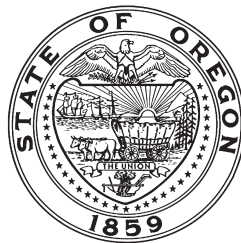


OREGON BULLETIN

Supplements the 2008 *Oregon Administrative Rules Compilation*

Volume 47, No. 2
February 1, 2008

For December 17, 2007–January 15, 2008



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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

ORS 183.310(9) defines “rule” as “any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.” Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 180 days), using the procedures outlined in the *Oregon Attorney General’s Administrative Law Manual*. The Administrative Rules Unit, Archives Division, Secretary of State assists agencies with the notification, filing and publication requirements of the administrative rules process. Every Administrative Rule uses the same numbering sequence of a 3 digit agency chapter number followed by a 3 digit division number and ending with a 4 digit rule number. (000-000-0000)

How to Cite

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

Understanding an Administrative Rule’s “History”

State agencies operate in a dynamic environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track the changes to individual rules, and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed a “history” for each rule which is located at the end of rule text. An Administrative Rule “history” outlines the statutory authority, statutes implemented and dates of each authorized modification to the rule text. Changes are listed in chronological order and identify the agency, filing number, year, filing date and effective date in an abbreviated format. For example: “OSA 4-1993, f. & cert. ef. 11-10-93” documents a rule change made by the Oregon State Archives (OSA). The history notes that this was the 4th filing from the Archives in 1993, it was filed on November 10, 1993 and the rule changes became effective on the same date. The most recent change to each rule is listed at the end of the “history.”

Locating the Most Recent Version of an Administrative Rule

The annual, bound *Oregon Administrative Rules Compilation* contains the full text of all permanent rules filed through November 15 of the previous year. Subsequent changes to individual rules are listed in the OAR Revision Cumulative Index which is published monthly in the *Oregon Bulletin*. Changes to individual Administrative rules are listed in the OAR Revision Cumulative Index by OAR number and include the effective date, the specific rulemaking action and the issue of the *Oregon Bulletin* which contains the full text of the amended rule. The *Oregon Bulletin* publishes the full text of permanent and temporary administrative rules submitted for publication.

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available in electronic and printed formats. Electronic versions are available through the Oregon State Archives Website at <http://arcweb.sos.state.or.us>. Printed copies of these publications are deposited in Oregon’s Public Documents Depository Libraries listed in OAR 543-070-0000 and may be ordered by contacting: Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701, Julie.A.Yamaka@state.or.us

2007–2008 Oregon Bulletin Publication Schedule

The Administrative Rule Unit accepts rulemaking notices and filings Monday through Friday 8:00 a.m. to 5:00 p.m. at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97301. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following publication deadlines.

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an “Appointment of Agency Rules Coordinator” form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a “Delegation of Rulemaking Authority” form, ARC 915-2005. It is the agency’s responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms ARC 910-2003 and ARC 915-2005 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97301, or are downloadable from the Oregon State Archives Website.

Publication Authority

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

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SPECIAL ANNOUNCEMENTS

MODEL STATE ADMINISTRATIVE PROCEDURE ACT REVISION PROCESS — INVITATION TO PARTICIPATE

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is revising its Model State Administrative Procedure Act (MSAPA). NCCUSL invites organizations and individuals interested in state administrative agency processes to participate in this effort.

NCCUSL is a 117 year old national organization of lawyers, judges and law professors who are appointed to represent their states in drafting and seeking enactment of uniform laws to facilitate commerce and certainty in the law among the states. For more information about NCCUSL, visit <http://www.nccusl.org/>.

The goal of the MSAPA drafting committee is to make the administrative process more efficient, accessible and fair. The most recent draft of MSAPA is available at <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=234>. The drafting process will not be completed until the spring of 2009. The MSAPA drafting committee invites interested parties to attend committee meetings as an observer and make comments and suggestions at the meetings or by submitting them in writing. To become an observer, please contact Ms. Leang Sou at NCCUSL at (312) 450-6606 or at leang.sou@nccusl.org. Submit written comments about the MSAPA to Commissioner Francis J. Pavetti, 18 The Strand, Goshen Point, Waterford, CT 06385.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 08 - 01

DETERMINATION OF STATE OF EMERGENCY IN UMATILLA COUNTY DUE TO SEVERE WINTER STORM AND HIGH WINDS

Pursuant to ORS 401.055, I find that a threat to life, safety and property exists due to a severe winter storm that occurred in Umatilla County on January 4, 2008. The storm caused extensive damage to private structures, businesses, public buildings, numerous roads and highways, utility lines and other infrastructure in Umatilla County.

IT IS ORDERED AND DIRECTED:

1. The Office of Emergency Management (OEM) shall activate the State's Emergency Operations Plan and shall coordinate access to and use of personnel and equipment of all state agencies necessary to assess, alleviate, respond to, mitigate or recover from conditions caused by this emergency.
2. The Office of Emergency Management shall closely monitor and coordinate with Umatilla County to facilitate needs and requirements as requested.
3. All State agencies shall provide any assistance that is deemed necessary to assist Umatilla County in the response and recovery efforts. All State agencies shall coordinate requests and deployment of resources through the Office of Emergency Management.

These findings and this order were initially made by verbal proclamation at 6:50 p.m. on the 4th day of January, 2008, and confirmed in writing by this Executive Order on this 5th day of January, 2008.

Done at Salem, Oregon, this 5th day of January, 2008.

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

ATTEST

/s/ Jean Straight for
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 08 - 02

DETERMINATION OF STATE OF EMERGENCY IN UNION COUNTY DUE TO SEVERE WINTER STORM AND HIGH WINDS

Pursuant to ORS 401.055, I find that a threat to life, safety and property exists due to a severe winter storm that occurred in Union County on January 4, 2008. The storm caused extensive damage to private structures, businesses, public buildings, numerous roads and highways, utility lines and other infrastructure in Union County.

IT IS ORDERED AND DIRECTED:

1. The Office of Emergency Management (OEM) shall activate the State's Emergency Operations Plan and shall coordinate access to and use of personnel and equipment of all state agencies necessary to assess, alleviate, respond to, mitigate or recover from conditions caused by this emergency.
2. The Office of Emergency Management shall closely monitor and coordinate with Union County to facilitate needs and requirements as requested.
3. All State agencies shall provide any assistance that is deemed necessary to assist Union County in the response and recovery efforts. All State agencies shall coordinate requests and deployment of resources through the Office of Emergency Management.

These findings and this order are confirmed in writing by this Executive Order on this 11th day of January, 2008.

Done at Salem, Oregon, this 11th day of January, 2008.

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

ATTEST

/s/ Jean Straight for
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

DEQ SELECTS THE PORTLAND REGION AS AN AIR TOXICS GEOGRAPHIC AREA

Pursuant to OAR 340-246-0150, The Oregon Department of Environmental Quality (DEQ) is formally selecting the Portland region as the first air toxics geographic area. DEQ has prioritized geographic areas statewide and found that the Portland region has the highest risk to the population from air toxics. Relying upon two computer modeling studies and six years of monitoring data, DEQ has determined that within the Portland region at least ten air toxics are above levels protective of human health, and three of these are more than ten times above protective levels.

The Portland air toxics geographic area includes sections of Multnomah, Washington, Clackamas and Yamhill counties. DEQ is describing this area by listing the census tracts representing areas of higher air toxics risk that are also more densely populated or undergoing population growth and development. The listed census tracts will be the study area of a DEQ project called "Portland Air Toxics Solutions" or "PATS". Under PATS, DEQ will work with a broad group of interested persons within the study area to develop and implement an air toxics emission reduction plan.

A map of the PATS study area and more information about DEQ's air toxics program may be found on DEQ's website at <http://www.deq.state.or.us/air/toxics/pats.htm>. The PATS study area includes the following census tracts:

Multnomah County:

000100,000200,000301,000302,000401,000402,000501,000502,000601,000602,000701,000702,000801,000802,000901,000902,001000,001101,001102,001201,001202,001301,001302,001400,001500,001601,001602,001701,001702,001801,001802,001900,002000,002100,002201,002202,002301,002302,002401,002402,002501,002502,002600,002701,002702,002801,002802,002901,002902,002903,003000,003100,003200,003301,003302,003401,003402,003501,003502,003601,003602,003603,003701,003702,003801,003802,003803,003901,003902,004001,004002,004101,004102,004200,004300,004400,004500,004601,004602,004700,004800,004900,005000,005100,005200,005300,005400,005500,005600,005700,005800,005900,006000,006100,006200,006300,006401,006402,006501,006502,006601,006602,006701,006702,006801,006802,006900,007000,007100,007201,007202,007300,007400,007500,007600,007700,007800,007900,008001,008002,008100,008201,008202,008302,008400,008500,008600,008700,008800,008901,008902,009000,009101,009102,009201,009202,009301,009302,009400,009501,009502,009603,009604,009605,009606,009701,009702,009801,009803,009804,009901,009902,009903,010001,010002,010100,010200,010303,010304,010305,010306,010402,010405,010406,010407,010408,010409,

Washington County:

030100,030200,030300,030401,030402,030501,030502,030600,030700,030801,030803,030804,030900,031003,031004,031005,031006,031100,031200,031300,031402,031403,031404,031504,031506,031507,031508,031509,031510,031511,031512,031605,031606,031608,031609,031610,031611,031612,031613,031703,031704,031705,031706,031804,031805,031806,031807,031808,031809,031903,031904,031905,031906,032001,032002,032103,032104,032105,032106,032200,032300,032403,032404,032405,032406,032500,032603,032604,032605,032606,032901,032902,033000,033100,033200,

Clackamas County:

020100,020200,020302,020303,020304,020401,020402,020501,020502,020503,020600,020700,020800,020900,021000,021100,021200,021300,021400,021500,021601,021602,021700,021801,021802,021900,022000,022101,022103,022104,022201,022203,022204,022300,022400,022500,022601,022602,022702,022703,022704,022902,022903,023000,023100,023201,023202,023300,023401,023402,023500

Yamhill County:

030100,030201,030202

Questions concerning this announcement should be directed to Sarah Armitage in DEQ's Portland office at 503-229-5186, or toll free in Oregon at 1-800-452-4011.

PUBLIC NOTICE PROPOSED REMEDIAL ACTION FOR FORMER GULL STATION NO. 415 KLAMATH FALLS, OR

COMMENTS DUE: March 1, 2008

PROJECT LOCATION: 1100 Main Street, Klamath Falls, Klamath County

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action decision regarding cleanup activities at the above referenced site based upon an approval of work done to date and a proposed Risk-Based Corrective Action Plan.

HIGHLIGHTS: The former Gull 415 Station ceased operations as a retail service station in 1974; the underground storage tanks (USTs) were removed in the late 1980s. Site investigations confirmed the presence of petroleum impacted soil and groundwater. In an effort to remove the source of contamination, approximately 1,260 cubic yards of suspected petroleum contaminated soil (PCS) was excavated from the site during April and May 2006 and taken to Dry Creek Landfill, Central Point for disposal. Contaminants remaining in groundwater at the site have been shown to be present at concentrations below site-specific risk-based concentrations. Petroleum contaminated soil remains at the site, which contains benzene at concentrations that exceed the risk-based concentration for an urban residential scenario; however, the PCS occurs at depths of 6 feet to 8 feet below ground surface, which is considered to be protective of human health, welfare, and the environment.

A conceptual site model was developed and a risk-based assessment performed showing that residual petroleum hydrocarbons do not pose an unacceptable risk to all reasonably likely current exposure pathways. Construction which includes a residential component may require the use of engineering controls. The site is in an area served by a municipal water system.

Based upon the consultant's findings, there are no pathways by which ecological receptors may be exposed to site-related contaminants. Residual contaminants at the site do not currently produce odors or other nuisance conditions.

If implemented as proposed, this risk-based corrective action plan will achieve protective conditions at the site as defined in OAR 340-122-0040.

COMMENT: All documents and reports pertaining to the recommendation of acceptance of the proposed remedial action may be reviewed by appointment, at DEQ's office in Bend, 300 SE Reed Market Road, Bend, OR 97702. To schedule an appointment or make inquiries, contact the project manager, Joe Klemz at (541) 388-6146, ext. 237.

Written comments should be sent to the attention of Mr. Klemz at the address listed above and must be received by March 1, 2008. Questions or comments may also be directed to Mr. Klemz via email at klemz.joe@deq.state.or.us

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

PUBLIC NOTICE PROPOSED REMEDIAL ACTION FOR BLY DISTRICT RANGER STATION, BLY, OR

COMMENTS DUE: March 1, 2008

PROJECT LOCATION: Bly, Klamath County

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action decision regarding cleanup activities at the above referenced site based upon an approval of work done to date and a proposed Risk-Based Corrective Action Plan.

HIGHLIGHTS: The Bly Ranger Station site consists of approximately 7.4 acres containing five office buildings, a warehouse and storage buildings, and six houses. Petroleum contaminated soil (PCS) was discovered in October, 1992 during the decommissioning of one 2,000 gallon underground storage tank (UST) which had been used to store gasoline. Initial cleanup efforts included the excavation of

OTHER NOTICES

approximately 550 to 600 cubic yards of PCS. Subsequent site investigation determined that groundwater at the site had also been impacted. Groundwater monitoring events have occurred at the site through 2004. Monitoring reports continue to show that the contaminant plume is stable and undergoing biodegradation, and that contaminated groundwater does not migrate off site. A pocket of petroleum contaminated soil remains at the site, however the PCS occurs at depths of 11 feet to 14 feet below ground surface, which is considered to be protective of human health, welfare, and the environment.

A conceptual site model was developed and a risk-based assessment performed which showed that residual petroleum hydrocarbons do not pose an unacceptable risk to all reasonably likely current and future exposure pathways. The site is in an area served by a municipal water system.

Based upon the consultant's findings, there are no pathways by which ecological receptors may be exposed to site-related contaminants. Residual contaminants at the site do not currently produce odors or other nuisance conditions.

If implemented as proposed, this risk-based corrective action plan will achieve protective conditions at the site as defined in OAR 340-122-0040.

COMMENT: All documents and reports pertaining to the recommendation of acceptance of the proposed remedial action may be reviewed by appointment, at DEQ's office in Bend, 300 SE Reed Market Road, Bend, OR 97702. To schedule an appointment or make inquiries, contact the project manager, Joe Klemz at (541)388-6146, ext. 237.

Written comments should be sent to the attention of Mr. Klemz at the address listed above and must be received by March 1, 2008. Questions or comments may also be directed to Mr. Klemz via email at klemz.joe@deq.state.or.us .

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 NO FURTHER ACTION DETERMINATION FOR THE GABLE ROAD/HWY 30 SITE, ST. HELENS, OREGON

COMMENTS DUE: March 3, 2008

PROJECT LOCATION: Intersection of Gable Road and Highway 30 in St. Helens, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve a no further action determination (NFA) at the Gable Road/Hwy 30 site in St. Helens, Oregon. This site has been identified by DEQ in our Environmental Cleanup Site Information (ECSI) system as site # 4848.

HIGHLIGHTS: DEQ has reviewed site investigations and remedial action reports for this approximate 0.96-acre site in St. Helens. Assessments and investigations identified areas of the property with concentrations of arsenic and lead in soil found in fill material that had been placed on the site. Site investigations also evaluated a former drinking water supply well (now decommissioned). In the fall of 2006, 1,225.86 tons of contaminated soil were removed from the site. Post-removal sampling verified that all contaminated materials were removed — with the exception of a pocket of subsurface arsenic-contaminated soil that was left undisturbed since it was directly below a water supply line that conveys water to a fire hydrant present on the east edge of the property .

Based on the work performed, DEQ is prepared to issue a NFA for the Gable Road/Hwy 30 site. The NFA would stipulate that due care be taken by utility or excavation workers in the area of identified arsenic-contaminated soil. DEQ does not plan to require that an institutional control be established on the site as a condition of the NFA. How to Comment: DEQ's project file is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a

file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. DEQ has also posted the Staff Report on our ECSI internet site <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.aspx?SourceId=4848&SourceIdType=11>.

Send written comments to Chuck Harman, Project Manager, at the address listed above or via email at harman.charles@deq.state.or.us by 5 p.m., March 3, 2008. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

Summaries of site information can be found on DEQ's on-line Environmental Cleanup Site Information (ECSI) database (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The Gable Road/Hwy 30 site is listed as ECSI # 4848.

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

THE NEXT STEP: DEQ will consider all public comments received by the March 3, 2008 deadline and the Regional Cleanup Manager will make a final decision after consideration of these public comments.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DECISION FOR BLUEBERRY HILL NURSERY (A.K.A. FORMER CRAWFORD OIL BULK PLANT) PENDLETON, OREGON

COMMENTS DUE: March 3, 2008 by 5:00 p.m.

PROJECT LOCATION: 900 SW Emigrant Ave, Pendleton
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a no further action (NFA) determination for Blueberry Hill Nursery site located at 900 SW Emigrant Ave in Pendleton, Oregon.

HIGHLIGHTS: The proposed No Further Action determination is documented in the No Further Action Decision Document, dated January 10, 2008. The site was a former petroleum bulk plant that operated from the 1910's to 1988. Approximately 67 tons of contaminated soil has been excavated and transported off-site for disposal. Groundwater was not encountered in the soil excavations or other assessment activities.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. Summary information and a copy of "No Further Action Decision Document" memo are available in DEQ's Environmental Cleanup Site Information (ECSI) database <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 0524.

To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by March 3, 2008 and sent to Katie Robertson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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

REQUEST FOR COMMENTS PROPOSED SETTLEMENTS REGARDING COLUMBIA SLOUGH, PORTLAND, MULTNOMAH COUNTY

COMMENTS DUE: March 3, 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

OTHER NOTICES

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:

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 — 2701 N. Newark St.

Precision Equipment — 8440 N. Kerby Ave.

Wastech — 701 N. Hunt St.

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.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

Board of Clinical Social Workers Chapter 877

Rule Caption: Amends rules for clinical social workers; adds requirements for criminal records check.

Date: 2-16-08 **Time:** 10 a.m.–12 p.m. **Location:** 3218 Pringle Rd SE
Suite 240
Salem, OR

Hearing Officer: Mark Oldham, LCSW

Stat. Auth.: ORS 675.510(3), 675.530(1)(3), 675.535(1), 675.537(1)(3), 675.560 (2), 675.571(4), 675.595(3), 675.600(1)(a)

Stats. Implemented: ORS 675.510–675.600

Proposed Adoptions: 877-020-0017, 877-022-0005, 877-025-0001, 877-025-0006, 877-025-0011, 877-025-016, 877-025-0021

Proposed Amendments: 877-020-0000, 877-020-0005, 877-020-0008, 877-020-0009, 877-020-0010, 877-020-0012, 877-020-0015, 877-020-0016, 877-020-0020, 877-020-0030, 877-020-0031, 877-020-0036, 877-020-0046, 877-020-0055, 877-030-0040, 877-030-0100

Proposed Repeals: 877-020-0013, 877-025-0000, 877-025-0005

Last Date for Comment: 2-16-08, 12 p.m.

Summary: These changes accomplish the following: (1) Clarify process for certification and licensing; (2) Change the period for passing tests for licensure; (3) Establish the same fee for issue of initial and renewal of certificate; (4) Establish the same fee for initial and renewal of license; (5) Increases License renewal from \$90 to \$96; (6) Repeals the designations of “formal” and “informal” continuing education; (7) Allows the Board to require national FBI fingerprint background check for all applicants and other specific categories; (8) Reduces the lead-time needed for submission of non-credentialed continuing education; (9) Requires licensees to timely self-report in-patient psychiatric hospitalization or psychiatric day treatment; and (10) Requires private practice licensees to have specific information in client records, keep records in a secure, safe, retrievable and legible condition, and establishes record retention protocols.

Public comment may be provided to the Board through email (Jon.Langewalter@state.or.us) fax (503-373-1427), mail (Board address above), or in person at the Board meeting on Saturday, February 16, 2008.

Rules Coordinator: Jon F. Langewalter

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

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

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Revise language in rules related to professional licensure under the OSBEELS authority.

Date: 3-11-08 **Time:** 1 p.m. **Location:** 670 Hawthorne Ave. SE
Suite 220
Salem, OR 97301

Hearing Officer: Sue Lazlo

Stat. Auth.: ORS 672.153, 672.155 & 672.255

Other Auth.: ORS 670.310

Stats. Implemented: ORS 672.002–672.325

Proposed Adoptions: 820-010-0236

Proposed Amendments: 820-010-0300, 820-010-0305, 820-010-0325, 820-010-0415, 820-010-0425, 820-010-0427, 820-010-0450, 820-010-0605

Last Date for Comment: 3-11-08, Close of Hearing

Summary: 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 rescoring 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 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 email address.

Rules Coordinator: Mari Lopez

Address: Board of Examiners for Engineering and Land Surveying, 728 Hawthorne Ave. NE, Salem, OR 97301

Telephone: (503) 362-2666

Board of Geologist Examiners Chapter 809

Rule Caption: Official university transcript must include geology coursework as listed in this rule.

Stat. Auth.: ORS 183, 192, & 672

Other Auth.: SB 80 from 2005 Legislative Session

Stats. Implemented: ORS 672.555(4)

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 809-030-0025

Last Date for Comment: 2-28-08, Close of Business

Summary: This rule was filed with the Secretary of State's Office on March 17, 2006, as a permanent rule. It was received in the Legislative Counsel Office on April 3, 2006. The receipt by the Legislative Counsel Office was outside the 10-day window of time in which it was to have been submitted to Legislative Counsel. Notification that this was a late submission to Legislative Counsel was received in the Board office on December 13, 2007. This rule is being resubmitted with no changes to the rule that was submitted on March 17, 2006.

SB 80 of the 73rd Legislative Assembly directs the Board to list in rule the geology coursework required on a university transcript that accompanies an application packet. Some applicants have a geology degree, but the geology coursework falls short of the 45 hour threshold required of any applicant that has not completed a degree. SB 80 allows the Board to establish in rule what coursework should be found on an official university transcript with a degree posted.

Rules Coordinator: Susanna Knight

Address: 1193 Royvonne Avenue SE, #24, Salem, OR 97302

Telephone: (503) 566-2837

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Board of Massage Therapists
Chapter 334

Rule Caption: Amend written exam requirements.

Date:	Time:	Location:
2-15-08	9 a.m.	OBMT Board Rm. 748 Hawthorne Ave. NE Salem OR 97301

Hearing Officer: Stephanie Manriquez

Stat. Auth.: ORS 183, 687.121 & 687.051

Other Auth.: SB 1127

Stats. Implemented: ORS 183, 687.021 & 687.051

Proposed Amendments: 334-010-0010

Last Date for Comment: 2-15-08, Close of Hearing

Summary: The proposed rule amendment changes the requirements for written examination effective July 1, 2008. The proposed change is as follows: Applicants are required to take and pass the MBLEX written exam, Oregon practical exam and Oregon jurisprudence exam. Applicants who passed a written exam previously accepted by the board prior to July 1, 2008 may submit proof of passing in lieu of the MBLEX requirement.

Rules Coordinator: Patty Glenn

Address: 748 Hawthorne Avenue NE Salem, OR 97301

Telephone: (503) 365-8657

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Board of Nursing
Chapter 851

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

Date:	Time:	Location:
4-10-08	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.010, 678.111, 678.117, 678.150

Proposed Adoptions: 851-045-0030, 851-045-0040, 851-045-0050, 851-045-0060, 851-045-0070, 851-045-0080, 851-045-0090, 851-045-0100

Proposed Repeals: 851-045-0000, 851-045-0005, 851-045-0010, 851-045-0015, 851-045-0016, 851-045-0020, 851-045-0025

Last Date for Comment: 4-8-08, 5 p.m.

Summary: These rules cover the standards and scope of practice for the Licensed Practical Nurse and Registered Nurse. The amendments are part of a periodic review.

Please Note: This hearing was originally scheduled for February 14, 2008 and was published in the January 2008 issue of the Oregon Bulletin.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

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Board of Parole and Post-Prison Supervision
Chapter 255

Rule Caption: Clarification of the residency requirements for offenders released onto Parole and Post-Prison Supervision.

Stat. Auth.: ORS 144.050, 144.098, SB 2 (2007)(codified at 2007 OL Ch. 100), HB 2007 (2007)(codified at 2007 OL Ch. 99)

Stats. Implemented:

Proposed Amendments: 255-070-0003

Last Date for Comment: 2-29-08

Summary: The amendment of this rule is necessary to implement the policy choices made in SB 2 and HB 207 (2007).

Rules Coordinator: Peggy Barber

Address: Board of Parole & Post-Prison Supervision, 2575 Center St. NE, Suite 100, Salem, OR 97301-4621

Telephone: (503) 945-0914

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amends rule to clarify apparent conflict in Farm Labor Contractor rules.

Stat. Auth.: ORS 658.407

Stats. Implemented: ORS 658.405-658.503

Proposed Amendments: 839-015-0605

Last Date for Comment: 2-25-08

Summary: The proposed 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

Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Telephone: (971) 673-0784

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Rule Caption: Clarifies and corrects prevailing wage rate rules.

Stat. Auth.: ORS 651.060(4), 279C

Stats. Implemented: ORS 279C.800-279C.870

Proposed Amendments: 839-025-0008, 839-025-0015

Last Date for Comment: 2-25-08

Summary: The proposed 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 filled with the Construction Contractors Board by contractors and subcontractors on public works projects of \$100,000 or more.

Rules Coordinator: Marcia Ohlemiller

Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Telephone: (971) 673-0784

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Construction Contractors Board
Chapter 812

Rule Caption: Rules Adopted or Amended to Implement 2007 Legislation.

NOTICES OF PROPOSED RULEMAKING

Date: 2-26-08
Time: 11 a.m.
Location: West Salem Roth's IGA
Santiam Rm.
1130 Wallace Rd.
Salem, OR

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.085, 701.130, 701.150, 701.235, 701.350, 701.355, 701.515, 701.992

Other Auth.: Chapter 114, OR Laws 2007 (HB 2109), Chapter 203 OR Laws 2007 (HB 2309), & Chapter 836, OR Laws 2007 (HB 3242)

Stats. Implemented: ORS 25.270, 25.785, 25.990, 87.093, 279C.590, 279C.800 to 279C.870, 670.600, 701, 701.005, 701.035, 701.055, 701.058, 701.072, 701.075, 701.078, 701.085, 701.100, 701.105, 701.115, 701.125, 701.130, 701.135, 701.150, 701.175, 701.227, 701.350, 701.355, 701.992 & section 4, chapter 114 OR Laws 2007 (HB 2109), section 2, chapter 203 OR Laws 2007 (HB 2309), sections 3, 4, 6 & 8, chapter 836, OR Laws 2007 (HB 3242)

Proposed Adoptions: 812-003-0131, 812-003-0152, 812-003-0153, 812-003-0171, 812-003-0221

Proposed Amendments: 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

Last Date for Comment: 2-26-08, 11 a.m.

Summary: 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 requirements 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

Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

Telephone: (503) 378-4621, ext. 4077

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Department of Administrative Services Chapter 125

Rule Caption: Renumber & amend Surplus Property Administrative Rules from Division 246 to Division 50 an adopt one new rule.

Date: 2-19-08
Time: 1:30 p.m.
Location: General Services Bldg.
1225 Ferry St. SE
Salem, OR

Hearing Officer: Brian King

Stat. Auth.: ORS 283.060, 279A.065, 279A.070

Stats. Implemented: ORS 279A.250, ORS 279A.260, 279A.280

Proposed Adoptions: 125-050-0200

Proposed Ren. & Amends: 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

Last Date for Comment: 2-21-08, Close of Hearing

Summary: To Amend DAS Surplus Property Rules 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

NOTICES OF PROPOSED RULEMAKING

Address: 155 Cottage Street NE, Salem, OR 97301
Telephone: (503) 378-2349, ext. 325

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**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.

Date:	Time:	Location:
2-15-08	9 a.m.	155 Cottage St. NE Salem, OR 97301

Hearing Officer: Mark Rassmussen

Stat. Auth.: ORS 240.145(3), 240.240

Stats. Implemented: ORS 408.225, 408.230, 408.235

Proposed Adoptions: 105-040-0015

Last Date for Comment: 2-22-08, 5 p.m.

Summary: 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 examination 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

Address: 155 Cottage St. NE U90; Salem, OR 97301

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

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**Department of Administrative Services,
Oregon Educators Benefit Board
Chapter 111**

Rule Caption: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in for eligible Subject Districts.

Date:	Time:	Location:
2-21-08	8:30-9:30 a.m.	635 Capitol St. NE Agriculture Bldg. Basement Hearing Rm. Salem, OR

Hearing Officer: Denise Hall

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec. 14(2), Ch. 7 OL 2007

Proposed Adoptions: 111-020-0001

Last Date for Comment: 2-29-08

Summary: Establishes Oregon Educators Benefit Board's policy for initial group phase-in to the OEBB benefit program.

Rules Coordinator: Rose Mann

Address: Department of Administrative Services, Oregon Educators Benefit Board, 775 Court St. NE, Salem, OR 97301

Telephone: (503) 378-4606

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Rule Caption: Establishes Oregon Educators Benefit Board's policy for continuation of group medical and dental coverage.

Date:	Time:	Location:
2-21-08	8:30-9:30 a.m.	635 Capitol St. NE Agriculture Bldg. Basement Hearing Rm. Salem, OR

Hearing Officer: Denise Hall

Stat. Auth.: Ch. 7, OL 2007

Stats. Implemented: ORS 659A.060-069 & 743.600-602; Sec. 14(a)(B), Ch. 7, OL 2007; Sec. 4(7), Ch. 7, OL 2007

Proposed Adoptions: 111-050-0001, 111-050-0010, 111-050-0015

Last Date for Comment: 2-29-08

Summary: Establishes Oregon Educators Benefit Board's policy for continuation of group medical and dental coverage under the Con-

solidated Omnibus Budget Reconciliation Act (COBRA) and upon retirement.

Rules Coordinator: Rose Mann

Address: Department of Administrative Services, Oregon Educators Benefit Board, 775 Court St. NE, Salem, OR 97301

Telephone: (503) 378-4606

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**Department of Agriculture
Chapter 603**

Rule Caption: Identifies weed seeds that are adulterants in wild bird feed.

Date:	Time:	Location:
2-25-08	11:30 a.m.	635 Capitol St NE Salem, OR 97301

Hearing Officer: Janet Fults

Stat. Auth.: ORS 633.045

Stats. Implemented: ORS 633.045

Proposed Adoptions: 603-058-0032

Last Date for Comment: 2-29-08

Summary: These rules are established to reflect changes made by the 2007 Legislative Assembly through HB 2289 to make viable noxious weed seeds an adulterant in wild bird feeds. Adopts by reference the Prohibited and restricted noxious weed lists in OAR 603-056-0205. Provides limited enforcement in 2008 if the product is registered with the Department.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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Rule Caption: Adds two weeds to weed quarantine, modifies restrictions on English ivy, Butterfly bush and Scotch broom.

Stat. Auth.: ORS 561.020, 561.190, 561.510, 570.305

Stats. Implemented: ORS 570.405

Proposed Amendments: 603-052-1200

Last Date for Comment: 2-5-08

Summary: The proposed amendment to the noxious weed quarantine (603-052-1200) would update the list of prohibited plants. Two new weeds, parrots feather (*Myrophyllum aquaticum*) and perennial peavine (*Lathyrus latifolius*) would be added to the list. restrictions would be added for English Ivy (*Hedera helix/hibernica*) and Butterflybush (*Buddleia davidii/varabilia*). These changes would bring the noxious weed quarantine in line with the State Noxious Weed List maintained by the State Weed Board.

This rule has already been filed and appeared in the December 1, 2007 Oregon Bulletin. Due to a request to extend the public comment period by an interested party, we are extending the public comment time by three weeks.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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

Rule Caption: Clarifies the requirements for reciprocal electrical and plumbing licensing.

Date:	Time:	Location:
5-20-08	9:30 a.m.	1535 Edgewater St. NW Salem, Oregon

Hearing Officer: Aeron Teverbaugh

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117 & 670.380

Proposed Adoptions: 918-030-0045

Proposed Amendments: Rules in 918-030, 918-282, 918-695

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

NOTICES OF PROPOSED RULEMAKING

Summary: This proposed rule clarifies the qualifying criteria for persons applying for reciprocal electrical or plumbing licensing.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

Date:	Time:	Location:
2-19-08	6 p.m.	1820 Roosevelt St., Bldg. 2 Eugene, OR
2-19-08	6 p.m.	520 NW Wall St., Rm. 314 Bend, OR
2-19-08	6 p.m.	811 SW 6th Ave, 10th Flr. EQC Rm. B Portland, OR
2-20-08	6 p.m.	2411 NW Cardan Ave. Rm. 220 Pendleton, OR
2-21-08	6 p.m.	1101 W Main St. Suite 101 Medford, OR

Department of Environmental Quality
Chapter 340

Rule Caption: This rulemaking increases water quality permit fees and establishes a surcharge on certain municipalities.

Date:	Time:	Location:
2-19-08	6 p.m.	DEQ 1102 Lincoln St. Suite 210 Eugene, OR
2-20-08	6 p.m.	Community Justice Center 101 W Main St., Suite 101 Medford, OR
2-21-08	6 p.m.	DEQ 2020 SW 4th Ave. Rm. A-B, 4th Flr. Portland, OR
2-27-08	6 p.m.	City Hall--Community Rm. (back entrance) 501 SW Emigrant Ave. Pendleton, OR
2-28-08	6 p.m.	Health & Human Services 1300 NW Wall St., Suite 101 Bend, OR

Hearing Officer: Melissa Aerne, DEQ
Stat. Auth.: ORS 468.020, 468.065 & 468B.035
Other Auth.: 2007 OL Ch. 696 (SB 737)
Stats. Implemented: ORS 468.065 & 468B.051, Ch. 696 OL 2007 (SB 737)
Proposed Amendments: 340-045-0075
Last Date for Comment: 3-3-08, 5 p.m.

Summary: This proposal to revise the Oregon Administrative Rules contains three separate water quality permit fee increases and a surcharge. DEQ proposes to increase fees for all National Pollution Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permits by 3% to address increased water quality permit program positions approved by the 2007 Legislature. Suction dredge permits covered by General Permit 700-PM and WPCF-Onsite permits are not included in the increase. DEQ proposes to increase NPDES storm water permit fees by 82% to support 14 new storm water program positions, approved by the 2007 Legislature.

DEQ proposes to implement a surcharge on 47 municipalities with 52 wastewater treatment plant permits that have an average dry weather design flow capacity of one million gallons per day or more. The surcharge will support two limited-duration positions to perform work as outlined in Senate Bill 737. Senate Bill 737 requires DEQ to create a list of priority persistent bioaccumulative toxics that have a documented effect on human health, wildlife and aquatic life.

To submit comments or request additional information, please contact Melissa Aerne at the Department for Environmental Quality (DEQ) at wqfeerule@deq.state.or.us, at (503) 229-5656; toll free in Oregon at 800-452-4011, ext. 5656; by fax (503) 229-6037, or visit DEQ's website at http://www.deq.state.or.us/news/public_notices/PN.asp

Rules Coordinator: Larry McAllister
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6412

Rule Caption: Amend solid waste composting facility rules and adopt new National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit No. 1200-CP for composting facilities. Clarify financial assurance requirements for solid waste disposal facilities and public notice requirements for renewal of several solid waste permits.

Hearing Officer: Julie Berndt, Bruce Lumper, Kathy Kiwala, Audrey Eldridge
Stat. Auth.: ORS 459.045, 459.235, 459.236, 459A.025, 459A.110, 459A.115, 468.020, 468B.020, 468B.035
Stats. Implemented: ORS 459.005, 459.015, 459.045, 459.205, 459.215, 459.225, 459.235, 459.236, 459.245, 459.248, 459.272, 459.273, 459A.025, 459A.110, 459A.115, 468.065, 468B.015, 468B.035, 468B.050
Proposed Adoptions: 340-096-0023, 340-096-0026, 340-096-0027, 340-096-0029
Proposed Amendments: 340-045-0033, 340-093-0030, 340-093-0050, 340-093-0070, 340-093-0080, 340-093-0100, 340-093-0105, 340-093-0130, 340-093-0140, 340-093-0150, 340-096-0001, 340-096-0010, 340-096-0020, 340-096-0050, 340-097-0110, 340-097-0120
Proposed Repeals: 340-096-0024
Proposed Ren. & Amends: 340-096-0028 to 340-096-0025
Last Date for Comment: 2-29-08, 5 p.m.

Summary: The proposed rules eliminate several categories of solid waste composting facility permits and adjust permit exemptions for agricultural and certain small composting operations; provide greater specificity to composting facility design features for stormwater and leachate control; adopt a new water quality NPDES Stormwater General Permit designed specifically for composting facilities; clarify the agricultural application exemption in the definition of solid waste; clarify financial assurance requirements for solid waste disposal facilities and public notice requirements for renewal of several solid waste permits.

To submit comments or request additional information, please contact Pat Vernon at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, Portland, Oregon 97241, toll free in Oregon at 800-452-4100 or 503-229-5720, or at vernon.pat@deq.state.or.us, or by fax 503-229-6977 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: This proposal increases WPCF Onsite Fees by 3% and 5% and the Onsite application surcharge by \$20 and makes minor housekeeping changes.

Date:	Time:	Location:
2-19-08	6 p.m.	Community Justice Center 1101 Main St., Suite 101 Medford, OR
2-20-08	6 p.m.	DEQ Bend Office, Conference Rm. 300 SE Reed Market Rd. Bend, OR
2-21-08	6 p.m.	City Hall--Community Rm. (Back Entrance) 501 SW Emigrant Ave. Pendleton, OR
2-26-08	6 p.m.	DEQ, 1102 Lincoln St. Suite 210 Eugene, OR

NOTICES OF PROPOSED RULEMAKING

2-27-08 6 p.m. DEQ, 10th Flr, EQC-A
811 SW 6th Ave
Portland, OR

Hearing Officer: Dan Wiltze, DEQ
Stat. Auth.: ORS 468.020, 468.065, 454.745, 454.755
Stats. Implemented: ORS 454.605 to 454.755, 468.065, 468B.035, 468B.051.

Proposed Amendments: 340-071-0140, 340-071-0220

Last Date for Comment: 3-3-08, 5 p.m.

Summary: The Onsite System Fee Increase rulemaking proposes two separate water quality permit fee increases, a surcharge, and two housekeeping changes in Division 71.

The DEQ water quality permit program needs a 3% fee revenue increase to help cover anticipated increased salary and benefit costs and a 5% increase to support 2.5 new positions in the water quality program. This rulemaking will increase Water Pollution Control Facility Onsite permit fees by 3% and 5% to cover a portion of these costs in the water quality program. Other water quality permit fees in division 045 are being increased under a separate rulemaking.

Since 2001, the onsite program has been reduced by 4.60 FTE. This reduction in FTE has resulted in a decline in DEQ's services such as conducting program reviews of the contract county programs. DEQ is proposing a \$20 surcharge increase to allow DEQ to add 3.0 FTE in order to conduct regularly scheduled program reviews of contract county programs and ensure consistent implementation of the onsite program across the state.

DEQ proposes to change the structure of the fee schedule from outline format to table format. The fees will be presented in Tables 9A to 9F. The proposed changes to the structure of the fee schedule will make it easier for the regulated community to determine what fee is required for their application.

DEQ proposes to strike the words "or Structure" from section 11 of Table 1 of Division 71. Structure is not defined in Division 71 but is defined by Oregon Building Codes Department as that which is built or constructed. Striking the words "or Structure" is needed to clarify the intent of the rule and give appropriate flexibility to our agents in the field in regards to onsite system setbacks from certain structures.

To submit comments or request additional information, please contact Zach Loboy at loboy.zach@deq.state.or.us, at (541) 687-7425; toll free in Oregon at 800-844-8467 ext. 7425; by fax (541) 686-7551, or visit DEQ's website at <http://www.deq.state.or.us/news/publicnotices/PN.asp>

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
2-22-08	11 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 418.785, 419B.005 - 419B.050, 2007 Or. Laws ch. 674, 2007 Or. Laws ch. 781

Proposed Amendments: 413-015-0100, 413-015-0110, 413-015-0115, 413-015-0205, 413-015-0415, 413-015-0420

Last Date for Comment: 2-27-08

Summary: OAR 413-015-0100 about the processes and timeline for screening reports of alleged child abuse or neglect is being amended to clarify that the rules in OAR chapter 407 division 045 contain

the processes and time lines for completion of response to reports of alleged child abuse or neglect in Children's Care Providers.

OAR 413-015-0110 about the subject matter of the rules in OAR chapter 413 division 015 is being amended to reference new rules OAR 413-015-0520 to 413-015-0565 for Day Care Investigations.

OAR 413-015-0115 which defines terms used in OAR chapter 413, division 015 about child protective services (CPS) is being amended to add definitions for the terms Children's Care Provider, Day Care Facility, designated medical professional, OIT (Office of Investigations and Training), private child-caring agency, reasonable suspicion, and suspicious physical injury. This rule is also being amended to update statutory references. This rule is also being amended to implement HB 3328 (2007 Or. Laws ch. 674) and HB 3113 (2007 Or. Laws ch. 781).

OAR 413-015-0205 about Child Protective Services (CPS) screening activities is being amended to provide direction to CPS screeners for transferring child abuse and neglect reports to OIT for child abuse investigative response. This rule is also being amended to clarify the screening activities that must be completed. This rule is also being amended to clarify information the screener must gather from a reporter to determine the Department's response and how to handle historical cases with the disposition of "unable to locate." This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting. This rule is also being amended to implement HB 3328 (2007 Or. Laws ch. 674) and HB 3113 (2007 Or. Laws ch. 781).

OAR 413-015-0415 about Child Protective Services (CPS) assessment activities and OAR 413-015-0420 about the initial contact the CPS worker must make are being amended to implement the provisions of HB 3328 (2007 Or. Laws ch. 674) and HB 3113 (2007 Or. Laws ch. 781), by specifying that the Department and the law enforcement agency must assure that suspicious physical injuries in which there is a reasonable suspicion of abuse are evaluated by a designated medical professional or available physician within 48 hours; requiring CPS workers photographing suspicious physical injuries to send those photographs to a designated medical professional within 72 hours; requiring that all photographs be filed in the case record and labeled with identifying information within 48 hours or the next business day, whichever occurs later; requiring the Department to make photographs of suspicious physical injuries available to multi-disciplinary team (MDT) members if the case is staffed by the MDT; clarifying that photographs of the anal or genital region may be taken only by medical personnel; and stating that the CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region. OAR 413-015-0415 and OAR 413-015-0420 are also being amended to assist the Department in transferring the investigation of child abuse and neglect in a subset of Licensed Child Caring Agencies that will be referred to as Children's Care Providers from the CPS/CAF Program to the OIT in the Director's office. The investigation of child abuse and neglect in these mental health therapeutic settings requires a specialized skill set that can be offered by OIT. These rules are also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
2-22-08	9 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 & 418.285

Proposed Amendments: 413-120-0060

Last Date for Comment: 2-27-08

Summary: OAR 413-120-0060 about the process for reviewing an adoption committee's decision is being amended to make permanent a temporary rule amendment adopted on December 12, 2007 and allow the Assistant Director of the Children, Adults and Families Division of the Department of Human Services, if the deadline for judicial review has not expired, to withdraw and reconsider the adoption committee's decision on adoption placement for a child who is in the permanent custody of the Department or a legal risk adoptive placement.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
2-22-08	10 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.330-418.340

Proposed Amendments: 413-130-0000, 413-130-0005, 413-130-0010, 413-130-0020, 413-130-0030, 413-130-0040, 413-130-0050, 413-130-0060, 413-130-0070, 413-130-0075, 413-130-0080, 413-130-0090, 413-130-0100, 413-130-0110, 413-130-0115, 413-130-0120, 413-130-0125, 413-130-0130

Last Date for Comment: 2-27-08

Summary: OAR 413-130-0000 through 413-130-0130 about the eligibility criteria for the Adoption Assistance program are being amended to make changes to the eligibility criteria and enable children adopted through Tribes with IV-E eligibility to be eligible to receive Adoption Assistance. These rules are also being amended to clarify key terms, 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

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

Telephone: (503) 945-6067

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

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

Date:	Time:	Location:
2-21-08	10 a.m.	Rm. 255, 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.117, 411.660, 411.700, 411.730, 411.795, 411.806, 411.816, 411.892, 414.042, 414.105, 414.106, 418.040, 418.100

Other Auth.: 7 USC 2014(d)(18); 7 USC 2014(g)(2)(B)(v); 42 USC 405(j)(4); 42 USC 1396d(p) (Section 1905(p) of the Social Security Act); 42 USC 1396p; 42 USC 1396r-6 (Section 1925 of the Social Security Act); 42 USC 3020a(b); Deficit Reduction Act of 2005

(DRA); Public Law 103-296; 7 CFR 273.8(c)(1); 7 CFR 273.9(b)(2)(ii); 20 CFR 416.1123(b)(3); 42 CFR 435.115; 45 CFR 260; 45 CFR 260.52; 45 CFR 261

Stats. Implemented: ORS 410.070, 411.060, 411.070, 411.095, 411.117, 411.620, 411.630, 411.635, 411.650, 411.660, 411.700, 411.708, 411.730, 411.795, 411.816, 411.892, 412.600, 413.200, 414.042, 414.047, 414.055, 414.105, 416.310, 416.340, 418.040, 418.045, 418.100, 418.125, 2007 Or. Laws Ch. 288

Proposed Amendments: 461-001-0000, 461-025-0310, 461-025-0350, 461-115-0610, 461-115-0705, 461-125-0310, 461-135-0832, 461-135-0835, 461-135-0910, 461-135-1175, 461-140-0040, 461-145-0120, 461-145-0370, 461-145-0470, 461-145-0490, 461-145-0500, 461-145-0505, 461-145-0520, 461-145-0530, 461-145-0550, 461-145-0585, 461-145-0910, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0030, 461-175-0050, 461-175-0200, 461-175-0340, 461-190-0426, 461-195-0521

Proposed Repeals: 461-145-0450

Proposed Ren. & Amends: 461-006-0452 to 461-135-0833

Last Date for Comment: 2-26-08

Summary: OAR 461-001-0000 about definitions for terms used in OAR chapter 461 is being amended to change the definition of shelter-in-kind to include shelter provided by an agency or person outside of the financial group and to clarify what constitutes shelter-in-kind. Previously, shelter-in-kind only included shelter provided by an agency or person outside of the household group. Additionally, the rule is being amended for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) program to remove certain types of shelter and situations where no shelter is being provided from the definition of shelter-in-kind. For OSIP, OSIPM, and QMB, shelter-in-kind does not automatically apply in all situations where there are no shelter costs.

OAR 461-006-0452 about the treatment of burial expenses in the Department's Estates Administration Unit is being amended and renumbered as 461-135-0833 to increase the allowance for the average cost of a plain and decent funeral to \$3,500 for those recipients of public assistance who die on or after, April 1, 2008. In addition, those funeral items not considered professional services or merchandise are being clarified. This rule is being renumbered to 461-135-0833 because currently it is the only rule in OAR chapter 461, division 006 and it is being renumbered to be adjacent to the Department's other rules used in its estate recovery process.

OAR 461-025-0310 about requests for hearings in public assistance, medical, and food stamp programs is being amended to clarify that individuals have a right to a contested case hearing when the Department has issued a notice to an employer participating in the JOBS program seeking repayment under ORS 411.892. This rule is also being amended to clarify the circumstances when a client is entitled to a hearing when the Department has not acted on a request or application for public assistance.

OAR 461-025-0350 about withdrawals of hearing requests is being amended to make permanent a temporary rule adopted on January 1, 2008, implement HB 2423 (2007 Or. Laws, ch. 288) and adjust the process that applies to a client withdrawal from contested case. This amendment specifies when an individual may withdraw a request for hearing, the actions taken after a withdrawal occurs, and how an individual may cancel a withdrawal of a request for hearing.

OAR 461-115-0610 about verification is being amended to make updates to terminology and language and to align with current policy and practice related to domestic violence verification. Program intent and practice does not require verification of the occurrence of domestic violence in any program.

OAR 461-115-0705 about required verification in the Department's Breast and Cervical Cancer Medical program (BCCM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Extended Medical Assistance (EXT), Oregon Health Plan (OHP) and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs is being amended to make the rule consistent

NOTICES OF PROPOSED RULEMAKING

with the Department's policy and practice by removing EXT from the programs that require individuals to provide documentation of citizenship/identity. The Department's policy is that clients who are transitioning from the MAA or MAF program to EXT do not require a full medical redetermination so are not required to provide documentation of citizenship/identity.

OAR 461-125-0310 about the basis of need in the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs is being amended to clarify that the blindness, old age, or disability basis of need applies to OSIPM (as well as to OSIP) and that children are not eligible for the \$1.70 SIP payment. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-135-0832 about definitions used in the Department's Estate Administration rules is being amended to clarify key terms used in the Department's estate administration process. This amendment adds definitions for "blind child", "child under age 21" and "date of request". This rule is also being amended to change the definition of "estate" to include an inter-spousal transfer of assets for public assistance recipients who die on or after April 1, 2008. This rule is also being amended to change the definition of "living trust" to include an irrevocable trust. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-135-0835 about claims against the estates of recipients of public assistance is being amended to identify new recovery claim criteria for recipients who die on, or after, April 1, 2008. This rule is being amended to make an inter-spousal transfer of assets subject to estate recovery if such transfer(s) occurs no earlier than 60 months prior to the first date of request for assistance. This rule is also being amended to clarify that any assistance payments, made at any age, are recoverable if they are payments made under the General Assistance provisions of ORS Chapter 411, or categorized as GA. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-135-0910 about the eligibility for the Department's public assistance, medical, and food stamp programs of refugees in the Unaccompanied Minors Program is being amended to clarify the programs for which such refugees are not eligible. Currently, the rule states that such individuals are not eligible for any cash assistance program. This rule is being amended to specify that such individuals are not eligible for the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs. This rule is being amended to make it consistent with Department practice.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to clarify that the Department uses countable income to determine eligibility for the Senior Farm Direct Nutrition Program and that the Department may not issue more than one voucher per case per year. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-140-0040 about determining the availability of income in the public assistance, medical, and food stamp programs is being amended to specify that expenses incurred to secure a payment, such as Workers Compensation or damages from an accident, are not countable. This rule is also being amended to clarify that not only earned income but also unearned income that is diverted at the request of the individual who owns it is considered available income. This rule is also being amended to cross-reference to OAR 461-150-0020 for purposes of clarity. In addition, OAR 461-140-0040 is being amended to clarify that for all programs, when a client receives money that is intended and used for the care of someone that does not live with the client, the money used for the care of the person not living with the client does not count as income to the client. This rule is also being amended to clarify that income is not considered available in the Medical Assistance Assumed (MAA), Refugee Assistance

(REF), Refugee Assistance Medical, (REFM), and Temporary Aid for Needy Families (TANF) programs when the income is controlled by the client's abuser, if the client is a victim of domestic violence, the client's abuser controls the income, and the abuser is not in the client's filing group.

OAR 461-145-0120 regarding the definition of earned income for the public assistance, medical, and food stamp programs is being amended to clarify that earned income includes representative payee fees.

OAR 461-145-0370 about the treatment of income from the Older Americans Act in public assistance, medical, and food stamp programs is being amended to clarify the treatment of income that is not a wage or a salary under Title V of the Older Americans Act of 1965 by specifying that payments to an individual 55 years of age and older under Title V of the Older Americans Act of 1965 that are not a wage or salary are excluded for all programs.

OAR 461-145-0450 about the treatment of representative payee fee payments in the public assistance, medical, and food stamp programs is being repealed. Section (1) is being incorporated into OAR 461-145-0120 and section (2) is being deleted because representative payee fees are never unidentifiable and are not intended for more than one beneficiary.

OAR 461-145-0470 about the treatment of shelter-in-kind income in the Department's public assistance, medical, and food stamp programs is being amended to change the treatment of shelter-in-kind for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) programs and to clarify current policy regarding the treatment of shelter-in-kind in these programs. Previously the rule required that in all situations where a client had no shelter costs the shelter-in-kind standard for total shelter applied. This rule is being amended to specify that shelter-in-kind does not apply to all situations where the client has no shelter costs. If the shelter is provided by certain nonprofit organizations or in situations where the shelter does not have any market value, the shelter is not considered shelter-in-kind. Shelter-in-kind standards only apply in situations where the client's shelter is considered shelter-in-kind as that term is defined in OAR 461-001-0000. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0490 about the treatment of Social Security benefits in public assistance, medical, and food stamp programs is being amended to be consistent with federal requirements in 42 USC 405(j)(4) and Public Law 103-296. Previously, representative payee fees were excluded from countable Social Security income. This amendment makes representative payee fees countable as unearned income.

OAR 461-145-0500 is being amended to remove language that indicates that money remaining from Social Security death benefits after the payment of burial costs can be considered "periodic income" and to correct current language. The rule will add a cross-reference to OAR 461-140-0120 about treatment of lump sum income.

OAR 461-145-0505 about the treatment of spousal support in public assistance, medical, and food stamp programs is being amended to clarify how spousal support is treated. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0520 about the treatment of stocks, bonds, and other securities in the public assistance, medical, and food stamp programs is being amended to clarify what is counted as a resource for stocks, bonds, and other securities. This rule is also being amended to remove a reference to hardship waivers for savings bonds, and adds a cross reference to OAR 461-145-0108 for types of resources not covered in section (1) of this rule. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

NOTICES OF PROPOSED RULEMAKING

OAR 461-145-0530 about the treatment of tax refunds in the Department's public assistance, medical, and food stamp programs is being amended to state that any income tax refunds are counted as a resource and to update statutory references.

OAR 461-145-0550 about the treatment of unemployment compensation benefits in the Department's public assistance, medical, and food stamp programs is being amended to clarify the treatment of unemployment compensation benefits by removing a reference to monthly unemployment compensation benefits, adding a reference to disaster unemployment benefits, and adding a cross reference to the disaster assistance rule (OAR 461-145-0100). The amended rule also clarifies that retroactive payments are counted as periodic or lump sum income. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0585 about the treatment of vocational rehabilitation payments in the Department's public assistance, medical, and food stamp programs is being amended to clarify the treatment of vocational rehabilitation payments. The treatment of vocational rehabilitation payments is being clarified by specifying that educational income that is not a training allowance or stipend is treated as provided in OAR 461-145-0150. The treatment of vocational rehabilitation payments is also being clarified by specifying that benefits from the United States Veterans Administration are treated as provided in OAR 461-145-0580. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0910 about the definition and treatment of self-employment income in public assistance, medical, and food stamp programs is being amended to revise the policy on identifying self-employment by removing one criterion from a list of six, changing the criteria from meeting five out of a list of six criteria to meeting four out of a list of five criteria. The Department is also amending this rule by adding independent contractor status to the criteria for determining self-employment, and clarifying that the amount of countable income considered available is gross receipts and sales before costs. The Department is eliminating the criterion "contracts for a site or works out of another's business location." This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-155-0290, 461-155-0291, and 461-155-0295 about the income standards for the QMB-BAS, QMB-DW, and QMB-SMB programs (Qualified Medicare Beneficiaries - Basic, Disabled Worker, Special Medicare Beneficiaries) are being amended to base their income standards on the 2008 Federal Poverty Level. Currently, these rules are based on the 2007 Federal Poverty Level. These amendments will make permanent temporary rule changes planned to be adopted by March 1, 2008.

OAR 461-160-0030 about the treatment of costs in the Department's public assistance, medical, and food stamp programs is being amended to comply with federal guidance on the use of medical costs in the determination of an individual's liability as stated in the State Medicaid Manual 3701.3, published by United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. This rule is being amended to clarify how medical expenses are used to calculate the long-term care liability by adding a section that provides how to determine the medical deduction in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs. This rule is being amended to codify current practice that has not previously been codified in an administrative rule.

OAR 461-175-0050 about the notice period used to determine the effective date for taking action when the Department sends a decision notice is being amended to remove a cross-reference to the computation method in the rules for the Office of Administrative Hearings.

OAR 461-175-0200 about the types of decision notices that are required in certain circumstances is being amended to implement HB 2423, 2007 Or. Laws, Ch. 288, and restate the Department's policy about amending a decision notice, when a decision notice becomes void, and when no decision notice is needed. This amendment will make permanent a temporary rule amendment from January 1, 2008. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-175-0340 about the type of decision notice that is required when an individual makes a voluntary decision to withdraw the individual's application or make a voluntary withdrawal or reduction in benefit amount is being amended to implement HB 2423, 2007 Or. Laws Ch. 288, make permanent a temporary rule amended January 1, 2008, and clarify Department policy when an individual notifies the Department that the individual wishes to withdraw his or her application for benefits or wishes to reduce or to no longer receive benefits. This amendment specifies that the Department sends a basic decision notice when a client withdraws a request for benefits. This amendment also states that to voluntarily reduce or close benefits, the individual completes a voluntary agreement. This amendment also specifies that the voluntary agreement is a final order, and states the grounds and time limits to set aside the agreement.

OAR 461-190-0426 is being amended to include in rule the requirements that JOBS Plus employers must comply with to be eligible to receive JOBS Plus payments from the Department. This rule is also being amended to remove old terminology and replace it with new terms.

OAR 461-195-0521 about calculating an overpayment in the Department's public assistance, medical, and food stamp programs is being amended to remove a reference to the Department's spend down program, which has been eliminated.

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

OAR 461-001-0000 and 461-025-0310 have separate pending changes that were filed for public comment on December 14, 2007 (http://arcweb.sos.state.or.us/rules/0108_Bulletin/0108_rule_making_bulletin.html). Those changes remain pending in addition to the changes described in this notice.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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**Department of Human Services,
Children, Adults and Families Division:
Vocational Rehabilitation Services
Chapter 582**

Rule Caption: Changes to Rules and Procedures Needed to Address Requirements of House Bill 2633, Ch. 209.

Date:	Time:	Location:
2-22-08	8 a.m.–11 a.m.	Dept. of Human Services 500 Summer St., Rm. 137 c-d Salem, OR
2-26-08	10 a.m.–12 p.m.	Multnomah Public Library Midland Branch 805 SE 122 Ave Portland, OR
2-28-08	8 a.m.–12 p.m.	McKenzie Center 2885 Chad Dr., Rm. 2 Eugene, OR

Hearing Officer: Ron Barcikowski

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511

Proposed Amendments: 582-001-0010, 582-070-0020, 582-080-0020

Last Date for Comment: 2-29-08

NOTICES OF PROPOSED RULEMAKING

Summary: 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 accreditation 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 (ORS 344.511(2)).

This rule would create definitions for “vocational training” and “vocational rehabilitation training” in conformance with the requirements of House Bill 2633 and would limit the school 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

Address: Department of Human Services, Children, Adults and Families Division: Vocational Rehabilitation Services, 500 Summer St. NE, E-87, Salem, OR 97301

Telephone: (503) 945-6734

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Department of Human Services, Public Health Division Chapter 333

Rule Caption: Emergency Contraception.

Date:	Time:	Location:
2-22-08	1 p.m.	Portland State Office Bldg. 1-D 800 Oregon St. NE Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 183.745, 441.055, HB 2700 (Ch. 182, 2007 OL)

Proposed Adoptions: 333-520-0073

Last Date for Comment: 2-25-08, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to adopt OAR 333-520-0073 in accordance with House Bill 2700 (Ch. 182, 2007 OL), to require 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 penalties for non-compliance.

Rules Coordinator: Judy Murdza

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

Telephone: (971) 673-0561

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Rule Caption: Registration of Organ Procurement Organizations.

Date:	Time:	Location:
2-29-08	1 p.m.	Portland State Office Bldg. Rm. 1-C 800 Oregon St. NE Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 441.015

Stats. Implemented: ORS 183.745, 441.015, SB 341 (Ch. 334, 2007 OL)

Proposed Adoptions: 333-080-0040, 333-080-0050

Proposed Amendments: 333-520-0110

Last Date for Comment: 3-3-08, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to adopt rules in accordance with Senate Bill 341 (Ch. 334, 2007 OL), effective July 1, 2008, to register organ procurement organizations, tissue banks and eye banks, and to impose civil penalties for non-compliance.

Rules Coordinator: Judy Murdza

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

Telephone: (971) 673-0561

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Rule Caption: Immunization ALERT lifetime expansion, approved school computer records, phase-in changes.

Date:	Time:	Location:
2-26-08	2:30 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1-E Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 432.119, 433.004, 433.094, 433.096, 433.098, 433.100, 433.273, 433.282 & 433.283; Ch. 445, HB 2185 (OL 2007), Ch. 433, HB 2188 (OL 2007)

Stats. Implemented: ORS 433.001, 433.004, 433.006, 433.092, 433.094, 433.096, 433.098, 433.100 & 433.235-433.284; Ch. 445 HB 2185 (OL 2007), Ch. 433, HB 2188 (OL 2007)

Proposed Amendments: 333-049-0010, 333-049-0020, 333-049-0030, 333-049-0040, 333-049-0050, 333-049-0060, 333-049-0065, 333-049-0070, 333-049-0080, 333-049-0090, 333-049-0120, 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0070, 333-050-0080, 333-050-0090, 333-050-0095, 333-050-0100, 333-050-0110, 333-050-0120, 333-050-0130, 333-050-0140

Proposed Repeals: 333-049-0110

Last Date for Comment: 2-26-08, 5 p.m.

Summary: The Department of Human Services proposes to amend rules in Chapters 333-049 and 333-050 in concert with Oregon Laws 2007, Chapters 433 and 445. Proposed amendment will address changes in the expansion of the Oregon Immunization ALERT registry system, change the phase-in schedule for Hepatitis A school immunization requirements, make administrative changes related to approved computerized immunization records, and update the process for review of exclusion orders. Civil penalties will be added for specified facilities that are non-compliant with Oregon immunization laws. Wording changes have been added to clarify these rules. OAR 333-049-0110 is repealed upon the date these rules become permanently adopted.

Rules Coordinator: Judy Murdza

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

Telephone: (971) 673-0561

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Rule Caption: Farm Direct Nutrition Program.

Date:	Time:	Location:
3-25-08	2 p.m.	Portland State Office Bldg., Rm. 1C 800 Oregon St. NE Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Proposed Amendments: 333-052-0030, 333-052-0040, 333-052-0050, 333-052-0060, 333-052-0065, 333-052-0070, 333-052-0075, 333-052-0080, 333-052-0090, 33-052-0100, 333-052-0110, 333-052-0120, 333-052-0130

Last Date for Comment: 3-27-08, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to amend rules in OAR 333-052 to incorporate the Senior Farm Direct Nutrition Program regulations allowing the Department to meet federal requirements.

Rules Coordinator: Judy Murdza

NOTICES OF PROPOSED RULEMAKING

Address: Department of Human Services, Public Health Division,
800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-0561

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

Rule Caption: Medicaid Nursing Facilities.

Date:	Time:	Location:
2-19-08	2 p.m.	Human Services Bldg. 500 Summer St. NE Rm. 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070, 414.065

Other Auth.: HB 3057 (2007 Legislative Session)

Stats. Implemented: ORS 410.070, 414.065

Proposed Amendments: 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

Proposed Repeals: 411-070-0428, 411-070-0462, 411-070-0005(T), 411-070-0027(T), 411-070-0035(T), 411-070-0045(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)

Last Date for Comment: 2-22-08, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to permanently adopt the September 10, 2007 temporary amendments to the Oregon Administrative Rules in Chapter 411, Division 070 relating to Medicaid Nursing Facilities that implemented a reduced payment methodologies directed in House Bill 3057, updated the scope of reimbursed goods and services to reflect current practice, clarified provider reporting expectations, and deleted obsolete rules.

In addition to adopting the temporary amendments, SPD is proposing to define "prior authorization", remove language pertaining to Pre-Admission Screening to reflect current practice and move language from OAR 411-070-0027 (Complex Medical Add-On payment Authorization) to OAR 411-070-0045 (Facility Payments) pertaining to prior authorization, nursing facility responsibility to confirm Medicaid eligibility and collect resident liability payment, and reduced payment for abuse.

Rules Coordinator: Christina Hartman

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

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Rule Caption: Nursing Facility Licensing (Criminal History Checks, Residents' Rights, Physician Services and Notice Requirements).

Date:	Time:	Location:
2-19-08	9 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137BC Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 181.537, 410.070, 410.090, 441.05, 441.605

Other Auth.: HB 3093 (2007)

Stats. Implemented: ORS 181.537, 441.055, 441.600-441.615

Proposed Amendments: 411-085-0200, 411-085-0310, 411-086-0200, 411-088-0070

Last Date for Comment: 2-22-08, 5 p.m.

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

- OAR 411-085-0200 (Licensee, Employee, Consultants) to require nursing facilities to conduct a criminal history check on all employees as required under OAR Ch. 407, Div. 7;
- 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 (ORS 183.415 and OAR 137-003-0505).

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: Procedures for establishment and reopening of paternity and consumer credit reporting.

Stat. Auth.: ORS 180.345

Other Auth.: 15 USC 1681b

Stats. Implemented: ORS 25.080, 25.650, 109.070, 109.252, 416.430, 416.443, OL 2007, Ch. 454

Proposed Amendments: 137-055-3020, 137-055-3060, 137-055-3080, 137-055-3100, 137-055-3140, 137-055-4560

Last Date for Comment: 3-21-08, 5 p.m.

Summary: OAR 137-055-3020 is being amended to delete the definition of "marital presumption." Additionally, the rule is being amended to delete provisions that provided for different processes, depending on when a child was born. A clarification has been added that when the Child Support Program has given notice to a husband and presumptive legal father that the program will proceed against another man that mother has named as the biological father, any objection from the husband must be in writing.

OAR 137-055-3060 is being amended to remove references to a conclusive presumption of paternity.

OAR 137-055-3080 is being amended to remove the reference to "legal" paternity under ORS 109.070, as well as making other house-keeping amendments.

OAR 137-055-3100 is being amended to clarify that the rule does not apply to parties who fail to comply with additional parentage testing unless he or she is the party who requested the additional tests.

OAR 137-055-3140 is being amended to remove a reference to a conclusive presumption of paternity and to clarify that an application for services may be required.

OAR 137-055-4560 is being amended to clarify that one of the reasons an obligor may contest credit reporting is that an arrears balance is the result of past support in an order or by an upward modification of an order. Additionally, a clarification is being added that a 10-day notice to the obligor or obligee must be given if the person's credit report will be obtained for the purpose of enforcing a support order.

Rules Coordinator: Carol Riches

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

Telephone: (503) 986-6086

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**Department of State Lands
Chapter 141**

Rule Caption: Established an expedited permit for fish habitat improvement projects, including large wood and boulders.

Date:	Time:	Location:
2-20-08	1-3 p.m.	Dept. of State Lands 775 Summer St. NE, Suite 100 Salem, OR 97301

Hearing Officer: Kevin Herkamp

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Proposed Adoptions: 141-089-0350, 141-089-0390

Last Date for Comment: 2-27-08

Summary: Establish an expedited general Authorization (GA) for the placement of large wood, placement of large boulders in bedrock dominated systems, and placement of spawning gravel to improve fish habitat conditions. The process to obtain authorization would be

NOTICES OF PROPOSED RULEMAKING

to notify the agency on the GA application and obtain an approval from the agency before starting the activity. The application would not go out for public review. DSL review will occur within 15 days instead of the current 40 days allowed under the existing GA process.

Rules Coordinator: Elizabeth Bott

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

Telephone: (503) 986-5239

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

Rule Caption: Clarifies Procedures and requirements to Obtain Expedited Titles Services from DMV.

Stat. Auth.: ORS 181.616, 184.619, 802.010 & 803.207

Other Auth.: 49 CFR Part 580

Stats. Implemented: ORS 803.207

Proposed Amendments: 735-028-0100

Last Date for Comment: 2-21-08

Summary: ORS 803.207 authorizes DMV to adopt rules to provide expedited title services for the purposes of complying with federal odometer disclosure requirements. In 1992, and for that purpose, DMV adopted OAR 735-028-0100 (Expedited Title and registration Services for Odometer Disclosure Problems). DMV recently reviewed the rule and determined it was difficult to understand and partially inaccurate.

As a result, DMV proposes to rewrite OAR 735-028-0100 to clarify language and correct the requirements for obtaining expedited title services. Text stating that a request for expedited services may be submitted in person to the DMV Headquarters is removed because that is no longer correct. All requests for expedited title services must be submitted by mail to: Expedite Desk c/o DMV Headquarters, 1905 Lana Ave NE, Salem, Oregon 97314.

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

Rules Coordinator: Lauri Salsbury

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

Telephone: (503) 986-3171

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Rule Caption: CDL Waiver of Physical Disqualification for Intrastate Operations.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Other Auth.: Title 49, CFR Sections 391.41–391.49

Stats. Implemented: ORS 807.040, 807.150

Proposed Ren. & Amends: 740-100-0070 to 735-063-0070, 740-300-0140 to 735-063-0075

Last Date for Comment: 2-21-08

Summary: The Motor Carrier Transportation Division of the Oregon Department of Transportation previously issued a Waiver of Physical Disqualification which allows intrastate operation of commercial motor vehicles by a commercial driver license holder who is determined to be medically qualified under Oregon criteria. The responsibility for issuing these waivers was transferred to the Driver and Motor Vehicles Division of ODOT on October 1, 2007. Rule changes are necessary in order to reflect this change.

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

Rules Coordinator: Lauri Salsbury

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, Motor Carrier Transportation Division Chapter 740

Rule Caption: Adoption and amendment of Federal safety and hazardous materials transportation regulations affecting motor carriers.

Stat. Auth.: ORS 153.022, 184.616, 184.619, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258 & 825.990

Stats. Implemented: ORS 825.210, 825.250, 825.252, 825.258 & 825.260

Proposed Amendments: 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-110-0010

Last Date for Comment: 2-21-08

Summary: These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the drivers' hours of service regulations are needed to correct an oversight from a previous rulemaking that should have allowed intrastate drivers to use extended intrastate hours of service for sleeper berth operations and for the time card exception. A provision regarding utility service vehicle drivers is being deleted, as it has recently been included in the federal regulations that are being adopted. Amendment related to medical waiver applications reflects transfer of that program to DMV.

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

Rules Coordinator: Lauri Salsbury

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

Telephone: (503) 986-3171

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Department of Veterans' Affairs Chapter 274

Rule Caption: Implement 2007 Legislative Changes.

Stat. Auth.: ORS 406-030 & 407.275

Other Auth.: HB 2155 & 2160 of the 2007 Legislative Session

Stats. Implemented: ORS 406-030 & 407.275

Proposed Amendments: 274-025-0030, 274-045-0060, 274-045-0240

Proposed Repeals: 274-015-0005, 274-015-0010

Last Date for Comment: 2-21-08

Summary: House Bill 2155 of the Regular Legislative Session (Ch. 755 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 (Ch. 117 Oregon Laws 2007) repealed Attorney Services for Veterans — ORS 406.410, 406.420 and 406.430.

Rules Coordinator: Herbert D. Riley

Address: Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97301-1285

Telephone: (503) 373-2055

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Rule Caption: Oregon Veterans' Emergency Financial Assistance Program.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010, 408.500

Other Auth.: HB 2157 (2007 Regular Legislative Session)

Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010, 408.500

Proposed Amendments: 274-012-0001, 274-012-01000, 274-012-0120

Last Date for Comment: 2-21-08

NOTICES OF PROPOSED RULEMAKING

Summary: This OAR repeals and supersedes the temporary Rule filed on January 1 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

Address: Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97301-1285

Telephone: (503) 373-2055

Employment Relations Board
Chapter 115

Rule Caption: Amends rules for public employees to designate a collective bargaining representative without an election.

Date: 3-5-08 **Time:** 9:30 a.m. **Location:** Employment Relations Brd.
Rm. 340
528 Cottage St. NE
Salem, OR 97301

Hearing Officer: Paul B. Gamson, Board Chair

Stat. Auth.: ORS 243.766(7), 243.682(20(b))

Other Auth.: HB 2891, OR Legislature 2007

Stats. Implemented: ORS 243.682, 243.692

Proposed Amendments: 115-025-0025, 115-025-0030, 115-025-0065

Last Date for Comment: 3-10-08

Summary: The proposed rule concerns 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

Address: Employment Relations Board, 528 Cottage St. NE, Suite 400, Salem, OR 97301-3807

Telephone: (503) 378-8610

Landscape Architect Board
Chapter 804

Rule Caption: Adjusts four different fees; allows Board to assess a civil penalty of less than \$5000.

Stat. Auth.: ORS 671.415 & 671.950

Stats. Implemented: ORS 671.950 & 671.365

Proposed Amendments: 804-030-0020, 804-040-0000

Last Date for Comment: 2-28-08, Close of Business

Summary: The Board submitted this rule change to the Administrative Rules Unit on March 17, 2006, and to the Legislative Counsel's Office on April 3, 2006. However, the submission to the Legislative Counsel's Office was outside the 10-day window allowed. The Board was notified on December 13, 2007, of the need to resubmit the rule.

The Board is now including on the fee list an application fee for initial Landscape Architect registration and an application fee for business registration, each being \$100.00. These application processing fees have always been assessed but were not listed in the fee schedule. The fee of \$50.00 for a registrant list is also being included in the fee listing. The Board is increasing the initial Landscape Architect registration fee by \$25.00 so that it becomes the same as the annual renewal fee of \$250.00.

The Board is rewording the civil penalty language so it can assess less than the \$5000.00 amount currently required by rule.

Rules Coordinator: Susanna Knight

Address: 1193 Royvonne Avenue SE, #19, Salem, OR 97302

Telephone: (503) 589-0093

Rule Caption: LA businesses must notify the Board within 30 days of any change in status.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.315

Proposed Amendments: 804-035-0010

Last Date for Comment: 2-28-08, Close of Business

Summary: This rule was finalized by the Board in June of 2006 and provided detailed information regarding the Certificate of Authorization which businesses must have if they are providing Landscape Architect services. An oversight in the rule development was the deadline set for businesses to submit changes to and of the following: the address; business status; officer status; or status of the person or persons in responsible charge. The Administrative Rule set the allowed the changes to arrive within a 60 day window. However, a review by Legislative Counsel of this submitted rule alerted the Board on December 7, 2007, to the enabling statute ORS 671.315 which clearly sets the window of time at 30 days.

This amendment to the current rule is submitted to correct the current error in the rule by changing the 60 days to 30 days.

Rules Coordinator: Susanna Knight

Address: 1193 Royvonne Avenue, #19, Salem, OR 97302

Telephone: (503) 589-0093

Landscape Contractors Board
Chapter 808

Rule Caption: Suspends delegated authority for an AL to issue a final order on behalf of the LCB.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 183.464

Proposed Repeals: 808-009-0360

Last Date for Comment: 3-6-08

Summary: This rule is being suspended to withdraw the delegated authority for an ALJ to issue a final order on behalf of the LCB.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909

Oregon Department of Education
Chapter 581

Rule Caption: Establishes minimum standards for sign language interpreters serving students in public schools.

Stat. Auth.: ORS 185.225 & 343.041

Stats. Implemented: ORS 185.110 & 185.225

Proposed Adoptions: 581-015-2035

Last Date for Comment: 2-27-08, 5 p.m.

Summary: The rule establishes minimum standards for sign language interpreters employed by or contracted with by public schools to provide services to students. The rule also establishes a timeline for meeting the standards.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Establishes requirements for use by schools of motorcoach type buses called School Pupil Activity Buses.

Stat. Auth.: 820.100 & 820.190

Stats. Implemented: 820.100-820.190

Proposed Amendments: 581-053-5556

Last Date for Comment: 2-27-08, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The rule allows the use by schools of motorcoach type buses call School Pupil Activity Buses (SPAB) for transportation of students for activity trips. The rule places requirements on providers of motorcoach services that contract with school districts and schools. The rule also establishes requirements for the operation of SPAB's and requirements for the drivers of SPAB's.

Rules Coordinator: Paula Merritt
Address: 255 Capital St NE, Salem 97310
Telephone: (503) 947-5746

Oregon Liquor Control Commission
Chapter 845

Rule Caption: Amend rule creating a new Number VI minor posting for "mixed-use" on-premises licensees.

Date: 2-22-08 **Time:** 10 a.m.-12 p.m. **Location:** 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Jennifer Huntsman
Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.430(3) and ORS 471.730(1) & (5)

Stats. Implemented: ORS 471.430(3)
Proposed Amendments: 845-006-0340

Last Date for Comment: 3-7-08
Summary: This rule describes the minor postings that the Commission assigns to those licensed premises that allow on-premises consumption. These minor postings define if and under what conditions minors are allowed in areas where alcohol is consumed or there is a drinking environment. Staff proposes revising and clarifying the definition of "drinking environment" to reflect a premises, room or area where the consumption of alcoholic beverages is the predominant activity. The proposed amendments would allow the Commission to determine that there is no "drinking environment" when activities besides "eating meals" (i.e. watching a performance, bowling, etc.) are the predominant activity. In order to standardize how minors are regulated in a premises, room, or area with "mixed-use" operations (i.e. concert halls, performing arts centers, movie theaters, sports arenas, convention centers, or dance halls), staff proposes the deletion of the current section (2)(a)-(j), When Minor Patrons are Allowed, and the addition of a new Number VI minor posting instead. This new Number VI minor posting [section (5)(g)] will put into our rule our current practice of using an approved control plan to regulate minors in certain types of premises. Staff further proposes the addition of a new section (8) regarding the control plan required for a Number VI minor posting, which would include examples of control plan elements which will prevent minors from obtaining alcohol and minimize minors' exposure to a drinking environment, and also establish violations for both failure to follow the approved control plan and failure to make the control plan available. Staff also proposes amending section (7), Permanent Changes to Minor Postings, by separating it from the section on temporary changes, and revising the language to simplify the process for licensees and staff while also clarifying the criteria for permanently changing a minor posting.

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: Amendment Modifies the Rules to Exclude Non-elective 403(b) Employer Contributions From PERS Definition of "Salary."

Date: 2-26-08 **Time:** 2-4 p.m. **Location:** Boardroom, PERS Headquarters
11410 SW 68th Pkwy
Tigard OR

Hearing Officer: Carolyn Waterfall

Stat. Auth.: ORS 238.650, 238A.450
Stats. Implemented: ORS 238.005, 238A.005
Proposed Amendments: 459-005-0001, 459-070-0001
Last Date for Comment: 3-7-08

Summary: This amendment modifies the rules to exclude non-elective 403(b) employer contributions made pursuant to ORS 243.820(3) from PERS definition of "salary."

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 Carolyn.Waterfall@state.or.us

Rules Coordinator: Carolyn Waterfall
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700
Telephone: (503) 598-3537

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

Date: 2-26-08 **Time:** 2 p.m. **Location:** Boardroom, PERS Headquarters
11410 SW 68th Pkwy
Tigard, OR 97223

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 237.620, Ch. 622 (2007 OL)
Proposed Amendments: 459-030-0011, 459-030-0025, 459-030-0030

Last Date for Comment: 3-7-08
Summary: The modifications to these rules change the timing of and the standard by which the PERS board will review the non-PERS sponsored benefit plans of those police officer and firefighters employed by public employers to ensure that they are equal to or better than (ETOB) pension benefits offered by PERS. The changes eliminate the requirement that the Board schedule an ETOB review every two years and replaces it with a new method by which the study will be engaged by the Board. The rules are also being modified to reflect a new ETOB standard that sets the comparative benchmark for the study to the PERS benefits that were in effect at the time the employee was hired.

Rules Coordinator: Carolyn Waterfall
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700
Telephone: (503) 603-7713

Oregon State Marine Board
Chapter 250

Rule Caption: Establish a Statewide Boating Safety/Education Assistance Program for non-profit organizations and associations.

Stat. Auth.: ORS 830
Stats. Implemented: ORS 830
Proposed Adoptions: 250-010-0075
Proposed Repeals: 250-010-0075(T)
Last Date for Comment: 3-14-08

Summary: This rule will implement a statewide boating safety/education assistance program. The program will provide small amounts of funding to local community organizations to address safety problems on their local waterways. The funds would be used for creative and innovative local projects that promote safe boating. Volunteer boating groups (such as the US Coast Guard Auxiliary or US Power Squadrons), non-profit clubs and association are among the groups that would be eligible to apply for funding. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency. The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Rules Coordinator: June LeTarte

NOTICES OF PROPOSED RULEMAKING

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309
Telephone: (503) 378-2617

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Oregon State Treasury
Chapter 170

Rule Caption: Criminal Records Check and Fitness Determination Rules.

Stat. Auth.: ORS 181.534, 184.340 & 184.365

Stats. Implemented: ORS 181.534(9)

Proposed Adoptions: 170-002-0010

Last Date for Comment: 2-25-08

Summary: 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

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

Telephone: (503) 378-4990

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Oregon University System,
Eastern Oregon University
Chapter 579

Rule Caption: Amend fee classification, usage priorities and rental rates at Eastern Oregon University.

Date:	Time:	Location:
2-19-08	3 p.m.	Hoke Union Bldg, Rm 301 Eastern Oregon University La Grande, OR

Hearing Officer: Stephen Jenkins

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 579-030-0005, 579-030-0010, 579-030-0015, 579-030-0020

Last Date for Comment: 2-21-08

Summary: 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 the increases in utilities and maintenance costs.

Rules Coordinator: Lara Moore

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

Telephone: (541) 962-3368

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Rule Caption: Amend special student course fees.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 579-020-0006

Last Date for Comment: 2-21-08

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

Rules Coordinator: Lara Moore

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

Telephone: (541) 962-3368

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Oregon University System,
Southern Oregon University
Chapter 573

Rule Caption: Discrimination, Duties of Grievance Officer.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 573-035-0040

Last Date for Comment: 2-28-08

Summary: Discrimination, Duties of Grievance Officer.

Rules Coordinator: Treasa Sprague

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

Telephone: (541) 552-6319

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Rule Caption: Code of Student Conduct, Administration of Grievances, Grievances.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 573-075-0100

Last Date for Comment: 2-28-08

Summary: Code of Student Conduct, Administration of Grievances, Grievances.

Rules Coordinator: Treasa Sprague

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

Telephone: (541) 552-6319

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Rule Caption: Academic Standards/Grading Grievance Policy, Regulation.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 573-095-0010

Last Date for Comment: 2-28-08

Summary: Academic Standards/Grading Grievance Policy, Regulation.

Rules Coordinator: Treasa Sprague

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

Telephone: (541) 552-6319

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Parks and Recreation Department
Chapter 736

Rule Caption: Updating, correcting and clarifying language to current nomenclature.

Stat. Auth.: ORS 183.545, 183.550, 390.805-390.925

Stats. Implemented: ORS 390.124, 390.845

Proposed Amendments: Rules in 736-040

Last Date for Comment: 2-28-08

Summary: Scenic Waterway administrative rules are in need of updating to address changes in staff, department titles, correct grammatical and typographical errors, update the "interim classification" list, and clarify the notification review process.

Rules Coordinator: Colleen Rogers

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

Telephone: (503) 986-0730

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Amendments to OAR 860-012-0100 Regarding Case Certification for Grant Eligibility.

Stat. Auth.: ORS 756.040 & 757.072

Stats. Implemented: ORS 757.072

Proposed Amendments: 860-012-0100

Last Date for Comment: 2-25-08, 5 p.m.

Summary: The proposed amendments to OAR 860-012-0100 clarify the requirements of an organization for case certification for eligibility for intervernor funding. These amendments are required to conform the rule to the language included in the First Amended and Restated Intervenor Funding Agreement approved by the Commission in its Order No. 07-564 on December 19, 2007, and effective January 1, 2008.

Rules Coordinator: Diane Davis

Address: 550 Capitol St NE, Suite 215, Salem OR 97301-2551

Telephone: (503) 378-4372

NOTICES OF PROPOSED RULEMAKING

Secretary of State, Corporation Division Chapter 160

Rule Caption: Clarifies the distinguishability standard used to determine business name availability.

Stat. Auth.: ORS 56.022

Stats. Implemented: ORS 58.085, 62.131, 63.094, 67.625, 68.735, 70.010, 128.580, 554.005 & 648.051

Proposed Amendments: 160-010-0010, 160-010-0011, 160-010-0012, 160-010-0013

Last Date for Comment: 2-28-08

Summary: This rule amends the OAR sections governing business name availability. It clarifies the use of “company” in a business name, what is considered an “entity identifier” and conforms the rule to the unique requirements of ORS 67.625.

Rules Coordinator: Tom Wrosch

Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

Telephone: (503) 986-2371

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Rule Caption: Conform the administrative rules for UCC filings to the new Model Administrative Rules adopted by IACA in 2007.

Stat. Auth.: ORS 79.0525 & 79.0526

Stats. Implemented: ORS 79.0501–79.0528

Proposed Amendments: 160-040-0100 – 160-040-0504

Last Date for Comment: 2-28-08

Summary: ORS Ch. 79.0526(3) directs the Secretary of State to adopt rules in harmony with other states and according to the Model Rules promulgated by the International Association of Corporate Administrators. In 2007, this body adopted new model rules, and this filing conforms Oregon’s rules to the new standard to the greatest extent possible.

Rules Coordinator: Tom Wrosch

Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

Telephone: (503) 986-2371

Water Resources Department Chapter 690

Rule Caption: Special area standards for water supply well construction and mainainence.

Date:
2-12-08

Time:
6 p.m.

Location:
Canby Adult Center
1250 S. Ivy
Canby OR 97013

3-4-08

6 p.m.

NW Viticulture Center
215 Doaks Ferry Rd. NW
Salem, OR 97304

Hearing Officer: Juno Pandian, Tom Paul

Stat. Auth.: ORS 537.780, 536.027, 536.090

Stats. Implemented: ORS 537.505–537.795, 537.780(1)

Proposed Adoptions: 690-215-0200

Proposed Amendments: 690-200-0028, 690-200-0050, 690-210-0280, 690-215-0060, 690-215-0080

Last Date for Comment: 3-10-08

Summary: The Water Resources Department (Department) is proposing administrative rules that establish special area standards for water supply well construction and maintenance in the Eola Hills Ground Water Limited Area and Petes Mountain Area. Specifically, the rules propose that all wells within both areas have a minimum 3/4-inch dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement to give the department access necessary to gather essential water level data. Additionally, the proposed standards would require that all new and deepened water supply wells that develop water from basalt within the Eola Hills ground Water Limited Area be constructed with casing and seal to within 100 feet of the bottom of the well.

Rules Coordinator: Ruben Ochoa

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

Telephone: (503) 986-0874

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Rule Caption: Effective date of professional standards adopted by the Board.

Adm. Order No.: BOA 1-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 801-001-0035

Subject: The rule is amended to update the effective date of professional standards to January 1, 2008.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-001-0035

Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2008.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05;

BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA

1-2007, f. 12-27-07 cert. ef. 1-1-08

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Rule Caption: Firm extension requests.

Adm. Order No.: BOA 2-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 801-010-0340

Subject: New provision allows extension of time in the event of death or other unforeseen circumstance for public accounting firms to meet ownership requirements.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-010-0340

Non-CPA and Non-PA Ownership of Business Organizations

(1) Requirements of non-CPA or non-PA ownership. The ownership of a business organization, defined in ORS 673.010 and registered as a firm under ORS 673.160 and OAR 801-010-0345, that is lawfully engaged in the practice of public accountancy in this state, may include owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(a) Licensed certified public accountants and public accountants shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(b) If the business organization has its principal place of business in this state and performs public accountancy services in this state, licensees under the provisions of ORS 673.150 or 673.100 shall, in the aggregate, directly or beneficially, hold ownership of more than half of the equity capital and a majority of voting rights;

(c) The business organization shall designate in writing a permit holder under ORS 673.150 who shall be responsible for the management and registration of the business organization in this state;

(d) A permit holder under ORS 673.150 shall have ultimate responsibility for each financial statement attest service engagement performed in this state;

(e) Non-licensee owners shall be material participants in the business of the firm or an entity affiliated with the firm;

(f) Non-licensee owners may be natural persons or legal entities provided that each ultimate beneficial owner of an equity interest in such entity shall be a natural person who materially participates in the business conducted by the firm.

(g) Non-licensee owners shall not hold themselves out as certified public accountants or public accountants.

(h) Business organizations with non-CPA or non-PA ownership that are registered under OAR 801-010-0345 shall comply with the requirements for peer review as provided in ORS 673.455 if such business organization performs attestation or compilation services.

(i) For purposes of this rule, "material participation" means an activity that is regular, continuous and substantial.

(2) Registration. A business organization with non-licensee ownership that is registered in this state under OAR 801-010-0345 shall certify at the time of registration and at each renewal that the business organization is in compliance with the provisions of this rule.

(3) Request for extension. If the licensee ownership of a registered business organization whose principal place of business is in this state does not meet the requirements of section (1) of this rule because of a death or other unforeseen circumstance, the business organization may request an extension of 180 days, or until the next renewal period, whichever is longer, for the business organization to meet such requirement.

(4) CPA designation. A business organization of which the majority ownership is held by individuals licensed as public accountants under ORS 673.100, may not use the term "CPA firm" or any similar name that would indicate that a majority of the owners of the firm hold CPA certificates issued under ORS 673.040.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ORS 673.160

Hist.: 1AB 18, f. 11-25-70, ef. 12-25-70; 1AB 29, f. 4-25-73, ef. 5-15-73; 1AB 3-1982, f. &

ef. 4-20-82; AB 5-1990, f. & cert. ef. 8-16-90; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994,

f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef.

1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03;

BOA 2-2007, f. 12-27-07 cert. ef. 1-1-08

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Rule Caption: Change retention period for work papers, firm name clarification and rules regarding non disclosure agreements.

Adm. Order No.: BOA 3-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 801-030-0010, 801-030-0015, 801-030-0020

Subject: Revisions make the following non-substantive changes:

1) Replace obsolete term "management advisory services" with current term "consulting services."

2) Reduce record retention period for audit working papers from seven years to five years, thus conforming with retention period in professional standards.

3) Provide clarification with regard to firm name requirements.

4) Provide clarification for the disclosure of confidential client information.

new section in 801-030-0020 prohibits licensees from entering into non disclosure agreements that would inhibit any party to the agreement from reporting alleged violations to the Board of Accountancy or that inhibit cooperation with any Board, State or Federal investigation.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-030-0010

General and Technical Standards

(1) **General Standards.** Licensees shall comply with the following general standards.

(a) **Professional Competence.** Licensees shall undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

(b) **Due Professional Care.** Licensees shall exercise due professional care in the performance of professional services.

(c) **Planning and Supervision.** Licensees shall plan and supervise the performance of professional services.

(d) **Sufficient Relevant Data.** Licensees shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(e) The Board adopts the AICPA Interpretations under AICPA rule 201 as a non-exclusive list to provide guidance to licensees, prospective licensees, the board and members of the public.

(2) **Auditing standards.** A licensee shall not permit the licensee's name to be associated with financial statements in such a manner as to imply that the licensee is independent with respect to such financial statements unless the licensee has complied with applicable generally accepted auditing standards. Statements on Auditing Standards issued by the AICPA, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures there from must be justified when such standards are not followed.

(3) **Accounting principles.**

(a) **Responsibility of Licensees in Public Accounting.** A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances, the financial statements would otherwise have been misleading. In such a case,

ADMINISTRATIVE RULES

the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this rule, generally accepted accounting principles are defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

(b) **Responsibility for the preparation** of financial statements in conformity with GAAP. A person who holds an active, inactive or lapsed license shall not state affirmatively that financial statements or other financial data of an entity are presented in conformity with generally accepted accounting principles (GAAP) if such statements or data contain any departure from an accounting principle promulgated by the Financial Accounting Standards Board and its predecessor entities and similar generally recognized authority that has a material effect on the statements or data taken as a whole.

(c) **Departures from Established Accounting Principles.** There is a strong presumption that adherence to officially established accounting principles would in nearly all instances result in financial statements that are not misleading. There may be unusual circumstances where literal application of pronouncements on accounting principles would have the effect of rendering financial statements misleading. In such cases the proper accounting treatment is that which will render the financial statements not misleading. The question of what constitutes unusual circumstances is a matter of professional judgment involving the ability to support the position that adherence to a promulgated principle would be regarded by a reasonable person as producing a misleading result.

(4) **Tax standards.** Licensees shall not perform tax planning services, recommend tax return positions or prepare or sign tax returns (including amended returns, claims for refund and information returns) filed with any taxing authority unless the licensee has complied with Statements on Standards for Tax Services issued by the Tax Executive Committee of the American Institute of Certified Public Accountants and with United States Department of Treasury Circular No. 230.

(5) **Other professional standards.** Licensees, in the performance of consulting services or accounting and review services, shall conform to the professional standards applicable to such services. For purposes of this rule such professional standards are considered to be defined by Statements on Consulting Services and Statements for Accounting and Review Services, respectively, in each instance issued by the AICPA, and by similar pronouncements by other entities having generally recognized authority.

Stat. Auth.: ORS 670.310, 673.410 & 673.445

Stats. Implemented: ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; AB 3-1989, f. & cert. ef. 1-25-89; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08

801-030-0015

Responsibilities to Clients

(1) **Confidential client information.** A member in public practice shall not disclose any confidential client information without the specific written consent of the client.

(a) **Prohibited disclosures.** Except as provided in subsection (b) of this rule:

(A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to or obtained by the licensee from a client or on behalf of a client if such information relates to services that the licensee rendered for the client.

(B) Members of the Board, members of Board committees and professional practice reviewers shall not disclose confidential client information which comes to their attention in the course of investigations, disciplinary proceedings or otherwise in carrying out their responsibilities, except that the Board may furnish such information when disclosure is required as described in subsection (b) of this rule.

(b) **Permitted disclosures.** Nothing in subsection (a) of this rule shall prohibit the disclosure of confidential client information under the following circumstances:

(A) When disclosure is required by the standards of the public accountancy profession in reporting on the examination of financial statements;

(B) When disclosure is required by a court order;

(C) In response to subpoenas issued in state or federal agency proceedings;

(D) In investigations or proceedings under ORS 673.170 or 673.400;

(E) In ethical investigations conducted by private professional organizations in the course of peer reviews;

(F) To the insurance carrier of a licensee in connection with a claim or potential claim; or

(G) When disclosure is required by the Oregon Board of Accountancy for regulatory purposes of the Board.

(2) **Client records and working papers.**

(a) **Definitions.** As used in this rule:

(A) Client records include any accounting or other records belonging to or obtained from or on behalf of the client or former client that the licensee received for the client's account or removed from the client's premises.

(B) Working papers include but are not limited to all statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by the licensee incident to or in the course of rendering services to a client or former client. Working papers are and shall remain the property of the licensee in the absence of an express agreement to the contrary between the licensee and client.

(C) In addition to the requirements specified in paragraph (B) of this rule, attest documentation shall include, but not be limited to, the following:

(i) The objectives, scope and methodology, including any sampling criteria used;

(ii) Documentation of the work performed to support significant conclusions and judgments, including descriptions of transactions and records examined that would enable a reviewer with relevant knowledge and experience, having no previous connection with the attest engagement, to examine the same transactions and records; and

(iii) Evidence of any supervisory review of the work performed.

(b) **Requested records.** Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:

(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.

(B) In response to a client's request for client records, made within a reasonable time, that occurs after the issuance of a tax return, financial statement, report or other document prepared by the licensee, the licensee shall furnish to the client or former client:

(i) A copy of a tax return, financial statement, report or other document issued by the licensee to or for such client or former client;

(ii) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account; and

(iii) A copy of the licensee's working papers to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(c) **Non-payment by client.** Licensees shall not refuse to provide client records and working papers as described in subsection (b) of this rule based on the client's failure or refusal to pay the licensee's fees.

(d) **Custody and disposition of working papers.**

(A) A licensee may not sell, transfer or bequeath working papers described in this rule to anyone other than one or more surviving partners or stockholders, or new partners or stockholders of the licensee, or any combined or merged organization or successor in interest to the licensee, without the prior written consent of the client or the client's personal representative or assignee.

(B) A licensee is not prohibited from making a temporary transfer of working papers or other material necessary to the conduct of peer reviews or for the disclosure of information as provided by section (1)(b) of this rule.

(C) A licensee shall implement reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(D) A licensee shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

(e) Retention of attest and audit working papers.

(A) Licensees must maintain for a period of at least five years the working papers for any attest service or audit report prepared by the licensee together with any other supporting information, in sufficient detail to support the conclusions reached in such report.

(B) The five-year retention period described in paragraph (A) of this subsection is extended if a longer period is required for purposes of a Board

ADMINISTRATIVE RULES

investigation as provided in paragraph (d)(D) of this rule and OAR 801-010-0115(3).

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.445
Hist.: AB 1-1978, f. & ef. 1-11-78; LAB 2-1984, f. & ef. 5-21-84; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2005, f. 1-26-05, cert. ef. 2-1-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08

801-030-0020

Other Responsibilities and Practices

(1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others.** A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising.** A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

(a) Includes a misrepresentation of fact;

(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;

(c) Is intended or likely to create false or unjustified expectations of favorable results;

(d) Falsely states or implies educational or professional attainments or licensing recognition;

(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(5) **Professional designations.** A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

(6) Firm names.

(a) False and misleading firm names.

(A) A public accounting firm shall not offer or provide public accounting services using a firm name that is misleading as to the legal entity or organization of the firm, as to the owners or employees of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, the number of licensees associated with or working for the firm or the identity of individual members of the firm. Except as provided in paragraphs (D) and (E) of this subsection, a firm name shall not include information about or indicate an association with, individuals who are not members of the firm.

(C) A firm name shall include words or abbreviations required by the laws under which the business organization is organized to identify the form of business organization or legal entity being used by the firm.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member:

(i) Is not actively engaged in the practice of public accountancy as a sole proprietor in the same market area, and

(ii) Approves in writing of the continued use of such name. Approval given by a licensee for the continued use of licensee's name may be withdrawn by the licensee, in writing and shall allow a reasonable period of time for the firm to withdraw such name.

(E) A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this rule.

(b) **Singular firm names.** The use by a certified public accountant or public accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant", "CPA" or "PA" is not misleading.

(c) Plural firm names.

(A) The use by a firm of a plural title or designation, including words like "company", "and company", "associates" and "accountants", is not misleading if, in addition to the names of persons included in the firm name, the firm employs at least one staff person, who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) **Notice to Board.** A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(7) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

ADMINISTRATIVE RULES

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented to the transaction after full disclosure of the differing interests in writing. Disclosure in writing shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) **Notification of change** of address, employer or assumed business name. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) **Child support defaults.** In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(11) **State tax defaults.** In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) **Continuing violation.** A continuing violation is a violation of any provision of ORS 673.010-673.457 or OAR chapter 801 that remains in place ("continues") without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single viola-

tion, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

(13) **Non-Disclosure Agreement.** "Non-disclosure agreement" means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS chapter 673 or OAR chapter 801 to the Board, or that inhibits any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal government.

(a) Licensees shall not enter into, nor benefit directly or indirectly from, any non-disclosure agreement.

(b) Any licensee who is a party to a non-disclosure agreement and who receives written notice from the Board, an agency of any state, or an agency of the Federal government requesting information that is subject to the provisions of such non-disclosure agreement, shall provide a written release for information requested within 30 days of the date of notice.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08

Rule Caption: Distance learning CPE does not require QAS review and approval.

Adm. Order No.: BOA 4-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 801-040-0030

Subject: Rule clarifies that CPE taken through a distance learning program provided by an accredited university or college, as described in ORS 673.050, are not required to be QAS approved.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-040-0030

Programs that Qualify for CPE Credit

(1) Qualifying programs. In order to qualify for CPE credit under these rules, a CPE program must be a formal program of learning that contributes directly to the professional competence of the licensee. It is the obligation of each licensee to select a course of study that contributes to the licensee's professional competence in public accountancy. The licensee may take programs in a variety of topics that are relevant to the licensee's practice.

(2) Program requirements. CPE programs must meet the following requirements to qualify for CPE credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program is at least one hour (fifty-minute period) in length;

(c) A record of attendance is maintained by the sponsor; evidence of completion is provided to participating licensees;

(d) The program is conducted by a qualified instructor whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(3) Eligible programs. The following programs will qualify for CPE credit provided they also meet the requirements of section (2) of this rule:

(a) Programs presented by national, state or local accounting organizations;

(b) Programs offered by a firm to licensees;

(c) Programs sponsored by organizations that provide professional educational programs on a regular basis;

(d) University or college courses are eligible for CPE credit at the rate of 15 CPE hours for each semester hour credit and 10 CPE hours for each quarter hour credit. University or college courses that do not earn college credit are eligible for one CPE hour for each classroom hour of learning;

(e) Distance learning programs offered by an accredited university or college are eligible for CPE credit as described in subsection (3)(d), without meeting the requirement of NASBA Quality Assurance Service approval described in section (4) of this rule.

(f) Other programs may qualify for CPE credit if the program meets the requirements of section 2 of this rule.

(4) Individual study programs.

(a) Correspondence courses or other individual study programs do not qualify for CPE credit unless both the CPE sponsor and the specific CPE program are approved by the NASBA Quality Assurance Service (QAS).

ADMINISTRATIVE RULES

(5) Programs not eligible for CPE credit. The following programs do not qualify for CPE credit:

(a) Courses taken to fulfill the requirements for licensure as a certified public accountant or public accountant;

(b) Ethics courses that were taken to fulfill the Ethics exam requirement for licensure; and

(c) CPA exam review or study courses.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 1-1994, f. & cert. ef. 1-21-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 4-2007, f. 12-27-07 cert. ef. 1-1-08

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Procedures for Predatory Sex Offender Designation for Inmates.

Adm. Order No.: PAR 1-2008

Filed with Sec. of State: 1-11-2008

Certified to be Effective: 1-11-08

Notice Publication Date: 11-1-2007

Rules Amended: 255-060-0011

Subject: Amend rule to conform language to ORS 181.585.

Rules Coordinator: Peggy Barber—(503) 945-0914

255-060-0011

Procedures for Predatory Sex Offender Designation

(1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree, or has been convicted of attempting to commit one or has been found guilty except for insanity of one of these crimes. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.

(2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores six or more points on the STATIC-99.

(4) Subject to the procedures set forth below, inmates or offenders who score six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.

(a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).

(b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.

(c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.

(d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more

(4) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after

the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

(5) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.

(a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.

(b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearings Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.

(c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.

(7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

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

Stat. Auth.: ORS 144.050, 144.140, 181.585 & 181.586

Stats. Implemented:

Hist.: PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; PAR 4-2002, f. & cert. ef. 3-12-02; PAR 5-2003, f. & cert. ef. 10-10-03; PAR 2-2004(Temp), f. & cert. ef. 1-41-04 thru 7-11-04; PAR 7-2004, f. & cert. ef. 6-14-04; PAR 1-2006(Temp), f. & cert. ef. 3-20-06 thru 9-15-06; PAR 5-2006, f. & cert. ef. 6-14-06; PAR 6-2006(Temp), f. 6-14-06 cert. ef. 6-15-06 thru 12-11-06; PAR 9-2006, f. & cert. ef. 10-9-06; PAR 1-2008, f. & cert. ef. 1-11-08

Board of Tax Practitioners Chapter 800

Rule Caption: 2007 Overhaul of OAR's based on recommendations made by Rules Advisory Committee and voted on by the Board.

Adm. Order No.: BTP 1-2008

Filed with Sec. of State: 1-14-2008

Certified to be Effective: 2-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 800-015-0015

Rules Amended: 800-010-0015, 800-010-0017, 800-010-0025, 800-010-0030, 800-010-0041, 800-015-0005, 800-015-0010, 800-015-0030, 800-020-0015, 800-020-0020, 800-020-0022, 800-020-0025, 800-020-0026, 800-020-0030, 800-020-0031, 800-020-0035, 800-025-0020, 800-025-0023, 800-025-0025, 800-025-0030, 800-025-0060, 800-025-0070, 800-030-0025, 800-030-0050

Subject: The amendments to the OAR's were recommended by the Board's Rules Advisory Committee and are for general "house-keeping" & "maintenance" as well as to change language to better

ADMINISTRATIVE RULES

reflect the “norm” in industry standards and the practices of other state agencies.

The adoption of OAR 800-015-0015 allows for the implementation of a continuing education audit process for licensees.

The amendments to OAR 800-020-0025 propose to increase the fees of the Board. The fee increases include the fees for licenses, examinations, business registrations and late fees. The increased revenues will be used to cover the agencies; Department of Administrative Services assessments, Department of Justice assessments, inflation, salary increases and rent. The remaining revenues will be used to; upgrade the agency’s database and include a compliance program and replace the agency’s computer hardware per the Department of Administrative Services Schedule.

The amendment(s) to OAR 800-030-0050 provide the Board guidance when processing requests and assessing charges for board materials. The amendments also assist tax practitioners and the general public by clarifying the services available from the Board for purposes as well as the Board’s intentions and practice in processing requests and assessing charges for board materials.

Rules Coordinator: Monica J. Walker—(503) 378-4034

800-010-0015

Definitions

As used in these rules, unless the context requires otherwise:

- (1) “Board” means the State Board of Tax Practitioners.
- (2) “Branch Office” means an office or other place of business where clients would normally or usually contact a licensee.
- (3) “Client” means a person for whom a licensee performs or agrees to perform professional services for a fee and the services are related directly or indirectly to the client’s personal income taxes.
- (4) “Confidential Information” means information furnished to a licensee for, or in connection with, the preparation of a client’s income tax return.
- (5) “Designated Consultant” means a Licensed Tax Consultant who is the responsible individual for the preparation of all personal income tax returns prepared for the public for each registered business.
- (6) “Licensee” means a Licensed Tax Consultant, Licensed Tax Preparer, or any person, corporation, firm or partnership falling within the purview of ORS 673.605 to 673.735.
- (7) “Resident Consultant” means the Licensed Tax Consultant who is physically present to conduct and carryout his/her duties in the principal or branch office.
- (8) “Tax Consultant or Tax Preparer Practice” and a licensee’s “professional practice” means any service performed or supervised by the licensee for a client, including any advice or recommendation made by the licensee to the client, when it is related directly or indirectly to the client’s personal income tax return, if the licensee also prepares the client’s personal income tax returns.
- (9) “Tax Preparation Business” means a sole proprietorship, partnership, corporation or other entity that offers personal income tax preparation services to the public, for a fee, whether operated under an individual’s own name or under an assumed business or corporate name, and including tax preparation businesses operated on a full- or part-time basis.
- (10) “Valuable Consideration”, as used in ORS 673.615 and OAR chapter 800, means a benefit that accrues to a person as a result of preparing, advising or assisting in the preparation of personal tax returns for others, or offering to perform such services. Valuable consideration need not be translatable into dollars and cents.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 6-1986, f. & ef. 12-31-86; TSE 3-1987, f. & ef. 10-2-87; TSE 1-1990, f. & cert. ef. 1-25-90; TSE 4-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-010-0017

Incompetence and Negligence

Under ORS 673.700(3):

- (1) A licensee is incompetent who has engaged in conduct which evinced a lack of ability or fitness to perform his or her professional functions.
- (2) A licensee is negligent who has engaged in detrimental conduct to the client.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 8-1990, f. & cert. ef. 9-4-90; TSE 9-1990(Temp), f. & cert. ef. 10-30-90; TSE 1-1991, f. & cert. ef. 1-3-91; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-010-0025

Integrity and Objectivity

(1) A licensee shall not knowingly misrepresent facts while preparing, assisting or advising in the preparation of income tax returns. A licensee may resolve doubt in favor of a client if there is reasonable support for the position.

(2) A licensee who finds that a client has made an error or omitted information or related material required on an income tax return shall promptly advise the client of such error or omission.

(3) A licensee shall not arrange for or permit a client’s individual income tax refund check to be mailed to the licensee at any time, for any purpose.

(4) Commissions earned for the personal services of the licensee, such as real estate, insurance, investment and securities sales, may be earned if the licensee also holds any license, permit or registration required by law to perform the services. A licensee shall disclose in writing that s/he will be compensated for any personal services. The client will acknowledge receipt of the disclosure in writing.

(5) Fees in connection with preparation of tax returns must be stated separately from, and in addition to, any other professional services provided.

(6) A licensee shall, upon written request by a client, make available or return within a reasonable time to the client, personal papers or source material in the manner furnished to the licensee by the client;

(a) A licensee who has provided a tax return to a client shall, upon written request by the client, make available within a reasonable time to the client, copies of depreciation schedules that support the return;

(b) A licensee is not required to furnish records to a client more than once under this subsection.

(7) A licensee shall not engage in fraudulent, deceptive or dishonest conduct relating to the licensee’s professional practice.

(8) A licensee shall not violate any position of trust, including positions of trust outside the licensee’s professional practice.

Stat. Auth.: ORS 673.730(6)

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 3-1980, f. & ef. 8-22-80; TSE 1-1985, f. & ef. 1-15-85; TSE 4-1986, f. & ef. 8-15-86; TSE 3-1989, f. & cert. ef. 12-20-89; TSE 1-1992, f. 3-24-92, cert. ef. 6-1-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-010-0030

Accountability

(1) A Licensed Tax Consultant or registered business shall only allow persons to practice in the consultant’s or business’ name who are licensed as tax consultants, tax preparers, or as described in ORS 673.610.

(2) A Licensed Tax Consultant shall not permit the use of the consultant’s license to enable others to establish and carry on a business for the preparation of personal income tax returns wherein the consultant’s only interest is the receipt of a fee for use of the consultant’s license and the Licensed Tax Consultant does not provide supervision of the tax preparation activities as defined in OAR 800-025-0050.

(3) A Licensed Tax Consultant or a Licensed Tax Preparer shall not state or imply that a Licensed Tax Preparer preparing tax returns to which the consultant’s license number or business information is affixed is not:

(a) Fully subject to the supervision of the Licensed Tax Consultant or registered business; as defined in OAR 800-025-0050; or

(b) Acting as agent of the Licensed Tax Consultant or registered business.

(4) A Licensed Tax Preparer shall not engage in the preparation of tax returns, assist in such preparation, gather tax information, or provide tax advice unless the Licensed Tax Preparer is under the supervision of a Licensed Tax Consultant as defined in OAR 800-025-0050.

(5) A licensee shall not maintain a financial interest in or hold an employment position with any business entity that offers personal income tax preparation services, if any other person maintains a financial interest in the entity, or holds a management position involving authority over the business operations of the entity, and:

(a) That person’s tax consultants or tax preparers license has been permanently revoked; or

(b) The Board has refused to issue or renew a license to that person; or

(c) Another state regulatory agency or the Internal Revenue Service has revoked or refused to issue or renew an occupational license, registration or permit held or requested by that person, for conduct involving tax preparation or dishonesty.

(6) If required to do so under section (5) of this rule, a licensee shall be allowed a reasonable time, not to exceed 180 days, to sever an existing relationship with a person whose license is revoked or refused.

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(7) Section (5) of this rule does not apply to a licensee or a person described in subsections (5)(a) through (c) of this rule, whose only financial interest in a tax preparation business is the ownership of ten percent or less of the stock in a publicly-held corporation.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 1-1985, f. & ef. 1-15-85; TSE 8-1987, f. & ef. 12-21-87; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-010-0041

Address and Telephone

Licenses shall file with the Board their current mailing address, residence address, email address and telephone number(s). Licensees shall also file with the Board their current business address, telephone number and a year-round address and telephone number where clients and the Board may contact the licensee. Whenever any of the information required in this section changes, the licensee shall notify the Board within 10 days.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 1-1985, f. & ef. 1-15-85; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-015-0005

Basic Education

(1) An accredited college/university, educational service district (ESD), or a private firm that has met or is exempt from the registration requirements of the Oregon Department of Education or a private firm offering classes only to its own employees and is exempt from the Oregon Department of Education requirements may act as a sponsor for the basic income tax course.

(2) Sponsors shall apply for course certification on a form provided by the Board.

(3) A basic course shall include:

(a) At least 80 classroom hours of basic tax preparation instruction. If the course is offered through correspondence, it must be the equivalent of 80 classroom hours of instruction;

(b) Instruction in each of the subject areas specified in the Preparer Examination Index maintained by the Board;

(c) Sufficient working problems to instruct in the use of appropriate forms and schedules; and

(d) A midterm and final examination.

(4) The Board may require that a sponsor applicant submit evidence that course materials and lesson plans comply with section (3) of this rule.

(5) Basic course sponsors shall employ only instructors to teach basic courses who are actively licensed or who fall within the exemptions of ORS 673.610(2)(4) and who prepared taxes for at least two (2) tax seasons immediately prior to teaching the course.

(a) The Board may grant a specific waiver to instructor qualifications when unusual or extenuating circumstances exist.

(b) Sponsors shall submit to the Board the names and qualifications of instructors teaching each basic course.

(c) Repeated low passage rates of an instructor's students on the tax preparers' examination is evidence that the instructor may not be qualified to teach a basic tax preparation course.

(d) The instructor's approval to teach Basic Tax Preparation courses may be revoked by the Board.

(6) Evidence of successful course completion shall be furnished to students by course instructors on a Board-approved session attendance certification form. Forms may be reproduced by course sponsors. If a student misses a portion of the class sessions, the instructor may provide makeup work.

(7) Applications for course certification shall be submitted annually at least 60 days prior to the course starting. Certification shall be for the subsequent 12 months.

(8) The Board may refuse to issue or withdraw a course certification for failure to meet any of the course or instructor requirements contained in this rule.

Stat. Auth.: ORS 673.625(1)

Stats. Implemented:

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; Renumbered from OAR 800-020-0040 by TSE 2-1980, f. & ef. 5-30-80; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1990, f. & cert. ef. 1-25-90; TSE 7-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-015-0010

Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall submit evidence of

attending OR by self-attestation on the renewal must complete at least 30 hours of acceptable continuing education since the last renewal date.

(2) If by self-attestation, each licensee shall report compliance with the continuing education requirements on the license renewal document. Licensees shall be subject to the provisions of OAR 800-015-0015 pertaining to the periodic audit of continuing education.

(3) If by self-attestation, proof of participation in required continuing education is the responsibility of the licensee. To ensure that proof of attainment of required continuing education is available for audit or investigation by the Board, licensees shall maintain a record of attendance for at least two years following each continuing education cycle and renewal of the tax practitioner license.

(4) Continuing education credit will be accepted only for courses and seminars that comply with all Board rules regarding continuing education.

(5) The Board may verify continuing education information submitted by licensees.

(6) Education hours earned in excess of 30 hours annually cannot be carried over from one renewal period to the next, except extra hours earned during the month of renewal not claimed on that renewal may be submitted with the following year's renewal.

(7) Continuing education credit shall be granted only once during a license year for attendance at or instruction of duplicate seminars offered by the same sponsor.

(8) Continuing education credit for courses at accredited universities and colleges will be 15 hours for each semester hour credit and 10 hours for each quarter hour credit. For all other courses and seminars, one hour of continuing education credit will be allowed for each hour of classroom attendance.

(9) Continuing education credit may be accepted for instructors of basic or advanced courses or seminars. The credit allowed will be two hours for each hour of teaching, which includes preparation time. No more than 1/2 of total required continuing education credit can be in teaching.

(10) Correspondence study courses may be accepted if the program and sponsor comply with all Board rules regarding continuing education and:

(a) The sponsor requires evidence of satisfactory completion of workbooks or examinations before certificates are issued.

(b) The hours credited do not exceed the credit that would be allowed in a resident course covering the same material; and

(c) A course outline with accompanying workbooks or exams is submitted to the Board, prior to offering the material, for approval of course content and hours of credit claimed.

(11) "In-Company" instruction may be accepted if the course or seminar is presented to ten or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

(12) If a licensee claims credit for a course or seminar in the reasonable belief the instruction qualifies as acceptable continuing education, but the Board finds all or part of the hours claimed to be unacceptable, the licensee may be granted an additional period of time, not to exceed 60 days, to make up the rejected hours.

(13) Licensed Tax Consultants and Licensed Tax Preparers who have extenuating circumstances and are unable to obtain all their continuing education by their license due dates may make application, by completing a form prescribed by the Board, for a waiver of continuing education hours.

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-015-0015

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Board will audit a select percentage of licensee records determined by the Board to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation shall submit to the Board, within 30 days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 800-015-0010.

(3) Documentation of a certificate of completion of attendance at a program, seminar or course provided by a sponsor must include:

(a) Name of student;

(b) Name of sponsoring institution/association or organization;

(c) Location of program;

(d) Title of program and description of content;

ADMINISTRATIVE RULES

- (e) Name of instructor or presenter;
- (f) Date(s) of attendance;
- (g) Number of classroom hours of instruction;

(4) For documentation of completion of a college/university course, a licensee must submit a copy of an official transcript, diploma, certificate, statement or affidavit.

(5) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(6) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 673.605 - 673.740
Stats. Implemented: ORS 673.605 - 673.740
Hist.: BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-015-0030

Continuing Education and Basic Sponsor Requirements

(1) Sponsors shall:

(a) Maintain for at least two years an outline of each program presented;

(b) Maintain for at least two years a record of attendance for each program presented;

(c) Maintain for at least two years a record of instructor names, addresses and qualification; and

(d) Provide the student a certificate or other verification of completion at the conclusion of the program. If the sponsor is an accredited college or university, a student transcript or grade report showing the credit earned will be acceptable verification. For all other sponsors, the certification shall include:

- (A) Student's name;
- (B) Sponsor's name and address;
- (C) Instructor/presenter's name;
- (D) Location of program;
- (E) Title of program;
- (F) Date(s) attended;
- (G) Number of classroom hours of instruction.

(2) Sponsors must conduct their programs in an honest and ethical manner.

Stat. Auth.: ORS 673.655
Stats. Implemented:
Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1995, f. & cert. ef. 5-5-95; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0015

Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board, together with the examination fee and proctor site fee, if applicable. The application must be signed.

(2) The application and examination fee shall be filed with the Board no later than one month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

(3) Completed basic course certification forms as required under OAR 800-015-0005(6) shall be submitted to the Board by the student with the application for a Tax Preparer License. The preparer applicant may file an application to take the examination before completing the basic tax course. Applicants shall furnish the Board a brief outline of courses completed, together with a transcript from the educational institution if the course(s) they completed has/have not received prior approval from the Board. If the agency determines the course(s) completed is/are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 780 hours during at least two of the last five years.

(5) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 780 hours during at least two of the last five years.

(i) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(ii) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA and AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 150 hours credited. To qualify for the one to five hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(6) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 780 hours of work experience earned during at least two of the last five years.

(7) A tax consultant applicant claiming tax consulting experience in another state shall:

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax consultant for no less than two of the last five years; and

(b) Furnish documented proof of self-employment as a tax consultant.

(8) A tax preparer or tax consultant applicant who has worked in the capacity as a tax practitioner in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in a tax preparation business within two years prior to the date of application;

(b) The applicant has at least three years experience in a tax preparation business;

(c) The applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self-employment regarding the work experience.

(9) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for up to 260 hours of work experience at the rate of one classroom hour of education for five hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one year of applying to become a Licensed Tax Consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(10) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.625

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0020

Examinations

(1) Licensing examinations shall be scheduled as the Board deems appropriate.

(2) Tax preparer and tax consultant applicant's examination shall be written. Questions shall be so constructed as to measure the applicant's knowledge of Oregon and federal personal income tax law, theory and practice; the provisions of ORS 673.605 to 673.735 and the Code of Professional Conduct. The tax consultant examination shall require a higher standard of knowledge.

(3) A tax preparer applicant must have at least a 75 percent grade or score on the entire examination to pass.

(4) A tax consultant applicant must have at least a 75 percent grade or score on the entire examination to pass.

(5) An agent holding a valid treasury card who is enrolled to practice before the Internal Revenue Service must have at least a 75 percent grade or score on the Consultant's State-Only portion of the examination to pass.

ADMINISTRATIVE RULES

(6) Pass or fail results, including scores, of the examination shall be provided to each examination candidate, electronically or in writing. Results will not be given by any other means.

(7) No review of examination questions by the applicant will be granted.

(8) An applicant who fails to pass the examination shall be eligible for a succeeding examination upon making application and payment of the examination fee.

(9) An applicant who passes an examination must apply for licensing within 60 days from the examination date. If application for license is not made within 60 days, the applicant must retake the examination, unless there are verifiable circumstances beyond the reasonable control of the applicant, subject to the discretion of the Board.

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

Stat. Auth.: ORS 673

Stats. Implemented: ORS 673.605 - 673.740 & 673.990

Hist.: TSE 8, f. & ef. 5-19-76; TSE 10(Temp), f. & ef. 11-29-76 thru 3-28-77; TSE 11, f. & ef. 4-6-77; TSE 1-1979, f. 6-14-79, f. 6-15-79; TSE 2-1980, f. & ef. 5-30-80; TSE 1-1981 (Temp), f. 1-2-81, ef. 1-5-81; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1983, f. & ef. 3-10-83; TSE 1-1984(Temp), f. & ef. 12-20-84; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1985(Temp), f. & ef. 6-11-85; TSE 2-1986, f. & ef. 7-14-86; TSE 4-1987, f. & ef. 10-2-87; TSE 1-1989, f. & ef. 6-8-89; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 2-2004, f. 8-12-04 cert. ef. 8-31-04; BTP 2-2005, f. 7-28-05, cert. ef. 8-1-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0022

Examination Conduct; Disqualification

(1) Examination Conduct: Examinations shall be conducted in a designated area with restricted access. Approval notification of an applicant's eligibility to take the examination must be issued by the board office prior to scheduling an appointment for examination. Authorization must be provided by the board office or proctoring site before bringing any materials, electronic equipment or devices into the examination area. Applicants shall be required to provide a government issued photographic identification such as a driver's license before being allowed to take the examination.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Taking or attempting to take any unauthorized items, notes, materials or devices into the examination area;

(b) Giving or attempting to give assistance to others in answering questions during the examination;

(c) Receiving or attempting to receive assistance during the examination, including assistance from other individuals, notes, books or devices to answer questions;

(d) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(e) Failing to follow directions relative to the conduct of the examination;

(f) Exhibiting behavior which impedes the normal progress of the examination; and

(g) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The candidate will be required to reapply, submit additional examination fees, and request in writing via submission of a new application to schedule another examination. The examination will be scheduled at a date, time and place determined by the Board following the date of disqualification.

Stat. Auth.: ORS 673.605 - 673.740, 673.990

Stats. Implemented: ORS 673.605 - 673.740, 673.990

Hist.: BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0025

Fees

The fees for licenses and registrations issued, renewed, reactivated or otherwise, shall be prescribed by the State Board of Tax Practitioners by rule but shall not exceed the following:

(1) The fee for application for examination for a tax preparer's license is \$50.

(2) The fee for application for examination for a tax consultant's license is \$85.

(3) The fee for issuance or renewal of a tax preparer's active license is \$80.

(4) The fee for issuance or renewal of a tax consultant's active license is \$95.

(5) The fee for an initial consultant license, if an applicant holds an active preparer's license is \$65.

(6) The fee for an initial combination consultant license/business registration, if an applicant holds an active preparer's license is \$125.

(7) The fee to place a tax preparer's license in inactive status is \$35.

(8) The fee to place a tax consultant's license in inactive status is \$50.

(9) The fee for reactivation of a tax preparer license in inactive status is \$80.

(10) The fee for reactivation of a tax consultant license in inactive status is \$95.

(11) The fee to reactivate a tax preparer or tax consultant license in lapsed status is \$35, plus payment of all unpaid renewal fees.

(12) The fee for a duplicate license is \$10.

(13) The fee for a replacement tax consultant's certificate is \$15.

(14) The fee for issuance or renewal of a tax preparation business registration is \$110.

(15) As provided by subsection (a) and (b) of this section, the fee for issuance or renewal of a combination tax consultant's or tax preparer's license and tax preparation business registration is \$155:

(a) For Consultants — If postmarked on or before June 15th.

(b) For Preparers — If postmarked on or before October 15th.

(16) The fee for issuance or renewal of a branch office registration is \$20.

(17) Dishonored Check or Electronic Payment. Pursuant to ORS 30.701, whenever a bank check, credit or debit transaction in payment of an obligation due for fees, penalties, copies of records or materials, or other services to the agency, is dishonored by the bank upon which the check is drawn, the applicant or authorization holder will be assessed and must pay an administrative processing fee in the amount of \$25. The agency may take any other disciplinary action against an authorization holder or payer and may seek other legal remedies in pursuing to effect collection of the returned items. If a check is returned for Non-Sufficient Fund (NSF) or uncollected funds the agency will attempt to collect payment by other means.

Stat. Auth.: ORS 673.730

Stats. Implemented: ORS 673.685

Hist.: TSE 4(Temp), f. & ef. 11-20-75 through 3-19-76; TSE 8, f. & ef. 5-19-76; TSE 14, f. 10-25-77, ef. 11-1-77; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 1-1987(Temp), f. 6-30-87, ef. 7-1-87; TSE 5-1987, f. & ef. 10-2-87; TSE 7-1987(Temp), f. & ef. 11-17-87; TSE 1-1988, f. & cert. ef. 2-19-88; TSE 4-1990, f. & cert. ef. 5-3-90; TSE 3-1991(Temp), f. 8-14-91, cert. ef. 9-29-91; TSE 5-1991, f. & cert. ef. 10-28-91; TSE 12-1991(Temp), f. & cert. ef. 11-25-91; TSE 3-1992, f. 5-15-92, cert. ef. 6-1-92; TSE 3-1997, f. & cert. ef. 9-4-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administration correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 3-2007, f. 7-30-07, cert. ef. 8-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0026

Refunds of Examination Fees

(1) A \$10 nonrefundable processing fee shall be retained from all examination application fees. The remainder of an examination application fee shall be refunded only when the applicant is not qualified or when there are verifiable circumstances beyond the reasonable control of the applicant, subject to the discretion of the Board.

(2) Except as provided in section (3) of this rule, an applicant who has been approved to sit for the examination but who fails to take or pass the examination shall not be entitled to a refund of the examination fee.

(3) If application for examination is made in anticipation of successfully completing the required basic course and the applicant fails to complete the required course a refund of the examination fee will be issued only if:

(a) The applicant establishes that failure to successfully complete the course was beyond the reasonable control of the applicant subject to the discretion of the Board; and

(b) The applicant notifies the Board prior to the scheduled examination date.

Stat. Auth.: ORS 673.730(3)

Stats. Implemented:

Hist.: TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1983, f. & ef. 3-10-83; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 6-1991, f. & cert. ef. 10-28-91; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0030

Licenses – Renewals and Reactivation

(1) Applicants who pass the required examination and meet all other requirements shall be issued a license upon request and payment of the license fee. The licensee shall be assigned a permanent license number.

(2) Tax preparers' licenses shall expire annually on September 30.

(3) Tax consultants' licenses shall expire annually on May 31.

(4) Renewal licenses shall be issued upon receipt of a signed renewal application notice, proof of required continuing education and the appropriate fee.

(5) Licensed Tax Preparers have the option to file for inactive status on or before October 15, provided the license is not in lapsed status as provided in OAR 800-020-0035(2).

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(6) Licensed Tax Consultants have the option to file for inactive status until June 15, provided the license is not in lapsed status as provided in OAR 800-020-0035(2).

(7) If a tax preparers or tax consultants license is suspended or revoked, the individual's license and pocket identification card become the property of the Board and shall, on demand, be delivered by the holder to the Board of Tax Practitioners.

(8) Licenses that have been placed in inactive or lapsed status may be reactivated upon receipt of a completed reactivation application form prescribed by the Board, proof of required continuing education and the appropriate fee(s).

Stat. Auth.: ORS 673.730

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0031

Certificates

(1) A Licensed Tax Consultant's certificate issued by the Board may be displayed by the licensee so long as the licensee holds a current valid license as a Licensed Tax Consultant. If a Licensed Tax Consultant's license has been placed in inactive or lapsed status, the holder shall no longer display the certificate.

(2) If a tax consultant's license is suspended or revoked, the certificate becomes the property of the Board and shall on demand be delivered by the holder to the Board of Tax Practitioners.

Stat. Auth.: ORS 673.730

Stats. Implemented:

Hist.: TSE 13, f. & ef. 9-20-77; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-020-0035

Inactive and Lapsed Status

(1) Except as provided in section (3) of this rule, a license that has been placed in inactive status may be reactivated upon submission of a reactivation application, payment of license fee for an active license and proof of compliance with all past continuing education requirements the same as if the licensee had held an active license.

(2) Except as provided in section (3) of this rule, a license that has been placed in lapsed status may be reactivated to active status upon submission of a reactivation application, payment of all past unpaid fees and proof of compliance with all past continuing education requirements the same as if the licensee had held an active license. A license that has been placed in lapsed status shall not be placed in inactive status.

(3) A license that has been placed in inactive or lapsed status, or a combination thereof, for three consecutive years, shall not be reactivated to active status.

(4) The Board may refuse to reactivate a license that has been placed in inactive or lapsed status for the same reasons it may refuse to issue, renew, suspend, or revoke a license.

Stat. Auth.: ORS 673.645, 673.667 & 673.730

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1991, f. & cert. ef. 1-30-91; TSE 6-1992, f. 8-13-92, cert. ef. 8-1-93; TSE 2-1993, f. & cert. ef. 2-23-93; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-025-0020

Tax Preparation Business Registration

(1) A tax preparation business shall not offer services to the public until the business has:

(a) Complied with applicable laws and rules of the Oregon Corporation Division;

(b) Registered with the Board, on a Board-approved application form, the business name, address and telephone number; the name(s) of the owner(s) of the business; and the name of the individual(s) responsible under OAR 800-025-0040 for the tax activities of the business; and

(c) Paid the tax business registration fee required under OAR 800-025-0025.

(2) Within ten days of a change of name or ownership, a tax preparation business must file a new business registration with the Board and pay a new business registration fee.

(3) A person who offers tax preparation services under more than one name must register each such name as a separate business.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 13-1991(Temp), f. & cert. ef. 11-25-91; TSE 14-1991, f. 11-25-91, cert. ef. 1-1-92; TSE 4-1992, f. & cert. ef. 5-15-92; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-025-0023

Reporting Closing of Business; Address and Phone Changes

A tax preparation business shall notify the Board within ten days of:

(1) Termination of the tax preparation business;

(2) A change in the mailing address, physical address, email address or telephone number(s) of the business.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 7-1991, f. & cert. ef. 10-28-91; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-025-0025

Renewal of Tax Preparation Business Registration

(1) Tax preparation business registrations shall expire annually on June 15, except that combination business registration/tax preparer licenses shall expire annually on October 15.

(2) At least 30 days prior to the registration expiration date each year, the Board shall attempt to notify each business, using the contact information they provided to the Board, that their tax preparation business registration is up for renewal.

(3) Renewal registrations shall be issued to qualifying businesses upon receipt of a completed registration renewal application and the fee for registering a tax preparation business specified in OAR 800-020-0025(14) or the fee for a combined tax consultants or tax preparers license and business registration specified in OAR 800-020-0025(15).

(4) A business whose registration has expired shall not perform tax preparation services for the public, for a fee, or offer such services until the business submits a new business registration application and the application process has been completed.

Stat. Auth.:

Stats. Implemented:

Hist.: TSE 8-1991, f. & cert. ef. 10-28-91; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-025-0030

Branch Offices

(1) A tax preparation business shall not operate any branch office until:

(a) The business has complied with all laws and rules of the Board concerning tax business registration;

(b) The mailing address, physical address and phone number(s) of the branch office and the name and license number of the resident consultant for the branch office have been submitted to the Board; and

(c) The business has paid an annual fee for the branch office registration for that location as required under OAR 800-020-0025(16).

(2) Branch office registrations shall expire annually on the expiration date of the associated tax business registration.

(3) At least 30 days before the expiration of a branch office registration, the Board shall attempt to notify each business, using the contact information they provided to the Board, that their tax preparation branch office registration is up for renewal.

(4) Renewal branch office registrations shall be issued to qualifying businesses upon receipt of the required annual registration fee.

(5) A tax preparation business operating branch offices shall notify the Board within 10 days of:

(a) Change of mailing address, physical address, e-mail address or phone number(s) of the branch office.

(b) Change in resident consultant of the branch office.

(c) Closing the branch office.

(6) Branch offices must be conducted under the same name as the principal office. This name shall be posted conspicuously in each branch office.

(7) The name of the Designated Consultant and the name of the Resident Consultant must be posted conspicuously in each branch office.

(8) The current registration issued by the Board for a branch office must be posted conspicuously in the branch office.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.730(5)

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 10-1991, f. & cert. ef. 10-28-91; TSE 5-1992, f. 5-15-92, cert. ef. 7-1-92; TSE 2-1996, f. & cert. ef. 12-30-96; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-025-0060

Consultant in Residence

(1) A Licensed Tax Consultant shall be in residence at each principal and branch office. "Tax consultant in residence" means that a Licensed Tax Consultant is physically present to conduct and carry out his/her duties in the principal or branch office for at least fifty (50) percent of the time an office is open to the public for tax preparation, assistance & advice during each week from January 15 to the federal filing deadline without extensions and during each month for the remainder of the year for year round offices.

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(2) The Board may waive the Licensed Tax Consultant in residence requirement of subsection (1) upon written application which details how the management and supervision of principal and branch offices will effectively be accomplished. The Board shall grant a waiver only where at least one of the following circumstances exist: Sickness or death of a Licensed Tax Consultant.

(a) Unforeseen or unusual circumstances.

(3) In granting or denying a written application for waiver, the Board shall evaluate each case on an individual basis, considering the following factors:

(a) Distance between offices supervised by a Licensed Tax Consultant.

(b) Past compliance of waiver applicants with ORS 673.605 to 673.735 and rules of the Board.

(c) Whether the policies and procedures described in the application will result in effective management and supervision of Licensed Tax Preparers in the absence of a Resident Consultant.

(4) Applicants shall apply annually for waiver of the resident consultant rule. The application shall provide all of the information described in guidelines established by the Board for applying for waivers. Except in emergency circumstances, such as incapacitation, death or resignation of a resident tax consultant, waiver applications will not be accepted after January 31 for branch offices intended to operate at any time during the period January 1 to April 15 of the same calendar year. Approved waivers shall expire on the expiration date of the associated tax business registration or a date established by the Board.

(5) All applications must be acted upon by the Board. Disapproval of an application by the Board may be appealed.

(6) The supervising Licensed Tax Consultant of an office for which a waiver has been approved shall meet in person with Licensed Tax Preparers in the office at least twice weekly to review the work of each Licensed Tax Preparer and respond to questions.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.615(2)4

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 5-1986, f. & ef. 10-6-86; TSE 6-1987, f. & ef. 10-2-87; TSE 3-1988, f. & cert. ef. 8-26-88; TSE 5-1995, f. & cert. ef. 5-5-95; TSE 2-1996, f. & cert. ef. 12-30-96; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-025-0070

Keeping of Records

(1) If a Licensed Tax Consultant is employed by another Licensed Tax Consultant, the records shall be kept by the employing Licensed Tax Consultant.

(2) If the Licensed Tax Consultant who has been designated as responsible for the tax return preparation activities and decisions of the corporation, firm or partnership, ceases to be connected with the corporation, firm or partnership the records shall be retained by the corporation, firm or partnership.

(3) The records of the returns shall be kept for a period of not less than four years after the date of the preparation, advice or assistance.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0070; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-030-0025

Civil Penalties

(1) Civil Penalty Ranges. Pursuant to ORS 673.735, a civil penalty in the following range shall be assessed for each violation of the following statutes and rules: [Table not included. See ED. NOTE.]

(2) Civil Penalty Factors. Pursuant to ORS 673.735, the following factors shall be considered in determining the amount of civil penalty to assess for each violation above the minimum established under paragraph (1) of this rule or for violations not specified in paragraph (1):

(a) The previous record of the person in complying, or failing to comply, with ORS 673.605 to 673.740, or any rule or order adopted there under.

(b) The harm to the consumer as a result of the violation.

(c) The person's knowledge of the statute, rule, or order violated. An intentional, reckless, or willful violation warrants a high civil penalty per violation.

(d) The person's lack of cooperation with the Board.

(e) The seriousness of the violations committed.

(3) Daily Civil Penalty. Pursuant to ORS 673.735, the Board may impose civil penalties of not more than \$5,000 for each violation of ORS 673.605 to 673.740, or any rule adopted there under. In the case of violations of ORS 673.615, 673.643, or 673.705(5), or OAR 800-010-0025(7) or 800-010-0042, the Board may consider each business day a person continues in violation following Board notification to be a separate violation.

(4) Civil Penalty Adjustment. The civil penalty amount to be imposed under this rule shall be lowered to an appropriate amount when the Board determines that the total civil penalties to be assessed against a person are grossly disproportionate to the seriousness of the violations committed.

(5) Payment of Civil Penalties. Unless otherwise ordered by the Board, payment of any civil penalty imposed by the Board must be made within 60 days of the date a final order assessing the penalty is issued. If the civil penalty is not paid within that time, in addition to any other action allowed by law or Board rules, proceedings may be instituted to suspend, revoke or refuse to renew the tax consultants or tax preparers license of the person against whom the penalty is assessed.

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

Stat. Auth.: ORS 673.730

Stats. Implemented: ORS 673.735

Hist.: TSE 1-1985, f. & ef. 1-15-85; BTSE 1-1998, f. & cert ef 9-3-98; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administrative correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04; BTP 3-2004, f. 10-11-04 cert. ef. 11-1-04; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

800-030-0050

Obtaining Information and Purchasing Board-Provided Materials and Services

Materials and services available to the public and licensees through the Tax Board may be obtained or purchased as follows:

(1) In response to telephone requests, the board office may provide the tax practitioner name, license number, whether the license is active or expired, business location, business telephone number and whether a discipline record exists.

(2) A copy of the Oregon Revised Statutes Chapter 673 and Oregon Administrative Rules Chapter 800 may be provided upon request at no charge for the first request. A charge will be assessed for additional/multiple copies.

(3) All requests for any information other than that listed in sub-section (1) and (2) of this rule must be submitted in writing to the board office.

(4) The Board may charge for copies of its records. The types of records that the Board can charge for copies includes, but is not limited to, such material as copies of certificate(s), license(s), registration(s), board meeting materials that are available to the public, general information, duplicating requests requiring multiple records search or the compiling and creation of official documents.

(5) Fees shall not exceed the Board's actual costs for copying the record(s) requested including, but not limited to, the Board's cost for locating, compiling, making available for inspection, obtaining legal or other professional advice related to the request, reviewing the records in order to delete exempt material, supervising a person's inspection of original records, preparing the copy in paper, audio, or electronic format, certifying documents as true copies, and delivery of such record(s).

(6) All fees assessed must be paid before public records are made available. Estimates/fees for processing requests for public records may be given when requested. Person(s) making the public records request is responsible for the actual costs regardless of the estimate.

(7) Persons who want to obtain copies of the following records may learn the charge for them by contacting the board office:

(a) A list of name's, addresses and places of business for all licensed tax practitioners currently on file with the Agency;

(b) A list of records, regardless of whether status is active, inactive, expired or archived;

(c) One or more photocopies of any Board document or portion thereof;

(d) Copies of board meeting minutes or committee meeting minutes/notes.

(8) Advertising services provided by the Board for a fee which can be obtained by contacting the board office:

(a) Advertising for help-wanted, sale of business and tax related services or products in the Board newsletter;

(b) Advertising of Tax Consultant or Tax Business on the Board Web site. Licensees and businesses must be in good standing with the Board to obtain and maintain this service.

(c) All advertising is subject to the review and approval of the Board.

(9) Charges for records may be waived or substantially reduced if the request is in the public's interest, pursuant to ORS 192.440(4) & (5).

(10) The following fees apply to requests for the following types of public records, information, and services provided by the Board:

(a) Fee for a list of current licensees, which includes; license number, name, mailing address is \$25.

(b) Fee for a monthly subscription to a list of current licensees is \$120 per year. Lists provided between the 1st – 10th of each month.

(c) Fee for duplicates of tape recordings of board meetings, disciplinary hearings, etc. that are available to the public are \$5 each, plus labor at

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an hourly rate of \$25, mailing costs and any Department of Justice costs that may need to be incurred.

(d) Fee for board/committee meeting materials, available to the public, is:

- (A) \$10 per board/committee meetings' minutes.
- (B) \$5 per board/committee notice and agendas.

(e) Fees for advertising for help-wanted and tax related services or products in board newsletter:

- (A) \$10 per 3 3/8 inch line or part line.
- (B) \$350 for a full page ad.
- (C) \$180 for a half page ad.
- (D) \$100 for a quarter page ad.
- (E) \$50 for a business card size ad.

(f) Fee for advertising of a tax consultant or tax business or as an employee of a tax business on the Boards website:

(A) Name, business address (physical & e-mail), and phone is \$10 per year per county.

(B) An additional \$10 per county annual fee may be charged for a link to a tax business related website.

(g) Fee for multiple records search including duplicating of documents is labor at an hourly rate of \$30, per page duplicating .05 cents, mailing costs and any Department of Justice costs that may need to be incurred.

(h) Fee for making general photocopies is labor at an hourly rate of \$25, per page duplicating .05 cents, mailing costs and any Department of Justice costs that may need to be incurred.

Stat. Auth.: ORS 192, 670 & 673
Stats. Implemented: ORS 673.605-740 & 673.990
Hist.: TSE 5-1986, f. & ef. 10-6-86; TSE 6-1990, f. & cert. ef. 5-3-90; BTSE 1-1999, f. & cert. ef. 11-23-99; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2004, f. 10-11-04 cert. ef. 11-1-04; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08

Bureau of Labor and Industries Chapter 839

Rule Caption: Implementing statutory requirements that employers provide leave to victims of certain crimes or certain purposes.

Adm. Order No.: BLI 32-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 1-1-2007

Rules Adopted: 839-009-0325, 839-009-0330, 839-009-0335, 839-009-0340, 839-009-0345, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365

Subject: These rules implement, define, and clarify SB 946 which provides leave from work for victims of domestic violence, sexual assault, and stalking.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-009-0325

Purpose and Scope

(1) The Civil Rights Division of the Bureau of Labor and Industries enforces the Oregon Victims of Certain Crimes Leave Act (OVCCCLA), Chapter 180, Oregon Laws 2007. OVCCCLA leave requires leave for victims of domestic violence, sexual assault or stalking and prohibits discrimination against employees using leave under OVCCCLA. These rules implement and interpret the Oregon Victims of Certain Crimes Leave Act.

(2) ORS 659A.190 through 659A.198 are separate statutes providing for leave for crime victims to attend criminal proceedings. The Civil Rights Division does not enforce ORS 659A.190 through 659A.198.

(3) These rules apply to complaints and inquiries received under Oregon Laws, 2007, Chapter 180 and under these rules.

Stat. Auth.: ORS 659A.805
Stats. Implemented: Oregon Laws, 2007, Chapter 180
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0330

Prohibited Discrimination

It is an unlawful employment practice for a covered employer to deny OVCCCLA leave to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee inquires about, applies for, or takes leave as provided under OVCCCLA.

Stat. Auth.: ORS 659A.805
Stats. Implemented: Oregon Laws, 2007, Chapter 180
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0335

Relationship of OVCCCLA to OFLA

To the extent the employee's need for OVCCCLA leave is also covered by the Oregon Family Leave Act (OFLA), the employer may run OVCCCLA leave and OFLA leave concurrently.

Stat. Auth.: ORS 659A.805
Stats. Implemented: Oregon Laws, 2007, Chapter 180
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0340

Definitions

(1) "Covered employer" means an employer who employs 6 or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the calendar year in which an eligible employee takes OVCCCLA leave or in the calendar year immediately preceding the year in which an eligible employee takes OVCCCLA leave.

(2) "Eligible employee" means an employee employed in the State of Oregon on the date OVCCCLA leave begins; and

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 calendar days immediately preceding the date the employee takes OVCCCLA leave; and

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining more than 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act (See 29 CFR Part 785).

(C) For the purpose of qualifying as an eligible employee, the employee need not perform work solely in the State of Oregon.

(D) Eligibility of employees reemployed following a period of uniformed service: The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for OVCCCLA leave if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet the eligibility requirements of these rules. In the event that a service member is denied OVCCCLA leave for failing to satisfy the days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under these statutes.

(b) Is a victim of domestic violence, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault or stalking.

(3) "Dependent" means an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d) or any adult of whom the employee has guardianship.

(4) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(5) "Health Care Professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.

(6) "Immediate Family" means spouse, domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim at the time of the domestic violence, sexual assault or stalking.

(7) "In loco parentis" means in the place of a parent, having financial and day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(8) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(9) "Law Enforcement Officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.

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(10) "Minor Child," means a biological, adopted, foster or stepchild, or a child with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee's same-sex domestic partner. The minor child must be under the age of 18.

(11) "Parent or Guardian" means a custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent or an employee who is or was in relationship of in loco parentis with a minor child or a dependent with whom the employee is or was in a relationship of in loco parentis.

(12) "Protective Order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(13) "Reasonable Leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(14) "Victim of Domestic Violence" means:

(a) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(15) "Victims Services Provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, sexual assault or stalking.

(16) "Victim of Sexual Assault" means:

(a) An individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(17) "Victim of Stalking" means:

(a) An individual against whom stalking has been committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0345

Purposes for Taking Leave

(1) A covered employer must allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(a) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking.

(b) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of the eligible employee or the eligible employee's minor child or dependent.

(c) To obtain, or to assist the eligible employee's minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking.

(d) To obtain services from a victim services provider for the eligible employee or the eligible employee's minor child or dependent.

(e) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent. Relocate includes:

(A) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions related to domestic violence, sexual assault or stalking;

(B) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0350

Length of Leave and Other Conditions

(1) A covered employer must allow an eligible employee to take reasonable leave and may only limit the amount of leave an eligible employee takes if the eligible employee's leave creates an undue hardship on the covered employer's business.

(2) An eligible employee must follow the covered employer's known, reasonable, and customary procedures regarding periodic reporting to the covered employer of the eligible employee's current status.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0355

Undue Hardship

(1) Undue Hardship means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the covered employer's business and the covered employer's critical need for the eligible employee. Other factors to consider in determining whether granting OVCCLA leave will cause an undue hardship on a covered employer's business include, but are not limited to:

(a) The length of OVCCLA leave requested and the relative cost to a covered employer's business;

(b) The overall financial resources of the covered employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the OVCCLA leave were granted;

(c) The overall financial resources of the covered employer, the overall size of the business of the covered employer with respect to the number of its employees and the number, type and location of the covered employer's facilities;

(d) The type of operations conducted by the covered employer, including the composition, structure and functions of the covered employer's workforce.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0360

Intermittent Leave and Alternate Duty

(1) An eligible employee may take OVCCLA leave in multiple blocks of time and/or requiring an altered or reduced work schedule.

(2) A covered employer may transfer an employee on intermittent leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

(a) The eligible employee accepts the transfer position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

(c) Transfer to an alternate position is used only when there is no other reasonable option available that would allow the eligible employee to use intermittent leave or reduced work schedule; and

(d) The transfer is not used to discourage the eligible employee from taking intermittent or reduced work schedule leave, or to create a hardship for the eligible employee.

(3) An eligible employee transferred to an alternate position for the purpose of a reduced work schedule under section (2)(a) through (d) of this rule must be returned to the eligible employee's former position when the eligible employee notifies the employer that the eligible employee is ready to return to the former position.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0362

Notice by Employee

(1) An eligible employee seeking OVCCLA leave will give the covered employer reasonable advance notice of the employee's intention to take OVCCLA leave unless giving the advance notice is not feasible.

(2) When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.

(3) An eligible employee able to give advance notice of the need to take leave must follow the covered employer's known, reasonable and customary procedures for requesting any kind of leave;

(4) The covered employer may require the eligible employee to provide certification that:

ADMINISTRATIVE RULES

(a) The eligible employee or the eligible employee's minor child or dependent is a victim of domestic violence, sexual assault or stalking as defined in 839-009-0340(14), (16) or (17); and

(b) The leave taken is for one of the purposes identified in 839-009-0328.

(5) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, sexual assault or stalking as defined in 839-009-0340(14), (16) and (17)

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking as defined in 839-009-0340(14), (16) and (17); or

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the eligible employee's minor child or dependent is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking as defined in 839-009-0340 (14), (16) and (17).

(6) Consistent with ORS 659A.306, the covered employer must pay the cost of any medical verification related to 839-009-0345 (1)(b) and (c) not covered by insurance or other benefit plan.

(7) The eligible employee will provide the certification within a reasonable time after receiving the covered employer's written request for the certification.

(8) The covered employer may provisionally designate an absence as OVCCLA leave until sufficient certification is received, if requested, to make a determination.

(9) An eligible employee on leave who needs to take more leave than originally authorized should give the covered employer notice as soon as is practicable prior to the end of the authorized leave, following the covered employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of leave has ended and an eligible employee does not return to work, a covered employer having reason to believe the continuing absence may qualify as OVCCLA leave may request additional information. If the covered employer requests additional information the eligible employee will provide the requested information as soon as is practicable. The covered employer may not treat a continuing absence as unauthorized unless requested information is not provided or does not support leave qualification.

(10) All records and information kept by a covered employer regarding an eligible employee's leave under OVCCLA, including the fact that the eligible employee has requested or obtained leave under OVCCLA, are confidential and may not be released without the express permission of the eligible employee, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0363

Use of Paid Leave

(1) Leave is unpaid leave unless otherwise provided by:

(a) A collective bargaining agreement;

(b) The terms of an agreement between the eligible employee and the covered employer or;

(c) A covered employer's policy.

(2) An eligible employee taking leave pursuant to an agreement between the eligible employee and the covered employer, a collective bargaining agreement or a covered employer policy may use any paid accrued vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or a covered employer policy, the covered employer may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

839-009-0365

Enforcement and Retaliation

(1) A covered employer's duties and obligations under OVCCLA extend to a successor employer as defined in 29 CFR 825.107.

(2) In accordance with the provisions of OVCCLA an eligible employee claiming a violation of the OVCCLA may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the man-

ner provided by ORS 659A.820.

(3) It is an unlawful employment practice for a covered employer to retaliate or in any way discriminate against any person with respect to hiring, tenure or any other term or condition of employment because the person has inquired about OVCCLA leave, submitted a request for OVCCLA leave or invoked any provision of OVCCLA.

(4) It is an unlawful employment practice for a covered employer to count OVCCLA leave against an employee in determining the employee's compliance with attendance policies or to count OVCCLA leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from OVCCLA leave and may not be disqualified from the bonus as a result of taking OVCCLA leave.

(5) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for a covered employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OVCCLA.

(6) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OVCCLA or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: Oregon Laws, 2007, Chapter 180

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08

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Rule Caption: Implementing statutory amendments requiring employers to provide rest periods for employees to express breast milk.

Adm. Order No.: BLI 33-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Adopted: 839-020-0051

Subject: The final rules implement and clarify newly enacted statutory provisions requiring employees to provide rest periods to employees needing to express milk during work time, to feed their infants.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-020-0051

Rest Periods for Expression of Milk

(1) ORS 653.077 applies to employers who employ 25 or more employees in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.

(2) ORS 653.077 requires a covered employer to provide reasonable rest periods to accommodate an employee who needs to express milk for her child 18 months of age or younger. Any employer not covered by ORS 653.077 and these rules may provide rest periods or other accommodation for expression of milk pursuant to its own policies or by agreement or contract with employees.

(a) A "reasonable rest period," unless otherwise agreed to by the employer and the employee, is no less than 30 minutes during each 4-hour work period, or major part of a 4 hour work period, to be taken by the employee approximately in the middle of each work period.

(A) If feasible, the employee will take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee. If not feasible, the employee is entitled to take an unpaid rest period of up to 30 additional minutes during each 4-hour period to express milk.

(B) If the employer is required by law or contract to provide the employee with paid rest periods, the employer will treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods.

(C) If an employee takes unpaid rest periods, the employer may, but is not required to, allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time.

(D) A covered employer may not require an employee, including an employee who is FLSA exempt, to substitute paid leave time for unpaid rest periods provided in compliance with these rules.

(b) As used in ORS 653.077 and this rule, "expression of milk" means the initiation of lactation by manual or mechanical means and does not include breastfeeding. However, any employer may accommodate breast-

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feeding pursuant to its own policies or by agreement or contract with employees.

(3) An employer subject to ORS 653.077 will make a reasonable effort to provide the employee with a private location within close proximity to the employee's work area to express milk.

(a) As used in ORS 653.077 and this rule, a "private location" is a place, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk concealed from view and without intrusion by other employees or the public and includes, but is not limited to:

(A) The employee's work area if the work area permits the employee to express milk concealed from view and without intrusion by other employees or the public.

(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk concealed from view and without intrusion by other employees or the public.

(C) A child care facility where the employee can express milk concealed from view and without intrusion by other employees or the public.

(D) An empty or unused office, conference room, or a storage space, so long as there is a door that closes and any windows can be covered, and there is a sign that can be placed on the door or handle of the door indicating that the room is in use.

(b) As used in ORS 653.077 and this rule, a "public restroom" is a restroom freely available for use by employees or the general public that does not include an attached lounge or room that allows an employee to express milk concealed from view and without intrusion by other employees or the public. A "toilet stall" includes a restroom that contains one toilet, whether or not in plain view, and whether or not the restroom locks from the inside.

(c) As used in ORS 653.077 and this rule, "close proximity" means within walking distance from the employee's work area that does not appreciably shorten the rest or meal period.

(d) If a private location is not within close proximity to the employee's work area, the employer may not include the time taken to travel to and from the location as part of the break period.

(4) A covered employer is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business. As defined in ORS 653.077, "undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. For the purpose of determining whether providing rest periods for expression of milk requires significant difficulty or expense, the following factors will be considered:

(a) The nature and the cost of complying with the requirement to provide a reasonable rest period for the expression of milk.

(b) The overall financial resources of the covered employer's facility or facilities involved in complying with the requirement to provide a reasonable rest period for the expression of milk, the number of persons employed at the facility and the effect on expenses and resources or other effects on the operation of the facility caused by the necessity for compliance with the requirement to provide a reasonable rest period in a private location.

(c) The overall financial resources of the covered employer, the overall size of the covered employer's business with respect to the number of its employees and the number, type and location of the covered employer's facilities.

(d) The type of operations conducted by the covered employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered employer.

(5) An employee who intends to express milk during work hours must give the employer reasonable oral or written notice of her intention to allow the employer time to make the preparations necessary for compliance with ORS 653.077 and these rules.

(6) A covered employer must notify all employees, through its policies or other means, of the person or entity to whom an employee should give notice of intent to express milk. If the employer does not provide such notification, the employee's oral or written notice to a supervisor, manager, or human resource or personnel department or their staff will be presumed sufficient.

(7) After receiving notice from the employee, the employer may take a reasonable time to make necessary preparations for compliance with ORS 653.077 and this rule. A "reasonable time" must not interfere with the rights provided by ORS 653.077 and this rule, taking into consideration the immediacy of the employee's need to express milk, and that the rights under ORS 653.077 and this rule apply only until the employee's child is 18 months of age. For example, an employer in the process of creating a private location for expressing milk must provide the most adequate space

already available for an employee who gives notice of an immediate need.

(8) An employee invoking the provisions of ORS 653.077 and this rule is responsible for storing her expressed milk. The covered employer must allow the employee to bring a cooler or other insulated food container to work for storing the expressed milk and ensure there is adequate space in the workplace to accommodate the employee's cooler or insulated food container. If the employer allows employees access to refrigeration for personal use, the employer may allow, but cannot require, an employee who expresses milk during work hours to use the available refrigeration to store the expressed milk.

(9) ORS 653.077 and this rule apply to temporary employment agencies that employ 25 or more employees in Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.

(10) ORS 653.077 and this rule apply to individuals engaged in administrative, executive or professional work as described in ORS 653.020(3).

(11) The provisions of this rule may be modified by the terms of a collective bargaining agreement if the collective bargaining agreement entered into by the employee includes provisions that prescribe rules pertaining to reasonable rest periods for the expression of milk.

(12) Each school district board must adopt a policy to accommodate an employee who needs to express milk for her child.

(13) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.

(14) The commissioner of the Bureau of Labor and Industries will appoint an advisory committee to facilitate compliance with ORS 653.077 and these rules. Upon request by a particular industry or profession, the advisory committee will determine when the ordinary course of such industry or profession makes compliance difficult for an employer in that industry or profession, and submit to the commissioner recommendations for rules to address compliance difficulties in that industry or profession.

Stat. Auth.: ORS 653.077(11)
Stats. Implemented: ORS 653.077
Hist.: BLI 33-2007, f. 12-27-07, cert. ef. 1-1-08

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 34-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2008.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act dated January 1, 2008, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2008, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(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

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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

Rule Caption: Proposing rules to implement and clarify newly enacted statutes SB 2 and HB 2007.

Adm. Order No.: BLI 35-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 839-005-0016

Rules Amended: 839-005-0021, 839-005-0026, 839-005-0030

Subject: The proposed rules would implement and clarify newly enacted statutory provisions making discrimination based on sexual orientation an unlawful practice under Chapter 659A (SB2) and add “domestic partner” to the rights and protections under the appropriate rules (HB2007). The proposed rules also correct grammatical and technical errors.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-005-0016

Exceptions to Discrimination Based on Sexual Orientation

(1) The following actions are not unlawful practices under ORS chapter 659A:

(a) Housing and the use of facilities. It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities when:

(A) The action taken is based on a bona fide religious belief about sexual orientation; and

(B) The housing or the use of facilities involved is closely connected with or related to the primary purpose of the church or institution; and

(C) The housing or the use of facilities involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(b) Employment Preference. It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(A) The employee or applicant belongs to the same religious sect or persuasion as the church or institution; and

(B) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(C) The employment involved is closely connected with or related to the primary purposes of the church or institution; and

(D) The employment involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(c) Employment Actions. It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation when:

(A) The employment position involved is directly related to the oper-

ation of the church or other place of worship, such as clergy, religious instructors and support staff;

(B) The employment position involved is in a nonprofit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit religious radio station or nonprofit religious shelter; or

(C) The employment position involves religious activities, as long as the employment position:

(i) Is closely connected with or related to the primary purpose of the church or institution; and

(ii) Is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(d) Dress Code. An employer is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(2) The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A, OL 2007 Ch 100

Hist.: BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0021

Discrimination Based On Sex

(1) Employers are not required to treat all employees exactly the same, but are prohibited from using sex as the basis for employment decisions with regard to hiring, promotion or discharge; or in terms, conditions or privileges of employment such as benefits and compensation.

(2) Discrimination because of sex includes sexual harassment, discrimination based on pregnancy, childbirth and medical conditions and occurrences related to pregnancy and childbirth.

(3) In very rare instances, sex may be a bona fide occupational qualification (BFOQ), as defined in OAR 839-005-0045.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029 & 659A.030

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0026

Protections and Rights Relating to Pregnancy

(1) Pregnant women are protected from sex discrimination in employment.

(2) In judging the physical ability of an individual to work, pregnant women must be treated the same as males, non-pregnant females and other employees with off-the-job illnesses or injuries.

(3) The statutes prohibit discrimination regarding employee and dependent spouse or domestic partner benefits for pregnancy when employee and dependent spouse or domestic partner benefits exist for other medical conditions. Domestic Partnership for the purposes of 659A means two individuals who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with Oregon Laws, 2007, Chapter 99 and rules adopted by the State Registrar of the Center for Health Statistics.

(4) Women needing to be absent from work because of pregnancy or childbirth may have rights under the Oregon Family Leave Act, as provided in ORS 659A.150 to 659A.186 and OAR 839-009-0200 to 839-009-0320.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029, 659A.030 & 659A.150- 659A.186 & OL 2007 Ch 99

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0030

Sexual Harassment

(1) Sexual harassment is unlawful discrimination on the basis of sex and includes the following types of conduct:

(a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

(2) The standard for determining whether harassment based on an individual's sex is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in

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the circumstances of the complaining individual would so perceive it.

(3) Employer proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the respondent's president, owner, partner or corporate officer.

(4) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for sexual harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against that individual. A tangible employment action includes but is not limited to the following:

- (a) Terminating employment, including constructive discharge;
- (b) Failing to hire;
- (c) Failing to promote; or
- (d) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(5) Harassment by Supervisor, No Tangible Employment Action: When sexual harassment by a supervisor with immediate or successively higher authority over an individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(a) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(b) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(A) That the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and

(B) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(6) Harassment by Co-Workers or Agents: An employer is liable for sexual harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(7) Harassment by Non-Employees: An employer is liable for sexual harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(8) Withdrawn Consent: An employer is liable for sexual harassment of an individual by the employer's supervisory or non-supervisory employees, agents or non-employees, even if the acts complained of were of a kind previously consented to by the complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(9) When employment opportunities or benefits are granted because of an individual's submission to an employer's sexual advances, requests for sexual favors, or other sexual harassment, the employer is liable for unlawful sex discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.029 & 659A.030
Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 46-2006, f. 12-29-06, cert. ef. 1-3-07; BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08

Rule Caption: Proposed rule adoption implementing statutory amendments conforming state housing discrimination law with federal law and implementing SB 2.

Adm. Order No.: BLI 36-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 839-003-0200, 839-003-0205, 839-003-0210, 839-003-0215, 839-003-0220, 839-003-0225, 839-003-0230, 839-003-0235, 839-003-0240, 839-003-0245, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0210, 839-005-0215, 839-005-0220

Rules Amended: 839-003-0005, 839-003-0020, 839-003-0055, 839-003-0060, 839-003-0080, 839-003-0090, 839-005-0000, 839-005-0003, 839-005-0010

Rules Repealed: 839-006-0400, 839-006-0405, 839-006-0410, 839-006-0415, 839-006-0425

Subject: Adopt and amend administrative rules to implement Senate Bill 725, enacted by the 2007 Oregon Legislature, which conforms state housing discrimination law with federal law.

Also, amend rules to implement and clarify SB 2, which makes discrimination based on sexual orientation an unlawful practice.

Also to repeal certain rules in Chapter 839 Division 6, BOLI real property transaction rules, because their content would be moved into Division 5 to implement SB 725.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-003-0005

Definitions

Except where otherwise required by ORS 654.005 and except as provided below, definitions for terms used in these rules are found in ORS 659A.001 and 659A.100:

(1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.

(4) "Complaint" means for the purpose of ORS chapter 659A (see OAR 839-003-0200 related to housing discrimination complaints filed under 659A.145, 659A.421 or Federal Housing Law) a written, verified statement signed by the complainant or the complainant's attorney that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the complainant; and

(C) The causal connection between the complainant's protected class and the alleged harm.

(5) "Complainant" means a person filing a complaint personally or through an attorney.

(6) "Days," unless otherwise stated in the text of a document, means calendar days. "Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.

(7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(8) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(9) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(10) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(11) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

(12) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.

(13) "Person" has the meaning given in ORS 659A.001(9).

(14) "Respondent" includes any person or other entity against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(16) "Substantial evidence" means proof that a reasonable person would accept as sufficient to support the allegations of the complaint.

(17) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(18) "Written verified complaint" means a complaint that is:

(a) In writing; and

(b) Under oath or affirmation

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.001, 659A.145 & 659A.421

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08

839-003-0020

Civil Suit

(1) A person alleging unlawful discrimination under state law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

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(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(b) A person filing a civil suit in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil suit.

(2) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(3) The commissioner will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil suit. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275.

(4) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(5) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001-659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150-659A.224 & 659A.800-659A.890

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 12-1982, f. & ef. 8-10-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 24-2006(Temp), f. 7-5-06, cert. ef. 7-7-06 thru 1-3-07; BLI 38-2006, f. 10-25-06, cert. ef. 10-27-06; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08

839-003-0055

Cconciliation Agreements Prior to Completion of the Investigation

(1) The division encourages complainants and respondents to resolve complaints by mutual agreement at any time. The division will facilitate settlement negotiations between the complainant and respondent, as provided in this rule, at any time during the investigation. The division may terminate negotiations that become lengthy or appear unlikely to result in conciliation.

(2) If the complainant and respondent agree upon settlement, the division will draft a settlement agreement that states:

(a) That a "no fault" settlement has been reached;

(b) That the complainant, the respondent and the Civil Rights Division accept the terms of the agreement as a resolution of the complaint;

(c) The specific action(s) the complainant and respondent will take as a result of the complaint settlement and the time within which the action(s) will be taken; and

(d) That the division may investigate any alleged breach of the agreement.

(3) The settlement agreement will not include release language that applies to any forum other than the Civil Rights Division.

(4) The complainant, the respondent and a representative of the division will sign the division's settlement agreement. The complainant and respondent will receive copies of the signed agreement. Upon execution of this agreement, the division will notify the complainant and respondent that the complaint is dismissed.

(5) The division may allow the complainant and the respondent to enter into a private agreement with release language in addition to the division's agreement. The division will not be a party to nor enforce private agreements.

(6) Nothing in these rules is intended to preclude private settlement between the complainant and the respondent.

(7) This rule also applies to investigations of unlawful practices under ORS 659A.145, 659A.421 and discrimination under Federal Housing Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835, 659A.840 & 659A.850

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08

839-003-0060

Fact-Finding Conference

(1) At its discretion, the division may hold a fact-finding conference. This conference may encompass part or all of the division's investigation

of the complaint. The complainant and the respondent will attend the conference and a division representative will conduct the conference. The purposes of the conference will be to:

(a) Review evidence regarding the complaint;

(b) Identify the undisputed elements of the complaint;

(c) Define and, if possible, resolve the disputed elements of the complaint; and

(d) Attempt to settle the complaint.

(2) The division will schedule the conference, notifying the complainant and the respondent of the time and place. The division may require the complainant and the respondent to provide information and documents relevant to the complaint. The division may issue subpoenas ad testificandum to compel the respondent's representatives to attend the conference and issue subpoenas duces tecum to compel the production of documents at the conference.

(3) The conference may be rescheduled, subject to the division's approval, at the request of the complainant or the respondent, or at the division's discretion.

(4) The complainant's failure to attend the conference may cause the complaint to be administratively dismissed if the division determines that the complainant has failed to cooperate pursuant to OAR 839-003-0050(3).

(5) If the complainant attends the conference but the respondent's representatives fail to attend, the division representative may proceed based on the information in the division's possession.

(6) The respondent's representatives at a fact-finding conference should include persons with:

(a) Knowledge of the facts bearing on the complaint; and

(b) Authority to negotiate a settlement agreement.

(7) The complainant and the respondent may be accompanied by legal counsel, but counsel's role is strictly limited to providing legal advice to the counsel's client.

(8) Division's representative conducting the conference may:

(a) Question the participants about their knowledge of the situation;

(b) Ask for additional statements and documentation from the complainant and the respondent;

(c) Terminate discussion of a particular point when further discussion would be irrelevant or repetitive;

(d) Exclude witnesses with the exception of the complainant, the respondent and counsel;

(e) Order unruly participants to leave the conference;

(f) Tape-record the conference with the knowledge of the participants;

(g) Attempt to negotiate a settlement agreement between the parties; and

(h) Recess or terminate the conference at any time.

(9) If the conference does not result in settlement, the division will either continue the investigation or dismiss the complaint.

(10) This rule also applies to investigations of unlawful practices under ORS 659A.145, 659A.421 and discrimination under Federal Housing Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, 659A.850 & 659A.860

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 1-1993, f. 3-25-93, cert. ef. 4-1-93; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08

839-003-0080

Access to Records/Confidentiality

(1) During an investigation, the contents of the investigative file and related records, other than the complaint, are confidential. However, any individual may inspect and copy information or statements that the individual has given to the division. The division may charge a fee for inspection or to copy information.

(2) After the complaint is closed, a copy of the closed file will be available for a fee. To obtain a copy of a closed file a person must make a written request to the division. The request must include the person's name, address and telephone number, the complainant's and the respondent's names and payment of the fee, as determined by the division.

(3) The division will not at any time disclose any information that is required to be kept confidential by any state or federal law or under any contractual agreement between the bureau and federal, state and local agencies.

(4) A complainant's or respondent's designation of information as confidential will not supercede the State of Oregon Public Records Law.

(5) This rule also applies to investigations of unlawful practices under ORS 659A.145, 659A.421 and discrimination under Federal Housing Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 192.440(3) & 192.501(8)

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 10-1984(Temp), f. & ef. 9-6-84; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08

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839-003-0090

Remedy

(1) In cases of employment discrimination remedy includes, but is not limited to:

- (a) Employment or reemployment;
- (b) Wages or other benefits lost due to the practice;
- (c) Out-of-pocket expenses attributable to the practice;
- (d) Compensation for emotional distress and impaired personal dignity; and
- (e) Interest.

(2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.

(3) In order to recover damages for lost wages, the complainant will generally be required to mitigate damages by seeking employment.

(a) Earned income from employment may be deducted from lost wage damages.

(b) In most cases, unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

(4) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(5) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(6) When the respondent makes an offer of remedy, the division will inform the complainant of the offer. If the complainant does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.

(7) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 20-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2006, f. 3-16-06 cert. ef. 3-20-06; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08

839-003-0200

Filing a Complaint Under State and Federal Housing Discrimination Laws

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in section (5) of this rule, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire to assist in determining if there is a basis for filing a complaint;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person or the person's attorney will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be

signed by the minor and the parent or legal guardian of the minor.

(5) The division will notify the Respondent within 10 days of the filing of a complaint under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law. The notification will include:

(a) The date, place and circumstances of the alleged unlawful practice; and

(b) A statement that the Respondent may file an answer to the complaint.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, ORS 659A.145, ORS 659A.421, 659A.820 & 29 CFR Part 15(d)(3)

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0205

Amending a Housing Discrimination Complaint

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(a) Within 10 days after identifying an additional person who will named as a respondent, the division will serve the person with a copy of the complaint that identifies the alleged discriminatory housing practice and a notice that advises the person of the procedural rights and obligations of the person, including the person's right to file an answer to the complaint.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the complainant must file a new complaint meeting the standards provided in OAR 839-003-0005(4).

(3) Amended complaints need not be verified or signed by the complainant or the complainant's attorney.

(4) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.820

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0210

Withdrawal of a Housing Discrimination Complaint

A complainant may voluntarily withdraw a complaint at any time by giving the division written notice of the complainant's decision to withdraw. If the complainant wants a federal "right to sue letter," the complainant must provide a written request to HUD or to the division. If the complainant makes the request to the division, the division will forward the request to HUD.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0215

Administrative Dismissal of a Housing Discrimination Complaint

(1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.

(2) The division may dismiss the complaint if the complainant files a proceeding, based on the same set of facts, with another agency having the authority to provide remedy to the complainant for the alleged discrimination.

(3) If a complainant or the complainant's attorney fails to cooperate with the division, the division may dismiss the complaint.

(4) The complainant will notify the division in writing of address and telephone number changes. When a complainant cannot be located by reasonable efforts, the division may dismiss the complaint.

(5) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. The division will provide written notice of such dismissal to complainant and respondent.

(6) The division may elect to administratively dismiss a complaint without investigation. The division will provide written notice of such dismissal to complainant and respondent.

(7) The division will dismiss a complaint if it learns that the complainant has filed a civil suit alleging the same matters as provided in OAR 839-003-0235, and the civil suit has commenced.

(8) The division will dismiss complaints alleging discrimination under federal housing law statutes administered by HUD in accordance with federal requirements.

(9) The division will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division. The complainant will have 90 days from the notice mailing date to file a civil suit. A complainant filing suit

ADMINISTRATIVE RULES

against a public body must also file a tort claim notice as required by ORS 30.275.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 30.680, ORS 659A.145, ORS 659A.421, ORS 659A.835, ORS 659A.850 & ORS 659A.870 - ORS 659A.885
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0220

Housing Discrimination Investigations

(1) The division may investigate the allegations contained in any complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law to determine objectively whether there is substantial evidence of unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.

(2) The division will commence an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law within 30 days after the timely filing of the complaint.

(3) OAR 839-003-0065, Sections (2) through (13) also apply to the investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law.

(4) The authority of the commissioner to conduct investigations or other proceedings to resolve a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law does not cease one year after the complaint is filed if the determination of whether substantial evidence exists is not practicable within the one year period under ORS 659A.830(3). If the division determines it is not practicable to make a determination of whether substantial evidence exists within one year after the complaint is filed as provided in ORS 659A.830(3), the division will notify the parties in writing of the reasons therefore.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.800, ORS 659A.805, ORS 659A.835 & ORS 659A.870 to ORS 659A.885
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0225

Settlement Process After Substantial Evidence Determination in Housing Discrimination Complaints

(1) If the division finds substantial evidence of unlawful discriminatory act(s) by conference, settlement and persuasion. The division will facilitate any settlement negotiations between the complainant and respondent as provided in OAR 839-003-0055.

(2) If no settlement agreement is reached in the period of time set aside for settlement after a Substantial Evidence Determination, the division retains the discretion to further negotiate settlement, administratively dismiss the complaint, or proceed to a contested case hearing.

(3) The complainant may withdraw the complainant's own complaint at any time.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.835 & ORS 659A.840
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0230

Remedies in Housing Discrimination Complaints

(1) In cases of housing discrimination remedy includes, but is not limited to:

- (a) Rental, lease or sale of real property;
- (b) Service lost;
- (c) Expenses or lost benefits attributable to the practice;
- (d) Compensation for emotional distress and for impaired personal dignity; and
- (e) Interest.

(2) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(3) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to do one or more of the following:

- (a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an

unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(4) When the respondent makes an offer of remedy, the division will inform the complainant of the offer. If the complainant does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint. The division will notify the complainant in writing, as provided in OAR 839-003-0215(9), of the right to file suit in state court.

(5) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0235

Civil Suit

(1) A person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(2) A civil suit alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(3) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed the division will not dismiss the complaint until the civil trial commences. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(4) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a hearing on the record under ORS Chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or Federal Housing Law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved individuals in the same manner as an individual or group of individuals may file a civil action under ORS 659A.885.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 30.275, 30.680, 659A.001 - 659A.030, 659A.145, 659A.150 - 659A.224, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, & 659A.800 - 659A.890
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0240

Enforcement of Settlement Agreements and Orders in Housing Discrimination Complaints

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the complainant believes the terms of a bureau settlement agreement have been breached, the complainant may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division may review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.850, ORS 659A.860 & ORS 659A.865
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-003-0245

Commissioner's Complaint

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights due to

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an unlawful practice. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0200.

(2) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 183 & ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.820, ORS 659A.825 & ORS 659A.870 - ORS 659A.885

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0000

Purpose and Scope

(1) It is the policy of the State of Oregon that unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, familial status and other classes protected under Oregon statutes is a matter of state concern and that such discrimination threatens individual rights and privileges and menaces the institutions and foundations of a free democratic state.

(2) Prohibited discrimination is a basis of unlawful practices and unlawful employment practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) The Civil Rights Division of the Bureau of Labor and Industries is responsible for protecting individual rights through the enforcement of civil rights statutes prohibiting unlawful practices and unlawful employment practices over which the bureau has jurisdiction.

(4) The purpose of these rules is to implement, interpret and describe the division's approach to civil rights enforcement under the bureau's jurisdiction.

(5) These rules apply to all inquiries and complaints received by the division on or after the effective date of these rules.

(6) An individual claiming a violation of the civil rights statutes may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or Federal Housing Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

Hist.: BL 9-1982, f. & ef. 6-11-8; BL 4-1996, f. & cert. ef. 3-12-96; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0003

Definitions

(1) "Bureau" means the Bureau of Labor and Industries.

(2) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or Federal Housing Law.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employee" does not include any individual employed by that individual's parents, spouse or child or in the domestic service of any person.

(5) "Employer" means any person in this state who, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. Employer also includes any public body that, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, municipal corporations and all other political subdivisions of the state.

(6) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(7) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(8) "Labor organization" includes any organization that is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment

or of other mutual aid or protection in connection with employees.

(9) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

(10) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(11) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth.

(12) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(13) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(14) "Sex" means the anatomical, physiological and genetic characteristics associated with being male or female.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A, OL 2007 Ch 100

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0010

Discrimination Theories

(1) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The complainant is a member of a protected class;

(c) The complainant was harmed by an action of the respondent; and

(d) The complainant's protected class was the reason for the respondent's action. In determining whether the complainant's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class. Unless the respondent can show that a bona fide occupational qualification or a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0045) allows the action or in the case of housing discrimination under ORS 659A.145, 659A.421 or under Federal Housing Law just cause can be shown, the respondent has unlawfully discriminated.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than comparably situated individuals who were not members of the complainant's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was the reason for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(i) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(ii) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The complainant at all times has the burden of proving that the complainant's protected class was the reason for the respondent's unlawful action.

(2) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional dis-

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crimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(3) For the purposes of housing discrimination complaints filed under ORS 659A.145, 659A.421 and federal housing law, in determining whether evidence of adverse impact discrimination exists and, if so, what relief should be granted, a court or the commissioner will consider:

(a) The significance of the adverse impact on the protected class;

(b) The importance and necessity of any business purpose for the standard or policy; and

(c) The availability of less discriminatory alternatives for achieving the business purpose for the standard or policy.

(4) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact or failure to accommodate a disability. To be protected from discrimination based on disability, an individual must have a disability, as defined in ORS 659A.100(1) and (2) and the relevant rules. Reasonable accommodation for purposes of employment is defined in ORS 659A.118 and OAR 839-006-0206. Reasonable accommodation in real property transactions is covered by ORS 659A.145 and OAR 839-005-0220. Reasonable modifications in services, programs or activities, provision of auxiliary aids, services by state government, removal of barriers to facilities, goods and services and provision of auxiliary aids by public accommodations are covered by ORS 659A.142 and OAR 839-006-0310 to 0330.

(5) An employer must reasonably accommodate an employee or applicant's religious belief, observance or practice unless the employer can demonstrate that such accommodation would cause undue hardship on the employer's business.

(6) Harassment in employment based on an individual's protected class is a type of intentional unlawful discrimination. In cases of alleged unlawful sexual harassment in employment see OAR 839-005-0030.

(a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(C) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(c) Employer Proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the employer's president, owner, partner or corporate officer.

(d) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against the individual. A tangible employment action includes, but is not limited to, any of the following:

(A) Terminating employment, including constructive discharge;

(B) Failing to hire;

(C) Failing to promote; or

(D) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(e) Harassment by Supervisor, No Tangible Employment Action: When harassment by a supervisor with immediate or successively higher authority over the individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(A) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(B) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(i) That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and

(ii) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(f) Harassment by Coworkers or Agents: An employer is liable for harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(g) Harassment by Non-Employees: An employer is liable for harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases, the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(h) Withdrawn Consent: An employer may be liable for harassment by the employer's supervisory or non-supervisory employees, agents or non-employees even if the acts complained of were of a kind previously consented to by the complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(i) When employment opportunities or benefits are granted because of an individual's submission to an employer's harassment, the employer is liable for unlawful discrimination against other individuals who were qualified for but denied that opportunity or benefit.

(7) Harassment in Housing and Public Accommodations: Harassment on the basis of a protected class, including sexual harassment, is an unlawful practice in housing and in places of public accommodation when:

(a) Substantial evidence of the elements of OAR 839-005-0010(1) is shown; and

(b) Such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment. The standard for determining whether harassment in housing and in places of public accommodation creates an intimidating, hostile or offensive environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A & 42 U.S.C. 3601 et seq.

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2007, f. 1-29-07, cert. ef. 2-2-07; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0195

Purpose and Scope

(1) The public policy of the State of Oregon guarantees all persons the fullest possible participation in the social and economic life of the state, including the right to purchase, lease or rent property without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes. The Bureau of Labor and Industries, through the Civil Rights Division, protects these rights by enforcement of ORS 659A.145, 659A.421 and the Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing and Urban Development has jurisdiction.

(2) A person claiming a violation of ORS 659A.145 or 659A.421 or discrimination under Federal Housing Law may file a complaint with the Civil Rights Division as described in OAR 839-003-0200.

(3) These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

(4) Provisions of ORS 659A.145, 659A.421 and these rules will be construed to the extent possible in a manner that is consistent with any similar provisions of the Fair Housing Act (42 U.S.C. 3601 et seq.).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0200

Definitions

(1) "Disabled Person" means a person with a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale, lease or

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rental for the construction or location thereon of any such building, structure, or portion thereof. "Family" includes a single individual.

(3)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(4) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development has jurisdiction.

(5) "Major life activity" includes, but is not limited to, self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(a) Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(6) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(7) "Person associated with a purchaser, lessee or renter," as used in ORS 659A.145(1), includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees in bankruptcy, receivers, public bodies or other entities that have the primary purpose of serving, representing or otherwise benefiting the protected class.

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

(9) "Property" and "real property" include property used or intended for commercial, business or residential purposes.

(10) "Purchaser" means an occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

(11) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(5), means actual treatment of a person for a mental condition or an assertion that the person received such treatment.

(12) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:

(a) A person having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;

(b) A person having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) A person having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(13) "Residential real estate related transaction" means any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(B) For securing residential real estate; or

(b) The selling, brokering or appraising of residential real property.

(14) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth.

(15) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated

with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(16) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(17) "Substantially limits" means:

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

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

(18) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(19) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0205

Prohibited Discrimination

(1) A person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser;

(b) Expel a purchaser from any real property;

(c) Make any distinction, discrimination or restriction against a purchaser in price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection with real property;

(d) Attempt to discourage the sale, rental, lease or occupancy of any real property to a purchaser;

(e) Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind whether oral, written or electronic, relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes ;

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates ORS 659A.145, 659A.421, Federal Housing Law or these rules;

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by ORS 659A.145, 659A.421, Federal Housing Law or these rules;

(h) Deny access to, or membership or participation in, any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation;

(i) Represent to a person that a dwelling is not available for inspection, sale, rental or lease when the dwelling in fact is available for inspection, sale, rental or lease;

(j) Otherwise make unavailable or deny a dwelling to a person.

(2) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(3) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(4) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(5) For purposes of OAR 839-005-0205 subsections (1) to (4),

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“source of income” does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

(6) Any violation of OAR 839-005-0205 is an unlawful practice.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et. seq.
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0210

Exceptions

(1) OAR 839-005-0205 does not apply with respect to sex distinction, discrimination or restriction if the real property involved is such that the application of OAR 839-005-0205 would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

(2) The provisions of OAR 839-005-0205(1)(a) to (d) and (f) that prohibit actions based upon sex, sexual orientation or familial status do not apply to the renting of space within a single-family residence if the owner actually maintains and occupies the residence as the owner’s primary residence and all occupants share some common space within the residence.

(3)(a) OAR 839-005-0205 does not apply to familial status distinction, discrimination or restriction with respect to housing for older persons.

(b) As used in this subsection, “housing for older persons” means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:

(i) At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(ii) Policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.

(c) Housing does not fail to meet the requirements for housing for older persons if:

(A) Persons residing in the housing as of September 13, 1988, do not meet the requirements of paragraph (b)(B) or (C) of this subsection. However, new occupants of such housing will meet the age requirements of paragraph (b)(B) or (C) of this subsection; or

(B) The housing includes unoccupied units that are reserved for occupancy by persons who meet the age requirements of paragraph (b)(B) or (C) of this subsection.

(d) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et. seq.
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0215

Religious Exemption

It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing based on a bona fide religious belief about sexual orientation as long as the housing is closely connected with or related to the primary purpose of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et. seq.
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

839-005-0220

Disabled Persons

(1) Persons protected from discrimination on the basis of disability in real property transactions include any disabled person associated with a purchaser, lessee or renter.

(2) In addition to the prohibitions in OAR 839-005-0205, discrimination in real property transactions based on a person’s disability includes, but is not limited to:

(a) Refusing to permit or make reasonable accommodations, including but not limited to;

(A) Refusing to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of rental, the landlord

may, where it is reasonable to do so, condition permission for modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) Refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(3) A lessor or agent may engage in conduct otherwise prohibited by ORS 659A.145 when:

(a) A disabled person’s leasing or rental of the subject property would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others; and

(b) No reasonable accommodation is possible that would render insignificant the risk to health and safety.

(4) A lessor or agent must allow alterations of existing premises if the premises are occupied by or to be occupied by a disabled person, and the disabled person pays for the alterations, as provided in OAR 839-005-0220(2).

(5) There is no just cause for discrimination on the basis of perceived disability.

(6) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual’s inability to acquire, rent or maintain property.

(7) In the sale, lease or rental of real estate, a person may not disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

(8) Any violation of OAR 839-005-0220 is an unlawful practice.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et. seq.
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08

Rule Caption: Adopts and amends rules regarding wage claim enforcement and civil penalties.

Adm. Order No.: BLI 37-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 839-001-0495, 839-001-0496

Rules Amended: 839-001-0150, 839-001-0153, 839-001-0160, 839-001-0740, 839-001-0760

Rules Repealed: 839-001-0157

Subject: The permanent rules adopted, amended and repealed implement new civil penalty provisions enacted in House Bills 2254, 2256 and 2647 (2007 Legislature) effective January 1, 2008. These bills provide new civil penalty authority in ORS 652.900 for an employer’s failure to timely provide an employee access to the employee’s personal records as required; failure to comply with established requirements for methods of paying wages pursuant to ORS 652.100; and failure to timely pay amounts deducted from an employee’s wages for the appropriate recipient as required.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-001-0150

Civil Penalties for Violation of ORS 652.020, Maximum Working Hours in Mills, Factories and Manufacturing Establishments: Overtime Hours and Pay

As used in ORS 652.020, 652.900 and OAR 839-001-0150 to 839-001-0160:

(1) “Violation” means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

(2) “Knowingly” or “Willfully” means action undertaken with actual knowledge of a thing to be done or omitted. A person “should have known the thing to be done or omitted” if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done.

Stat. Auth.: ORS 651.060(4) & 652
Stats. Implemented: ORS 652.020
Hist.: BL 8-1990, f. & cert. ef. 5-11-90; BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

839-001-0153

Violations Separate and Distinct

Each violation of ORS 652.020 or any rule adopted pursuant thereto is a separate and distinct offense. In the case of continuing violations, each day’s continuance is a separate and distinct violation.

Stat. Auth.: ORS 651.060(4) & 652
Stats. Implemented: ORS 652.020
Hist.: BL 8-1990, f. & cert. ef. 5-11-90; BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

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839-001-0160

Schedule of Civil Penalties

(1) The civil penalty for any one violation of ORS 652.020 or any rule adopted pursuant thereto shall not exceed \$1,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) When the commissioner determines to assess a civil penalty for requiring or permitting an employee to work over ten hours in a day when the employee is not paid time and one-half the regular rate of pay in violation of ORS 652.020, the minimum civil penalty to be assessed shall be \$50 per day for each employee affected. For example, when the employer or an employer's agent requires or permits five employees to work over ten hours in a day for four days without paying the employees time and one-half their regular rate of pay for the hours worked over ten in a day, the minimum civil penalty to be assessed shall be \$1,000 (5 employees x 4 days x \$50 per day per employee = \$1,000).

(3) When the commissioner determines to assess a civil penalty for requiring or permitting an employee to work more than 13 hours in any day of 24 hours, the minimum civil penalty shall be \$500 per day for the first offense. For example, when an employer or an employer's agent requires or permits any number of employees to work over 13 hours in a day for four days, the minimum civil penalty shall be \$2,000 (4 days x \$500/day = \$2,000). When the Commissioner determines to assess a civil penalty for subsequent offenses, the Commissioner may assess up to \$1,000 for each such offense.

(4) The civil penalties set out in sections (2) and (3) of this rule shall be in addition to any other penalty imposed by law or rule.

(5) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-001-0496.

Stat. Auth.: ORS 651.060(4) & 652
Stats. Implemented: ORS 652.900
Hist.: BL 8-1990, f. & cert. ef. 5-11-90; BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

839-001-0495

Violations Separate and Distinct

Each violation of ORS 652.110, 652.140, 652.145, 652.610(4), 652.750 or any rule adopted pursuant thereto is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 651.060(4), 652.165, 652.900
Stats. Implemented: ORS 652.010-652.900
Hist.: BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

839-001-0496

Civil Penalties

(1) When assessing a civil penalty for violations of ORS 652.110, 652.140, 652.145, 652.610(4), 652.750 or any rule adopted pursuant thereto, the commissioner may consider the following mitigating and aggravating circumstances in determining the amount of the civil penalty to be assessed and cite those the commissioner finds to be appropriate:

(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the employer knew or should have known of the violation.

(2) The commissioner may consider what amount of civil penalty is likely to deter an employer from committing violations in the future.

(3) Notwithstanding any other section of this rule, the commissioner shall consider all aggravating circumstances presented by any employee or any other person for the purpose of increasing the amount of the civil penalty to be assessed.

(4) It shall be the responsibility of the employer to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be assessed.

(5) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth.: ORS 651.060(4), 652.165, 652.900
Stats. Implemented: ORS 652.010-652.900
Hist.: BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

839-001-0740

Employee Notification Form

(1) For purposes of complying with ORS 652.710(3) and OAR 839-001-0720, there is no specific form required. The document used by the employer to notify its employees must contain all the information provided for in OAR 839-001-0720(6).

(2) When the form supplied to the employer by the contractor or

insurer contains the required information and when an exact and clearly legible copy of the form is delivered to employees within the time required in ORS 652.710(3) and OAR 839-001-0720(3), the notification requirements are satisfied.

Stat. Auth.: ORS 652.710(7) & 652.710(11)
Stats. Implemented: ORS 652.710
Hist.: BL 10-1992, f. & cert. ef. 7-1-92; BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

839-001-0760

Violations Separate and Distinct

Each violation of ORS 652.710(1) and (3) is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 652.710(7) & 652.710(11)
Stats. Implemented: ORS 183.090 & 652.710
Hist.: BL 10-1992, f. & cert. ef. 7-1-92; BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Proposal to adopt rules implementing new legislative authority to enforce subpoenas and requirements for procedures.

Adm. Order No.: BLI 38-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 839-002-0015, 839-002-0020, 839-002-0025, 839-002-0030, 839-002-0035, 839-002-0040, 839-002-0045, 839-002-0050, 839-002-0055, 839-002-0060, 839-002-0065, 839-002-0070, 839-007-0075, 839-002-0080

Subject: The rules implement new legislation authorizing the bureau to enforce its civil rights and wage and hour investigative subpoenas in state circuit court.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-002-0015

Purpose and Scope

(1) ORS 651.060(1) authorizes the commissioner to conduct investigations in all matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, and Chapters 652, 653, 658, and 659A.

(2) While conducting these investigations, ORS 651.060(1) gives the commissioner the authority to issue subpoenas ad testificandum and subpoenas duces tecum, administer oaths, obtain evidence and take testimony.

(3) These rules govern the commissioner's gathering of information through subpoenas or testimony and establish procedures through which a subpoenaed party may object to answering questions or producing any document or other thing subpoenaed.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0020

Definitions

(1) "Division" means the Civil Rights Division and Wage and Hour Division in the Bureau of Labor and Industries.

(2) "Document" means any existing written, printed, typed, or recorded matter of any kind or nature, however produced or reproduced, including but not limited to all mechanical, electronic, sound or video recordings or their transcripts, photographs, electronic files and computer stored data.

(3) "Other thing" means any existing tangible object that is not a "document."

(4) "Party" means any person who has been served by a subpoena under these rules.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(6) "Subpoena ad testificandum" is a subpoena that requires an individual to appear and give testimony under oath.

(7) "Subpoena duces tecum" is a subpoena that requires the production of documents or other things.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0025

Who and What May Be Subpoenaed

The commissioner may issue subpoenas to persons to compel testimony and the production of documents or other things that are relevant to the commissioner's lawful investigative purpose and reasonable in scope

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under matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, and Chapters 652, 653, 658, and 659A.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0030

Circumstances under Which a Subpoena May be Issued

(1) The commissioner may issue a subpoena ad testificandum to compel an individual to testify under oath when:

(a) A Division determines that the individual is a material witness in an investigation being conducted by the Division under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, or Chapters 652, 653, 658, and 659A;

(b) The information sought from the individual is relevant to a lawful investigative purpose and is reasonable in scope; and

(c) The Division has been unable to interview the individual after having made reasonable attempts to do so, or the individual states that he or she will only consent to an interview if first served with a subpoena.

(2) The commissioner may also issue a subpoena ad testificandum to compel an individual to testify under oath about the contents of documents or other things produced in response to a subpoena duces tecum served on the same individual.

(3) The commissioner may issue a subpoena duces tecum to compel a person to produce documents or other things when:

(a) A Division determines that the documents or other things are relevant to the Division's investigation being conducted under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120 and 651.170, or Chapters 652, 653, 658, and 659A;

(b) The documents or other things sought are relevant to a lawful investigative purpose and are reasonable in scope; and

(c) The Division has made a written request for production of documents or things and the person to whom the request was made has failed to comply within the time specified by the Division, unless the commissioner finds a subpoena is necessary to protect the documents and things from destruction.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0035

Who May Issue Subpoenas

The commissioner or the commissioner's designees may issue subpoenas.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0040

Subpoena Duces Tecum

(1) A subpoena duces tecum may be issued to any individual who has custody, possession, or control of documents or other things named in the subpoena duces tecum when the conditions set out in OAR 839-026-0100(3) have been met.

(2) A subpoena duces tecum will not require production of documents or other things less than 14 days from the date of service upon the individual required to produce and permit inspection of the documents or things unless the commissioner finds a shorter period necessary to protect the documents and things from destruction or if the Division has an immediate need for the documents or things being subpoenaed.

(3) The commissioner may also command the individual to whom a subpoena duces tecum is issued to produce documents and other things by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals. The individual to whom the subpoena is directed complies if the individual produces copies of the specified items in the specified manner and certifies that the copies are true copies of all documents and other things responsive to the subpoena.

(4) The subpoenaed documents and other things must be produced at the location, time, and date required in the subpoena.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0045

Subpoena Ad Testificandum

(1) A subpoena ad testificandum may be issued to any individual when the conditions set out in 839-026-0015(1) or 839-026-0015(2) have been met.

(2) The subpoena ad testificandum must give the individual a reasonable time for preparation and travel to the place of attendance and the place

of attendance must be in a suitable place in the vicinity to which testimony is applicable.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0050

Method of Service

(1) Except as noted in subsections (2) and (3) of this rule, subpoenas must be served in person by delivering a copy to the witness personally and, at the same time, giving or offering to the witness the fees to which the individual is entitled for travel to and from the place where the witness is commanded to appear, along with one day's attendance fee. A subpoena may be served by any individual 18 years of age or older.

(2) Subpoenas may be served by mail under the following circumstances:

(a)(A) The Division must have, by personal or telephone contact, confirmed the witness's willingness to appear if subpoenaed and certify this on the return of service;

(B) The Division made arrangements for payment to the witness of fees and mileage satisfactory to the witness and pays those fees and mileage; and

(C) The subpoena is sent by certified mail to the witness more than 10 days before the date set for appearance or production of documents or other things and the Division receives a return receipt signed by the witness more than three days prior to that date.

(b) A subpoena duces tecum commands production of documents or other things but is not accompanied by a subpoena ad testificandum.

(3) All subpoenas must be accompanied by a copy of these rules. If a subpoena is served without a copy of these rules, the person served is not bound by the subpoena.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0055

Fees

All persons subpoenaed by the commissioner must be paid the mileage and per diem set out in ORS 44.415(2).

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0060

Time and Manner of Objecting to Subpoenas

(1) Any person served with an investigative subpoena may object to testifying or providing the documents or other things sought. Grounds for objections include:

(a) The information sought is irrelevant to a lawful investigative purpose;

(b) The information sought is unreasonable in scope;

(c) The witness is ordered to appear to give testimony in a place that is not suitable or not in the vicinity to which the testimony is applicable;

(d) The time and expense involved in copying the documents sought. In order to have this objection considered, a person making this objection must include a written estimate of the time involved and number of copies to be made in order to comply with the subpoena;

(e) Reasonable cause to refuse to comply; and

(f) Any other basis that may be asserted under Oregon law.

(2) Objections to subpoenas must be in writing and must be received by the Division at least seven calendar days before the time that the witness is subpoenaed to testify or provide documents or other things.

(3) If a subpoenaed witness refuses to answer specific questions while giving testimony, the witness must state the reason for his or her objection at the time that the witness refuses to answer the questions.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0065

Response to Objections

(1) The Division will respond in writing, to any objections timely received under OAR 839-026-0045(2).

(2) If the objection made is the time and expense involved in copying the documents sought, the Division will provide a check to the person subpoenaed to pay for the estimated time and expense, calculated at the rates set out in OAR 839-030-0010. The Division may provide this check before or at the time the witness is subpoenaed to provide documents or other things.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

839-002-0070

Method of Taking Testimony

(1) When a witness appears to give testimony in response to a subpoena ad testificandum, an oath or affirmation will be administered to the witness prior to his or her testimony. The oath or affirmation will be administered by an officer authorized to administer oaths in Oregon, generally a notary public employed by the Bureau of Labor and Industries.

(2) The witness's testimony will be preserved by an audio or video recording. Upon request, the Division will give the witness a copy of the recording at no cost.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0075

Failure to Appear

If a person served with a subpoena fails to appear and has not filed any prior objections, the commissioner will conclude that the person has refused, without reasonable cause, to answer any question or to produce any document or other thing.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

839-002-0080

Enforcement of Subpoena

If a person served with a subpoena refuses, without reasonable cause, to be examined, to answer any question or to produce any document or other thing as required by the subpoena, the commissioner may petition the circuit court in the county in which the investigation is pending for an order directing the person to show cause why the person has not complied with the subpoena and should not be held in contempt. The commissioner shall serve the court's order upon the person in the manner provided by ORCP 55 D.

Stat. Auth.: Ch. 277, OL 2007
Stats. Implemented: Ch. 277, OL 2007
Hist.: BLI 38-2007; f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Proposed Amendments to implement new statutory protections for making wage complaints and clarifying revisions.

Adm. Order No.: BLI 39-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Amended: 839-010-0000, 839-010-0010, 839-010-0020, 839-010-0040, 839-010-0100

Rules Repealed: 839-010-0110

Subject: The final rules will implement HB 2255, which made discrimination or retaliation against employees who complain about or inquire about wages an unlawful employment practice under ORS Chapter 659A.

Revision to other Division 10 rules and repeal of one rule will reorganize and clarify the rules.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-010-0000

Purpose and Scope

(1) The Civil Rights Division of the Oregon Bureau of Labor and Industries enforces the provisions of ORS 659A.200 to 659A.233, 652.355, and 653.060 prohibiting discrimination against employees based on whistleblowing disclosures or activities that are described in the statutes. These rules apply to all such complaints and inquiries received on or after the effective date of these rules.

(2) The purpose of these rules is to clarify the provisions of the statutes.

(3) In accordance with ORS 659A.820, an individual claiming a violation of ORS 659A.200 to 659A.233, 652.355, 653.060, or these rules, may file a complaint with the Civil Rights Division, as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805 & 659A.221, 652.355(2) & 653.060(2)
Stats. Implemented: ORS 659A.200 - 659A.233, 652.355 & 653.060
Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08

839-010-0010

Definitions

As used in ORS 659A.200 to 659A.224 and these rules:

(1) "Abuse of authority" means to deliberately exceed or make

improper use of delegated or inherent authority or to employ it in an illegal manner.

(2) "Agency" for the purposes of OAR 839-010-0010 to 839-010-0060 refers to the state or any agency of or political subdivision in the state.

(3) "Disciplinary action" means any adverse action including dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal, or withholding of work, whether or not the action affects or will affect employee compensation.

(4) "Disclosure" means a formal or informal internal or extra-agency communication, not including a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee providing the disclosure reasonably believes that the disclosure evidences:

(a) A violation of any federal or state law, rule, or regulation by the agency;

(b) Mismanagement;

(c) Gross misuse or waste of public resources or funds;

(d) Abuse of authority in connection with the administration of a public program or the execution of a public contract; or

(e) A substantial and specific danger to public health or safety resulting from agency action.

(5) "Employee" means a person employed by or under contract with:

(a) The state or any agency of or political subdivision in the state;

(b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) Employees of the public corporation created under ORS 656.751;

(d) Employees of a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and

(e) Any person authorized by contract to act on behalf of the state, agency or subdivision.

(6) "Gross waste of funds" means an expenditure that is significantly out of proportion to the benefit expected to accrue to the agency and is more than a debatable expenditure.

(7) "Mismanagement" means serious agency misconduct having the effect of actually or potentially undermining the agency's ability to fulfill its public mission.

(8) "Public employer" means:

(a) The state or any agency of or political subdivision in the state; and

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee.

(9) "Reckless disregard for its truth or falsity" means a conscious disregard of a substantial and justifiable risk that the information disclosed is false.

(10) "Substantial and specific danger" means a specified risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation.

Stat. Auth.: ORS 659A.805 & 659A.221

Stats. Implemented: ORS 659A.233 & 659A.200 - 659A.224

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08

839-010-0020

Prohibited Discrimination by Public Employers

(1) Oregon public employee whistleblower statutes prohibit public employers from taking action against or prohibiting employees from:

(a) Responding to legislative requests;

(b) Disclosing information the employee believes is evidence of violation of laws or disclosing evidence of mismanagement, gross waste or abuse of authority; or

(c) Reporting public endangerment resulting from an action by a public employer.

(2) No public employer may require an employee to give notice prior to making any disclosure described in sections (1)(a), (b) and (c) of this rule.

(3) No public employer may identify the employee who discloses the following information during any investigation of the information provided by the employee without the written consent of the employee:

(a) Matters described in ORS 659A.203(1)(b); and

(b) Reports required by ORS 659A.206(2).

(4) No public employer may prohibit or take action against employees for disclosing that a person receiving public assistance is also subject to arrest.

Stat. Auth.: ORS 659A.805 & 659A.221

Stats. Implemented: ORS 659A.233 & 659A.200 - 659A.224

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08

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839-010-0040

Discussions with Legislative Assembly Members

(1) ORS 659A.203(1)(a) and (d) prohibit a public employer from prohibiting, discouraging, restraining, dissuading, coercing or otherwise interfering with any employee responding to an official legislative request to discuss the activities of the state or any branch, agency or political subdivision thereof, or from discussing the activities of any person authorized to act on behalf of those entities.

(2) In order to be protected by ORS 659A.203(1)(a), a public employee must be responding to an official legislative request, whether orally or in writing. The request must be made by or at the direction of a Legislative Assembly member and must invite discussion with a Legislative Assembly member or legislative committee staff acting under the direction of a Legislative Assembly member;

(a) No employee may be required to inform the employer prior to engaging in the requested legislative discussion except when the legislative request for information is directed to the agency and the employee will speak or testify on behalf of the agency;

(b) Regarding legislative testimony or discussion with representatives of Legislative Assembly members, the whistleblower law is not intended to:

(A) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(B) Authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation, or allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505 or 659A.212;

(C) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action.

(3) An employee is not entitled to leave work without following the employer's applicable rules and policies pertaining to leave, unless the employee is requested by a Legislative Assembly member or a legislative committee to appear before a legislative committee. If the employee's testimony is so requested, the employee may elect to take personal time off in accordance with the employer's normal procedure.

(a) The employer may confirm the date and time for testimony but may not inquire into the substance of the testimony.

(b) The employer must excuse the employee's absence from work during the time required for testimony and travel to and from the location of the committee.

(c) If an employee appears to testify and testimony is not taken at the designated date and time, the absence must be treated in the same manner as if the testimony had been taken.

(d) If an employee is subsequently recalled to testify, the subsequent request must be treated by the employer and employee in the same manner an initial request is treated.

(e) An employee may take time off to testify following the employer's regular time off policy without notifying the employer of the purpose of the absence.

(4) No public employer may take any disciplinary action against an employee for employee activity described by ORS 659A.203(1)(a). An employer, however, is not precluded from taking disciplinary action if:

(a) The information disclosed by the employee is known to be false;

(b) The employee discloses the information with reckless disregard for its truth or falsity;

(c) The information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health and safety.

Stat. Auth.: ORS 659A.805 & ORS 659A.221

Stats. Implemented: ORS 659A.200 - ORS 659A.224

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08

839-010-0100

Prohibited Discrimination by Employers

(1) ORS 659A.230 prohibits any employer with one or more employees in Oregon from knowingly discriminating or retaliating against an employee because the employee has in good faith:

(a) Reported to any person, orally or in writing, criminal activity by any person;

(b) Reported to any person, orally or in writing, any activity the employee in good faith believed to be criminal or caused criminal charges to be brought against any person whether by the complainant's information or by a complaint, as defined in ORS 131.005(3) and (4);

(c) Cooperated with a law enforcement agency criminal investigation, whether or not under subpoena;

(d) Brought a civil proceeding against an employer; or

(e) Testified at a civil proceeding or criminal trial, whether or not under subpoena. (With regard to civil proceedings, see also OAR 839-010-0140.)

(2) ORS 659A.233 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because the employee has in good faith:

(a) Reported possible violations of ORS chapter 441, ORS 443.400 to 443.455;

(b) Testified at an unemployment compensation hearing; or

(c) Testified at a hearing conducted pursuant to ORS chapter 657.

(3) ORS 652.355 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because:

(a) The employee has made a wage claim or has discussed with anyone, inquired of anyone, or consulted an attorney or agency about a wage claim; or

(b) The employee has caused to be instituted, has testified in or is about to testify in any proceedings under or related to ORS 652.310 to 652.414.

(4) ORS 659A.060 prohibits any employer with one or more employees in Oregon from discharging or in any other manner discriminating against a current, former, or any other employer's employee because:

(a) The employee has made an oral or written complaint to anyone that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(b) The employee has caused to be instituted or is about to cause to be instituted or has testified or is about to testify in any proceeding under or related to ORS 653.010 to 653.261.

(5) As used in section (1) of this rule, "knowingly" means the employer knows or believes the employee engaged in the reporting acts described above.

Stat. Auth.: ORS 659A.805, ORS 652.355(2) & ORS 653.060(2)

Stats. Implemented: ORS 659A.230, ORS 652.355 & ORS 653.060

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Amends and clarifies rules relating to Farm Labor Contractors.

Adm. Order No.: BLI 40-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Adopted: 839-015-0509

Rules Amended: 839-015-0140, 839-015-0508

Subject: The new rule adopted (OAR 839-015-0509) 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. The rules that have been amended (839-015-0140 and 839-015-0508) conform existing rules pertaining to farm labor contractors to the provisions of SB 202 (2007 Legislature), which require farm labor contractors (in addition to forest labor contractors) to provide proof of required workers' compensation insurance as a condition of licensure. The rules also clarify that if a farm labor contractor applicant relies on workers' compensation coverage from a jurisdiction other than Oregon, the coverage must satisfy Oregon's coverage requirements under ORS Chapter 656 (relating to Worker's Compensation). The rule amendments additionally amend the violations for which civil penalties may be assessed against farm labor contractors to include failing to provide workers' compensation insurance coverage in violation of the law. Finally, the rule amendments clarify the current violation to examine a contractor's license or temporary permit as required by a person using the contractor to include determining that the license has not expired and that the photo on the license appears to be of the individual acting as a farm labor contractor.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-015-0140

Licensing Requirements

To be eligible for a license, an applicant therefore must:

(1) Be of good character, competence and reliability.

(2) Be a person who has not, within the preceding three years, had an

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Oregon farm and forest labor contractor's license application denied.

(3) Be a person who has not, within the preceding three years, in Oregon or in any other jurisdiction, had a farm or forest labor contractor's license or indorsement denied, revoked or suspended.

(4) Not have persons financially interested in any capacity in the applicant's business as a farm or forest labor contractor who were denied an Oregon farm or forest labor contractor's license within the preceding three years or who had such license denied, revoked, or suspended within the preceding three years in Oregon or any other jurisdiction. A refusal to renew a license or grant a temporary permit because the applicant or any person financially interested in the applicant's business as a farm or forest labor contractor has been denied a license or had a license revoked in Oregon or any other jurisdiction within the preceding three years is considered the same as the revocation of the license or permit on the date of its expiration.

(5) Not have any unsatisfied final judgments of the court or final orders issued by any government agency which require the payment of unpaid wages to employees or the payment of any advances made to the contractor by farmers or owners or lessees of land intended to be used for the production of timber.

(6) Pay the appropriate license fee.

(7) Except as provided in OAR 839-015-0141(2), show proof of financial ability to promptly pay the wages of employees and advances made by farmers or owners or lessees of land intended for the production of timber in the form of a corporate surety bond or deposit with the commissioner.

(8) File a completed application form.

(9) Except as provided in OAR 839-015-0141(2), certify on the application that there is insurance on vehicles used to transport workers in an amount sufficient to comply with the Oregon Financial Responsibility Law (ORS 486.011 to 486.680).

(10) Except as provided in OAR 839-015-0141(2), show proof that worker's compensation insurance will be provided on each individual as required in ORS 658.415(2)(b) and ORS 658.440(1)(j). If the applicant is relying on workers' compensation insurance coverage from a jurisdiction other than Oregon, the workers' compensation insurance coverage must satisfy Oregon's coverage requirements under ORS Chapter 656.

(11) In the case of a corporation, be authorized to do business in Oregon.

Stat. Auth.: ORS 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 2-1996, f. & cert. ef. 1-9-96; BLI 40-2007, f. 12-28-07, cert. ef. 1-1-08

839-015-0508

Violations for Which a Civil Penalty May Be Imposed

(1) Pursuant to ORS 658.453, the commissioner may impose a civil penalty for each of the following violations:

(a) Recruiting, soliciting, supplying or employing workers without a license to act as a farm or forest labor contractor in violation of ORS 658.410;

(b) Failing to carry a farm labor contractor's license at all times while acting as a farm labor contractor and exhibit it upon request to any person with whom the contractor intends to deal in the capacity of a farm labor contractor, in violation of ORS 658.440(1)(a);

(c) Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit in violation of ORS 658.415(15);

(d) Failing to file a change of address notice with the U.S. Post Office and the bureau in violation of ORS 658.440(1)(b);

(e) Failing to pay or distribute when due any money or other valuables entrusted to the contractor in violation of ORS 658.440(1)(c);

(f) Failing to comply with contracts or agreements entered into as a contractor in violation of ORS 658.440(1)(d);

(g) Failing to furnish each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement that contains the terms and conditions described in ORS 658.440(1)(f);

(h) Failing to execute a written agreement between the worker and the farm labor contractor containing the terms and conditions described in ORS 658.440(1)(f), at the time of hiring and prior to the worker performing any work for the farm labor contractor;

(i) Failing to furnish each worker with an itemized deduction statement and statement as to the rate of wage to be paid and other information in violation of ORS 658.440(1)(h);

(j) Making misrepresentations, false statements or willful concealments on the license applications in violation of ORS 658.440(3)(a);

(k) Willfully making or causing to be made any false, fraudulent or misleading information concerning the terms, conditions or existence of

employment in violation of ORS 658.440(3)(b);

(l) Soliciting or inducing or causing to be solicited or induced a violation of an existing employment contract in violation of ORS 658.440(3)(c);

(m) Knowingly employing an alien not legally employable or present in the United States in violation of ORS 658.440(3)(d);

(n) Assisting an unlicensed person to act as a contractor in violation of ORS 658.440(3)(e);

(o) Inducing in any manner whatsoever an employee or subcontractor to give up any part of the employee's or subcontractor's compensation to which they are entitled under an employment contract or under federal or state wage laws in violation of ORS 658.440(3)(f);

(p) Soliciting, inducing, or causing to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date work was represented as being available, is in violation of ORS 658.440(3)(g);

(q) Discharging or in any other manner discriminating against employees in violation of ORS 658.452;

(r) Failing to provide lodging and food when required by ORS 658.440(2)(c) and these rules;

(s) Failing to carry the license in violation of ORS 658.440(1)(a);

(t) Failing to exhibit the license in violation of ORS 658.440(1)(a);

(u) Failing to provide certified true copies of payroll records in violation of ORS 658.440(1)(i);

(v) Failing to provide workers' compensation insurance in violation of ORS 658.440(1)(j).

(2) In the case of forest labor contractors, in addition to any other penalties, a civil penalty may be imposed for failing to obtain a special indorsement from the bureau to act as a forest labor contractor in violation of ORS 658.417(1).

(3) The commissioner may impose a civil penalty on a person to whom workers are to be provided, when the person or the person's agent 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).

Stat. Auth.: ORS 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 40-2007, f. 12-28-07, cert. ef. 1-1-08

839-015-0509

Inspection of Farm Labor Contractor's License or Temporary Permit

A person to whom an unlicensed farm labor contractor provides workers violates ORS 658.437(2) when the person or person's agent did not, prior to allowing work to be performed on any contract or agreement with the contractor:

(1) Inspect the contractor's apparently valid farm or forest labor contractor's license or temporary permit that has not expired and identify the contractor providing the workers as the same individual whose photo appears on the license or temporary permit; and

(2) Retain a copy of the license or temporary permit provided to the person or the person's agent by the contractor.

Stat. Auth.: ORS 658.407

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BLI 40-2007, f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Amends and clarifies rules relating to sub-minimum wages, meal periods and recordkeeping provisions.

Adm. Order No.: BLI 41-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Amended: 839-020-0012, 839-020-0015, 839-020-0050, 839-020-0080, 839-020-0260, 839-020-1010

Subject: The rule amendments eliminate outdated, inappropriate and unnecessary references to sex and disabled persons in existing rules; clarify the pay rate information to be included on wage statements provided to employees; codify a long-standing existing BOLI policy of recognizing and accepting sub-minimum wage certifications issued by the U.S. Department of Labor to nonprofit rehabilitation programs or organizations as complying with state sub-minimum wage requirements; provide for tipped food and beverage service employees to waive meal periods under certain circumstances

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pursuant to SB 403 (2007 Legislature); and conform existing civil penalty provisions to these amendments.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-020-0012

Wage Statements to Be Provided to Employees

(1) Except for employees who are otherwise specifically exempt under ORS 653.020, employers must furnish each employee, each time the employee receives a compensation payment from the employer, a written itemized statement of earnings. The written itemized statement must include:

- (a) The total gross payment being made;
 - (b) The amount and a brief description of each and every deduction from the gross payment;
 - (c) The total number of hours worked during the time covered by the gross payment;
 - (d) The rate of pay;
 - (e) If multiple rates of pay are paid, the total number of hours worked at each rate of pay;
 - (f) If the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done;
 - (g) The net amount paid after any deductions;
 - (h) The employer's name, address and telephone number;
 - (i) The pay period for which the payment is made.
- (2) When a compensation payment is a draw or advance against future earnings, and no deductions are being made from the payment, the written itemized statement must include the information required in section (1)(a), (h) and (i) of this rule. The employee must be provided with a statement containing all of the information required by section (1) of this rule at the employee's next regular payday, even if the employee is not entitled to payment of any further wages at that time.

(3) Pursuant to the Uniform Electronic Transactions Act (Chapter 535, Oregon Laws 2001) ORS 84.001 to 84.061, the itemized statement may be provided in an electronic format if:

- (a) The employee agrees; and
- (b) The employee has the ability to print or store the electronic itemized statement at the time of receipt.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 652.610 & 652.640

Hist.: BLI 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08

839-020-0015

Fixed Minimum Hourly Wage Rates Lower than the Minimum Wage Rate

(1) Pursuant to ORS 653.025 and 653.030 the commissioner will consider the employment of specific types of persons or of individual persons themselves at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025, when the commissioner has determined that the application of these requirements would substantially curtail employment opportunities for the specific types of persons or individuals involved. The types of persons for whom a lower rate may be set upon a showing of good cause as set out below include, but are not limited to, individuals with mental or physical disabilities who cannot perform all of the bona fide job requirements within a reasonable period of time expected of those at the entry level and student learners as defined in ORS 653.070.

(2) Rules for the employment of specific named individuals at less than the minimum wage:

(a) An employer must submit an application for the payment of a fixed minimum hourly wage rate lower than the rate required by ORS 653.025 on a form provided by the commissioner stating each and every reason why the employer believes a lower rate should be established. Forms may be obtained at any office of the Bureau of Labor and Industries;

(b) The application form must be signed by the employer, the prospective employee and legal guardian, or person legally empowered to act for such employee to whom the lower wage rate is proposed to be paid;

(c) The commissioner may require additional information from the employer or prospective employee to verify the conditions or reasons specified in the application including, but not limited to, medical reports;

(d) In considering the application, the Civil Rights Division of the Oregon Bureau of Labor and Industries, or other appropriate governmental agencies may be consulted for technical assistance to reasonably assure that no approval will be granted that will conflict with the rights of workers under other laws;

(e) The commissioner will grant the application only when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment of the prospective employee named in the application. The application may be granted under such terms and conditions as the commissioner deems appropriate;

(f) The commissioner will consider each application on an individual basis and will not grant blanket authorization in advance for a specific type or group of persons unless the conditions set out in section (3) of this rule are met.

(3) Rules for general authorization for an employer to employ unnamed individuals with mental or physical disabilities at less than the minimum wage:

(a) Under certain circumstances, the commissioner may grant blanket approval for an employer to employ persons with mental or physical disabilities or others when good cause is shown at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025.

(b) An employer desiring blanket authority to employ individuals with mental or physical disabilities at less than the minimum wage must apply to the commissioner for such authority;

(c) The application should include:

- (A) The name of the organization;
- (B) The purpose for which it was created;
- (C) A detailed statement of the organization and its activities;
- (D) The method and procedure by which the applicant obtains its employees;

(E) A detailed statement of the duties the employees will perform and a description of the end product produced from the performance of such duties;

(F) The hours the employees will work;

(G) How many individuals it intends to employ under authorization, if granted, and for how long;

(H) The rate of pay it will pay such individuals if authorization is granted.

(d) The applicant will be required to submit such other information as the commissioner deems necessary;

(e) The commissioner will grant the application only when it has determined that the application of ORS 653.025 would substantially curtail opportunities for employment;

(f) If the commissioner grants the application the commissioner may do so under such terms and conditions as the commissioner deems appropriate;

(g) Employers operating nonprofit rehabilitation programs or organizations which are organized and conducted for the education and training of individuals with mental or physical disabilities, who desire blanket authorization to pay less than the minimum wage required by ORS 653.025, must apply for such authorization to the U.S. Department of Labor, Wage and Hour Division, Federal Office Building, 1111 Third Avenue, Suite 605, Seattle, WA 98101-3212, utilizing the application procedures set out in Title 29, CFR, Part 525. Pursuant to an agreement with the U.S. Department of Labor, the commissioner may review the application material submitted to the U.S. Department of Labor. A certificate issued by the U.S. Department of Labor authorizing the payment of special minimum wage rates under the Fair Labor Standards Act will be deemed by the commissioner to satisfy the requirements of this rule.

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

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 653.030

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08

839-020-0050

Meal and Rest Periods

(1) Except as otherwise provided, every employer shall provide to each employee an appropriate meal period and an appropriate rest period.

(a) "Appropriate meal period" means:

(A) A period of not less than 30 minutes during which the employee is relieved of all duties for each work period of not less than six or more than eight hours. If the work period is seven hours or less, the meal period is to be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period is to be taken between the third and sixth hour worked; or

(B) A period in which to eat (for each work period of not less than six or more than eight hours) while continuing to perform duties or remain on call, which is not deducted from the employee's hours worked. This is permitted only in those cases where the employer can show that the nature or circumstances of the work prevent the employee from being relieved from all duty.

(C) Where the employer can show that industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are relieved of all duty, such industry practice or custom will satisfy the meal period provisions of section (1) of this rule.

(b) "Appropriate rest period" means: A period of rest of not less than ten minutes for every segment of four hours or major part thereof worked

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in one work period without deduction from the employee's pay. The period of rest must be in addition to and taken separately from the time allowed for the usual meal period. Insofar as feasible, considering the nature and circumstances of the work, such period of rest is to be taken by an employee approximately in the middle of each four hour (or major part thereof) segment. The rest period is not to be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.

(A) The provisions of section (1) of this rule regarding appropriate rest periods do not apply when all of the following conditions are met:

- (a) The employee is 18 years of age or older; and
- (b) The employee works less than five hours in any period of 16 continuous hours; and
- (c) The employee is working alone; and
- (d) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and
- (e) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(2) In the absence of regularly scheduled meal periods and rest periods, it will be sufficient compliance with section (1) of this rule when the employer can show that the employee has, in fact, received the time specified. This is permitted only in those cases where the employer can show that the ordinary nature and circumstances of the work prevent the employer from establishing and maintaining a regularly scheduled meal period and rest period.

(3) For the purposes of 839-020-0050, factors to be considered in determining the nature or circumstances of work which prevent an employee being relieved of all duties or the scheduling of regular meal and rest periods may include, but are not limited to, the following: The safety and health of employees, patients, clients, and the public; availability of other employees to provide relief; qualifications (or lack thereof) of those available to provide relief; costs involved in the shutdown/startup of machinery in continuous-operation industrial processes; intermittent and unpredictable work flow not in the control of the employer/employee; unforeseeable equipment failures, emergencies, acts of nature.

(4) As used in this rule, "work period" means the period between the time the employee begins work and the time the employee ends work, and includes rest periods, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties. Meal periods are not included as part of the work period unless the employee continues to perform duties during the meal period.

(5) The provisions of this section regarding appropriate meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

(6) Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

- (a) The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;
- (b) The employee is at least 18 years of age;
- (c) The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;
- (d) The employee's request to waive the employee's meal periods is in writing and is signed and dated by both the employee and employer;
- (e) The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the employee's employment and for no less than six months after the termination date of the employee;
- (f) The employee is provided with a reasonable opportunity to consume food during any workshift of six hours or more while continuing to work;
- (g) The employee is paid for any and all meal periods in which the employee is not completely relieved of all duty;
- (h) The employee is not required to work longer than eight hours without receiving a 30-minute meal period in which the employee is relieved of all duty;

(i) The employer makes and keeps available to the commissioner accurate records of hours worked by each employee which clearly indicate whether or not the employee has received a meal period; and

(j) The employer posts a notice provided by the commissioner regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. Notices that comply with this rule are available upon request from the Bureau of Labor and Industries.

(7) The written request to waive the employee's meal periods referred to in subsection (6)(d) of this rule must be made using a form provided by

the commissioner in the language used by the employer to communicate with the employee. Written request forms that comply with this rule are available upon request from the Bureau of Labor and Industries.

(8) Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

(9) Notwithstanding the provisions of section (8), an employee who has requested to waive meal periods pursuant to sections (6) and (7) of this rule may request to take a meal period without revoking the agreement to waive such periods. Such requests must be submitted in writing to the employee's employer no less than 24 hours prior to the meal period(s) requested.

(10) An employer may not coerce an employee into waiving a meal period.

(11) An employer will be considered to have coerced an employee into waiving the employee's meal period under the following circumstances:

(a) The employer requests or requires an employee to sign a request to waive meal periods;

(b) An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

(c) The employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or

(d) The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days;

(12) Minors under the age of 18 are not subject to this rule. Rest and meal period requirements for minors under 18 years of age are provided in OAR 839-021-0072.

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96; BL 1-2002, f. & cert. ef. 1-9-02; BL 41-2007, f. 12-28-07, cert. ef. 1-1-08

839-020-0080

General Requirements

(1) Every employer regulated under ORS 653.010 to 653.261 must maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the law applies:

(a) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

(b) Home address, including zip code;

(c) Date of birth, if under 19;

(d) Occupation in which employed;

(e) Time of day and day of week on which the employee's workweek begins. If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole work force or establishment will suffice;

(f) Regular hourly rate of pay for any workweek in which overtime compensation is due, and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and the amount and nature of each payment which, pursuant to ORS 653.261(1) is excluded from the "regular rate of pay". (These records may be in the form of vouchers or other payment data.);

(g) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays);

(h) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;

(i) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under subsection (h) of this section;

(j) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions;

(k) Total wages paid each pay period;

(l) Date of payment and the pay period covered by payment.

(2) Every employer who makes retroactive payment of wages or compensation under the supervision of the U.S. Department of Labor or the Oregon Bureau of Labor and Industries must record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

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(3) With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by this rule, the schedule of daily and weekly hours the employee normally works, provided:

(a) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by the employee; and

(b) In week in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

(4) With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in ORS 653.010(8), employers must maintain and preserve records containing all the information and data required by subsections (1)(a) through (e) of this rule and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and perquisites.

(5) With respect to each employee of hospitals and institutions primarily engaged in the care of persons who are sick or aged or have mental illness or mental retardation and who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under OAR 839-020-0125(2)(d), employers must maintain and preserve:

(a) The records required by section (1) of this rule except subsections (1)(e) and (g) through (i) of this rule, and in addition:

(A) Time of day and day of week on which the employee's 14-day work period begins;

(B) Hours worked each workday and total hours worked each 14-day work period;

(C) Total straight-time wages paid for hours worked during the 14-day work period;

(D) Total overtime excess compensation paid for hours worked in excess of eight in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

(6) With respect to each tipped employee, the employer must maintain and preserve payroll or other records containing all the information and data required in section (1) of this rule and, in addition, a symbol, letter or other notation placed on the pay records identifying each employee.

Stat. Auth.: ORS 653

Stats. Implemented: ORS 653.045

Hist.: BLI 1-1990, f. 2-27-90, cert. ef. 2-28-90; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08

839-020-0260

Ambulance and Rescue Service Employees

(1) Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by ORS 653.269(3) if their services are substantially related to firefighting or law enforcement activities in that:

(a) The ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties; and

(b) The ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents.

(2) Where employees perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

(3) Ambulance and rescue service employees are not exempt under ORS 653.269(3) when they are employees of public agencies engaged in the operation of a hospital or an institution primarily engaged in the care of persons who are sick or aged or have mental illness or mental retardation and who reside on the premises of such institutions.

(4) Ambulance and rescue service employees of private organizations are not exempt from the provisions of ORS 653.269(3) even if their activities are substantially related to the fire protection and law enforcement activities performed by a public agency or their employer is under contract with a public agency to provide such services.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BLI 8-1997, f. & cert. ef. 11-13-97; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08

839-020-1010

Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for any of the following willful violations:

(a) Failure to pay the applicable minimum wage for all hours worked in violation of ORS 653.025 and OAR 839-020-0010.

(b) Failure to pay overtime for all hours worked over forty (40) in a week in violation of OAR 839-020-0030.

(c) Payment to persons with mental or physical disabilities less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015;

(d) Payment to student-learners less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and 839-020-0015;

(e) Failure to make required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, 839-020-0080, and 839-020-0082;

(f) Failure to keep available required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, OAR 839-020-0080, OAR 839-020-0082, and OAR 839-020-0083;

(g) Failure to supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610 in violation of 653.045, OAR 839-020-0012 and 839-020-0080;

(h) Failure to keep summaries of ORS 653.010 to 653.261 and rules promulgated thereto by the commissioner and the Wage and Hour Commission posted in a conspicuous and accessible place in or about the premises where such employees are employed in violation of ORS 653.050;

(i) Discharging or discriminating in any other manner against any employee in violation of ORS 653.060;

(A) Because the employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(B) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or relating to ORS 653.010 to 653.261; or

(C) Because the employee has testified or is about to testify in any such proceedings.

(j) Failure to provide to each employee appropriate meal periods in violation of OAR 839-020-0050;

(k) Coercing an employee into waiving a meal period in violation of ORS 653.261(5)(b);

(l) Failure to provide to each employee appropriate rest periods in violation of OAR 839-020-0050;

(m) Intentional failure to provide a reasonable rest period to accommodate an employee who needs to express breast milk in violation of ORS 653.077 and OAR 839-020-0051;

(n) Requiring any employee to lift excessive weights in violation of OAR 839-020-0060; or

(o) Employing any employee to work under any conditions in violation of OAR 839-020-0065.

(2) Except as provided in ORS 653.261(5)(c), the civil penalty for any one violation will not exceed \$1000. The actual amount of the civil penalty will depend on all the facts and circumstances referred to in OAR 839-020-1020.

(3) The civil penalties set out in this rule will be in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS 653.040

Stats. Implemented: Ch. 314, 1997 OL

Hist.: BL 9-1997, f. & cert. ef. 11-13-97; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 15-2002, f. 10-17-02, cert. ef. 10-18-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Amends and replaces temporary rules regulating payment of prevailing wage rates on public works projects.

Adm. Order No.: BLI 42-2007

Filed with Sec. of State: 12-28-2007

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Rules Adopted: 839-025-0005, 839-025-0315

Rules Amended: 839-025-0004, 839-025-0007, 839-025-0008, 839-025-0010, 839-025-0013, 839-025-0020, 839-025-0025, 839-025-0035, 839-025-0037, 839-025-0080, 839-025-0085, 839-025-0090, 839-025-0095, 839-025-0100, 839-025-0150, 839-025-0200, 839-025-0210, 839-025-0220, 839-025-0230, 839-025-0310, 839-025-0340, 839-025-0500, 839-025-0520, 839-025-0530, 839-025-0540

Subject: The rules adopted and amended replace temporary rules implementing the provision of House Bill 2140, which amended the

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definition of “public work” in the Prevailing Wage Rate (PWR) law; implement the provision of HB 2021 pertaining to projects subject to both the state PWR law and federal Davis-Bacon Act and shifting responsibility for payment of a fee to BOLI by contractors on public works projects to public agencies; and establish a process for the issuance of multiple wage determinations on public work projects.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0004

Definitions

As used in OAR chapter 839, division 025, unless the context requires otherwise:

- (1) “Apprentice” means:
 - (a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or with any state apprenticeship agency recognized by BAT; or
 - (b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the BAT or a state apprenticeship agency to be eligible for probationary employment as an apprentice.
- (2) “The Basic Hourly Rate of Pay” or “Hourly Rate” means the rate of hourly wage, excluding fringe benefits, paid to the worker.
- (3) “Bureau” means the Bureau of Labor and Industries.
- (4) “Commissioner” means the Commissioner of the Bureau of Labor and Industries, or designee.
- (5) “Construction” means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. “Construction” does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor.
- (6) “Division” means the Wage and Hour Division of the Bureau of Labor and Industries.
- (7) “Employ” includes to suffer or permit to work.
- (8) “Fringe benefits” means the amount of:
 - (a) The rate of contribution irrevocably made on a regular basis and not less often than quarterly by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and
 - (b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example).
- (9)(a) “Funds of a public agency” includes any funds of a public agency that are directly or indirectly used, as described below.
 - (A) “Directly used funds of a public agency” means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency’s immediate custody and control, and, except as provided in ORS 279C.810(1)(a)(H) and (J) and subsection (b) of this section, includes but is not limited to any money loaned by a public agency, including the loan of proceeds from the sale of conduit or pass-through revenue bonds for the specific purpose of financing a project, and public property or other assets used as payment for all or part of a project.
 - (B) “Indirectly used funds of a public agency” means, except as provided in subsection (b) of this section, that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. A public agency does not indirectly use funds of a public agency when it elects not to collect land rent that is due. Examples of when an agency “ultimately bears the cost” of all or part of a project include but are not limited to:
 - (i) Amortizing the costs of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease;
 - (ii) A public agency subsidizing the costs of construction that would normally be borne by the contractor;
 - (iii) Using insurance proceeds that belong to a public agency to pay

for construction. Insurance proceeds represent “money collected for the custody and control of a public agency” and therefore are funds of a public agency, whether the contractor obtains payment directly from the insurance company or the public agency; or

- (iv) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency.
- (b) “Funds of a public agency” does not include:
 - (A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;
 - (B) Building and development permit fees paid or waived by the public agency;
 - (C) Tax credits or tax abatements;
 - (D) Land that a public agency sells to a private entity at fair market value;
 - (E) The difference between:
 - (i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and
 - (ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this paragraph;
 - (F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;
 - (G) Staff resources of the public agency used to design or inspect one or more components of a project;
 - (H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;
 - (I) Value added to land as a consequence of a public agency’s site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or
 - (J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.
- (10) “Housing” has the meaning given that term in ORS 456.055.
- (11) “Major renovation” means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price of which exceeds \$50,000.
- (12) “Nonprofit organization,” as used in section (9)(b)(A) of this rule, means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.
- (13) “Normal business hours” means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours.
- (14) “Overtime” means all hours worked:
 - (a) On Saturdays;
 - (b) On the following legal holidays:
 - (A) Each Sunday;
 - (B) New Year’s Day on January 1;
 - (C) Memorial Day on the last Monday in May;
 - (D) Independence Day on July 4;
 - (E) Labor Day on the first Monday in September;
 - (F) Thanksgiving Day on the fourth Thursday in November;
 - (G) Christmas Day on December 25.
 - (c) Over 40 hours in a week; and either
 - (d) Over eight (8) hours in a day; or
 - (e) Over 10 hours in a day provided:
 - (A) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and
 - (B) The employer operates in accordance with this established work schedule.
 - (15) “Overtime rate” means the basic hourly rate of pay multiplied by one and one-half.
 - (16) “Overtime wages” means the overtime hours worked multiplied by the overtime rate.
 - (17) “Person” includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or govern-

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mental instrumentality.

(18) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division.

(19) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any instrumentality thereof organized and existing under law or charter.

(20)(a) "Public work," "public works" or "public works project" includes but is not limited to:

(A) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest;

(B) A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or

(C) A project for the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

(b) "Public works" does not include:

(A) The reconstruction or renovation of privately owned property that is leased by a public agency; or

(B) The renovation of publicly owned real property that is more than 75 years old by a private nonprofit entity if:

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 1, 2007.

(21) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work.

(22) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures.

(23) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure.

(24)(a) "Residential construction project" means a public work project for the construction, reconstruction, major renovation or painting of a single family house or apartment building of not more than four (4) stories in height and all incidental items such as site work, parking areas, utilities, streets and sidewalks pursuant to the U.S. Department of Labor's "All Agency Memorandum No. 130" — "Application Of The Standard of Comparison 'Projects Of a Character Similar' Under the Davis-Bacon and Related Acts" dated March 17, 1978. (See Appendix 6.)

(b) Notwithstanding the provisions of subsection (a) of this section, where it is determined that a different definition of "residential construction" has been adopted by local ordinance or code, or that the prevailing practice of a particular trade or occupation regarding what is considered "residential construction" differs from the U.S. Department of Labor definition of residential construction, the commissioner may consider such information in determining a project to be a "residential construction project."

(25) "Site of work" is defined as follows:

(a) The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(b) Except as provided in subsection (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are established by a supplier of materials for the project after the opening of bids are deemed to be dedicated exclusively to the performance of the contract or project.

(c) Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool

yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project.

(26) "Special wage determination" means a wage determination made at the request of a public agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project.

(27) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(28) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that bureau.

(29) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815.

(30) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in sections (2) and (8) of this rule.

(31) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-025-0035.)

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

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800, 279C.870

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0004, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0005

Determination Requests

(1) A request for a determination as to whether a project or proposed project is a public works under Or Laws 2007, ch. 764, § 43, must meet the following requirements before it will be considered by the commissioner:

(a) The request must be in writing, describe all relevant details of the project or proposed project, and be submitted to: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., #1045, Portland, OR, 97232.

(b) A copy of the request must be sent to any public agency known to be associated with the project at the time it is submitted to the Prevailing Wage Rate Unit. The request must identify the public agencies receiving a copy of the request.

(c) In addition to the written request, the requester must provide all documents, records, and other information necessary to enable the commissioner to make the determination. This information includes, but is not limited to, copies of advertisements, project plans and specifications, development and disposition agreements, contracts, project financing information, loan agreements, and any other relevant information related to the project or proposed project. When the requester is not a public agency and information necessary for a determination is in the custody or control of a public agency, it is the requester's responsibility to obtain the information from the public agency and provide it with the request.

(2) The requester has a continuing duty to provide the Prevailing Wage Rate Unit with all relevant documents, records and other information until a determination is made. If any information submitted in connection with a request is modified or superseded in any material respect after the request is made, the requester must promptly submit the updated information to the Prevailing Wage Rate Unit.

(3) The commissioner will inform the requester if additional documents, records, or other information is necessary to enable the commissioner to make the determination.

(4) If the commissioner informs a requester that the Prevailing Wage Rate Unit has not received all the documents, records, or other information necessary to make a determination, the request will remain pending for 90 calendar days. If the Prevailing Wage Rate Unit does not receive the information the commissioner deems necessary to make a determination while the request is pending, the requester may be required to submit a new request in order to obtain a determination.

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(5) If a requester fails or refuses to provide documents, records, or other information necessary to enable the commissioner to make the determination and the commissioner has reasonable grounds to believe such documents, records, or other information exist, the commissioner may inform the requester that the commissioner is unable to issue a determination.

(6) The commissioner's determination will be issued to the requester, with copies mailed to any public agencies identified on the request.

(7) The determination will include notice of the right of the requester and any person adversely affected or aggrieved by the determination to a hearing, pursuant to ORS 183.415, OAR 137-003-0001, the supplemental provisions for hearing requests in OAR Ch. 839, div. 50. and Or Laws 2007, ch. 764, § 43.

(8)(a) After the commissioner issues a determination, the requester or any public agency served with a copy of the determination may request that the commissioner reconsider the determination.

(b) A request for reconsideration must be received within 15 calendar days of the date the determination was mailed. Requests must be submitted to the Prevailing Wage Rate Unit. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

(c) The reconsideration request must be in writing and include the reason or reasons for the request and any documents in support of the request.

(d) The commissioner will accept or reject the request within 15 business days of receipt of the request by the Prevailing Wage Rate Unit. If the commissioner does not accept the request within 15 business days, it is deemed denied.

Stat. Auth.: ORS 279C & 651.060, Other Auth. HB 2140, Sec. 45, 2007
Stats. Implemented: ORS 279C.800, 279C.870
Hist.: BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0007

Purpose and Procedure for Special Wage Determination

(1) In planning a public works project, public agencies periodically require the use of a trade not normally included in wage determinations. Special wage determinations allow the commissioner to recognize a trade and establish a rate for it. This procedure also allows the commissioner to respond in a timely fashion to the needs of the public agency. Special wage determinations are not available when the wage determination is applicable.

(2) Any public agency may submit a written request for a special wage determination to the Prevailing Wage Rate Unit. The request must contain:

- (a) A written description of the work to be performed; and
- (b) An identification of the requested trade(s).

(3) Within two weeks the PWR Coordinator will recommend to the commissioner whether or not a special wage determination should be established.

(4) If a special wage determination is to be allowed, the PWR Coordinator will provide the requesting agency with the instruments, procedures, and minimum requirements for conducting a wage survey. The requesting agency will conduct the wage survey in accordance with bureau procedures and submit the results to the PWR Coordinator.

(5) The PWR Coordinator will review the data for methodological compliance and accuracy and submit it to the commissioner with a recommendation.

(6) The commissioner will approve or disapprove the special wage determination request after considering the PWR Coordinator's recommendation. The public agency will be notified, in writing, of the commissioner's final decision.

(7) If the special wage determination is approved, it is valid only for the locality specified in the special wage determination and only until the first day of July following the date of approval unless amended prior to that date.

(8) A copy of the approved special wage determination will be kept on file by the PWR Coordinator and the Wage and Hour Division.

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 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0007, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0008

List of Planned Public Improvements

(1) As used in this rule, "public improvement" has the meaning given that term in ORS 279A.010(1)(cc).

(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 sub-

mitted 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.

(5) To assist public 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 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 fiscal year, noting the project information requested on the form;

(b) ORS 279C.305 requires public 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

839-025-0010

Payroll and Certified Statement

(1) The form required by ORS 279C.845 is the Payroll and Certified Statement form, **WH-38**. This form must accurately and completely set out the contractor's or subcontractor's payroll for each week during which the contractor or subcontractor employs a worker upon a public works project.

(2) The contractor or subcontractor may submit the weekly payroll on the **WH-38** form or may use a similar form providing such form contains all the elements of the **WH-38** form. When submitting the weekly payroll on a form other than **WH-38**, the contractor or subcontractor must attach the certified statement contained on the **WH-38** form to the payroll forms submitted.

(3) Each Payroll and Certified Statement form must be submitted by the contractor or subcontractor to the public agency by the fifth business day of each month following a month in which workers were employed upon a public works project.

(4) The Payroll and Certified Statement forms received by the public agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(2), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.

(5) If the contractor fails to submit its payroll and certified statement forms to the public agency as required by subsection (3) of this rule, the public agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the contractor at the time each payroll and certified statement are due. For example, if the contractor fails to submit its payroll and certified statement by the fifth of the month and the contractor earned \$100,000 in the period since its last payroll and certified statement were submitted to the public agency, the public agency must retain 25 percent of \$100,000 (\$25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the contractor.

(c) Once the required payroll and certified statement have been sub-

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mitted to the public agency, the public agency must pay the amount retained to the contractor within 14 days.

(6) If a first-tier subcontractor fails to submit a payroll and certified statement form to the public agency as required by subsection (3) of this rule, the contractor must retain 25 percent of any amount earned by the first-tier subcontractor until the first-tier subcontractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each payroll and certified statement are due. For example, if the first-tier subcontractor fails to submit the payroll and certified statement by the fifth of the month and the first-tier subcontractor earned \$100,000 in the period since the last payroll and certified statement were submitted to the public agency, the contractor must retain 25 percent of \$100,000 (\$25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the first-tier subcontractor.

(c) The contractor must verify that the first-tier subcontractor has filed the required payroll and certified statement(s) with the public agency before the contractor may pay the first-tier subcontractor any amount retained under this section.

(d) Once the first-tier subcontractor has filed the required payroll and certified statement with the public agency, the contractor must pay the amount retained to the first-tier subcontractor within 14 days.

(7) Notwithstanding ORS 279C.555 or 279C.570(7), amounts retained pursuant to the provisions of this rule shall be in addition to any other amounts retained.

(8)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(B), and no public agency awards a contract to a contractor for the project, the contractor and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies providing funds for the project.

(b) When more than one public agency provides funds for a project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

(9)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(C), and no public agency awards a contract to a contractor for the project, the contractor and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies that will occupy or use the completed project.

(b) When more than one public agency will occupy or use the completed project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

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

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 13-1992, f. & cert. ef. 12-14-9; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0010, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0013

Notice of Public Works Form

(1) The notification form required by ORS 279C.835 is the Notice of Public Works form, **WH-81**.

(2) Except as provided in sections (4) and (5) of this rule, the public agency must file the Notice of Public Works form, **WH-81**, with the Prevailing Wage Rate Unit within 30 days after the date a public works contract is awarded.

(3) Pursuant to ORS 279C.835, the Notice of Public Works form, **WH-81**, must include a copy of the disclosure of first-tier subcontractors submitted to the public agency by the contractor if a public agency awards a contract to a contractor for a public works project.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency providing public funds for the project at the time the public agency commits to the provision of funds for the project.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency when the agency enters into an agreement to occupy or use the completed project.

(6) Public agencies are not required to file a Notice of Public Works form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.

[ED. NOTE: Forms and Publications 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 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0013, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

(1) For purposes of this rule:

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team.

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements.

(2) Every public works contract must contain the following:

(A) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public [contracting] agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520); and

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530).

(3) Every public works contract and subcontract must contain a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

(4)(a) Except as provided in sections (6) and (7) of this rule, the existing rate of wage is the rate in effect at the time the initial specifications were first advertised for bid solicitations.

(b) If a public agency is required under subsection (a) of this section or section (6) of this rule to include the state and federal prevailing rates of wage in the specifications for a contract for public works, the public agency also shall include in the specifications information showing which prevail-

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ing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(b).

(5)(a) The provisions described in sections (3) and (4), and sections (6) and (7) if applicable, must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more (Reference: ORS 279C.830).

(b) A statement incorporating the applicable prevailing wage rate publication and any amendments thereto or Davis-Bacon wage rate determination into the specifications by reference will satisfy these requirements. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(c) When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(6) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract. For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price. For purposes of this rule, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

(7) A public works project described in ORS 279C.800(6)(a)(B) or (C) that is not a CM/GC contract subject to section (6) of this rule is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(8) If a project is a public works of the type described in ORS 279C.800(6)(a)(B) or (C), a public agency will be deemed to have complied with the provisions of ORS 279C.830 if the public agency requires compliance with the provisions of section (5) of this rule in any agreement entered into by the public agency committing to provide funds for the project or to occupy or use the completed project.

(9) Public agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800-279C.870

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BL 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05; BL 29-2005, f. 12-29-05, cert. ef. 1-1-06; BL 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BL 39-2006, f. 11-8-06, cert. ef. 11-10-06; BL 2-2007, f. & cert. ef. 1-23-07; BL 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BL 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0025

Required Records

(1) All contractors and subcontractors performing work on public works contracts subject to ORS 279C.800 to 279C.870 shall make and maintain for a period of three (3) years from the completion of work upon such public works records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to workers upon public works.

(2) In addition to the Payroll and Certified Statement, Form WH-38, records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid include but are not limited to records of:

- (a) The name and address of each employee;
- (b) The work classification or classifications of each employee;
- (c) The rate or rates of monetary wages and fringe benefits paid to each employee;
- (d) The rate or rates of fringe benefit payments made in lieu of those

required to be provided to each employee;

- (e) Total daily and weekly compensation paid to each employee;
- (f) The daily and weekly hours worked by each employee;
- (g) Apprenticeship and Training Agreements;
- (h) Any deductions, rebates or refunds taken from each employee's total compensation and actual wages paid;
- (i) Any payroll and other such records pertaining to the employment of employees upon a public work.

(3) When apprentices and/or trainees are employed on a public works project, the records must clearly distinguish them from other employees.

(4) When a contractor or subcontractor employs a worker on public works projects and non public works projects during the same work week and the worker is paid a rate of pay which is less than the prevailing wage rate when working on a non public works project, the contractor or subcontractor must separately record the hours worked on the public works projects and those hours worked elsewhere.

(5) For all public works contracts subject to ORS 279C.800 to 279C.870 first advertised or solicited on or before January 1, 2008, contractors shall maintain records documenting that the appropriate fee was paid. Such records shall be maintained for a period of two years and shall include but are not limited to:

- (a) Contract documents showing the contract price;
- (b) Change orders or other adjustments to the final contract price;
- (c) Receipts showing amounts paid.

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 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0025, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05; BL 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0035

Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed.

(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.

(3) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(4) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(5) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(6) Except as provided in ORS 279C.838, persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the applicable prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(25) or when the work is performed in fabrication plants, batch plants, barrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(7) Except as provided in ORS 279C.838, persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the applicable prevailing wage rate for work performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(25).

(8) Persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

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(9) Every apprentice, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at an apprentice wage rate, who is not an apprentice as defined in these rules, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(10) Every trainee, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at a trainee wage rate, who is not a trainee as defined in these rules, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.350
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0035, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0037

Residential Construction Projects

(1)(a) For residential construction projects subject to ORS 279C.800 to 279C.870, public agencies shall use federal Davis-Bacon wage rates for residential construction projects unless there is no applicable federal rate for a particular trade or classification on the residential project.

(b) If the applicable federal Davis-Bacon wage rate determination does not include a rate for a particular trade or classification needed on a specific residential construction project, and the project is subject to ORS 279C.800 to 279C.870 but not the federal Davis-Bacon Act, the public agency is required to request a special wage rate, identifying the specific trade or classification, pursuant to OAR 839-025-0007.

(c) The commissioner may consider and approve a residential wage determination for a trade or classification issued by any federal agency within twelve months of the date of any request for a special wage rate pursuant to subsection (b) of this section.

(d) Requests for special wage rate determinations for projects subject to both ORS 279C.800 to 279C.870 and the federal Davis-Bacon Act shall be submitted pursuant to Title 29 CFR, Part 5.5(a)(1)(ii) as amended November 20, 2000.

(e) Copies of any special federal wage rate determinations requested and subsequent determination(s) issued pursuant to subsection (d) of this section must be provided to the commissioner by the public agency.

(2) Notwithstanding section (1) of this rule, the commissioner, consistent with statutory authority, may survey and issue residential rates.

(3) Requests for special wage rates for residential construction projects pursuant to section (1)(b) of this rule must be submitted to the Bureau of Labor and Industries by the public agency no fewer than fifteen (15) business days prior to the date the specifications for the project are first advertised.

(4) If a public agency fails to request special wage rates for a residential construction project pursuant to section (1)(b) of this rule at least fifteen (15) business days before the date the specifications for the project are first advertised for the project, the Prevailing Wage Rates for Public Contracts published by the Commissioner of the Bureau of Labor and Industries in effect when the specifications are first advertised shall apply to those trades or classifications for which there is no applicable federal residential rate.

(5) The federal Davis-Bacon wage rates apply to residential construction projects subject to ORS 279C.800 to 279C.870 regardless of whether federal law requires Davis-Bacon rates on the project.

(6) Notwithstanding any other provision of this rule, unless otherwise exempt, under no circumstances may a rate less than the minimum wage rate required by ORS 653.025 be paid to any worker on a residential construction project subject to ORS 279C.800 to 279C.870.

Stat. Auth.: ORS 279C & 651.060
Stats. Implemented: ORS 279C.800-279C.870
Hist.: BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0080

Liability to Workers

(1) Any contractor or subcontractor or any surety thereof who fails or

refuses to pay at least the prevailing wages and fringe benefits as determined by the commissioner or any overtime wages as required by ORS 279C.540 is liable to the workers affected for all the unpaid prevailing wages, including fringe benefits, and unpaid overtime wages.

(2) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid prevailing wages, including fringe benefits, as liquidated damages.

(3) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid overtime wages as liquidated damages, except that if the unpaid overtime results from willful falsification of payroll records, these liquidated damages shall be twice the amount of unpaid overtime.

(4) Any public agency which fails to include a provision in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents that the contractor and any subcontractor shall comply with ORS 279C.840 shall be jointly and severally liable, with any contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840, to the workers affected for any unpaid minimum wages.

(5) As used in section (4) of this rule, "minimum wages" means the prevailing wage, including fringe benefits, as determined by the commissioner. "Minimum wages" does not mean overtime wages required by ORS 279C.540 nor liquidated damages referred to in sections (2) and (3) of this rule.

(6) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and a public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract for public works as required under ORS 279C.830(1)(a), or fails to include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality as required under ORS 279C.830(1)(b), the public agency is liable to each affected worker for:

(a) The worker's unpaid minimum wages, including fringe benefits, in an amount that equals, for each hour worked, the difference between the applicable higher rate of wage and the lower rate of wage; and

(b) An additional amount, equal to the amount of unpaid minimum wages due under subsection (a) of this section, as liquidated damages.

Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.334 & 279.356
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; Renumbered from 839-016-0080, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0085

Contract Ineligibility

(1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that, for a period not to exceed three years, a contractor, subcontractor or any firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for a public work:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on a public works project as required by ORS 279C.840;

(b) The subcontractor has failed to pay the prevailing rate of wage to workers employed on a public works project as required by ORS 279C.840 and the contractor has paid the workers on the subcontractor's behalf; or

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279C.840(4) and these rules.

(2) When the contractor or subcontractor is a corporation, the provisions of section (1) of this rule will apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing wage rates.

(3) As used in section (2) of this rule, any corporate officer or corporate agent responsible for the failure to pay or post the prevailing wage rates or for the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf includes, but is not limited to, the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:

(a) The corporate president;

(b) The corporate vice president;

(c) The corporate secretary;

(d) The corporate treasurer;

(e) Any other person acting as an agent of a corporate officer or the corporation.

(4) The Wage and Hour Division will maintain a written list of the

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names of those contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list will contain the name of contractors, subcontractors and other persons, and the name of any firms, corporations, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-025-0095, such names will remain on the list for a period not to exceed three (3) years from the date such names were first published on the list.

(5) Before placing a name on the ineligible list referred to in section (4) of this rule, the commissioner will serve a notice of intended action upon the contractor or subcontractor in the same manner as service of summons or by certified mail, return receipt requested. The notice will include:

(a) A reference to ORS 279C.840;

(b) A short and concise statement of the matters which constitute intentional failure or refusal to pay or post the prevailing rate of wage;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) A statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing as provided in section (5)(c) of this rule;

(e) A statement that failure to make written request to the commissioner for a contested case hearing within the time specified will constitute a waiver of the right thereto; and

(f) A statement that if a hearing is requested, the contractor or subcontractor will be given information on procedures and rights as required by ORS 183.413(2).

(6) Upon the failure of the contractor or subcontractor to request a contested case hearing within the time specified, the commissioner or the commissioner's designee will enter an order supporting the bureau's action.

(7) If a contractor or subcontractor makes a timely request for a contested case hearing a hearing will be held in accordance with the Attorney General's Model Rules of Procedure under the Administrative Procedure Act by the commissioner or the commissioner's designee.

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 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0085, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0090

List of Ineligibles

(1) The name of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest whom the commissioner has determined to be ineligible to receive public works contracts shall be published on a list of persons ineligible to receive such contracts or subcontracts.

(2) The list of persons ineligible to receive contracts or subcontracts on public works shall be known as the List of Ineligibles. In addition to names referred to in section (1) of this rule, the list shall contain the date the name was placed on the list and the period of time for which the person is ineligible.

(3) The List of Ineligibles shall be published quarterly and amended as needed at any time. Such list shall be furnished to the public upon request, and made available to public agencies as published or amended.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.361

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; Renumbered from 839-016-0090, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0095

Removal of Names from List

(1) The names of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor, subcontractor or other persons have a financial interest shall remain on the list for a period not to exceed three (3) years from the date of publication of such name on the list.

(2) The names referred to in section (1) of this rule shall be removed from the list after three (3) years.

(3) The commissioner may, for good cause shown, direct the removal of a name from the list before the expiration of three (3) years. If the commissioner determines good cause has been shown, the commissioner shall issue an order directing the removal of such name or names.

(4) Contractors, subcontractors or other persons, or any firm, corporation, partnership or association in which the contractor, subcontractor or other persons have a financial interest who desire to be removed from the

list before the expiration of three (3) years must show good cause for such removal. Such persons may petition the commissioner at any time during the period of ineligibility.

(5) In reviewing such petitions, the commissioner shall consider the following matters:

(a) The past history of the petitioner in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) Magnitude and seriousness of the violation;

(d) Other matters which indicate to the commissioner that the petitioner is not likely to violate ORS 279C.800 to 279C.870 and these rules in the future.

(6) The commissioner shall grant or deny the petition.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.361

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; Renumbered from 839-016-0095, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0100

Exemptions

(1) All public works are regulated under ORS 279C.800 to 279C.870 except as follows:

(a) Projects for which the total price does not exceed \$50,000. As used in this section, the price of a project includes, but is not limited to, the value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay. If the price of a project exceeds \$50,000 at any time during the project, the project is not exempt from ORS 279C.800 to 279C.870.

(b) Contracts of a People's Utility District, which are regulated under ORS 261.345.

(c) Projects for which no funds of a public agency are directly or indirectly used.

(d) Projects:

(A) That are privately owned;

(B) That use funds of a private entity;

(C) In which less than 25 percent of the square footage of a completed project will be occupied or used by a public agency; and

(D) For which less than \$750,000 of funds of a public agency are used.

(E) For purposes of this rule, if none of the square footage of a completed project will be occupied or used by a public agency and no funds of a public agency are used, the provisions of paragraphs (C) and (D) of this subsection will be deemed to have been met.

(e) Projects for residential construction that are privately owned and that predominantly provide affordable housing. As used in this paragraph:

(A) "Affordable housing" means housing that serves occupants whose incomes are no greater than 60 percent of the area median income or, if the occupants are owners, whose incomes are no greater than 80 percent of the area median income.

(B) "Predominantly" means 60 percent or more.

(C) "Privately owned" includes:

(i) Affordable housing provided on real property owned by a public agency if the real property and related structures are leased to a private entity for 50 or more years; and

(ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability company in which a housing authority, as defined in ORS 456.005, is a general partner, director or managing member and the housing authority is not a majority owner in the partnership, nonprofit corporation or limited liability company.

(2) The provisions of ORS 279C.840 and these rules that regulate payment of the prevailing rate of wage do not apply to:

(a) Inmates of the Oregon Department of Corrections assigned to:

(A) A work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor; or

(B) State Parks and Recreation Department projects to improve, maintain and repair buildings and property at state parks and recreation areas pursuant to ORS 390.195(1).

(b) Oregon Youth Conservation Corps members.

(3) A public agency is not subject to ORS 279C.800 to 279C.870 if the public agency only provides funds for a public works project that are not "funds of a public agency" as that phrase is defined in OAR 839-025-0004(9), or, if the public agency will use or occupy less than 25% of the square footage of the completed public works project and less than 25% of combined square footage of the completed project will be used or occupied by public agencies.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651.060

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Stats. Implemented: ORS 279.357, 390.195(1) & OL Ch. 628 (2001)
Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; Renumbered from 839-016-0100, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 18-2006, f. 5-12-06, cert. ef. 5-15-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0150

Definitions

(1) For purposes of this rule and OAR 839-025-0155, notwithstanding the definitions in OAR 839-025-0004:

(a) "Construction," "reconstruction," and "major renovation" do not include the installation of applied art.

(b) "Worker" does not include an individual whose primary duty consists of the performance of work that is original and creative in character in a recognized field of artistic endeavor (as contrasted to work which can be produced by an individual endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the individual.

(2) The installation of applied art includes, but is not limited to, the installation of pictures (including paintings, etchings, drawings and photographs), all hangings, pieces of sculpture, statues and other artistic pieces which are independent unto themselves and are not necessary to the structural integrity of the public work.

(3) Installation work necessary to the structural integrity of a public work includes, but is not limited to, the installation of windows, ceiling tiles, brick and concrete masonry, sheet metal or other fascia materials, siding of any kind, lights, support beams and any item necessary to the construction of the actual public work itself, or to the health and safety of persons who use or will use the public work. The painting of a public work, or any of its parts is considered necessary to the structural integrity of the public work.

(4) Work considered to be "de minimus" means work not regulated under ORS 279C.800 to 279C.870 or these rules.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 8-1984, f. & ef. 6-21-84; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0150, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0200

Fees to Be Paid by Public Agency

(1) A public agency must pay a fee to the Prevailing Wage Rate Unit for every contract awarded to a contractor for a public work which is regulated under the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870).

(2) The amount of the fee is one tenth of one percent (.001) of the contract price. However, the fee must be no less than \$100 nor more than \$5,000 regardless of the contract price. [Note: Pursuant to Or Laws 2007, ch. 844, § 8, for public works contracts first advertised or solicited on or after January 1, 2008 and before January 1, 2011, the fee must be no less than \$250 nor more than \$7,500 regardless of the contract price.]

(3) The public agency must pay the fee at the time the public agency enters into the public works contract.

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form is available, on request, from the Prevailing Wage Rate Unit.

(5) As used in this rule, "contract price" means the dollar amount of the contract on the date it was awarded to the contractor and the dollar amount of any subsequent change orders or other adjustments.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0200, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0210

Adjustment of Fees

(1) Within 30 days of the final progress payment to the contractor by the public agency after completion of the contract, the public agency must determine the final contract price. The public agency must consider all change orders or other adjustments to the contract price in making the determination.

(2) The public agency must calculate the fee in accordance with OAR 839-025-0200(2) and must credit the amount paid pursuant to OAR 839-025-0200(3). The difference, if any, must be determined as follows:

(a) In the case of a reduction of more than \$100 in the amount of the fee, the public agency may submit a request to the bureau for a refund of the difference and the bureau will pay a refund to the public agency;

(b) In the case of an increase of more than \$100 in the amount of the fee, the public agency must pay the difference to the bureau.

(3) Requests for refunds and additional payments must be submitted with sufficient documentation to show how the amount to be refunded or to

be paid was calculated. All such requests or payments must be made to the Prevailing Wage Rate Unit within 30 days after the date the final progress payment was made to the contractor by the public agency after completion of the contract.

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form is available, on request, from the Prevailing Wage Rate Unit.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0210, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0220

Fees for Contract Without Specific Award Amounts

(1) When a project is a public work subject to ORS 279C.800 to 279C.870, but the contract is awarded without stating any specific amount, the contract price for purposes of calculating the fee shall be based on the amount the public agency anticipates to be the guaranteed maximum amount of the project.

(2) When the contract is completed, adjustments in the fees shall be calculated and paid or a refund may be requested as provided in OAR 839-025-0210.

(3) When the public agency has not determined the guaranteed maximum amount, the agency shall make a good faith estimate of the contract price. The fee shall be calculated on this estimated amount.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0220, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, 12-28-07, cert. ef. 1-1-08

839-025-0230

Special Circumstances

(1) When a public agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager in connection with a public works project subject to ORS 279C.800 to 279C.870, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount.

(2) When a public agency contracts with a contractor to act as the general manager of a public works project, the contract for general manager services is a public works contract for purposes of these rules and a fee is required just as it is for any other public works contract, since the contract would not have been entered into but for the public works project.

(3) When a public agency acts as its own general contractor and enters into one or several contracts in connection with a public works project subject to ORS 279C.800 to 279C.870, the public agency is required to pay the fee in connection with each contract awarded to each contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the public agency or agencies providing public funds for the project shall pay the required fee at the time the public agency or agencies commit(s) to the provision of funds for the project. When the amount of the project is not known by the public agency or agencies providing public funds for the project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the public agency or agencies that will occupy or use the completed project shall pay the required fee when the agency or agencies enter(s) into an agreement to occupy or use the completed project. When the amount of the project is not known by the public agency or agencies that will occupy or use the completed project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(6) When more than one public agency is required to pay a fee pursuant to section (4) or (5) of this rule, the amount of the fee owed by each public agency shall, if not otherwise previously agreed upon by the agencies, be pro-rated proportionately based on the amount of public funds provided or space occupied or used by each agency.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0230, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

839-025-0310

Division of Projects

(1)(a) A public agency may not divide a public works project into more than one project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

(b) When making a determination of whether the public agency divided a public works project to avoid compliance with ORS 279C.800 to 279C.870, the commissioner will consider the facts and circumstances in any given situation including, but not limited to, the following matters:

(A) The physical separation of project structures;

(B) Whether a single public works project includes several types of improvements or structures;

(C) The anticipated outcome of the particular improvements or structures the agency plans to fund;

(D) Whether the structures or improvements are similar to one another and combine to form a single, logical entity having an overall purpose or function;

(E) Whether the work on the project is performed in one time period or in several phases as components of a larger entity;

(F) Whether a contractor or subcontractor and their employees are the same or substantially the same throughout the particular project;

(G) The manner in which the public agency and the contractors administer and implement the project;

(H) Other relevant matters as may arise in any particular case.

(c) When the commissioner determines that a public agency has divided a public works project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner will issue a written order compelling compliance with ORS 279C.800 to 279C.870. The order will offer the public agency the opportunity to contest the order pursuant to OAR 839-050-0000 through 839-050-0420.

(2) If a project is a public works of the type described in ORS 279C.800(6)(a)(B) or (C), the commissioner shall divide the project, if appropriate, after applying the considerations set forth in section (1)(b) of this rule to separate the parts of the project that include funds of a public agency or that will be occupied or used by a public agency from the parts of the project that do not include funds of a public agency and that will not be occupied or used by a public agency. If the commissioner divides the project, any part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency is not subject to ORS 279C.800 to 279C.870.

(3) If a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner shall divide the project, if appropriate, after applying the considerations set forth in sections (1)(b) and (2) of this rule to separate the parts of the project that are public works from the parts of the project that are not public works. If the commissioner divides the project, parts of the project that are not public works are not subject to ORS 279C.800 to 279C.870.

(4) When a private project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that is already underway becomes a public works project by virtue of the provisions of ORS 279C.800(6)(a)(B) or (C), the provisions of 279C.800 to 279C.870 apply prospectively to the project once any public agency commits to the provision of funds for the project or any public agency enters into an agreement to occupy or use any portion of the completed project. If a public agency delays a commitment to the provision of funds or delays entry into an agreement for occupancy or use for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner may determine that the provisions of 279C.800 to 279C.870 shall apply to the entire public works project under section (1) of this rule.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0310, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0315

Use of Multiple Wage Rate Determinations on Projects

(1) The commissioner may authorize the use of multiple wage rate determinations on projects comprised of more than one construction type. For example, on a project consisting of the construction of both residential units and commercial space, the commissioner may authorize residential wage rates to be paid for work performed in connection with the construction of the residential units pursuant to OAR 839-025-0037 and non-residential prevailing wage rates to be paid for work performed in connection with the construction of the commercial space.

(2) A public agency, developer or prime contractor may request authorization to use multiple wage determinations on a project. Requests

for authorization to use multiple wage determinations on a project must be in writing, describe all relevant details of the project or proposed project, and be submitted to: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., #1045, Portland, OR, 97232.

(3) The requester will be advised if the commissioner determines that multiple wage rate determinations are appropriate and may be used on a project.

(4) If the commissioner determines that multiple wage rate determinations may be used on a project, continued authorization to use the multiple wage rate determinations shall be contingent upon compliance with the following requirements:

(a) The project/contract specifications must clearly delineate the portions of the project subject to each applicable wage rate determination;

(b) All applicable wage rate determinations must be posted at the site of work pursuant to the provisions of OAR 839-025-0033, with an explanation of the portions of the project to which each wage rate determination applies;

(c) The developer or prime contractor must establish adequate controls to ensure that all workers on the project are paid in accordance with the applicable wage rates; and

(d) Each and every contractor employing workers on the project must prepare, submit and maintain accurate time and payroll records to demonstrate compliance with all wage rate determinations applicable to the project.

Stat. Auth.: ORS 651.060(4), 279C

Stats. implemented: ORS 279c.800 - 279C.870

Hist.: BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0340

Circumventions of the Prevailing Wage Rate Law

(1) A public agency circumvents the payment of the prevailing rate of wage when it knowingly or intentionally:

(a) Fails or refuses to include a provision stating the existing prevailing rate of wage in the contract specifications in violation of ORS 279C.830;

(b) Fails or refuses to include a provision in the contract that workers on the contract shall be paid no less than the specified minimum hourly rate of wage in violation of ORS 279C.830;

(c) Divides a project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870 in violation of Or Laws 2007, ch. 764, § 44.

(d) Awards a contract to a contractor whose name appears on the list of ineligible maintained pursuant to ORS 279C.860.

(2) The "specified minimum hourly rate of wage" as used in section (1)(b) of this rule means the applicable prevailing rate of wage.

(3) A contractor circumvents the payment of the prevailing rate of wage when it knowingly or intentionally awards a contract to a contractor whose name appears on the list of ineligible maintained pursuant to ORS 279C.860.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0340, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0500

Definitions

As used in OAR 839-025-0500 to 839-025-0540, a person acts knowingly when the person has actual knowledge of a thing to be done or omitted or should have known the thing to be done or omitted. A person should have known the thing to be done or omitted if the person has knowledge of facts or circumstances that would place the person on reasonably diligent inquiry. A person acts knowingly if the person has the means to be informed but elects not to do so. For purposes of the rule, the contractor, subcontractor and public agency are presumed to know the circumstances of the public works construction project.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0500, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0520

Criteria to Determine Civil Penalty

(1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor or public agency and shall cite those the commissioner finds to be applicable:

(a) The actions of the contractor, subcontractor or public agency in responding to previous violations of statutes and rules;

(b) Prior violations, if any, of statutes and rules;

(c) The opportunity and degree of difficulty to comply;

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- (d) The magnitude and seriousness of the violation;
- (e) Whether the contractor, subcontractor or public agency knew or should have known of the violation.
- (2) It shall be the responsibility of the contractor, subcontractor or public agency to provide the commissioner with evidence of any mitigating circumstances set out in section (1) of this rule.
- (3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.
- (4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor or public agency for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0520, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0530

Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

(2) Civil penalties may be assessed against any contractor, subcontractor or public agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

(a) Failure to pay the applicable prevailing rate of wage in violation of ORS 279C.840;

(b) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);

(c) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);

(d) Failure to include a provision in a subcontract that workers shall be paid not less than the specified minimum hourly rate of wage in violation of ORS 279C.830(1)(c);

(e) Failure to include in a subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3);

(f) Failure to file with the Construction Contractors Board a public works bond, as required under ORS 279C.836, before starting work on a contract or subcontract for a public works project subject to the provisions of ORS 279C.800 to 279C.870;

(g) Failure to verify that a subcontractor has filed a public works bond as required or has elected not to file a public works bond under ORS 279C.836 prior to permitting a subcontractor to start work on a public works project;

(h) Failure to file certified statements in violation of ORS 279C.845;

(i) Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;

(j) Failure to retain 25 percent of the amount the first-tier subcontractor earned when the first-tier subcontractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;

(k) Paying the prevailing rate of wage in violation of ORS 279C.840(6);

(l) Reducing an employee's pay in violation of ORS 279C.840(7);

(m) Taking action to circumvent the payment of the prevailing wage, other than subsections (i) and (k) of this section, in violation of ORS 279C.840(7);

(n) Failure to submit reports and returns in violation of ORS 279C.815(3);

(o) Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);

(p) Failure to timely pay the fee required by ORS 279C.825 on public works contracts first advertised or solicited prior to January 1, 2008;

(q) Receiving a public works contract or subcontract while on the list of ineligible in violation of ORS 279C.860;

(r) Awarding a contract to a contractor whose name appears on the list of ineligible maintained pursuant to ORS 279C.860.

(4) The commissioner may assess a civil penalty against a public agency for any of the following violations:

(a) Failure to include a contract provision stating that workers must be paid the applicable prevailing rate of wage in violation of ORS 279C.830(1)(c);

(b) Failure to include in the contract specifications a provision stating the applicable existing prevailing wage rate in violation of ORS

279C.830(1);

(c) Failure to include in the specifications for a contract for a public works stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3);

(d) Failure to include in a contract for a public works a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3)(a);

(e) Failure to include in a contract for a public works a provision requiring the contractor to include in every subcontract a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3)(b);

(f) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;

(g) Dividing a public works project in violation of Or Laws 2007, ch. 764, § 44;

(h) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835;

(i) Failure to retain 25 percent of the amount the contractor earned when the contractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;

(j) Failure to timely pay the fee required in violation of ORS 279C.825;

(k) Awarding a contract to a contractor whose name appears on the list of ineligible maintained pursuant to ORS 279C.860.

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.370

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0530, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

839-025-0540

Schedule of Civil Penalties

(1) The civil penalty for any one violation may not exceed \$5,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) For purposes of this rule, "repeated violations" means violations of a provision of law or rule which has been violated on more than one project within two years of the date of the most recent violation.

(3) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for a violation of ORS 279C.840 regarding the payment of the prevailing rate of wage, the minimum civil penalty will be calculated as follows:

(a) An equal amount of the unpaid wages or \$1,000, whichever is less, for the first violation;

(b) Two times the amount of the unpaid wages or \$3,000, whichever is less, for the first repeated violation;

(c) Three times the amount of the unpaid wages or \$5,000, whichever is less, for second and subsequent repeated violations.

(4) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for a violation of ORS 279C.825, or OAR 839-025-0200, or 839-025-0220 regarding fees to be paid by a public agency, the minimum civil penalty to be assessed will be calculated as follows:

(a) An equal amount of the unpaid fee or \$1,000, whichever is greater, for the first violation;

(b) Two times the amount of the unpaid fee or \$3,000, whichever is greater, for the second violation;

(c) Three times the amount of the unpaid fee or \$5,000, whichever is greater, for the third and subsequent violations.

(5) The civil penalty for all other violations will be set in accordance with the determinations and considerations referred to in OAR 839-025-0520.

(6) The civil penalties set out in this rule are in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0540, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Conforming rules with statutory change authorizing nurse practitioners to determine injured worker release to work.

Adm. Order No.: BLI 43-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

ADMINISTRATIVE RULES

Notice Publication Date: 11-1-2007

Rules Amended: 839-006-0105, 839-006-0130, 839-006-0135, 839-006-0150

Subject: The amendments will conform injured worker rules with statutory changes allowing nurse practitioners authorized to provide compensable medical services under ORS 656.245 to determine whether injured worker is released to work.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-006-0105

Definitions

(1) "Attending physician" means a physician or physician's assistant primarily responsible for the treatment of a worker's on-the-job injury as described in ORS 656.005(12).

(2) "Authorized nurse practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245.

(3) "Bureau" means the Bureau of Labor and Industries.

(4) "Demand" means the injured worker informing the employer that the worker seeks reinstatement or reemployment.

(5) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(6) "Injured worker" means a worker who has a compensable injury as defined in ORS 656.005(7)(a). Injured worker, for purposes of ORS 659A.040, includes a worker who has invoked the protection of the Oregon Workers' Compensation statutes. Injured worker, for the purposes of reinstatement rights under ORS 659A.043, does not include:

(a) a worker hired on a temporary basis as a replacement for an injured worker;

(b) a seasonal worker hired for and actually employed for less than six months in a calendar year; or

(c) a worker whose employment at the time of the injury resulted from working short terms of employment as the result of referral by a hiring hall operating pursuant to a collective bargaining agreement.

(7) "Invoke," as used in ORS 659A.040, includes, but is not limited to, a worker's reporting of an on-the-job injury or a perception by the employer that the worker has been injured on the job or will report an injury.

(8) "Release to the former position" means a release to the position a worker held prior to an on-the-job injury as provided in ORS 659A.043.

(9) "Release to an available, suitable position" means a release to work that meets an injured worker's medical restrictions and for which the worker possesses the necessary skills and abilities as provided in ORS 659A.046. An available, suitable position may vary in duties or hours from the worker's former position and may be a different position or a modified version of the injured worker's former position. An available, suitable position is paid at the rate normally paid by the employer for that position.

(10) "Supervisor" means a person exercising direct supervisory authority over a worker's position.

(11) "Worker" means any person, including a minor, whether lawfully or unlawfully employed, engaged to furnish services for remuneration, subject to the direction and control of an employer. A worker also includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, whether or not the worker is supervised by the employer. For the purposes of ORS 659A.040, worker also includes an applicant for a job. A worker does not include any person whose services are performed as an inmate or ward of a state institution or any person whose services are performed as part of the eligibility requirements for a public assistance grant, as provided in ORS 656.005(30).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.040 - 659A.052

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 43-2007, f. 12-31-07, cert. ef. 1-1-08

839-006-0130

Injured Worker Reinstatement Under ORS 659A.043

(1) An employer with 21 or more employees at the time of a worker's on-the-job injury or at the time an injured worker demands reinstatement to the former position must reinstate the worker to the worker's former position if:

(a) The injured worker's former position still exists (has not been eliminated for bona fide reasons). The former position "exists" even though the position may have been renamed or reclassified;

(b) The injured worker's former position is available. A worker's former position is "available" even if that position has been filled by a replacement worker while the injured worker was absent and regardless of the employer's possible preference for the replacement worker;

(c) The injured worker is not disabled from performing the duties of the former position; and

(d) Timely demand is made as provided in OAR 839-006-0130(5)(d).

(2) If the former position exists but is not available (due to seniority or other employment restrictions contained in a valid collective bargaining agreement that the injured worker does not meet; see subsection (8) of this rule), the employer must offer the injured worker a vacant, suitable position.

(a) For the purposes of ORS 659A.043, a suitable position is one that is most similar to the former position in compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent), and shift.

(b) If a suitable position is not available at the worker's normal work location the employer must consider vacant, suitable positions in all the employer's facilities within reasonable commuting distance, not just the facility where the injured worker was previously employed.

(c) Prior to beginning a vacant, suitable position, the injured worker has the right to discuss position duties with the employer and to receive written clarification of the specific duties.

(3) At the time of the injured worker's demand for reinstatement, if the worker's former position no longer exists and no other position exists that is vacant and suitable, the injured worker must follow the employer's reporting policy until the employer offers the worker the former position or a vacant, suitable position. The employer's reporting policy must be written, non-discriminatory and effectively made known to the employer's work force. If the employer has no such reporting policy, the employer may require the injured worker to inform the employer of any change in address and telephone number within ten days of the change, provided the employer gives prior written notice of this requirement to the injured worker.

(4) A certificate by the attending physician or authorized nurse practitioner that the attending physician or authorized nurse practitioner approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(a) In addition to an attending physician or authorized nurse practitioner certificate, the employer may require, within a reasonable period of time and at the employer's expense, further evidence of the injured worker's physical ability to perform the duties of the former position. The employer may, in a manner consistent with worker's compensation regulations, consult the worker's attending physician or authorized nurse practitioner regarding the worker's condition as it relates to the worker's ability to perform the duties of the former position.

(b) The employer may not question the attending physician's or authorized nurse practitioner's release as a subterfuge to avoid employer responsibilities under ORS 659A.043.

(5) The injured worker must make demand for reinstatement to the former position according to the employer's written policy effectively made known to the employer's workforce. If the employer has no such policy, the injured worker's demand:

(a) May be oral or written;

(b) Must be made to a supervisor, personnel officer or person in management;

(c) May be made by the injured worker or the injured worker's attorney; and

(d) May be made at any time after the attending physician or authorized nurse practitioner has released the injured worker for reinstatement to the former position, but must be made no later than seven calendar days after receiving certified mail notice from the insurer or self-insured employer that the worker's attending physician or authorized nurse practitioner has released the worker for return to the worker's former position. For purposes of this section, receipt of notice is deemed to have occurred on the day the worker signs a receipt for the mailing or three days following the deposit of the certified mail with the U.S. Postal Service, whichever occurs first, provided such mail is sent to the worker's last known address and that address is within the state. If the worker's last known address is outside of the state, the date of notice is the date the worker signs a receipt for the mailing or seven days after the mailing, whichever occurs first.

(6) Extenuating circumstances may, in very rare instances, extend the time allowed for timely demand for reinstatement.

(7) When the injured worker has not made demand for reinstatement to the former position because the employer has made it known to the worker that reinstatement will not be considered, even if a suitable position is vacant, and that an actual demand would therefore be futile, the division will deem the worker to have made timely demand.

(8) The right of reinstatement is guaranteed by ORS 659A.043. Conditions of reinstatement are subject to seniority and other employment restrictions contained in a valid collective bargaining agreement.

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(9) If the injured worker's former position no longer exists, and there is no vacant, suitable position, the employer has no obligation to create a position for a returning injured worker. If the employer creates such a position, the position may be discontinued at any time.

(10) Except as provided in these rules, an injured worker has no greater right to a position or other employment benefit than if the worker had not been injured.

(11) The duty under ORS 659A.043 to reinstate an injured worker to the worker's former position extends to a successor employer to the worker's employer at the time of injury. Determining whether a respondent is a successor employer involves a nine-part test. Not every element of the test need be present to find an employer to be a successor; the facts must be considered together to reach a determination:

(a) Whether respondent had notice of the injured worker at the time of acquiring or taking over the business;

(b) The ability of the predecessor to reinstate the injured worker;

(c) Whether there has been a substantial continuity of business operations;

(d) Whether the respondent uses the same plant as the predecessor;

(e) Whether respondent uses the same or substantially the same work force as the predecessor;

(f) Whether respondent uses the same or substantially the same supervisory personnel as the predecessor;

(g) Whether under respondent the same jobs exist under substantially the same working conditions as under the predecessor;

(h) Whether respondent uses the same machinery, equipment and methods of production as the predecessor;

(i) Whether respondent produces the same product as the predecessor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.043

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 3-1986, f. & ef. 4-7-86; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96; BL 10-1996, f. & cert. ef. 12-4-96; BL 2-1998, f. & cert. ef. 2-3-98; BL 15-2000, f. & cert. ef. 8-11-00; BL 10-2002, f. & cert. ef. 5-17-02; BL 43-2007, f. 12-31-07, cert. ef. 1-1-08

839-006-0135

Injured Worker Reemployment Under ORS 659A.046

(1) An employer with six or more employees at the time of the worker's on-the-job injury or at the time of the injured worker's demand for reemployment must reemploy an injured worker disabled from performing the duties of the worker's former regular employment to an available, suitable position if:

(a) The injured worker is medically released to perform the duties of the available, suitable position; and

(b) Timely demand is made as provided in OAR 839-006-0135(8)(d).

(2) For the purposes of ORS 659A.046, an available position is one that is vacant and for which the worker meets seniority or other employment restrictions contained in any applicable valid collective bargaining agreement (see subsection (11) of this rule).

(3) For the purposes of ORS 659A.046, a suitable position is one that meets the injured worker's medical restrictions and for which the worker possesses the necessary skills and abilities. A suitable position is as similar as practicable to the worker's former position in compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent) and shift. A suitable position under ORS 659A.046 is paid at the rate normally paid by the employer for that position.

(4) Prior to beginning an available, suitable position, the injured worker has the right to discuss the duties of the available, suitable position with the employer and to receive written clarification of the specific duties.

(5) Notwithstanding OAR 839-006-0136(6), an injured worker who meets the requirements of ORS 659A.046 and who has been placed in an available, suitable position is entitled to remain in the position, provided the worker's restrictions continue to allow the worker to perform the duties of the position and the position is not eliminated for bona fide reasons. If an injured worker recovers to the point that the worker can perform the duties of the worker's former position, the worker must make timely demand for reinstatement to the former position, subject to OAR 839-006-0130.

(6) At the time of the injured worker's demand for reemployment, a suitable position may not be available. When this occurs, the injured worker must follow the employer's reporting policy until the employer offers the injured worker an available, suitable position. The employer's reporting policy must be written, non-discriminatory, and effectively made known to the employer's work force. If the employer has no such reporting policy, the employer may require the injured worker to inform the employer of any change in address and telephone number within ten days of the change, provided the employer gives prior written notice of this requirement to the injured worker.

(a) If an employer has no suitable position available, the employer has no obligation to create a position for a returning injured worker. If the

employer creates such a position, the position may be discontinued at any time. A modified version of the worker's former position is not a created position.

(b) If a suitable position is not available at the time an injured worker's attending physician or authorized nurse practitioner finds the worker to be medically stationary but unable to perform the duties of the former position, the injured worker continues to retain the right to be reemployed in an available, suitable position for three years from the date of the injury, provided no other conditions of OAR 839-006-0136 have occurred.

(7) A certificate of the worker's attending physician or authorized nurse practitioner that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(a) The employer may require, within a reasonable period of time and at the employer's expense, further evidence of the worker's physical ability to perform the available, suitable position. The employer may, consistent with worker's compensation regulations, consult the worker's attending physician or authorized nurse practitioner regarding the worker's condition as it relates to the worker's ability to perform the available, suitable position.

(b) The employer may not question the attending physician's or authorized nurse practitioner's release as a subterfuge to avoid employer responsibilities under ORS 659A.046.

(8) The injured worker must make demand for reemployment to an available, suitable position according to the employer's written policy effectively made known to the employer's workforce. If the employer has no such policy, the injured worker's demand:

(a) May be oral or written;

(b) Must be made to a supervisor, personnel officer or person in management;

(c) May be made by the injured worker or the injured worker's attorney; and

(d) May be made any time after the attending physician or authorized nurse practitioner has released the injured worker to an available, suitable position, but must be made no later than seven calendar days after receiving certified mail notice from the insurer or self-insured employer that the worker's attending physician or authorized nurse practitioner has released the worker for reemployment to an available, suitable position. For purposes of this section, receipt of notice is deemed to have occurred on the day the worker signs a receipt for the mailing or three days following the deposit of the certified mail with the U.S. Postal Service, whichever occurs first, if such mail is sent to the worker's last known address and that address is within the state. If the worker's last known address is outside the state, the date of notice is the date the worker signs a receipt for the mailing or seven days after the mailing, whichever occurs first;

(9) Extenuating circumstances may, in very rare instances, extend the time allowed for timely demand for reemployment.

(10) When the injured worker has not made demand for reemployment to an available, suitable position because the employer has made it known to the worker that reemployment will not be considered even if a suitable position is available and that an actual demand would therefore be futile, the division will deem the worker to have made timely demand.

(11) The right of reemployment is guaranteed by ORS 659A.046. Conditions of reemployment are subject to seniority and other employment restrictions contained in a valid collective bargaining agreement.

(12) Except as provided in these rules, an injured worker has no greater right to a position or other employment benefit than if the worker had not been injured.

(13) The duty under ORS 659A.046 to reemploy an injured worker to an available, suitable position extends to a successor employer to the worker's employer at the time of injury. Determining whether a respondent is a successor employer involves a nine-part test. Not every element of the test need be present to find an employer to be a successor; the facts must be considered together to reach a determination:

(a) Whether respondent had notice of the injured worker at the time of acquiring or taking over the business;

(b) The ability of the predecessor to reemploy the injured worker;

(c) Whether there has been a substantial continuity of business operations;

(d) Whether the respondent uses the same plant as the predecessor;

(e) Whether respondent uses the same or substantially the same work force as the predecessor;

(f) Whether respondent uses the same or substantially the same supervisory personnel as the predecessor;

(g) Whether under respondent the same jobs exist under substantially the same working conditions as under the predecessor;

(h) Whether respondent uses the same machinery, equipment and methods of production as the predecessor;

(i) Whether respondent produces the same product as the predecessor.

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Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.046
Hist.: BL 1-1983, f. & ef. 1-26-83; BL 3-1986, f. & ef. 4-7-86; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BL 15-2000, f. & cert. ef. 8-11-00; BL 10-2002, f. & cert. ef. 5-17-02; BL 43-2007, f. 12-31-07, cert. ef. 1-1-08

839-006-0150

Retention and Loss of Reinstatement and Reemployment Rights

(1) An injured worker does not lose the right to reinstatement or reemployment under ORS 659A.043 or 659A.046 if:

(a) An employer discharges all employees who are off the job for a certain amount of time and discharges the injured worker under this policy for time off covered by time-loss compensation or for absences medically certifiable by the attending physician or authorized nurse practitioner in connection with the compensable injury.

(b) An employer discharges the injured worker for reasons other than for cause;

(c) An injured worker quits or resigns involuntarily or under mistake of fact;

(d) An injured worker making a timely demand for reinstatement or reemployment takes a position that is not suitable with another employer while waiting for a suitable position to become available; or

(e) An injured worker, disabled from performing the duties of the worker's former regular employment, accepts an available, suitable position with the same employer under ORS 659A.046 and these rules.

(2) If an injured worker recovers to the point that the worker can perform the duties of the worker's former position, the worker must make timely demand for reinstatement to the former position, subject to the requirements of OAR 839-006-0130.

(3) If an injured worker is unable to perform the duties of the former position but is released by the attending physician or authorized nurse practitioner to perform duties that meet the workers medical restrictions, the worker must make timely demand for reemployment to an available, suitable position, subject to the requirements of OAR 839-006-0135.

(4) Compliance with the duty to mitigate damages by seeking employment with another employer will not extinguish an injured worker's reinstatement rights, except when the injured worker acquires and commences suitable employment with another employer after becoming medically stationary.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.040, 659A.043 & 659A.046
Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 15-2000, f. & cert. ef. 8-11-00; BL 10-2002, f. & cert. ef. 5-17-02; BL 43-2007, f. 12-31-07, cert. ef. 1-1-08

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Rule Caption: Implementing statutory amendments to OFLA, injured worker and discrimination law; clarifying rule amendments.

Adm. Order No.: BLI 44-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Amended: 839-006-0131, 839-006-0136, 839-009-0210, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0280, 839-009-0320

Subject: The rules will implement newly enacted statutory amendments to the Oregon Family Leave Act (OFLA):

Prohibiting worker's compensation absence from running concurrently with an OFLA absence (HB 2460);

Making grandparents and grandchildren family members for purposes of OFLA (HB 2635);

Clarifying that it is unlawful to discriminate or retaliate against an employee for invoking OFLA (HB 2635);

Entitling employees to use accrued paid sick leave for OFLA (HB 2247).

These rules will implement newly enacted statutory amendments to injured worker law providing that nurse practitioners may release injured workers for reemployment or reinstatement (HB 2247).

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-006-0131

Loss of Reinstatement Rights Under ORS 659A.043

(1) An injured worker meeting the requirements for reinstatement under ORS 659A.043 loses the right to reinstatement to the worker's former position when any of the following occurs:

(a) A medical determination by the attending physician or, after an

appeal of such determination, by a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, that the worker cannot return to the former position of employment;

(b) The worker is eligible for and participates in vocational assistance under ORS 656.340;

(c) The worker accepts suitable employment with another employer after becoming medically stationary;

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment which is suitable prior to becoming medically stationary, except as provided under section (2) of this rule;

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or an authorized nurse practitioner has released the worker for employment unless the worker requests reinstatement within that time period;

(f) Three years elapse from the date of injury;

(g) The worker is discharged for bonafide reasons not connected with the injury and for which others are or would be discharged; or

(h) The worker clearly and unequivocally abandons employment with the employer.

(2) A worker who refuses an offer of employment under subsection (1)(d) of this rule and who otherwise is entitled to Oregon Family Leave Act (OFLA) leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and

(b) Need not give notice to the employer that would otherwise be required under OAR 839-009-0250 that the employee is commencing a period of OFLA leave. See ORS 659A.162 and 659A.043.

(3) The right to reinstatement does not apply to:

(a) A worker hired on a temporary basis as a replacement for an injured worker;

(b) A seasonal worker hired for and actually employed for less than six months in a calendar year; or

(c) A worker whose employment at the time of injury resulted from referral to short-term employment from a hiring hall operating pursuant to a collective bargaining agreement.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150-659A.186
Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BL 15-2000, f. & cert. ef. 8-11-00; BL 10-2002, f. & cert. ef. 5-17-02; BL 11-2006(Temp), f. 3-16-06, cert. ef. 3-17-06 thru 9-8-06; Administrative correction 9-21-06; BL 34-2006, f. 10-3-06, cert. ef. 10-4-06; BL 44-2007, f. 12-31-07, cert. ef. 1-1-08

839-006-0136

Loss of Reemployment Rights Under ORS 659A.046

An injured worker meeting the requirements for reemployment under ORS 659A.046 loses the right to reemployment to an available, suitable position when any of the following occurs:

(1) A medical determination by the attending physician or authorized nurse practitioner or, after an appeal of such determination, by a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, that the worker cannot return to any position of reemployment with the employer.

(2) The worker is eligible for and participates in vocational assistance under ORS 656.340;

(3) The worker accepts suitable employment with another employer after becoming medically stationary;

(4) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary. Except that a worker who refuses an offer of employment under this section, and who otherwise is entitled to Oregon Family Leave Act (OFLA) leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and

(b) Need not give notice to the employer that would otherwise be required under OAR 839-009-0250 that the employee is commencing a period of OFLA leave. See ORS 659A.162 and ORS 659A.046;

(5) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or authorized nurse practitioner has released the worker for reemployment unless the worker requests reemployment within that time period;

(6) Three years elapse from the date of injury;

(7) The worker is discharged for bona fide reasons not connected with the injury and for which others are or would be discharged; or

(8) The worker clearly and unequivocally abandons employment with the employer.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.046, 659A.150-659A.186
Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BL 15-2000, f. & cert. ef. 8-11-00; BL 10-2002, f. & cert. ef. 5-17-02; BL 11-2006(Temp), f. 10-26-05, cert. ef. 10-27-05 thru 4-24-06; BL 10-2006, f. 3-16-06, cert. ef. 3-20-06; BL 44-2007, f. 12-31-07, cert. ef. 1-1-08

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839-009-0210

Definitions

(1) "Alternate duty" means work assigned to an employee that may consist of:

- (a) The employee's same duties worked on a different schedule; or
- (b) Different duties worked on the same or different schedule.

(2) "Child," for the purposes of parental and sick child leave only (not for the purposes of serious health condition leave), means a biological, adopted, foster or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:

- (a) Under the age of 18; or
- (b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d).

(3) "Covered employer" means any employer employing 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

(4) "Domestic partner" means an individual joined in a domestic partnership.

(5) "Domestic partnership" for the purposes of ORS Chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with Oregon Laws, 2007, Chapter 99 and rules adopted by the State Registrar of the Center for Health Statistics.

(6) "Eligible employee" means an employee employed in the State of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsection (c) of this section.

(a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.

(b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must be employed by a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act (See 29 CFR Part 785).

(c) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA. [Note: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC 2601-2654 (FMLA).]

(d) For the purpose of qualifying as an eligible employee, the employee need not work solely in the State of Oregon.

(7) "Family member" means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an

employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave is taken.

(8) "FMLA" is the federal Family and Medical Leave Act, 29 USC 2601.

(9) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(10) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.

(11) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(12) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(13) "Health care provider" means:

(a) The person primarily responsible for providing health care to an eligible employee or to a family member of an eligible employee; and

(b) Who is a physician licensed to practice medicine or surgery, including a doctor of osteopathy; or

(c) A podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a licensed physician's assistant, a direct entry midwife, a nurse-midwife or a clinical social worker authorized to practice and perform within the scope of a professional license as provided by law; or

(d) A Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Mass; or

(e) A chiropractor, but only to the extent that a chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(14) "In loco parentis" means in the place of a parent, having financial and day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(15) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(16) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.

(17) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159 and OAR 839-009-0230(1) through (4). Except that "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(18) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.

(19) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:

(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:

(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;

(B) Transportation or other assistance required for a family member to obtain care from a physician; or

(C) Serious health conditions as described in (b) through (h) of section 14 of this rule.

(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) That requires constant or continuing care such as home care administered by a health care professional;

(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same

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condition. This incapacity must involve:

- (A) Two or more treatments by a health care provider; or
- (B) One treatment plus a regimen of continuing care.
- (e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;
- (f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;
- (g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or
- (h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2006, f. 10-3-06, cert. ef. 10-4-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08

839-009-0240

Length of Leave and Other Conditions

(1) An eligible employee is entitled to as much as 12 weeks of OFLA leave in any one-year period except that:

(a) An eligible female employee may take up to 12 weeks of pregnancy disability leave in addition to 12 weeks of OFLA leave for any leave purpose;

(b) An eligible employee taking the entire 12 weeks of OFLA leave for parental leave may take an additional 12 weeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except for the balance of the initial 12 weeks. The employee may also use this balance for any other OFLA leave purpose.

(2) An eligible female employee may take up to 36 weeks of OFLA leave in one leave year that includes up to 12 weeks of pregnancy disability leave, followed by 12 weeks of parental leave, and 12 weeks of sick child leave.

(3) An eligible male employee may take up to 24 weeks of OFLA leave in one leave year, but only under the following circumstances:

(a) The male employee takes 12 weeks of parental leave, followed by:

(b) Twelve weeks of sick child leave.

(4) When two eligible family members work for the same covered employer, both employees may take OFLA leave at the same time only under the following circumstances:

(a) One employee needs to care for the other employee suffering from a serious health condition; or

(b) One employee needs to care for a child suffering from a serious health condition while the other employee is also suffering from a serious health condition; or

(c) Both family members are suffering from a serious health condition; or

(d) The employer allows concurrent leave.

(5) Parental leave must be taken in one uninterrupted period -- unless the employer approves otherwise -- and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

(6) The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

(7) Sick child leave need not be provided to an eligible employee by a covered employer if another family member, including a non-custodial biological parent, is willing and able to care for the child.

(8) A covered employer may not reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(a) If an employee uses OFLA leave for a workplace injury pending acceptance of a workers' compensation claim, upon acceptance of the claim any OFLA leave used for the workplace injury must be restored to the employee. If the claim is denied, OFLA leave will be deducted from the employee's entitlement.

(A) If the employer uses a rolling forward leave year, a fixed leave

year or a calendar leave year, and a worker's compensation claim is first denied and then accepted, the employer must restore any OFLA leave taken in the leave year in which the worker's compensation claim is accepted.

(b) An employee must be eligible under OAR 839-009-0210(6) in order to use OFLA leave following a period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(9) Notwithstanding section (8) of this rule, the employer may reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005 after the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.043(4), 659A.046(5), 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(10) For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours OFLA leave.)

(a) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period must be used for calculating the employee's normal work week. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours OFLA leave.)

(b) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of OFLA leave to which the employee is entitled.

(11) An employee who has previously qualified for and taken some portion of OFLA leave must requalify as an "eligible employee" as defined in 839-009-0210(4) each time the employee begins additional OFLA leave within the same leave year. Exceptions:

(a) An employee who has been granted OFLA leave for a qualifying serious health condition of the employee or family member need not requalify under OAR 839-009-0210(4) each time leave for the same purpose (the same individual and the same serious health condition) is taken.

(b) A female employee who has been granted OFLA pregnancy disability leave need not requalify under OAR 839-009-0210(4) for an additional 12 weeks of leave within the same leave year for any OFLA leave purpose.

(c) An employee who has taken 12 weeks of OFLA parental leave, need not requalify under OAR 839-009-0210(4) for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave.

(12) An exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act (see 29 CFR Part 541 through 541.315) or the state minimum wage and overtime laws (ORS chapters 652 and 653).

(a) When OFLA leave is also covered by FMLA and the employee takes intermittent leave in blocks of less than one day, the employer may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).

(b) When OFLA leave is not covered by FMLA (e.g., the employer has 25 to 49 employees, the leave is taken for a sick child, for the serious health condition of a parent-in-law, for the serious health condition of a same-sex domestic partner or for the serious health condition of a same-sex domestic partner's parents), and the employee takes intermittent leave in blocks of less than one day, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for the part-day absence.

(13) The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, that provides as one of its options employee leave at least as generous as the leave required by OFLA.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08

839-009-0250

Notice by Employee; Designation by Employer

(1) Except in situations described in sections (2) and (3) of this rule, a covered employer may require an eligible employee to give 30 days written notice, including an explanation of the need for leave, before starting OFLA leave. The employee is not required to specify that the request is for OFLA leave:

(a) An employee able to give advance notice of the need to take

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OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave;

(b) An employer may request additional information to determine that a requested leave qualifies for designation as OFLA leave, except in cases of parental leave (no medical certification required) or sick child leave (no medical verification may be required until after three occurrences);

(c) The employer may provisionally designate an absence as OFLA leave until sufficient information is received to make a determination;

(d) An employee on OFLA leave who needs to take more leave than originally authorized should give the employer reasonable notice prior to the end of the authorized leave, following the employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave must request additional information, and may not treat a continuing absence as unauthorized unless requested information is not provided or does not support OFLA qualification.

(2) When an employee is unable to give the employer 30 days notice, the employee is encouraged to give the employer as much advance notice as is practicable.

(3) When taking OFLA leave in an unanticipated or emergency situation, an employee must give verbal or written notice within 24 hours of commencement of the leave. This notice may be given by any other person on behalf of an employee taking unanticipated OFLA leave. The employer may require written notice by the employee within three days of the employee's return to work.

(4) If an employee fails to give notice as required by sections (1), (2), and (3) of this rule or the employer's policies, the employer may reduce the period of unused OFLA leave by up to three weeks in that one-year leave period:

(a) The employee may also be subject to disciplinary action under an employer's uniformly applied policy or practice. This practice must be consistent with the employer's discipline for similar violations of comparable rules;

(b) An employer may not reduce an employee's available OFLA leave or take disciplinary action unless the employer has posted the required Bureau of Labor and Industries Family Leave Act notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement;

(c) Federal regulations prohibit reducing the leave period under FMLA, but allow an employer to delay the start of leave because of improper notice (see 29 CFR Section 825.304);

(d) When an employee is subject to both FMLA and OFLA, the employer must apply the discipline available under (4)(a) or (c) of this rule that is most beneficial to the employee's individual circumstances.

(5) An employee who refuses an offer of employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d) and who otherwise is entitled to OFLA leave under 659A.150 to 659A.186:

(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and

(b) Need not give notice to the employer that would otherwise be required by this rule, that the employee is commencing a period of OFLA leave. See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 1-2007, f. 1-16-07, cert. ef. 1-17-07; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08

839-009-0260

Medical Verification and Scheduling of Treatment

(1) When an employee gives 30 days notice for OFLA leave, the employer may require the employee to provide medical verification of the need for OFLA leave before the leave starts.

(a) An employer may not require medical verification for parental leave.

(b) Consistent with ORS 659A.306, the employer must pay the cost of any medical verification not covered by insurance or other benefit plan.

(2) If an employee's need for OFLA leave precludes giving 30 days notice, the employee must provide medical verification within 15 days of the employer's request for verification.

(3) The employer must provide the employee with written notice of any requirement to provide medical verification of the need for leave and the consequences for failure to do so.

(4) An employer may not delay the taking of an OFLA leave in the event that medical verification is not received prior to the commencement of (a) leave taken for unforeseen circumstances. The employer may designate the leave as provisionally approved subject to medical verification.

(5) If an employee submits medical verification signed by the health

care provider, the employer may not directly request additional information from the employee's health care provider. However, a health care provider representing the employer may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical verification.

(6) An employer may not request subsequent medical verifications more often than every 30 days and only in connection with an absence by the employee except as stated in the FMLA regulations (see 29 CFR 825.308), including, for example, when:

(a) Circumstances described by the previous medical verification have changed significantly (e.g., the duration or frequency of absences, the severity of conditions, complications); or

(b) The employer receives information that casts doubt upon the employee's stated reason for the absence.

(7) If an employee requests OFLA leave for any purpose except parental leave, the employer may require the employee to obtain the opinion of a second health care provider, designated by the employer, at the employer's expense. If the opinion of the second provider conflicts with the medical verification provided by the employee, the employer may require the two providers to designate a third health care provider to provide an opinion at the employer's expense (see ORS 659A.306). The opinion of the third provider is binding on both the employer and the employee. Before restoring the employee to work after taking OFLA leave for the employee's own serious health condition, the employer may require the employee to present certification from the employee's health care provider that the employee is able to resume work. The employer may not require the employee to obtain a second opinion.

(8) If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may, at its discretion, require medical verification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the verification not covered by insurance or other benefit plan (see ORS 659A.306). The opinion of the health care provider is binding. The employer may not require the employee to obtain a second opinion.

(9) When possible an employer must make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 24-2005, f. 11-15-06, cert. ef. 11-16-05; BLI 12-2006, f. 3-22-06, cert. ef. 3-24-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08

839-009-0280

Use of Paid Leave

(1) Except as provided in this rule or the terms of a collective bargaining agreement, an agreement between the eligible employee and the covered employer, or an employer policy, OFLA leave is not required to be granted with pay.

(2) An employee eligible to take OFLA leave is entitled to use accrued paid sick leave, personal leave, vacation leave or any other paid leave that is offered in lieu of vacation leave, during the period of OFLA leave. As used in this rule, accrued paid sick leave does not include disability insurance or disability benefits.

(4) An employer may require an employee to use available paid leave during OFLA leave that would otherwise be unpaid, and may determine the order in which paid leave is to be used if to do so is consistent with a collective bargaining agreement or other written agreement between the eligible employee and the covered employer or an employer policy. The employer may exercise these prerogatives only if:

(a) The employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave, prior to the commencement of OFLA leave; or

(b) The employer provides written notice to the employee within two business days of the employee's notice of unanticipated or emergency leave that the employee will be required to use accrued paid leave.

(4) An eligible employee or covered employer may choose to have the employee's OFLA leave run concurrently with a type of paid or unpaid leave not referenced in these rules, as provided or allowed under an employer policy. Except that an employer may not reduce the amount of OFLA leave available to an eligible employee by any period the employee is unable to work because of a disabling compensable injury, as defined in ORS 656.005 (see ORS 659A.162(6)).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 656.240, 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 47-2006, f. 12-29-06, cert. ef. 1-3-07; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

839-009-0320

Enforcement and Retaliation

(1) An employer's duties and obligations under OFLA extend to a successor employer as defined in 29 CFR 825.107.

(2) In accordance with the provisions of OFLA an eligible employee claiming a violation of the OFLA may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) Pursuant to ORS 659A.183, it is an unlawful employment practice for an employer to deny family leave to an eligible employee or retaliate or in any way discriminate against any person with respect to hiring, tenure or any other term or condition of employment because the person has inquired about OFLA leave, submitted a request for OFLA leave or invoked any provision of the Oregon Family Leave Act.

(4) It is an unlawful employment practice for an employer to count OFLA leave against an employee in determining the employee's compliance with attendance policies or to count OFLA leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from OFLA leave and may not be disqualified from the bonus as a result of taking OFLA leave.

(5) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with the Oregon Family Leave Act.

(6) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of the Oregon Family Leave Act or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 12-2006, f. 3-22-06, cert. ef. 3-24-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 1-2008

Filed with Sec. of State: 1-4-2008

Certified to be Effective: 1-4-08

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).

(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

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 2-2008

Filed with Sec. of State: 1-11-2008

Certified to be Effective: 1-11-08

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period of 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).

(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

ADMINISTRATIVE RULES

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

Construction Contractors Board Chapter 812

Rule Caption: Revised Notices.

Adm. Order No.: CCB 1-2008(Temp)

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08 thru 6-29-08

Notice Publication Date:

Rules Amended: 812-001-0200

Subject: OAR 812-001-0200(1) is amended to adopt the revised form because effective January 1, 2008, CCB's revised administrative rules require the Consumer Protection Notice be delivered at time of contract instead of its previous delivery requirement, which was at the time of bid.

OAR 812-001-0200(2) is amended to adopt the revised Information Notice to Owner about Construction Liens to correct consumer instructions about the Consumer Protection Notice delivery requirements.

The two forms have been revised to incorporate the new delivery requirement and to make the revised required notices available to contractor who must provide them to their customers be accurate and meet the new statutes effective January 1, 2008, it is necessary to adopt these temporary rules.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0200

Consumer Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled "Information Notice to Owner About Construction Liens," as revised December 20, 2007. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under section 14 (1), chapter 648, Or Laws 2007 (HB 2654), the board adopts the form "Consumer Protection Notice" as revised December 20, 2007.

(3) In order to comply with the requirement to adopt a "Information Notice to Property Owners About Construction Responsibilities" form under section 17 (5), chapter 648, Or Laws 2007 (HB 2654), the board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised December 4, 2007.

(4) In order to comply with the requirement to adopt a notice of procedure form under section 14 (2), chapter 648, Or Laws 2007 (HB 2654), the board adopts the form "Notice of Procedure" dated December 4, 2007.

(5) The board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as revised December 16, 2003.

(6) The board adopts the form "Model Features for Accessible Homes" dated December 4, 2007.

Stat. Auth.: ORS 87.093, 670.310, 701.055, 701.235 & 701.530

Stats. Implemented: ORS 87.093, 701.055, 701.235 & 701.530, sec. 5, 14, 17 OL 2007 (HB 2654)

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 1-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08

Rule Caption: Schedule of Penalties.

Adm. Order No.: CCB 2-2008(Temp)

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08 thru 6-29-08

Notice Publication Date:

Rules Amended: 812-005-0800

Subject: The rule governs that CCB may impose for violation of statutes and rules. CCB is amending the penalty rule to remove statutory provisions that the 2007 legislature repealed or modified and to insert statutory provisions that the 2007 legislature enacted. Similarly, CCB amends one provision to correspond to a substantive rule.
Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

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 701.055(1) 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 701.055(1) 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 701.055(1) 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 701.055(1), 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 701.055(1), 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 section 4, chapter 114, Oregon Laws 2007 (HB 2109); and

(7) \$1,000 per offense for hiring a 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.

ADMINISTRATIVE RULES

(11) Failure to use a written contract as required by section 7, chapter 648, Oregon Laws 2007 (HB 2654), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of section 14, chapter 648, Oregon Laws 2007 (HB 2654), failure to provide a Consumer Protection Notice or Notice of Procedure, as provided for in OAR 812-001-0200; \$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 701.075(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 working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(8), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Violating or failing to comply with any statute, or rule adopted under any statute, listed in section 14, chapter 114, Oregon Laws 2007 (HB 2109), \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute or rule.

(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 701.135(1)(f), \$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 701.135(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 701.135(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 701.135(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) Except as provided in section (28), 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 812-008-0202(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, 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 section 4, chapter 114, Oregon Laws 2007 (HB 2109), 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 701.135(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, 701.055, 701.075, 701.078, 701.100, 701.135, 701.175, 701.227, & 701.992

Hist.: IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; IBB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; ; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08

Rule Caption: Deletion of Four-Year License and Fees.

Adm. Order No.: CCB 3-2008(Temp)

Filed with Sec. of State: 1-10-2008

Certified to be Effective: 1-10-08 thru 7-7-08

Notice Publication Date:

Rules Amended: 812-003-0140, 812-003-0270

Subject: OAR 812-003-0140 and 812-003-0270 are amended to eliminate the four year new license or four-year renewal.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

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 (5) and (6) 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.

ADMINISTRATIVE RULES

(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 701.115, 701.125 & 701.130

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

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) 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) If the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a license prior to receipt of all documents and fees if the surety concurs with the decision of the agency to pre-date the bond.

(4) Licenses will be issued for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2008(Temp), f. & cert. ef. 1-10-08 thru 7-7-08

**Department of Administrative Services,
Oregon Educators Benefit Board
Chapter 111**

Rule Caption: Establishes procedures to be used for rulemaking; power and duties of the Board; and procurement and contracting processes and requirements for the Oregon Educators Benefit Board (OEBB).

Adm. Order No.: OEBB 1-2008

Filed with Sec. of State: 1-4-2008

Certified to be Effective: 1-4-08

Notice Publication Date: 12-1-2007

Rules Adopted: 111-001-0000, 111-001-0005, 111-002-0005, 111-002-0010, 111-005-0010, 111-005-0015, 111-005-0020, 111-005-0040, 111-005-0042, 111-005-0044, 111-005-0046, 111-005-0048, 111-005-0050, 111-005-0060, 111-005-0070

Subject: Establishes procedures to be used for rulemaking; power and duties of the Board; and procurement and contracting processes and requirements for the Oregon Educators Benefit Board (OEBB).

Rules Coordinator: Rose Mann—(503) 378-4606

111-001-0000

Notice of Proposed Rule Changes

Prior to adoption, amendment, or repeal of any permanent rule, the Oregon Educators Benefit Board (OEBB) will give notice of the intended action:

(1) In the Secretary of State's Bulletin at least 21 days before the effective date as provided in ORS 183.335.

(2) By mailing or electronically transmitting a copy of the notice to persons on the OEBB mailing list at least 28 days before the effective date of the rule as provided in ORS 183.335. Notice will be mailed electronically unless the recipient requests or approves the use of non-electronic mail; and

(3) By mailing, or transmitting by electronic mail, a copy of the notice to:

- (a) The Associated Press;
- (b) The Capitol Building Press Room;
- (c) Oregon Education Association;
- (d) Oregon School Board Association;
- (e) Confederation of Oregon School Administrators;
- (f) Oregon Federation of Teachers, Education and Health Professionals;
- (g) Oregon School Employees Association;
- (h) Oregon Community College Association;

(i) School and education service district superintendents, school board chairs and district payroll officers;

(j) AFT Oregon;

(k) The Oregon State Bar Association; and

(l) The state legislator who introduced legislation that created the need for a rule to be adopted, amended, or repealed, and the chair or co-chair of all committees that reported the bill out. If notice cannot be given to the legislator, notice will be provided to the Speaker of the House of Representatives and the President of the Senate.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: ORS 183.310-183.550, 192.660, Sec. 3(1), Ch.7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-001-0005

Uniform and Model Rules of Procedure

The Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedure Act, effective January 1, 2004, are adopted as rules of procedure of the Oregon Educators Benefit Board and are made a part of OAR chapter 111.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedures is available from the office of the Attorney General or the Department of Administrative Services, Oregon Educators Benefit Board.]

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: ORS 183.310-183.550, 192.660, Sec. 3(1), Ch.7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-002-0005

Powers and Duties of the Board

(1) The board will study all matters connected with providing adequate benefit plan coverage for eligible employees with concern for the welfare of the employees and affordability for the districts.

(2) The board will retain consultants, brokers, or other advisory personnel as it deems necessary and will employ such personnel as are required to perform the functions of the board.

(3) The board will design benefit plans, devise specifications, invite bids, analyze carrier responses to advertisements for bids, decide on the award of contracts and do acts necessary to award contracts for benefit plan coverage of eligible employees. The board will place emphasis on:

- (a) Employee choice among high-quality plans;
- (b) A competitive marketplace;
- (c) Plan performance and information;
- (d) District flexibility in plan design and contracting;
- (e) Quality customer services;
- (f) Creativity and innovation;
- (g) Benefit plans as part of total employee compensation; and
- (h) Improvement of employee health.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec.1-14, Ch. 7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-002-0010

Conduct of Meetings of the Board

(1) The board will select one of its appointed voting members as chair and another voting member as vice chair.

(2) The chair will conduct and control meetings of the board. The vice chair will preside over meetings in the absence of the chair. A majority vote of the board will designate the member to preside over meetings in the absence of the chair and the vice chair.

(3) All meetings of the board will be conducted according to Oregon Public Meetings Law, ORS 192.610 to 192.690.

(4) A person must not smoke any cigar or cigarette, or use tobacco in any form in meetings of the board.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: ORS 183.310-183.550, 192.660, 292.051, Sec. 2 & 3, Ch. 7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0010

Policy

The policy of the Oregon Educators Benefit Board (OEBB) is to select contractors and consultants in an expeditious, fair, and efficient manner that is consistent with the goal of delivering high-quality benefits and other services at a cost that is affordable to both the employees and the school districts, education service districts, and community college districts, and meets the requirements of section 4, chapter 00007, Oregon Laws 2007. The Board may enter into more than one contract for each type of benefit plan or other service sought.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Ch. 7 OL 2007

ADMINISTRATIVE RULES

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0015

Applicable Personal Service Contract Rules

For the procurement of personal service contracts, including but not limited to consultants, OEBB adopts the Department of Justice Model Rules OAR 137-046 through 137-048 (effective January 1, 2006).

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec. 19, Ch. 7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0020

Definitions

For the purposes of OARs 111-005-0010, 111-005-0015 and 111-005-0040 through 111-005-0160 the following definitions will apply:

(1) "Apparent successful proposer" or "ASP" means the organization selected as a result of a competitive and completed procurement process.

(2) "Benefit plan" includes, but is not limited to:

(a) Insurance or other benefits including medical, dental, vision, life, disability, accidental death, long term care, flexible spending accounts, supplemental medical, supplemental dental, supplemental vision, or any other remedial care recognized by state law, and related services and supplies;

(b) Comparable benefits for employees who rely on spiritual means of healing; and

(c) Self insurance programs managed by the Board.

(3) "Benefits" means goods and services provided under benefit plans.

(4) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(5) "Consultant" means brokers or other advisory personnel hired by the Board to:

(a) Assist in acquiring adequate benefit plan coverage for eligible district employees;

(b) Assist in the study of all matters connected with the provision of adequate benefit plan coverage for eligible district employees;

(c) Assist in the development and implementation of decision-making processes;

(d) Design and implement additional programs to review, monitor and assist in the improvement of eligible district employees and their dependents' health; and

(e) Provide other services as required by the Board.

(6) "Contractor" means an individual or firm who provides services to the Board under a public contract.

(7) "District" means a common school district, a union high school district, an education service district, or a community college district.

(8) "Emergency" means a situation characterized by a substantial risk of interruption of benefit services that requires prompt execution of a contract to remedy the condition.

(9) "Extensive procurement" means the process of soliciting proposals and bids and selecting a contractor for services amounting to \$150,000 and over.

(10) "Intermediate procurement" means the process of soliciting proposals and bids and selecting a contractor for services amounting to under \$150,000 but over \$5,000.

(11) "Non-responsive proposal" means the Proposer:

(a) Fails to provide information as required in the specification of the RFP;

(b) Takes exception to the terms and conditions in the proposed contract;

(c) Misses the RFP submission deadline;

(d) Has been debarred as set forth in ORS 279 B.130;

(e) Is not licensed to do business in Oregon or fails to meet other licensure and certification requirements included in the RFP;

(f) Will not provide or adhere to the certification of non-discrimination required under ORS 279A.110(4);

(g) Is found non-responsible as described under ORS 279B.110; or

(h) Fails to meet any other requirement set forth in the RFP.

(12) "Proposal" means a document submitted in response to a Request for Proposal.

(13) "Oregon Educators Benefit Board" or "OEBB" means the program created under chapter 00007, Oregon Laws 2007.

(14) "ORPIN" means the Oregon Procurement Information Network, an online service operated by the Department of Administrative Services that displays procurements and contracts issued by the state of Oregon's agencies.

(15) "Proposer" means a person or entity submitting a proposal in response to a Request for Proposal.

(16) "Renewal contractor" means a contractor or consultant who provided the same or similar employee benefit plan or other services under a contract with the Board in the plan year immediately prior.

(17) "Request for Proposal" or "RFP" means the written document soliciting competitive written proposals and setting forth the criteria and method to be used by the Board to the best responsive proposals, apparent successful proposer, and the eventual contractor.

(18) "Responsible proposer" means the proposer:

(a) Is qualified legally to contract with the Board;

(b) Has supplied all necessary information in connection with the inquiry concerning responsibility;

(c) Is authorized to do business in Oregon;

(d) Has the appropriate financial, material, equipment, facility, and personnel resources and expertise necessary to indicate the proposer can meet all contractual responsibilities;

(e) Has a satisfactory record of contract performance; and

(f) Has a satisfactory record of business integrity. This includes no convictions for violations of confidentiality, monetary fraud, or collusion.

(19) "Responsive proposal" means that the proposal meets the minimum requirements of the RFP and has not been deemed "non-responsive" as described in section (11).

(20) "Selection committee" means the group of individuals appointed and approved by the Board to review, evaluate and score proposals received as part of an intermediate or extensive procurement.

(21) "Small procurement" means the process of securing contractors or consultants for services amounting to \$5,000 or less.

(22) "Sole source" means the only contractor or consultant of a particular product or service reasonably available.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec. 19, Ch. 7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0040

Extensive Procurement Process

The Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The solicitation notice will include a description of the benefits or services sought, the scope of the services required, evaluation and selection criteria, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP, where to return the proposal, the method of submission, and the closing date.

(2) No remuneration will be offered to prospective proposers for attendance, travel, document preparation, etc. Unless otherwise specified in the RFP, the pre-proposal conference will:

(a) Be voluntary; and

(b) Be held in Salem, Oregon.

(3) RFP protest; request for change or request for clarification.

(a) Protest.

(A) A proposer may deliver a protest to the Board not less than ten calendar days prior to closing, unless otherwise specified in the RFP.

(B) Proposer protests must be in writing and must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the proposer; and

(iii) A statement of the desired changes to the RFP.

(C) The Board will not consider a proposer's protest after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's protest, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under OAR 137-030-0115.

(ii) If the Board receives a written protest from a proposer according to this rule, the closing may be extended if the Board determines an extension is necessary to consider the protest and to issue any addendum to the RFP.

(b) Request for change.

(A) A proposer may request in writing a change to the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for changes and does not specify otherwise, proposer

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must deliver the written request for change to the Board not less than ten calendar days prior to closing.

(B) A proposer's written request for change must include a statement of the requested changes to the RFP specifications, including the reason for the requested change.

(C) The Board will not consider a proposer's request for change after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a change. If the Board agrees with the entity's request for change, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under OAR 137-030-0115.

(ii) If the Board receives a written request for a change from a proposer according to this rule, closing may be extended if the Board determines an extension is necessary to consider the request and to issue any addendum to the RFP.

(c) Request for clarification.

(A) A proposer may request in writing clarification of the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for clarification and does not specify otherwise, a proposer must deliver the written request for clarification to the Board not less than ten calendar days prior to closing.

(B) A proposer may request that the Board clarify any provision of the RFP.

(C) The Board will not consider a proposer's request for clarification after the submission deadline. The Board's clarification to a proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

(4) Addenda to an RFP following an appeal or request for change or clarification.

(a) Issuance; receipt. The Board may change an RFP only by written addenda. A proposer must provide written acknowledgement of receipt of all issued addenda with its proposal, unless the Board otherwise specifies in the addenda.

(b) Notice and distribution. The RFP must specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(c) Timelines; extensions. The Board will issue addenda within a reasonable time to allow prospective proposers to consider the addenda in preparing their proposals. The Board may extend the closing if the Board determines prospective proposers need additional time to review and respond to addenda. The Board will not issue addenda less than 72 hours before the closing unless an addendum also extends the closing, except to the extent required by public interest.

(d) Request for change or protest. A proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum, unless a different deadline is set forth in an addendum.

(5) Submission. All proposals submitted must comply with the procurement's specifications.

(a) If portions of the proposal to any solicitation are deemed unacceptable or non-responsive portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(b) Submission of proposals must be in written hard copy or electronic format and delivered, as required by the specifications of the solicitation. OEBC is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBC recipient by the closing date and time stated in the RFP.

(6) Evaluation. The Selection Committee will evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. The Board will not divulge the names of the selection committee until completion of the cost negotiations or the apparent successful proposer has been announced. The Board will evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(7) Rejection of proposal. The Board may reject any proposal for good cause and deem it as non-responsive upon written finding that it is in the states', Districts', or employees' interest to do so or acceptance of the proposal may impair the integrity of the procurement process.

(a) The Board will notify the proposer of its rejection of the proposal in writing and provide the good cause justification and finding.

(8) Intent to award, discuss or negotiate. After the protest period provided in subsection (3)(a) expires, or after the Board has provided a final

response to any protest, whichever date is later, the Board may engage in discussions and negotiations with proposers in the competitive range.

(9) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board will proceed as follows:

(a) Initiating discussions. The Board must initiate oral or written discussions and negotiations with all of the proposers in the competitive range regarding their proposals.

(b) Conducting discussions. The Board may conduct discussions and negotiations with each proposer in the competitive range as necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each proposer. The Board may terminate discussions and negotiations with any proposer in the competitive range at any time. All proposers in the competitive range will be offered the opportunity to discuss their proposals with the Board before the Board notifies proposers of the award decisions. In conducting discussions, the Board and any designated representatives:

(A) Will treat all proposers fairly and will not favor any proposer over another.

(B) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents.

(C) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete or an apparent successful proposer has been announced.

(D) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to determine the apparent successful proposer, if a tie between proposers occurs.

(c) At any time during the period allowed for discussions and negotiations, the Board may:

(A) Continue discussions and negotiations with a particular proposer or proposers; or

(B) Terminate discussions with a particular proposer and continue discussions with other proposers in the competitive range.

(d) The Board may continue discussions and negotiations with proposers until determining who will be awarded contracts.

(10) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(11) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if:

(A) the proposer is eligible for award of the contract as a responsible proposer; and

(B) the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(12) Award of contracts. The Board will make final selections based on the evaluation criteria including, but not limited to, contractor or consultant availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBC, members and clients; debarment status; and references. The Board will place emphasis on employee choice among high-quality plans, plan performance and information, a competitive marketplace, employer flexibility in plan design and contracting, quality customer service, creativity and innovation and the improvement of employee health.

(13) Contract. The successful proposer must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

(14) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services

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contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor or consultant without re-entering the formal procurement process provided that the cumulative amendment does not materially alter the contract.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0042

Intermediate Procurement Process

For an intermediate procurement, the Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The notice will include a description of the benefits or services sought, the scope of the services required, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP and return the proposal and the closing date.

(2) Submission. All submitted proposals must comply with the RFP's specifications. If portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(a) Submission of proposals must be in written hard copy or electronic format and delivered as required by the specifications of the solicitation. OEBB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBB recipient by the closing date and time stated in the RFP.

(b) The proposal from the prospective proposer will describe the proposer's credentials, performance data and other information sufficient to establish proposer's qualifications for providing the benefits sought and all other information requested in the RFP.

(3) Evaluation. The Board may appoint a Selection Committee to evaluate proposals in accordance with criteria set forth in the RFP and applicable law. The Board will not divulge the names of the selection committee until completion of the cost negotiations or the apparent successful proposer has been announced. The Board will evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(4) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the proposers, the Board:

(a) Will treat all proposers fairly and will not favor any proposer over another.

(b) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents.

(c) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete.

(d) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to award the contract.

(5) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(6) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if:

(A) the proposer is eligible for award of the contract as a responsible proposer; and

(B) the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(7) Award of contracts. The Board will make final selections based on the evaluation criteria including, but not limited to, contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBB, members and clients; debarment status; and references. The Board will place emphasis on employee choice among high-quality plans, plan performance and information, a competitive marketplace, employer flexibility in plan design and contracting, quality customer service, creativity and innovation and the improvement of employee health.

(8) Contract. The successful proposer must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

(9) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor without re-entering the formal procurement process provided that the cumulative amendment does not:

(a) Materially alter the contract; and

(b) Increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec. 19, Ch. 7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0044

Small Procurement Process

For a small procurement, OEBB may procure contractor services in any manner it deems practical, including by direct selection, negotiation and award.

(1) The Board Chair delegates authority to the Public Employees' Benefit Board Administrator and the OEBB Deputy Administrator to enter into contracts on behalf of the Board.

(2) Award of contracts. The PEBB Administrator or OEBB Deputy Administrator will base selections on evaluation criteria which may include, but is not limited to, contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBB, members and clients; debarment status; and references. Emphasis will be placed on quality customer service, creativity and innovation and the improvement of employee health.

(3) Contract. The selected contractor must promptly execute the contract. The PEBB Administrator or OEBB Deputy Administrator will execute the contract only after obtaining all applicable required documents and contractor signatures.

(4) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor without re-entering the formal procurement process provided that the cumulative amendment does not:

(a) Materially alter the contract; and

(b) Increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.

Stat. Auth.: Ch. 7 OL 2007

Stats. Implemented: Sec. 19, Ch. 7 OL 2007

Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0046

Sole Source Procurement Process

The Board may negotiate with a single source provider of benefits if the services are available only from one prospective proposer, or the prospective proposer has special skills uniquely required for the adequate performance of the services.

(1) Contract. The single source provider must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

(2) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services con-

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tract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor without re-entering the formal procurement process provided that the cumulative amendment does not materially alter the contract.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0048

Emergency Contract Process

The Board may select a contractor to provide benefits without following any of the procedures under OAR 111-005-0040, 111-005-0042, 111-005-0044, or 111-005-0046 when required by emergency. The Board will determine if an emergency exists, declare the emergency and negotiate a contract with the contractor based on the following criteria: contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBB, members and clients; debarment status; and references. The Board will place emphasis on employee choice among high-quality plans, plan performance and information, a competitive marketplace, employer flexibility in plan design and contracting, quality customer service, creativity and innovation and the improvement of employee health.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0050

Mistakes

(1) Treatment of mistakes. If the OEBB discovers certain mistakes in a proposal after opening, but before award of the contract, and the mistakes are not identified as those qualifying as non-responsive to the specifications of the procurement, the OEBB may take the following action:

(a) Waive or permit a 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 proposal, or an insignificant mistake that can be waived or corrected without prejudice to other proposers. Mistakes including, but not limited to, signatures not affixed to the proposal document, proposals sent to the incorrect address, insufficient number of proposals submitted, or incorrect format will not be considered minor.

(b) Correct a clerical error if the intended proposal and the error are evident on the face of the proposal, or other documents submitted with the proposal, and the proposer confirms the correction in writing. A clerical error includes, but is not limited to, a proposer's error in transcribing its proposal.

(2) Rejection for mistakes. OEBB may reject any proposal in which a mistake is evident on the face of the proposal and the intended correct proposal is not evident or cannot be substantiated from documents accompanying the proposal. In order to ensure integrity of the competitive procurement process and to assure fair treatment of proposers, mistakes discovered that are contrary to the specifications of the procurement will be carefully reviewed and will be determined, under sole authority of the OEBB, to be waived or not be waived.

(3) If the OEBB discovers mistakes in the proposal after award, and the mistakes are not considered minor, the Board reserves the right to determine if the award will be revoked. The Board will then re-evaluate proposals deemed to be in second, third, fourth, etc., in the standings.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0060

Records Maintenance

OEBB will maintain all files pertaining to the selection process for all benefits and other service contracts entered on behalf of the state for six years. Files include, but are not limited to:

- (1) The method and copy of announcement.
- (2) The names of firms or individuals and cost estimates considered.
- (3) The basis for selection.
- (4) A copy of the resulting contract and any subsequent amendments.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

111-005-0070

Renewal process for Contractor Contracts

(1) Renewal procedure. If the Board does not issue a procurement to solicit formal proposals for benefit plans and other services, the Board may invite renewal proposals, directly negotiate and enter into renewal contracts

with renewal contractors to provide benefit plans without following the procedures set forth in OAR 111-005-0040.

(2) The Board may renew contracts with renewal contractors for as many years as the Board determines is in the best interest of the state, Districts, and employees.

(3) The Board will negotiate with renewal contractors and enter into contracts with them after giving full consideration to factors which include, but are not limited to, contractor capability, experience, approach, compensation requirements and references.

Stat. Auth.: Ch. 7 OL 2007
Stats. Implemented: Sec. 19, Ch. 7 OL 2007
Hist.: OEBB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-4-08; OEBB 1-2008, f. & cert. ef. 1-4-08

Rule Caption: Provides definitions of terms used for the Oregon Educators Benefit Board benefits program.

Adm. Order No.: OEBB 2-2008

Filed with Sec. of State: 1-4-2008

Certified to be Effective: 1-4-08

Notice Publication Date: 12-1-2007

Rules Adopted: 111-010-0015

Subject: Provides definitions of terms used for the Oregon Educators Benefit Board benefits program.

Rules Coordinator: Rose Mann—(503) 378-4606

111-010-0015

Definitions

Unless the context indicates otherwise, as used in OAR chapter 111, divisions 1 through 50, the following definitions will apply:

(1) "Affidavit of Dependency" means a notarized document that attests that a dependent child meets the criteria in section (5)(b).

(2) "Affidavit of Domestic Partnership" means a notarized document that attests the eligible employee and one other eligible individual meet the criteria in section (6)(b).

(3) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

- (a) Medical;
- (b) Dental;
- (c) Vision;
- (d) Life, disability and accidental death;
- (e) Long term care;
- (f) Flexible spending accounts;
- (g) Supplemental medical, dental and vision;
- (h) Any other remedial care recognized by state law, and related services and supplies; and
- (i) Comparable benefits for employees who rely on spiritual means of healing.

(4) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(5) "Dependent child" means and includes the following:

(a) A biological child of, an adopted child of, or a child placed for adoption with the eligible employee, spouse, or domestic partner; or

(b) A legal ward by court decree, a dependent by Affidavit of Dependency, or is under legal guardianship of the eligible employee, spouse or domestic partner, and is living in the home of the eligible employee.

(c) The child must not qualify as any other person's dependent child, except that a child of divorced or separated parents meeting conditions under IRC 152(e) can be treated as a dependent of both parents; and must meet the following criteria:

- (A) Is not married and does not have a domestic partner; and
- (B) Is under the age of 19 at the end of the calendar year; or
- (C) Meets the IRC 152 definition of a dependent child between the ages of 19 and up to age 26 and is:

(i) Attending school full time, excluding foreign students; or

(ii) Living in the home of the eligible employee over six months of the calendar year, and the eligible employee provides over half the yearly support; or

(iii) Incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability.

(D) Is age 26 or older, and is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability; and

- (i) The disability existed prior to attaining age 26; and

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(ii) The child has had continuous medical insurance coverage, group or individual, prior to attaining age 26 and until the time of the OEBB insurance effective date.

(6) "Domestic partner" means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and either has not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(7) "Eligible employee" means and includes:

(a) "Active eligible employee" means an employee of an OEBB participating organization who is employed on a half-time or greater basis or is in a job-sharing position or meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement.

(b) "Retired eligible employee" means a previously active eligible employee, who is:

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(8) "Employee Group" means one or more similarly situated employees (i.e., nonrepresented or represented by a specific collective bargaining contract) in a common school district, union high school district, education service district, community college district or charter school.

(9) "Non-subject District" means a community college district or a charter school if the employees are not considered employees of a school district.

(10) "Oregon Educators Benefit Board or OEBB" means the program created under chapter 00007, Oregon Laws 2007.

(11) "OEBB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).

(12) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that was self-insured or that had an independent health insurance trust established and functioning on or before December 31, 2006.

(13) "Spouse" means a person of the opposite sex who is a husband or wife. A relationship recognized as a marriage in another state will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(14) "Subject District" means a common school district, a union high school district, or an education service district that did not self-insure or have a health trust in effect on or after January 1, 2007.

Stat. Auth.: ch.7, OL 2007

Stats. Implemented:

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08

Rule Caption: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in for eligible Non-subject Districts.

Adm. Order No.: OEBB 3-2008

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Notice Publication Date: 12-1-2007

Rules Adopted: 111-020-0005

Subject: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in for eligible Non-subject Districts.

Rules Coordinator: Rose Mann—(503) 378-4606

111-020-0005

Employee Group Phase-in for Non-subject Districts

(1) An Employee Group in a Non-subject District may elect to participate in a benefit plan offered by the Board on October 1, 2008, or on October 1 of any following year.

(2) An Employee Group in a Non-subject District electing to participate in benefit plans provided by the Board under section 1 must provide notice of such election not later than June 30, 2008 for the benefit year beginning October 1, 2008, or May 31 of any following year in which they plan to move to the OEBB benefit plans on October 1.

(3) An Employee Group in a Non-subject District who elects to participate in benefit plans provided by the Board cannot return to benefit plans provided or administered by an entity other than the Board.

Stat. Auth.: ch.7, OL 2007

Stats. Implemented: Sec.14, ch. 7, OL 2007, Sec.16, ch. 7, OL 2007

Hist.: OEBB 3-2008, f. & cert. ef. 1-4-08

Department of Agriculture

Chapter 603

Rule Caption: Maintains general production area and protected districts for rapeseed/canola.

Adm. Order No.: DOA 1-2008

Filed with Sec. of State: 1-7-2008

Certified to be Effective: 1-7-08

Notice Publication Date: 11-1-2007

Rules Amended: 603-052-0880

Subject: The proposed amendment would maintain the current system of protected districts where growing canola oil is prohibited. Section (6) requiring a review of the rule by December 31, 2007 would be deleted.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0880

General Production Area

(1) All lands in Oregon outside of protected districts are for the purposes of this rule, in the general production area. Rapeseed production in the General Production Area is subject to the following regulations.

(a) Growing Brassica spp. crops for any purpose including oil is allowed.

(b) All rapeseed seed stock which trades in commerce in General Production Areas must be certified seed which has been produced under standards established by the Association of Seed Certifying Agencies and state standards, and must be accompanied by a phytosanitary certificate stating that a test performed on untreated seed was free from blackleg, *Leptosphaeria maculans*; the seed must also be treated (after the phytosanitary test) prior to planting with a fungicide officially approved for blackleg control;

(c) To prevent buildup of blackleg disease, rapeseed may not be grown on the same plot of land more often than two years in every five;

(d) All unbagged loads of rapeseed transported through Protected Districts must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss.

Protected Districts

(2) Production of rapeseed for oil is incompatible with production of crops of related species grown for seed or vegetables. Therefore, protected districts are established where rapeseed production for oil is prohibited except under special permit. Production of rapeseed for seed, forage or cover crop in these protected production areas is subject to measures to minimize undesirable cross-pollination, disease and pest buildup, and volunteers. The following rules apply to all land in Protected Districts:

(a) Growing Brassica spp. crops for oil is prohibited, except under special permit as outlined in (5) below and in northeast Oregon. In northeast Oregon's protected district, special permits are not required for growing Brassica spp. crops for oil, but all other requirements, (b) to (h) below, do apply;

(b) All rapeseed seed stock which trades in commerce in Protected Districts must be certified seed which has been produced under standards established by the Association of Seed Certifying Agencies and state standards, and must be accompanied by a phytosanitary certificate stating that a test performed on untreated seed was free from blackleg, *Leptosphaeria*

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maculans; the seed must also be treated (after the phytosanitary test) prior to planting with a fungicide officially approved for blackleg control;

(c) To prevent buildup of blackleg disease, rapeseed may not be grown on the same plot of land more often than one year in every four years;

(d) To prevent cross-pollination problems, rapeseed must be isolated from other crops with which it will cross-pollinate, by a distance of not less than three miles. In Baker, Union and Willamette counties the required isolation distance shall be not less than two miles;

(e) The location of all rapeseed fields, and experimental plots, must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting. In the Willamette Valley, the recording system used shall be that adopted by the Willamette Valley Specialty Seed Crops Association;

(f) Forage and cover crop rapeseed may be grown but shall not be allowed to flower;

(g) All unbagged loads of rapeseed transported within Protected Districts must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss;

(h) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Designation of Protected Districts

(3) The following areas are designated as Protected Districts:

(a) in the Willamette Valley, the entire counties of Benton, Clackamas, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington and Yamhill;

(b) in Central Oregon, the entire counties of Crook, Deschutes and Jefferson;

(c) in Northeastern Oregon, the entire counties of Baker, Union and Willamette, except the following part of Willamette County which is designated as a general production area: Township 4N, Range 43E; Township 4N, Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and those portions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E falling within the State of Oregon;

(d) in Malheur County, a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. This strip of land borders Idaho's rapeseed production district IV (IDAPA 02.06.13) where rapeseed production is prohibited. The rest of Malheur Co. is a general production area.

Changes to Rapeseed Control Area Rules

(4) Interested persons may petition the department to amend or repeal these rules, including designation changes creating or removing protected district status, by following the procedures in the Administrative Procedures Act, ORS 183.390. The agency must either deny the petition or initiate rulemaking within 90 days of receiving the petition. In deciding whether to grant or deny a request to amend or repeal these rules, the agency must consider six criteria:

(a) The continued need for the existing rule;

(b) Any complaints and comments about the rule received from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state or federal rules and, to the extent feasible, with local government regulations;

(e) The degree to which circumstances have changed since the rule was adopted; and

(f) The legal basis for the rule.

Special Permits for Exemptions

(5) The department may issue special permits providing exemptions to the rapeseed control area rules if after careful review and consultation with an advisory committee, it determines that the proposed action would not harm the agricultural industries in the area. The Department shall invite all growers of Brassica spp. within a three-mile radius of the proposed growing site to serve on the advisory committee as well as recognized experts from Oregon State University, and the biofuels, specialty seed and vegetable industries. The Director of the Department of Agriculture retains the final authority to approve or deny special permit requests. Any action under a special permit shall be subject to any conditions or restrictions set forth in the permit, and these conditions and restrictions may vary depending on the proposed action and its potential risk. Persons desiring an exemption to the rapeseed control area rules shall petition the department in writing.

Violations

(6) The Director shall have the authority to require destruction prior to bloom of any rapeseed production that violates these rules. In the event that the person or producer of said production does not comply with the

destruction order, the Director is authorized to have the production destroyed by a third party. The cost of such destruction is to be charged to the producer. In addition, persons violating these regulations are subject to the penalties provided by ORS 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.190 & 570.450

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 1-2008, f. & cert. ef. 1-7-08

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Rule Caption: Maintains the control area for genetically modified bentgrass in central Oregon.

Adm. Order No.: DOA 2-2008

Filed with Sec. of State: 1-7-2008

Certified to be Effective: 1-7-08

Notice Publication Date: 11-1-2007

Rules Amended: 603-052-1240

Subject: The proposed amendment would delete section (6) requiring review of the rule in 2007. The effect would be to leave the Jefferson County control area as is, thus maintaining separation of production conventionally bred varieties from genetically modified varieties.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1240

Bentgrass Control Area in Jefferson County

(1) Definitions: As used in this rule:

(a) "Modern biotechnology" means genetic modification of organisms by recombinant DNA techniques.

(b) "Conventionally bred" means traditional plant breeding not involving genetic modification of organisms by recombinant DNA techniques.

(c) "Willamette Valley counties" include: Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties in Oregon.

(2) As authorized in ORS 570.405, a control area is established in Jefferson County to regulate the production of bentgrass. This control area is designed to provide physical separation between varieties of bentgrass produced using techniques of modern biotechnology and conventionally bred varieties with which they might cross-pollinate.

(3) Extent of Control Area: The control area consists of all of the following parcels in central Jefferson County, Oregon:

(a) In T10S, R13E, W.M.: sections 2, 3, 4, 5, 11, 13, 14, and 24 in their entirety; the portions of sections 10, 15, 22, 23, 26, and 35 lying east of U.S. Hwy 26; the portion of section 25 lying west of Adams Drive; the NW, SE, SW, quarter sections and the western half of the NE quarter section of section 12; the western half of the SW and NW quarter sections of section 1; the NW quarter corner of the NW quarter section of section 36, plus;

(b) In T9S, R13E W.M.: sections 28, 33, 34, and 35 in their entirety; the portions of sections 16, 20, 21, and 29 lying on the Agency Plains and above the canyon rim; the southern half of section 32 and the eastern half of the NE quarter section of section 32.

(4) Commodities Covered: bentgrass (all *Agrostis* spp.). All other crops, plants, and commodities are exempt from provisions of this regulation except processing of other grass seed crops as regulated in section (5)(c) below.

(5) Prohibited Acts:

(a) Only varieties of bentgrass that have been developed using the techniques of modern biotechnology may be planted, grown, cleaned, conditioned or handled in the control area. Conventionally bred bentgrass varieties may not be planted, grown, cleaned, conditioned or handled within the control area. This regulation applies only to bentgrass.

(b) Bentgrass fields within the control area must not be located closer than one-quarter mile from fields of conventionally bred bentgrass varieties located outside the control area. All field borders, ditch banks, and roadsides within 165 feet of the bentgrass fields must be kept free of *Agrostis* spp. Waterways leaving bentgrass fields must be kept free of *Agrostis* spp. for a distance of 165 feet.

(c) The bentgrass seed produced within the control area must be processed at a seed cleaning and packaging facility located within the control area. No conventionally bred varieties of grass seed of any type shall be cleaned or packaged at this facility.

(d) Bentgrass seed produced in the control area must be transported from the field to the cleaning and packaging facility in enclosed containers.

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Processed bentgrass seed produced in the control area may not leave the control area except in sealed commercial containers.

(e) Combine(s) used to harvest bentgrass in the control area must not be used for any other crop. Dedicated combine(s) no longer being used to harvest bentgrass in the control area must be fumigated to decontaminate all bentgrass seeds and thoroughly cleaned. Other equipment used in the harvesting and transporting of unprocessed bentgrass seed must be thoroughly cleaned before leaving the control area. Containers such as poly bags used to transport unprocessed bentgrass seed and straw must not be used for other agricultural commodities or must be thoroughly cleaned before being used for other agricultural commodities to avoid cross-contamination.

(f) All bentgrass straw produced in the control area must be burned within the control area or processed in a way that decontaminates bentgrass seeds, e.g. pelletizing. If processing occurs outside the area, the straw must travel to the processing plant in enclosed containers.

(g) Stand removal following final harvest will include the following steps: watering to promote regrowth, application of an effective herbicide (such as fluzifop or glufosinate), and shallow tillage (not plowing). The next crop must tolerate a selective herbicide that kills bentgrass and roguing or such herbicide must be used to control bentgrass volunteers. Other methods of stand removal, e.g. fumigation, may be acceptable. Growers should send a written request for approval of alternative methods to: Administrator, Plant Division, Oregon Department of Agriculture, 635 Capitol St., Salem, OR, 97301.

(h) Varieties of bentgrass that have been developed using the techniques of modern biotechnology may not be planted in Willamette Valley counties in order to prevent cross-pollination with traditionally bred varieties. This includes both seed production fields and all non-production plantings such as sod farms, golf course putting greens, tees, and fairways. Research plots are allowed in Willamette Valley counties under permit/notification from the United States Department of Agriculture.

(6) Violations: Any bentgrass or other grass seed not in compliance with the provisions of this rule is subject to destruction as determined by the Director of the Oregon Department of Agriculture. Such destruction shall be at the expense of the owner or owners or their responsible agent or agents. Violators of this control area are subject to the penalties provided by 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.190 & 570.405
Stats. Implemented: ORS 570.405

Hist.: DOA 19-2002, f. & cert. ef. 7-23-02; DOA 2-2006, f. & cert. ef. 2-6-06; DOA 2-2008, f. & cert. ef. 1-7-08

Rule Caption: Eliminates assessment for nursery emergency fund and raises price of phytosanitary certificates.

Adm. Order No.: DOA 3-2008

Filed with Sec. of State: 1-7-2008

Certified to be Effective: 1-7-08

Notice Publication Date: 11-1-2007

Rules Amended: 603-054-0016, 603-054-0017, 603-054-0018, 603-054-0024

Subject: The proposed amendments would eliminate the \$10 minimum Emergency Response Fund assessment, authorize the department to collect a new \$16 pass through administrative charge required by USDA, and raise the state charge for a phytosanitary certificate from \$10 to \$15 to pay for the additional costs of collecting, processing, and remitting the USDA pass through administrative fee.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-054-0016

License Fees: Growers and Collectors

(1) The license fee for nursery growers, other than greenhouse growers of herbaceous plants, and for collectors of native plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$100;
- (b) \$20,001–\$100,000 = \$100 plus .0031 over \$20,000;
- (c) \$100,001–\$200,000 = \$348 plus .0029 over \$100,000;
- (d) \$200,001–\$500,000 = \$638 plus .0023 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$1,328 plus .0014 over \$500,000;
- (f) \$2,000,001 & above = \$3,428 plus .0004 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to

maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08

603-054-0017

License Fees: Greenhouse Growers of Herbaceous Plants

(1) The license fee for greenhouse growers of herbaceous plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$100;
- (b) \$20,001–\$100,000 = \$100 plus .00125 over \$20,000;
- (c) \$100,001–\$200,000 = \$200 plus .001 over \$100,000;
- (d) \$200,001–\$500,000 = \$300 plus .0005 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$450 plus .00025 over \$500,000;
- (f) \$2,000,001 & above = \$825 plus .0004 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08

603-054-0018

License Fees: Dealers, Florist and Landscape Contractors

(1) The license fee for dealers, florist, and landscape contractors shall be as follows: If annual purchases (live plant material only, cut flowers are exempt) are — The license fee is:

- (a) Up to \$20,000 = \$100;
- (b) \$20,001–\$100,000 = \$100 plus .00125 over \$20,000;
- (c) \$100,001–\$200,000 = \$200 plus .001 over \$100,000;
- (d) \$200,001–\$500,000 = \$300 plus .0005 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$450 plus .00025 over \$500,000;
- (f) \$2,000,001 & above = \$825 plus .0004 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual purchases. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual purchases.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08

603-054-0024

Fees for Issuance of Phytosanitary and Other Certificates

The following fees and charges are established for inspections requested by nurseries in order to issue state or federal phytosanitary certificates and any other certificate that requires inspection prior to issuance of such certificates. The charge for certificates will be \$15 each plus the \$16 pass through administrative charge required by USDA.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.145

Hist.: DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08

Rule Caption: Amending Malheur white hot control area to clarify language on acceptable sources of propagative materials.

Adm. Order No.: DOA 4-2008

Filed with Sec. of State: 1-11-2008

Certified to be Effective: 1-11-08

Notice Publication Date: 11-1-2007

Rules Amended: 603-052-0347

Subject: The proposed amendment is to the onion white hot control area order for Malheur county. The amendment clarifies the type and

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sources of propagative materials that may be used for commercial onion production in Malheur County.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0347

Control Area and Procedures in Malheur County

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the onion industry in the following described area through the eradication or control of onion white-rot disease caused by *Sclerotium cepivorum*. Such control area includes all of Malheur County.

(2) The following methods of control are declared to be the proper methods to be used in the control area described in section (1) of this rule, for the control and prevention of the introduction of onion white-rot disease into the area:

(a) No person shall import into the control area for the purpose of propagation any bulbs, sets, or seedlings of onion, garlic, leek, chive, shallots, or other *Allium* spp. except those produced in adjacent Idaho counties covered by the Idaho Rules Governing White-Rot Disease of Onion (IDAPA 02.06.07) in Ada, Canyon, Elmore, Gem, Payette, Owyhee, Twin Falls, and Washington counties;

(b) Commercial onion propagation within the control area shall be limited to production from seed, or if vegetative propagative material is used, that material must be produced within the control area or within the adjacent counties in Idaho described in subsection (a) of this section;

(c) Except as provided in subsections (c) and (d) of this section, no person shall in any manner import or move machinery, tools, or equipment into the control area, which have previously been used in any manner on fields outside the control area where the host plants named in subsection (a) of this section have been cultivated. Machinery, tools, or equipment may be imported or moved into the control area if they are first cleaned and sterilized to the satisfaction of and with the prior approval of the Department. The cleaning shall include the thorough removal of all dirt by the use of steam under pressure. Sterilization shall be accomplished by the use of steam. For the purposes of this subsection, "machinery, tools, or equipment" includes, but is not limited to, farm trucks, harvesters, and tillage equipment;

(d) Machinery, tools, or equipment utilized in the adjacent Idaho Counties covered by the Idaho Rules Governing White-Rot Disease of Onion in Ada, Canyon, Elmore, Gem, Payette, Owyhee, Twin Falls, and Washington Counties are exempt from the prohibitions in subsection (c) of this section;

(e) The Department may stop the movement into or within the control area of any machinery, tools, or equipment which have not been cleaned and sterilized as provided in this subsection, until such machinery, tools, or equipment are so cleaned and sterilized.

(3)(a) The Department may inspect any onions or onion planting areas within the control area during any time of the year to determine whether the disease organism is present therein. If the Department finds that any onions, whether or not being transported, or any fields are infested with the disease organism, it shall by written order, delivered or mailed to the onion grower or field owner, direct the control and eradication of the infestation, and may prior to issuance of the order, seize any infested onions which are separated from the land on which grown;

(b) Movement of such onions within the control area or removal of such from the control area may be carried out only with the Department's prior approval and under its supervision.

(4) Control and eradication methods used shall only be those approved by the Department and may include:

(a) The destruction of any infested onions;

(b) A directive that a specific part or all of any infested area be taken out of onion production;

(c) A directive that any infested area be fenced, properly diked to prevent off-flow of irrigation or rainwater, and planted to an approved crop which will prevent soil erosion and will not require annual tillage;

(d) Prohibit the pasturing of animals on any infested area;

(e) A directive that equipment, tools, and machinery used on an infested area be cleaned and sterilized as described in section (3) of this rule prior to removal from said area.

(5) The Department may, with the consent of the owner, allow use of an infested growing area as an experimental plot by Oregon State University for onion white-rot research. Such use shall be subject to the prior approval of, and supervised by the Department.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 2-1977, f. 2-9-77, ef. 3-1-77; DOA 4-2008, f. & cert. ef. 1-11-08

Department of Agriculture, Oregon Wheat Commission Chapter 678

Rule Caption: Sets per diem and reimbursement for substitute rates for commissioners that correspond with ORS 292.495.

Adm. Order No.: WHEAT 1-2008

Filed with Sec. of State: 1-11-2008

Certified to be Effective: 1-11-08

Notice Publication Date: 10-1-2007

Rules Adopted: 678-030-0000, 678-030-0010, 678-030-0020, 678-030-0030

Subject: The adoption of OAR 678-030-0000 would allow the commission to compensate for time spent on commission business. The compensation of up to \$30.00 per day, in accordance with ORS 292.495(1), could be allocated subject to the availability of funds and commission budget decisions.

The adoption of OAR 678-030-0010 allows commissioners to receive reimbursement for actually expenses incurred in the performance of commission business.

The adoption of OAR 678-030-0020 allows for the reimbursement of a commission up to \$25.00 per day to employ a substitute to perform the duties while the commissioner is conducting commission business.

The adoption of OAR 678-030-0030 limits commissioner terms to two consecutive four year terms. Should a vacancy occur the Director of the Oregon Department of Agriculture will appoint a replacement for the remainder of the term.

Rules Coordinator: Tana Simpson—(503) 229-6665

678-030-0000

Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Wheat 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 Wheat Commission a written claim for compensation by the 20th 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, 578.060, 576.206(7)

Stats. Implemented: ORS 578 & 576

Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08

678-030-0010

Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)–(5) of this rule, a member of the Oregon Wheat 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 Wheat Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 20th day of the calendar month following the month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

(a) Date on which the member incurred the expense; and

(b) Nature of the expense; and

(c) Amount of the expense.

(3) An expense that exceeds \$500.00 dollars must be authorized by the Oregon Wheat 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.

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Stat. Auth.: ORS 292.495, 578.060
Stats. Implemented: ORS 578 & 576
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08

678-030-0020

Reimbursement for Hiring a Substitute

(1) As used in OAR 678-015-0010, "other expenses" includes expenses incurred by a member of the Oregon Wheat 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 578 & 576
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08

678-030-0030

Term Limits

Each member is requested to fulfill a four-year term, with a maximum of two consecutive terms. Should a vacancy occur, the Director of the ODA would appoint a replacement for the remainder of the term.

Stat. Auth.: ORS 578.030, 576.206(5)
Stats. Implemented: ORS 578 & 576
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08

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

Rule Caption: Clarifies procedures to assume responsibility for a building inspection program from the state.

Adm. Order No.: BCD 12-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 918-020-0094

Rules Repealed: 918-020-0094(T)

Subject: This rule clarifies the processes and procedures to request and assume responsibility to administer and enforce the state building code from state administered building inspection programs.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-020-0094

Program Assumption by State-Administered Jurisdictions

A municipality that requests responsibility for the administration and enforcement of a building inspection program administered by the division must meet the requirements for assumption in ORS 455.148(7) and (11)(c).

Stat. Auth.: ORS 455.148
Stats. Implemented: ORS 455.148
Hist.: BCD 11-2007(Temp), f. & cert. ef. 11-15-07 thru 4-1-08; BCD 12-2007, f. 12-28-07 cert. ef. 1-1-08

Rule Caption: Allows residential inspectors to inspect all types of residential structures during construction.

Adm. Order No.: BCD 13-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Amended: 918-098-1012, 918-098-1015

Subject: These rules expand the scope of work allowed under a residential inspector certification to include all types of residential structures including manufactured dwellings.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-098-1012

Scope Of Work Allowed For Persons With An Oregon Inspector Certification and an International Code Council Certification

(1) Individuals meeting the experience requirement in OAR 918-098-1010 who possess a valid Oregon Inspector Certification and a current International Code Council certification may perform work based on the type of International Code Council Certification they possess.

(2) A Certified Building Official Legal/Management may oversee a jurisdictions administration and enforcement of the state building code for those specialty codes assumed by the jurisdictions pursuant to ORS

455.148 or 455.150. Building officials may not perform plan-reviews or inspections unless they possess the appropriate certification for the type of plan review or inspection being performed.

(a) Commercial Building Inspector certificate holders may conduct construction inspections for:

(A) All work regulated by the **Oregon Structural Specialty Code**; and

(B) Structural work on townhouse structures, rowhouse structures, and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(b) Commercial Building Plans Examiner certificate holders may review construction plans for:

(A) Compliance with the provisions of the **Oregon Structural Specialty Code** and **Oregon Fire Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) Fire and life safety construction on townhouse structures, rowhouse structures, and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(c) Commercial Fire Plans Examiner certificate holders who also have the Commercial Building Plans Examiner Certificate may review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code** and the **Oregon Fire Code**.

(d) A Commercial Mechanical Inspector certificate holder may conduct construction inspections and may review construction plans for:

(A) All work regulated by the **Oregon Mechanical Specialty Code**; and

(B) Mechanical work on townhouse structures, rowhouse structures and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(e) A Residential Building Inspector certificate holder may conduct construction inspections and plan reviews for:

(A) Structural work regulated by the **Oregon Residential Specialty Code**, except apartment buildings; and

(B) Construction work on manufactured structures and accessory buildings and structures regulated under the **Oregon Manufactured Dwelling and Park Specialty Code** or the **Manufactured Home Construction and Safety Standards** in 24 CFR, § 3280 and § 3282. Construction work does not include the scope of work described in OAR 918-098-1305.

(f) A Residential Mechanical Inspector certificate holder may conduct inspections and plan reviews for:

(A) Mechanical work regulated by the **Oregon Residential Specialty Code**, except for apartment buildings; and

(B) Mechanical work on manufactured dwelling alterations under the **Oregon Manufactured Dwelling and Park Specialty Code**.

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

Stat. Auth.: ORS 455.720 & 455.730
Stats. Implemented: ORS 455.720 & 455.730
Hist.: BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 13-2007, f. 12-28-07 cert. ef. 1-1-08

918-098-1015

Scope of Work for Persons Holding Oregon Code Certifications

Persons who possess a current Oregon Code Certification may perform inspections and plan reviews based on the class designated on their certificate. The classes, other than electrical and plumbing inspector classifications found in OAR 918-281-0020 and 918-695-0400, are:

(1) Building Official. Persons certified as a Building Official legal management certification may oversee jurisdictions' administration and enforcement of the state building code for those specialty codes assumed by the jurisdiction(s) pursuant to ORS 455.148 or 455.150. Building officials may not perform plan-reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(2) Fire and Life Safety. Persons certified as fire and life safety plans examiners review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code** and the **Oregon Fire Code** for any structure regulated by the **Oregon Structural Specialty Code**.

(3) A-Level.

(a) Persons certified as A-level structural plans examiners:

(A) May review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code** and **Oregon Fire Code** for all work regulated by the **Oregon Structural Specialty Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) May review construction plans for work that falls within the B-level structural plans examiner classification.

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(b) Persons certified as A-level structural inspectors:

(A) May conduct construction inspections of all work regulated by the **Oregon Structural Specialty Code**; and

(B) May conduct inspections of work that falls within the B-level structural inspector classification.

(c) Persons certified as A-level mechanical inspectors:

(A) May conduct construction inspections and may review construction plans for all work regulated by the **Oregon Mechanical Specialty Code**; and

(B) May conduct inspections and may review construction plans for work that falls within the B-level mechanical inspector classification.

(4) B-Level.

(a) Persons certified as B-level structural plans examiners may review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code** and **Oregon Fire Code** for work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(b) Persons certified as B-level structural inspectors may conduct construction inspections of work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(c) Persons certified as B-level mechanical inspectors may conduct construction inspections of work regulated by the **Oregon Mechanical Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(d) Persons certified as B-level structural plans examiners, B-level structural inspectors or B-level mechanical inspectors:

(A) May qualify to be certified to review construction plans or conduct inspections of structures regulated by the **Oregon Residential Specialty Code**; and

(B) Shall not be authorized to review construction plans or conduct inspections of structures that are outside the B-level classification without first obtaining the appropriate certification.

(5) One and two family dwelling or residential.

(a) Persons certified as one and two family dwelling or residential:

(A) Structural inspectors may conduct construction inspections of structural work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured structures and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code** or the **Manufactured Home Construction and Safety Standards** located in 24 CFR § 3280 and § 3282 but not the scope of work described in OAR 918-098-1305;

(B) Mechanical inspectors may conduct inspections of mechanical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations under the **Oregon Manufactured Dwelling and Park Specialty Code**;

(C) Plumbing inspectors may conduct inspections of plumbing work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings; and

(D) Electrical inspectors conduct inspections of electrical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings.

(b) Persons certified as a one-and-two family dwelling plans examiners review construction plans for compliance with provisions of the **Oregon Residential Specialty Code**, excluding apartment buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code** or the **Manufactured Home Construction and Safety Standards** located in 24 CFR § 3280 and § 3282.

(c) Persons certified as a one and two family dwelling or residential inspectors and plans examiners shall not be authorized to review construction plans or conduct inspections of either A-level or B-level structures without the required commercial A-level or B-level certification.

(d) See OAR 918-098-1325 for additional requirements of one and two family dwelling residential inspectors and plans examiners performing manufactured dwelling alteration inspections or plan reviews.

(e) See OAR 918-098-1330 for additional requirements of one and two family dwelling residential inspectors performing manufactured structure accessory structure or accessory building inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 24-1978, f. & ef. 9-1-78; DC 10-1980, f. & ef. 9-10-80; DC 4-1983, f. & ef. 1-12-83; Renumbered from 814-003-0065; BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0065; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0060; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0060; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 13-2007, f. 12-28-07 cert. ef. 1-1-08

Rule Caption: Clarifies boiler definitions and distinguishes permit types based on changes made in Senate Bill 193.

Adm. Order No.: BCD 14-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 918-225-0240, 918-225-0600, 918-225-0610

Subject: These rules clarify definitions and distinguish permit types in the boiler safety program's rules based on changes made in Senate Bill 193 (2007)

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-225-0240

Definitions

As used in OAR 918, division 225, unless the context requires otherwise:

(1) "Agricultural Purposes" means:

(a) Sowing, tending, and harvesting of products of the soil grown under natural conditions;

(b) Raising of poultry or fowl;

(c) Pasturage or raising of livestock or other animals; or

(d) Original processing of the farm product, but not the processing of the product of a different operator, or reprocessing work as freezing, canning, or packing if performed substantially for commercial purposes.

(2) "Available" to determine inspection fees at cost, means the vessels must be due for inspection in the year the notification is applicable, and must all be ready for inspection at the time designated by the inspector.

(3) "Board" is defined in ORS 480.515(1).

(4) "Boiler Room" means any enclosed room or designated space within a building, intended by design or by usage to contain a boiler that is connected and available for use. A boiler located in an area not meeting the definition of "boiler room" under OAR 918-225-0465 shall apply to any space within 20 feet of any burner.

(5) "Building Service Piping" means piping systems operating at or less than 150 psig steam; and water at or less than 160 psig and 250°F, as described in **ANSI/ASME Standard B31.9**.

(6) "Chief Inspector" means the inspector appointed by the Director pursuant to ORS 480.565(1).

(7) "Farm" means an area of land:

(a) Located in a rural district;

(b) Of sufficient size to generally be considered as a farm in its locale; and

(c) Devoted primarily to tillage and raising crops under natural conditions, or to raising animals, fowl, or poultry.

(8) "Emergency" as used in ORS 480.630(6) means an unplanned circumstance requiring immediate repair, installation, replacement or shutdown because of risk to health, life or property.

(9) "Hobby" or "Demonstration" means recreational or other non-commercial use.

(10) "Immediate Safety Hazard" means hazardous conditions exist requiring immediate correction to a boiler, pressure vessel or pressure piping system to preserve the safety of people or property.

(11) "Installer," as used in the boiler or pressure vessel laws and rules, means the person making the water, steam, air, refrigerant or other product piping connection to the boiler or pressure vessel. A person who transports or merely positions the boiler or pressure vessel is not an "installer." An electrician making electrical connections is not an "installer."

(12) "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

(13) "Operating" means any vessel connected and ready for service.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.

(15) "Place of Public Assembly" means a building used or held for use, in whole or in part, for worship, health treatment, rest, recuperation or

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retirement living; child care nurseries or institutions; public meetings; education; instruction; entertainment; eating; recreation; or awaiting transportation.

(16) "Pressure Piping" means piping systems and components under the scope of **ASME B31.1, B31.3, B31.5 and B31.9**.

(17) "Pressure Relief Valve" means a valve activated by inlet static pressure which opens in proportion to the increase in pressure over the opening pressure range. Only ASME approved valves are allowed under the boiler rules.

(18) "Pressure Vessel" is defined in ORS 480.515(10).

(19) "Psig" means pounds per square inch gauge pressure.

(20) "Quantity," to determine inspection fees at cost, means six or more vessels.

(21) "Related Appurtenance" is defined in ORS 480.515(11).

(22) "Safety Valve" means a valve activated by inlet static pressure and characterized by rapid opening or pop action. Only ASME approved valves are allowed under the boiler rules.

(23) "Same Location," to determine inspection fees at cost, means that all vessels are within 2,000 feet of one another.

(24) "Service of Process" means deposit in the U.S. mail a copy of a notice addressed to the respondent at the respondent's last known address.

(25) "Single Family Dwelling" means a one-family dwelling structure.

(26) "Process Piping Inspector" means the owner's inspector, for the inspection of **ASME B31.3 Process Piping**, Category "M" fluid service only.

(27) "Structure" means a building or shed with a roof and enclosed on the sides 75 percent or more.

(28) "Traction Boiler" means a boiler constructed before January 1, 1961, designed to operate or pull equipment, or to convert steam power into a flywheel energy driving apparatus such as a thresher, road roller, or grinding equipment.

(29) "Vessel That is Considered Subject to Corrosion or Erosion" means the vessel contains or is intended to contain contents having a corrosive or erosive effect on any portion of the vessel. The use of glass linings leaves a vessel subject to corrosion unless all portions of the vessel are impervious to the corrosive or erosive effects of the contents.

Stat. Auth.: ORS 455.030 & 480.545

Stats. Implemented: ORS 480.525, 480.545, 480.550, 480.560 & 480.565

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 3-1982, f. & ef. 2-3-82; DC 1-1984, f. & ef. 1-5-84; BCA 4-1989, f. & cert. ef. 4-17-89; Renumbered from 814-025-0003; BCA 4-1989, f. & cert. ef. 4-17-89; BCA 5-1991, f. & cert. ef. 3-15-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0005; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 4-2003, f. & cert. ef. 3-14-03; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 20-2005, f. 9-15-05, cert. ef. 10-1-05; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08

918-225-0600

Permits

The **Boiler and Pressure Vessel Law** authorizes three general permits:

(1) An installation, alteration or repair permit is required under ORS 480.630, before installing, altering or repairing a nonexempt boiler or pressure vessel.

(2) An operating permit is required, under ORS 480.585, before placing a nonexempt vessel into operation. The permit is issued to the responsible party to operate a certain type of boiler or pressure vessel for a specified period of time. The permit remains in effect and valid if the permitted vessel is removed and replaced in-kind. "Replacement in-kind" means the replacement vessel is of the same type and same permit code as the original vessel. The responsible party must notify the Division when replacing a permitted vessel. Operating permits are not transferable to a new responsible party.

(3) A special permit is required, under ORS 480.600(2), for a vessel inspected by a special inspector, as provided in ORS 480.570. When a vessel that has a special permit is found to be in violation of the minimum safety standards, as defined in ORS 480.515, an operating permit under section (2) of this rule, is required.

(4) Permits to operate boilers or pressure vessels shall be issued periodically according to vessel type, based on the schedule established by the division in **Table 1-A**.

(5) No permit is required for shop inspections of vessels manufactured or to be installed in this state under ORS 480.570(2)(a). A permit is required, however, under section (1) of this rule, for vessel installation.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.545, 480.585, 480.595, 480.600 & 480.630

Stats. Implemented: ORS 480.570, 480.585, 480.595, 480.600 & 480.630

Hist.: BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08

918-225-0610

Fees for Permits and Inspections

(1) Purpose and Scope of Rules. This rule sets permit and inspection fees.

(2) Authority for Action:

(a) ORS 480.595 authorizes the Board to establish boiler permit fees.

(3) ORS 480.607 authorizes establishment of fees and increases up to ten percent on fees set by ORS 480.595(3) and (4), 480.600(2), and 480.630(4) and (6).

(4) Other license fees are authorized by ORS 480.630.

(5) Permit fees generally under ORS 480.595 are established:

(a) Effective January 1, 2002, under ORS 480.595(3) and 480.607, operating permit fees, are:

(A) Boilers of 15 horsepower or less, \$71.50;

(B) Boilers greater than 15 horsepower to 100 horsepower, \$93.50;

(C) Boilers greater than 100 horsepower to 500 horsepower, \$110;

(D) Boilers greater than 500 horsepower, \$121;

(E) Cast iron boilers, \$71.50;

(F) Pressure vessels having a product volume of 20 cubic feet or less, \$60.50;

(G) Pressure vessels having a product volume greater than 20 cubic feet, \$82.50.

(b) The reinspection fee provided in ORS 480.595(4) shall be charged at the rate of \$66 per hour for travel and inspection time to defray the cost of a reinspection when deviations from the minimum safety standards are found during any inspection.

(6) The special permit fee set out in ORS 480.600(2) is \$27.50.

(7) Miscellaneous fees under ORS 480.605:

(a) The fees for shop inspection service provided in ORS 480.605(1) and witnessing hydrostatic or other tests under ORS 480.605(3) are:

(A) Hourly charges for travel and inspection, \$66;

(B) Hourly charge for travel and inspections before 8 a.m., after 5 p.m., on weekends and holidays, \$99.

(b) In addition to the hourly charge the actual cost of meals and lodging are also charged.

Stat. Auth.: ORS 480.545, 480.595, 480.600, 480.605, 480.607 & 480.630

Stats. Implemented: ORS 580.595, 480.600, 480.605, 480.607 & 480.630

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 8-1980, f. & ef. 7-1-80; DC 1-1981, f. & ef. 1-22-81; Renumbered from 814-025-0025; BCA 8-1990, f. 4-18-90, cert. ef. 5-1-90; BCA 13-1990, f. & cert. ef. 6-6-90; BCA 20-1991(Temp), f. & cert. ef. 6-14-91; BCA 30-1991, f. & cert. ef. 9-9-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0050; BCD 10-1996(Temp), f. & cert. ef. 7-1-96; BCD 28-1996, f. & cert. ef. 12-6-96; BCD 16-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2002(Temp), f. & cert. ef. 7-19-02 thru 1-14-03; BCD 31-2002, f. 12-20-02 cert. ef. 1-1-03; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 14-2007, f. 12-28-07 cert. ef. 1-1-08

Rule Caption: Defines "domestic" tankless water heater exempted from boiler safety law under HB 3360 (2007).

Adm. Order No.: BCD 15-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 918-225-0345

Subject: This rule defines a "domestic" tankless water heater for purposes of the exemption from the boiler and pressure vessel law under House Bill 3360 (2007).

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-225-0345

Domestic Tankless Water Heater Definition

For the purpose of ORS 480.525(1)(c), "domestic" means a water heater designed to create hot water instantaneously on demand without the use of a storage tank located within and serving a single Residential Group R dwelling unit or sleeping unit as defined in the Oregon Structural Specialty Code.

Stat. Auth.: ORS 455.030

Stats. Implemented: Chapter 386 OL 2007

Hist.: BCD 15-2007, f. 12-28-07 cert. ef. 1-1-08

Rule Caption: Electrical licensing changes, including deletions, clarifications and reductions in terms of apprenticeship.

Adm. Order No.: BCD 16-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 918-282-0220, 918-282-0240, 918-282-0355

Rules Repealed: 918-282-0210, 918-282-0300, 918-282-0310

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Subject: These rules implement electrical licensing changes made by the legislature that eliminate obsolete license types, reduce the terms of apprenticeship for certain licenses, and clarify the scope of work and the requirements to qualify for other licenses.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-282-0220

Limited Journeyman Sign Electrician License

- (1) A limited journeyman sign electrician:
 - (a) Installs and services electrical signs and outline lighting;
 - (b) Shall be employed by a limited sign contractor;
 - (c) May extend a sign branch circuit not more than 15 feet if the dedicated branch circuit exists at that location; and
 - (d) Is not permitted to:
 - (A) Install a branch circuit from an electrical panel;
 - (B) Install control equipment not located on the same wall or post, inside or outside the building;
 - (C) Install branch circuits; or
 - (D) Perform work on service equipment.
- (2) A licensed apprentice, after completing the sixth period of apprenticeship training, may service signs without supervision. "Servicing" is the replacement of incandescent, high intensity discharge and fluorescent lamps and cleaning and painting the sign interior.
- (3) This license is not required to install the footing or pole, or to operate the equipment required to access or set in place an electric sign, or to clean and paint the sign exterior.
- (4) License and Equivalent Requirements. Applicants for acceptance under equivalent requirements shall show proof of the following work categories and minimum hours of on-the-job training or experience:
 - (a) Stock room and material handling, 100 hours;
 - (b) Pattern and blueprints, 150 hours;
 - (c) Layout design, 500 hours;
 - (d) Assembly of display, 1,000 hours;
 - (e) Display painting and component parts, 250 hours;
 - (f) Display installation, service and maintenance, 1,250 hours; and
 - (g) Transportation and hoisting equipment maintenance and repair, 750 hours.

(h) Related Training Classes. Applicants shall submit transcripts with passing grades of "C" or better in graded classes and "pass" in non-graded classes in the following related electrical training classes pertaining to sign installation:

- (A) Electrical fundamentals and basic theory;
- (B) Wiring methods, under 600 volts nominal;
- (C) Wiring methods, over 600 volts nominal;
- (D) Conduit systems, raceways and boxes; and
- (E) Introduction to the National Electrical Code.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0940; BCD 119-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-320-0150; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 16-2007, f. 12-28-07 cert. ef. 1-1-08

918-282-0240

Limited Maintenance Electrician License

- (1) A limited maintenance electrician:
 - (a) Maintains, repairs and replaces electrical installations on the premises of an industrial plant where the individual is employed;
 - (b) Maintains, repairs and replaces electrical installations on systems that are less than 600 volts phase to phase on the premises of a commercial office building, a building occupied by the state or by a local government entity or a facility designated by the board, where the individual is employed; and
 - (c) Is not authorized to make any new electrical installations or to perform any work on services.
- (2) License and Equivalent Requirements. Applicants who did not complete an approved apprenticeship program shall verify 4,000 hours of on-the-job training or experience for the following work categories and minimum hours:
 - (a) Motors, generators and heating equipment, 500 hours;
 - (A) Assembly and testing;
 - (B) Repair and maintenance;
 - (C) Internal and external connections to change direction of rotation, speed and supply voltage;
 - (D) Motor setting, drives, pulleys, gears and coupling devices;
 - (E) In-place motor cleaning (maximum 100 hours credit);
 - (b) Controls, manual and automatic, including magnetic and solid state, 1,000 hours;
 - (c) Trouble shooting, 1,000 hours;

(d) Power distribution, inside and outside, high and low voltage distribution systems, maintenance and replacement, 500 hours;

(e) Lighting, 500 hours;

(f) Electrical oriented drawings, 100 hours;

(g) Total Hours Required. The minimum work hours under each subject shall not be less than the hours specified. No more than 300 percent credit shall be allowed under subjects (a) through (f) for any one subject;

(h) The applicant's on-the-job training or work experience shall be supervised by a:

(A) General supervising electrician;

(B) Limited supervising manufacturing plant electrician;

(C) General journeyman electrician;

(D) Limited journeyman manufacturing plant electrician; or

(E) Limited maintenance electrician;

(i) Required Educational Training. Applicants shall submit transcripts verifying successful completion, with passing grades of "C" or better in graded classes and a "pass" in non-graded classes, in the following subject areas:

(A) Electricity and electronics;

(B) Fundamental mechanical principles;

(C) Mathematics of the trade;

(D) Instrumentation and controls;

(E) Federal, state and local electrical laws, codes and rules;

(F) Blueprint reading, electrical drawing, pictorial, block, one-line and schematic drawings;

(G) Industrial electrical safety; and

(H) Certified cardiopulmonary resuscitation (CPR) course.

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.630

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0970; BCD 8-1996(Temp), f. & cert. ef. 6-14-96; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0180; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 16-2007, f. 12-28-07 cert. ef. 1-1-08

918-282-0355

Licensing Requirements for Class "A" Limited Energy Technician

(1) License and Equivalent Requirements. Applicant shall have a minimum of 6,000 hours of lawfully obtained experience. Experience must be verified as established in OAR division 30. This experience shall be obtained as follows

(a) By successful completion of a board-approved Class "A" limited energy apprenticeship program; or

(b) Through limited energy electrical experience equivalent to a Class "A" board-approved limited energy apprenticeship program.

(2) Persons utilizing lawful experience may meet equivalent experience requirements by providing verification as required by OAR 918-030-0030 through 918-030-0050.

(3) Applicants for approval under equivalent requirements must show proof of the following work categories and minimum hours of on the job training or experience:

(a) Stock room and materials, 150 hours:

(A) Shop;

(B) Service;

(b) Limited energy wiring, 2,400 hours:

(A) Installation;

(B) Wire pulling;

(C) Splices;

(D) Conduit;

(E) Flex;

(F) Tray and duct;

(G) Control panels and controls;

(H) Wiring devices;

(I) Removal and finish work;

(c) Trouble shooting and maintenance, 375 hours;

(d) Outdoor installation, overhead and underground, 75 hours; and

(e) Trade-specific installations, 3,000 hours of which at least 750 hours must be from paragraph (A) below:

(A) Protective signaling, including but not limited to;

(i) Fire alarm;

(ii) Nurse call;

(iii) Security;

(B) Medical;

(C) Data and telecommunications;

(D) CCTV, paging and sound;

(E) Instrumentation and HVAC;

(4) Total Hours Required. Total electrical work experience shall be at least 6,000 hours. No more than 300 percent credit shall be allowed in work categories (a) through (d) in Section (3) of this rule.

ADMINISTRATIVE RULES

(5) Related Training Classes. Additionally, applicants shall have a minimum of 432 hours of related classroom training as outlined in the following:

- (a) Electrical mathematics;
- (b) Safety and accident prevention;
- (c) Care and use of hand and power tools;
- (d) Blueprint reading and electrical symbols;
- (e) Introduction to the National Electrical Code;
- (f) Electrical fundamentals and basic theory, including AC and DC;
- (g) Electrical measuring devices;
- (h) Wiring methods;
- (i) Related electrical statutes and rules;
- (j) Fundamentals of electronics;
- (k) Transformers;

Stat. Auth.: ORS 479.730, 183.335

Stats. Implemented: ORS 479.905, 479.910, 479.915 & 183.335

Hist.: BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 16-2007, f. 12-28-07 cert. ef. 1-1-08

Rule Caption: Implementation for licensing consistency and implementation of reciprocating conveyor license.

Adm. Order No.: BCD 17-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 918-030-0200, 918-030-0220, 918-030-0230, 918-225-0640, 918-282-0130, 918-400-0280, 918-400-0333, 918-400-0340, 918-400-0380, 918-400-0800, 918-780-0030

Subject: These proposed rules implement HB 2219 by eliminating licensing examination fees, establishing consistent terminology for “application” and “renewal” fees and adjusting without increasing fee amounts to reflect the new 3-year licensing cycles. These rules also implement license terms for reciprocating mechanic and restricted reciprocating conveyor mechanic licenses consistent with established elevator trade license terms. These rules also correct the electrical and elevator contractor license term, which was overlooked during HB 2181 license consistency rules implementation in October 2006.

These rules further implement HB 2548 by creating the Reciprocating Conveyor Mechanic and Restricted Reciprocating Conveyor Mechanic licenses by establishing the type of qualifying work experience, training, supervision, oversight and other related licensing requirements.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-030-0200

License Renewal Process

(1) License renewals must be completed on or prior to the license expiration date by:

- (a) Submitting a renewal application or completing the online renewal form;
- (b) Completing all continuing education requirements; and
- (c) Paying the license renewal fee.

(2) The division mails one renewal notification to the last known address of the licensee at least 30 days prior to license expiration. It is the responsibility of the licensee to notify the division of a change in the licensee’s address.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 7-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-030-0220

Transitional Rule for License Expiration Dates

Nothing in these rules shall prevent the following licenses from renewing as follows:

(1) All combination licenses expire on July 1, 2006 unless renewed. Combination licenses next expire on July 1, 2008 and every three years thereafter.

(2) All contractor licenses except the electrical elevator contractor licenses expire on July 1, 2006 unless renewed. Contractor licenses described in this section next expire on July 1, 2008 and every three years thereafter. Electrical elevator contractor licenses expire annually on October 1 unless renewed. Electrical elevator contractor licenses shall con-

tinue to expire annually until October 1, 2009 and then shall expire every three years thereafter.

(3) All boiler licenses, including the boiler business license expire annually on July 1, unless renewed. Boiler licenses shall continue to expire annually until July 1, 2008 and then shall expire every three years thereafter.

(4) The elevator contractor mechanical license expires on July 1, 2006 unless renewed. Licenses described in this section next expire on July 1, 2007 and every three years thereafter.

(5) A holder of a journeyman plumber license that expires on April 1, 2007 shall be issued a license that expires on April 1, 2011, if the license holder renews the license prior to the April 1, 2007 expiration date. A license holder described in this section must complete 24 hours of approved continuing education prior to April 1, 2011 in order to renew the license.

(6) Reciprocating conveyor mechanic licenses and restricted reciprocating conveyor mechanic licenses issued on or after January 1, 2008 first expire on July 1, 2011 and every three years thereafter.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-030-0230

Failure to Renew

(1) A licensee who fails to renew a license must not perform work requiring the expired license.

(2) A licensee who fails to renew a license may obtain a valid license within one year of the date the license expired if the licensee:

- (a) Reapplies for the license;
- (b) Pays the license renewal fee; and
- (c) Completes all outstanding continuing education requirements that accrued prior to license expiration.

(3) A licensee who fails to renew under OAR 918-030-0200 and fails to obtain a valid license in Section (2), must apply for the license under OAR 918-030-0200, including passing the appropriate examination.

(4) Applicants reapplying under sections (2) or (3) of this rule are not required to re-qualify for examination or provide work history information unless the requirements for the license have changed since the applicant originally applied to the division.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-225-0640

Business and Trade License Fees

(1) Licenses required by ORS 480.630 shall be issued by the division to applicants who meet the requirements for the license and apply as established in OAR division 30.

(2) For applications received by the division prior to May 15, 2008 the application fee for a business license shall be \$165 and the application fee for a trade license shall be \$27.50. Any license issued prior to May 15, 2008 expires on July 1, 2008.

(3) The following fees apply for a three-year license term as established in OAR 918-030-0220:

- (a) Boiler business license application and renewal fees - \$495
- (b) Class 1 and 6 boiler trade license application and renewal fees — \$82.50
- (c) Class 2, Class 3, Class 4, Class 5, Class 5A and 5-B boiler trade license fees:

(A) Application fee — \$82.50

(B) Renewal fee — \$112.50, which includes a \$30 fee to track continuing education under ORS 480.545 and OAR 918-225-0670.

Stat. Auth.: ORS 455.117, 480.545, 480.630

Stats. Implemented: ORS 480.630

Hist.: BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-282-0130

Fees

The division charges an application and license renewal fee as specified in ORS 479.840.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0830; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0040; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

918-400-0280

Board-Created Definitions

For the purposes of OAR 918, division 400, unless the context requires otherwise, the following definitions are adopted:

(1) "Alteration" is a change of original design or operation through modernization; replacement of components or assemblies, or upgrade to existing equipment.

(2) "ANSI" means the American National Standards Institute.

(3) "Apprentice" means any person who is enrolled in an approved elevator apprenticeship program.

(4) "ASME" means the American Society of Mechanical Engineers.

(5) "Board" means the Electrical and Elevator Board.

(6) "BOLI" means the Bureau of Labor and Industries Apprenticeship Division.

(7) "Conveyance" is the industry term for elevator and includes, but is not limited to, escalator, man-lift, inclined elevator, dumbwaiter, lowerator, platform hoist, material lift, moving walk, platform or wheelchair lift and chair lift.

(8) "Electrical equipment" means any device or group of components that is connected to a source of electrical power. Such devices include, but are not limited to, electro-mechanical switches, controllers, motors, car and hall fixtures, lighting fixtures or any other component that has exposed electrical parts or connections either by design or when protective covers are removed.

(9) "Elevator Lobby" is the area in front of an elevator for waiting, boarding, disembarking, loading and unloading.

(10) "Equipment testing" means safety tests required by the adopted safety standard and required to be performed by properly licensed elevator technicians.

(11) "Industrial plant" means a facility engaged in a manufacturing endeavor to make a finished product using raw materials, especially on a large industrial scale wherein elevators are located and maintained by authorized plant personnel.

(12) "Interactive testing and maintenance" means that which requires interaction with the technical components of controllers and machinery and except where allowed by law, interactive testing and maintenance checks shall be performed only by licensed elevator personnel. This includes, but is not limited to, car and counterweight safety tests, pressure relief tests, buffer tests, brake tests, unintended car movement and ascending car over-speed tests.

(13) "License" means a document that signifies competency to install, repair, alter or maintain elevator mechanical equipment within a particular field in the elevator industry.

(14) "Maintenance" is the renewal of operating parts, cleaning, lubricating and adjusting existing elevator equipment to ensure proper and safe operation as required by code.

(15) "Mitigating Circumstances" are caused by a lack of materials or labor and are beyond the reasonable control of a building owner or contractor.

(16) "Operational testing and maintenance" means that which requires measurement, observation, cleaning and lubricating equipment that does not require disassembly or opening the equipment and shall be permitted to be performed by authorized or licensed elevator personnel. This includes, but is not limited to, fire service tests, step/skirt index tests, cleaning and lubricating exposed surfaces, starting and stopping of equipment through normal means, smoke and heat detector tests, relamping and repairing car lighting fixtures, and monthly monitoring of hydraulic oil levels.

(17) "Operator" is an individual employed by a general contractor, elevator contractor or owner to operate an elevator under a construction use permit.

(18) "Reciprocating conveyor" means:

(a) A self-contained, power-driven stationary device that moves objects on a platform equipped with safety guards; or

(b) A pre-packaged, self-contained unit, that moves individuals in a residence on a motorized chair, along a predetermined horizontal, inclined or vertical path between loading and discharge points.

(A) "Pre-packaged" means – A reciprocating conveyor sold as a unit that:

(i) Requires no electrical installations as defined by ORS 479.530;

(ii) Requires minimal assembly; and

(iii) Is installed on a straight run stairway.

(B) For the purposes of this section, the definition does not include vertical wheelchair lifts.

(19) "Repair" is the restoration of an elevator to its original intended design, but not changing its operation or intended use.

(20) "Term" means a set period for each phase of training within an approved apprenticeship program.

(21) "Transferable experience" means experience, knowledge and aptitude gained on equipment not governed by the Elevator Safety Law but is similar in construct and application to the types of equipment associated with the licensing requirements herein.

(22) "Vertical Reciprocating Lift" is a power-driven, isolated, self-contained, stationary lift that meets the requirements of the **Oregon Elevator Specialty Code**, Vertical Reciprocating Lift Code.

(23) "Waiver" or "Variance" is a trade term referring to a site-specific exception from code requirement granted under ORS 460.085.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085, Ch. 642 OL 2007

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0003; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-005; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-400-0333

Scope of Elevator Licensing

This rule lays out the licensing requirements for persons performing electrical and mechanical work on elevators.

(1) Electrical Elevator Contractor. Only a contractor licensed under ORS 479.630(1) and OAR 918-282-0017 may engage in the business of performing electrical work on an elevator.

(2) Elevator Contractor. Only an elevator contractor licensed under ORS 460.045(1) may engage in the business of performing mechanical work on an elevator.

(3) Limited Elevator Journeyman. A limited elevator journeyman licensed under ORS 479.630(6) may perform electrical and mechanical installation, maintenance and repair work on an elevator.

(4) Limited Elevator Mechanic. A limited elevator mechanic licensed under ORS 460.057 is restricted to the installation, alteration, repair and maintenance of a specific type, or types, of elevator mechanical equipment, in accordance with OAR 918-400-0380.

(5) Elevator Apprentice. An elevator apprentice licensed under ORS 460.059 is restricted to assisting a limited elevator mechanic in performing mechanical work on elevators, in accordance with OAR 918-400-0390.

(6) Reciprocating Conveyor Mechanic. A reciprocating conveyor mechanic licensed under Chapter 642 (2007 Oregon Laws) is restricted to the installation, alteration, repair and maintenance of the mechanical portions of reciprocating conveyors.

(7) Restricted Reciprocating Conveyor Mechanic. A restricted reciprocating conveyor mechanic licensed under Chapter 642 (2007 Oregon Laws) is restricted to the installation, alteration, repair and maintenance of the mechanical portions of reciprocating conveyors under the supervision of a person holding a reciprocating conveyor mechanic license. "Supervision" means the person supervised is in the physical presence of a qualified licensed person at the job site.

Stat. Auth.: ORS 460.047, 460.057 & 460.059

Stats. Implemented: ORS 460.005 - 460.175 & 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-400-0340

Elevator Contractor License

A person seeking issuance or renewal of an elevator contractor license shall:

(1) Provide a list of the company's employees and their license numbers issued under ORS 460.057, 460.059, 479.630(6) or Chapter 642 (2007 Oregon Laws) who will be performing the installation, alteration, repair and maintenance of elevator mechanical equipment; or

(2) Provide a list of employees who have made application and qualify for licensure under ORS 460.057 or 479.630(6) or Chapter 642 (2007 Oregon Laws).

(3) Provide written documentation from the company's insurance carrier that the applicant is insured as an elevator contractor. The certificate of insurance, or its equivalent, required by this section shall:

(a) Be a certified copy or original on the standard form issued by the insurance carrier;

(b) Include the insurance policy number, the insured's name and the insurance company's name, address and telephone number;

(c) Have clear information that the insurance company recognizes the insured as an elevator contractor and that the policy will cover the scope of elevator-related work in which the contractor is engaged; and

(d) Show proof of authorization from the insurance carrier that the division will be given notice upon any change to or cancellation of the insurance policy.

(e) Provide verification of the State Construction Contractors Board registration as an elevator company; and

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(f) Pay applicable fees as required by OAR 918-400-0800.
Stat. Auth. ORS 460.085
Stats. Implemented: ORS 460.005 - 460.175 & 479.630
Hist.: BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-400-0380

Limited Elevator and Reciprocating Conveyor Licenses

(1) Limited Elevator Mechanic License

(a) Pursuant to ORS 460.057, any person installing, altering, repairing or maintaining elevator mechanical equipment prior to October 23, 1999, and who does not otherwise qualify for licensure herein, shall be issued a limited elevator mechanic's license commensurate with their prior, verifiable work experience if they apply in the manner established by the division in OAR chapter 918 division 30.

(b) The following shall not be used to determine prior experience;

(A) Work on equipment not regulated by the Elevator Safety Law unless such prior experience is considered to be transferable experience gained prior to October 23, 1999;

(B) The installation, alteration, repair or maintenance of equipment installed in Oregon that was not lawfully permitted as required by the Elevator Safety Law;

(C) Work in Oregon while employed by a company not lawfully licensed as an elevator contractor in Oregon, or not lawfully registered with the Construction Contractors Board; or

(D) Experience gained in violation of any other state law.

(c) Experience gained shall be considered based on the following. Applicants must have been regularly engaged in the installation, alteration, repair or maintenance on the type, or types, of equipment commensurate with the license being sought based on:

(A) Minimum of 4,000 hours "substantial experience" lawfully obtained on equipment covered by a limited elevator mechanic's license;

(B) "Substantial experience" for purposes of this rule, must be verified evidence in the form of two separate notarized affidavits. One from an Oregon business attesting the person has been involved in 40 or more elevator projects and one from a CPA attesting that the business had at least \$75,000 of gross business prior to October 23, 1999. Nothing in this rule prevents an applicant from faxing or scanning and e-mailing documents.

(d) A license under this rule shall be limited to the scope of work for which the person has provided work experience acceptable to the division.

(2) Reciprocating Conveyor Mechanic License

(a) Applicant must demonstrate 3,000 hours of "lawful work experience," as defined in OAR 918 division 30, in the installation, alteration, repair and maintenance of reciprocating conveyors. An applicant must apply for the license as required under OAR 918 Division 30.

(3) Restricted Reciprocating Conveyor Mechanic License

(a) Applicant must apply to the division as required under OAR 918 Division 30.

(4) Exemption from Limited Elevator and Reciprocating Conveyor Licensing Requirements

(a) A person installing the mechanical portion of a reciprocating conveyor defined in OAR 918-400-0280(18)(b) is not required to hold any kind of mechanic's license under the Elevator Safety Law. This section does not exempt the installation of reciprocating conveyors defined in OAR 918-400-0280(18)(b) from other applicable provisions of the Elevator Safety Law, including ORS 460.045(1).

Stat. Auth.: ORS 460.057 & 460.085, 183.335, Ch. 642 OL 2007
Stats. Implemented: ORS 460.005 - 460.175, 183.335, Ch. 642 OL 2007
Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 8-2005, f. & cert. ef. 4-1-05; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-400-0800

Fees

(1) Subject to section (2) of this rule, the following elevator fees are adopted under ORS 460.165:

(a) Elevator contractor's license, \$585 for application or renewal;

(b) Plan reviews, \$78;

(c) Inspections of:

(A) Dumbwaiters, sidewalk elevators, residential elevators, residential incliners or subveyors, \$52;

(B) Escalators, lowerators, manlifts, stagelifts, inclined elevators, platform hoists or moving walks, \$78;

(C) Power-driven elevators with a four-floor rise or under, \$78;

(D) Power-driven elevators with over a four-floor rise, but under a 10-floor rise, \$98;

(E) Power-driven elevators with over 10-floor rise, but under 20-floor rise, \$124;

(F) Power-driven elevators with a 20-floor rise or over, \$147.

(d) Call-back inspections on a mechanism in section (3)(a) through (f) of this rule made by request or in continued existence of a defect, \$52;

(e) Special inspections, \$55 per hour;

(f) Report processing fee, \$20;

(g) Installation or alteration of an elevator, if the total cost of the installation or alteration, other than the inspection fee, is:

(A) \$1,000 or under — \$98;

(B) \$1,001 to \$14,999 — \$98, plus \$13 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$1,000;

(C) \$15,000 to \$49,999 — \$280, plus \$8 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$15,000;

(D) \$50,000 or over — \$553, plus \$3 for each \$1,000 or fraction of \$1,000 by which the cost exceeds \$50,000.

(2) Elevator alterations.

(a) No fee shall be charged when an alteration is limited to fixture upgrades to meet state-adopted accessibility standards;

(b) No fee shall be charged where the alteration is limited to the car interior upgrades that do not alter the gross weight of the car more than five percent;

(c) When a group of elevators under common group control is proposed for an upgrade, and the same upgrade is proposed for all cars in the group, the inspection fee shall be the contract valuation for the entire elevator upgrade project rather than the higher separate inspection fee for each elevator in the group; and

(d) Where the upgrade for a group of elevators is not identical for each elevator, the fees shall be calculated separately based on the contract valuation for each elevator.

(3) Plan Review Fees. Where a complete set of drawings shows all elevators affected by the proposed installation or alteration, only one plan review fee shall be required rather than a separate fee for each elevator.

(4) Limited Elevator Mechanic's License. The following fees shall apply to licenses issued under OAR 918-400-0333 and 918-400-0380(1):

(a) Limited Elevator Mechanic's license, \$60 for application or renewal;

(5) Reciprocating Conveyor Mechanic's Licenses. The following fees shall apply to licenses issued under OAR 918-400-0380(2) and (3):

(a) Reciprocating Conveyor Mechanic's license, \$300 for application or renewal;

(b) Restricted Reciprocating Conveyor Mechanic's license, \$50 for application or renewal.

Stat. Auth.: ORS 460.085
Stats. Implemented: ORS 460.165, Ch. 642 OL 2007
Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0030; BCA 21-1991(Temp), f. 6-14-91, cert. ef. 7-1-91 thru 12-27-91; BCA 29-1991, f. & cert. ef. 8-30-91; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0050; BCD 11-1996(Temp), f. & cert. ef. 7-1-96; BCD 27-1996, f. & cert. ef. 12-4-96; BCD 10-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 25-1998, f. 12-22-98, cert. ef. 12-27-98; BCD 13-1999, f. & cert. ef. 10-1-99; BCD 14-2000(Temp), f. 7-20-00, cert. ef. 8-1-00 thru 1-27-01; BCD 25-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

918-780-0030

Plumbing License Fees

(1) Licenses required by ORS chapters 447 and 693 may be issued and renewed by the division to applicants who meet the requirements for the license and apply as established in OAR chapter 918 division 30. The following license application and renewal fees are adopted:

(2) Plumbing business:

(a) Application fee — \$150

(b) Renewal fee — \$450

(3) Journeyman plumber:

(a) Application fee — \$100

(b) Renewal fee — \$180, including \$30 fee to track continuing education.

(4) Limited Specialty Plumber as follows:

(a) Limited specialty plumber water treatment installer license:

(A) Application fee — \$100

(B) Renewal fee — \$150

(b) Limited specialty plumber residential water heater installer license:

(A) Application fee — \$100

(B) Renewal fee — \$150

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(c) Limited specialty plumber solar heating and cooling installer license:

- (A) Application fee — \$100
- (B) Renewal fee — \$150
- (C) Application fee — \$100
- (D) Renewal fee — \$150

Stat. Auth.: ORS 447.020, 693.103 & 693.135
Stats. Implemented: ORS 693.103

Hist.: DC 4, f. 8-13-71, ef. 9-11-71; DC 25-1978, f. 9-5-78, ef. 9-20-78; Renumbered from 814-021-0504; DC 13-1981, f. 10-30-81, ef. 11-1-81; DC 2-1983, f. & ef. 1-3-83; BCA 5-1988, f. & ef. 2-23-88; Renumbered from 814-020-0015; BCA 4-1991(Temp), f. & cert. ef. 2-28-91; BCA 18-1991, f. & cert. ef. 6-12-91; BCA 23-1993, f. 10-15-93, cert. ef. 11-1-93; BCD 25-1994, f. 10-26-94, cert. ef. 11-1-94; BCD 15-1996(Temp), f. & cert. ef. 7-1-96; BCD 20-1996, f. 9-30-96, cert. ef. 10-1-96; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-690-0015; BCD 3-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2007, f. 12-28-07, cert. ef. 1-1-08

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Rule Caption: Clarifies the requirements for reciprocal electrical and plumbing licensing.

Adm. Order No.: BCD 1-2008(Temp)

Filed with Sec. of State: 1-3-2008

Certified to be Effective: 1-3-08 thru 7-1-08

Notice Publication Date:

Rules Adopted: 918-030-0045

Subject: This proposed temporary rule clarifies the qualifying criteria for persons applying for reciprocal electrical or plumbing licensing.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-030-0045

Oregon Reciprocal License Requirements

(1) The purpose of these rules is to assist the citizens of Oregon and reciprocating states with substantially similar electrical and plumbing licensing criteria to obtain a license without examination.

(2) For the purposes of this rule the following definitions apply:

(a) “Reciprocal Applicant” means a person applying for a reciprocal license.

(b) “Reciprocal License” means a license issued by Oregon to a person who qualifies under these rules.

(c) “Reciprocal State” means a state with a reciprocal licensing agreement with Oregon.

(3) To qualify for a license under these rules, a reciprocal applicant must prove that they:

(a) Possess a license from the reciprocal state that is current, active, and in good standing with no violations;

(b) Qualified for the license from the reciprocal state through examination, with a score of 75 percent or better, and by a minimum of four (4) years (8,000 hours) of work experience in the reciprocal state;

(c) Have resided in the reciprocal state for at least six (6) months prior to the reciprocal licensing application and submitted at least two (2) pieces of corroborating evidence of a physical address.

(A) Residency can be documented through submission of driver’s license, utility bills, rental receipts, and other similar documents.

(B) A P.O. Box will not be accepted.

(d) Have worked a minimum of six (6) months (1,000 hours) under the license from the reciprocal state;

(e) Have not applied for licensure in Oregon, qualified for, or taken, the Oregon Licensing exam within the last six (6) months.

(4) This rule applies retroactively.

Stat. Auth.: ORS 455.110 & 455.117

Stats. Implemented: ORS 455.117 & 670.380

Hist.: BCD 1-2008(Temp), f. & cert. ef. 1-3-08 thru 7-1-08

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Department of Consumer and Business Services,

Insurance Division

Chapter 836

Rule Caption: Rulemaking Relating to Health Insurance Coverage of Prosthetic and Orthotic Devices.

Adm. Order No.: ID 12-2007

Filed with Sec. of State: 12-18-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Adopted: 836-052-1000

Subject: This rulemaking adopts a rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. The rulemaking implements section 2, chapter 374, Oregon Law 2007 (Enrolled HB 2517), which requires all such

policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices.

Rules Coordinator: Sue Munson—(503) 947-7272

836-052-1000

Prosthetic and Orthotic Devices

(1) This rule is adopted under the authority of ORS 731.244 and section 2, ch. 374, Oregon Laws 2007, for the purpose of implementing section 2, ch. 374, Oregon Laws 2007.

(2) The list of prosthetic and orthotic devices and supplies in the Medicare fee schedule for Durable Medical Equipment, Prosthetics, Orthotics and Supplies is adopted for the purpose of listing the prosthetic and orthotic devices and supplies for which coverage is required by section 2, chapter 374, Oregon Laws 2007, insofar as the list is consistent with section 2, chapter 374, Oregon Laws 2007. The list is limited to those items designated by Centers for Medicare and Medicaid Services (CMS) in the L Codes of Healthcare Common Procedure Coding System (HCPC) Level II, which is accessible at https://www.noridianmedicare.com/dme/news/manual/chapter16_1.html.

(3) Under section 2(4), chapter 374, Oregon Laws 2007, benefits payable under a policy may not be subject to internal or separate limits or caps other than the policy lifetime maximum benefits as they apply to the coverage for prosthetic and orthotic devices required by section 2, chapter 374, Oregon Laws 2007.

(4) A managed care plan to which section 2(6), chapter 374, Oregon Laws 2007 applies is a health insurance policy that requires an enrollee to use a closed network of providers managed, owned, under contract with or employed by the insurer in order to receive benefits under the plan.

Stat. Auth.: ORS 731.244, Sec. 2, Ch. 374, OL 2007 (Enrolled HB 2517)

Stats. Implemented: Sec. 2, Ch. 374, OL 2007 (Enrolled HB 2517)

Hist.: ID 12-2007, f. 12-18-07, cert. ef. 1-1-08

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Rule Caption: Filing and Public Disclosure of Rates for certain Health Benefit Plans.

Adm. Order No.: ID 13-2007(Temp)

Filed with Sec. of State: 12-21-2007

Certified to be Effective: 12-21-07 thru 5-10-08

Notice Publication Date:

Rules Amended: 836-053-0910

Subject: This temporary rulemaking implements HB 3103 (2007 Regular Session), which requires that rate filings for certain health benefit plans be available for public inspection once filled with the Director.

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0910

Rate Filing

(1) A carrier shall file with the Director:

(a) The appropriate checklists and certification statements, as established in OAR 836-010-0011;

(b) An actuarial demonstration of the basis for the differences in the geographic average rates of the various plans offered in the marketplace. This demonstration shall be certified by a member of the American Academy of Actuaries both at the initial submission and subsequently when the rate relativities between plans are changed.

(2) A carrier shall not offer a subject health benefit plan until the Director has determined that the filed geographic average rate meets the applicable statutory requirements.

(3) An approved geographic average rate shall not be modified by a carrier until the Director has determined that the filed modification meets the applicable statutory requirements.

(4) Rate filings pursuant to requirements specified in OAR 836-010-0011 and 836-010-0021 for any of the following health benefit plans subject to ORS 743.730 to 743.773 must be submitted to the Director in electronic format:

(a) Health benefit plans for small employers.

(b) Portability health benefit plans.

(c) Individual health benefit plans.

(5) Forms of acceptable electronic filing format under section (4) of this rule are:

(a) Filings submitted using the National Association of Insurance Commissioner’s System for Electronic Rate and Form Filings (SERFF); or

(b) Filings with documentation attached in pdf format that is under 3MB in size. For the purpose of this subsection, each filing requirement, such as an exhibit, an actuarial memorandum or a certificate of compliance, must be in a separate pdf format under 3MB in size. These filings may be

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submitted via email with documents attached in pdf format, or the filings may be submitted on a compact disc (CD) with documents attached in pdf format. If submitting via email, the combined size of the email plus attached documents being transmitted must be less than four megabytes.

(6) A carrier shall submit with a filing under section (4) of this rule a statement that explains the filing in plain language for the purpose of public information, according to the form established in Exhibit 1 to this rule or in other substantively similar wording.

(7) An insurer requesting exemption from disclosure:

(a) Must submit the part or parts of the filing requested to be exempt in a separate pdf format from the portion of the filing for which exemption is not requested;

(b) Must accompany the exemption request by a clear and detailed explanation of how the part or parts of the filing meet the requirement of a trade secret along with clear and detailed explanation with evidence that public disclosure of the trade secret would harm competition in the Oregon health insurance market, with particular attention to the effects of disclosure on Oregon consumers; and

(c) May submit the request before or at the time the rate filing is made.

(8) Contents of rate filings described in section (4) of this rule and statements described in section (6) of this rule will be posted for public inspection on the Oregon Insurance Division Web site. A carrier that submits a request for exemption may respond to the Director not later than the fifth day after the carrier receives the Director's decision to grant or deny the exemption. A request for exemption in compliance with this section will stay disclosure of the part of a filing to which the request applies, pending the Director's decision on the request. Similarly, a request for a hearing on a decision by the Director will also stay disclosure of the part of a filing to which the request applies.

(9) Violation of any provision of this rule is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 743.730 - 743.773

Hist.: ID 13-1996(Temp), f. & cert. ef. 9-23-96; ID 2-1997, f. & cert. ef. 3-28-97; ID 5-1998, f. & cert. ef. 3-9-98, Renumbered from 836-053-0185; ID 13-2007(Temp), f. & cert. ef. 12-21-07 thru 5-10-08

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Department of Consumer and Business Services, Oregon Medical Insurance Pool Board Chapter 443

Rule Caption: Update and revise rules to be clear and concise with policy procedures and the 2008 OMIP benefit year.

Adm. Order No.: OMIPB 1-2008

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08

Notice Publication Date: 12-1-2007

Rules Amended: 443-002-0010, 443-002-0060, 443-002-0070, 443-002-0100

Rules Repealed: 443-002-0095

Subject: • (0010) Definitions: Updated, revised and removed definitions to be clear and easily understandable

• (0060) Eligibility: Revised section to accurately reflect who and how members are eligible for OMIP

• (0070) Benefit, benefit limitations, exclusions and claim administration: updated to refer to the current OMIP Benefit Contract.

• (0100) Member Suspension: Revised section to accurately reflect how member suspensions are processed

• (0095) Special exception to the 12 month waiting period: This section was repealed and re-written into the member suspension rules under 443-002-0100.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0010

Definitions

(1) "Administering Insurer" means the insurance company or third party administrator selected pursuant to ORS 735.620 to provide administrative services to operate OMIP on behalf of the OMIP Board.

(2) "Appeal" means a request to have an adverse grievance decision reviewed.

(3) "Applicant" means a person who is applying for OMIP coverage.

(4) "Benefit Enrollment Year" means a year beginning on the enrollee's effective date of OMIP coverage.

(5) "Calendar Year" means January 1st through December 31st each year.

(6) "Carrier" means an insurance company, a health maintenance organization or health care service contractor that has a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance.

(7) "Certificate of Coverage (COC)" means a certificate that is provided by an insurance carrier as proof of prior insurance coverage.

(8) "Children" means the applicant's natural or legally adopted children, stepchildren living in the home or non-resident stepchildren if there is a qualified medical child support order that requires the applicant to provide health insurance.

(9) "Claim" means a request for payment under the terms of an insurance Contract.

(10) "Creditable Coverage" means health care coverage prior to the OMIP coverage and comparable to the OMIP coverage.

(11) "Dependent" means the contract holder's enrolled legal spouse, domestic partner, child, stepchild, or adopted child.

(12) "Eligibility" means meeting the residency and medical, portability, or federal Health Coverage Tax Credit (HCTC) requirements to qualify for the OMIP program as established in OAR 443-002-0060.

(13) "Enrollee" means an individual who is enrolled in one of the OMIP medical or portability benefit plans.

(14) "External Review" is a review performed by a state contracted independent review organization when an enrollee has exhausted all internal grievance and appeal procedures and wants the opinion of a medical professional who is separate from the patient's health insurance company. External review applies only to disputes about medical necessity, experimental or investigational treatment, or need for continuity of care.

(15) "Grievance" means a written complaint submitted to OMIP's administering insurer by or on behalf of an enrollee regarding:

(a) Availability, delivery or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between an enrollee and OMIP.

(16) "Health Coverage Tax Credit (HCTC)" means enrollees who are eligible for OMIP coverage because they qualify and are receiving a federal subsidy through the federal Health Coverage Tax Credit.

(17) "Medicaid" means federal medical assistance provided under 42 U.S.C. section 396a administered by the Oregon Department of Human Services.

(18) "OMIP" means the Oregon Medical Insurance Pool.

(19) "Pre-existing Condition" means a condition for which professional medical advice, diagnosis, care, or treatment was recommended or received in the six months before coverage began. For purposes of the six month limitation period, the term pregnancy shall include: pre-and postnatal care, miscarriage, abortion, delivery (vaginal or surgical), and complication of pregnancy. Complication of pregnancy includes but is not limited to: intra-abdominal surgical procedures; placenta abruptio and placenta previa; acute exacerbations or heart conditions and or diabetes; toxemias.

Stat. Auth.: ORS 735.610(6)

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2008, f. & cert. ef. 1-2-08

443-002-0060

Eligibility

MEDICAL

(1) Individuals applying for OMIP medical coverage must be a resident of the State of Oregon and meet one of the following eligibility requirements:

(a) Applicant was denied comprehensive individual health insurance coverage within six months from the mailing date of the OMIP application; or

(b) Applicant has been diagnosed or treated within the last five years for one or more medical conditions listed on the most current OMIP application; or

(c) Applicant is now a resident of Oregon and has transferred from another state's high-risk pool; or

(d) Applicant was offered individual health insurance that contained a waiver which excluded coverage for a specific medical condition; or

(e) Applicant was offered individual health insurance but was limited by the choice of plans the carrier was willing to offer due to a specific medical condition; or

(f) Applicant is eligible for the health coverage tax credit (HCTC) under Section 35 of the Internal Revenue Code effective for taxable years beginning after December 31, 2001.

PORTABILITY

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(2) Individuals applying for OMIP portability coverage must be a resident of the State of Oregon, have a minimum of 180 days of continuous group health coverage within 63 days of applying to OMIP and must meet at least one of the following portability eligibility requirements:

(a) Applicant has exhausted COBRA benefits or state continuation coverage and does not have any portability options available in Oregon through the employer's insurance group carrier; or

(b) Applicant was offered portability coverage but the insurance carrier no longer services the area the applicant resides; or

(c) Applicant did not have any COBRA, state continuation or portability options available; or

(d) Applicant is eligible for portability coverage but no longer lives in the prior insurance carrier's service area; or

(e) Applicant has moved to Oregon, has been continuously covered by group health insurance for 18 months or more, without a single gap in coverage greater than 63 days and has no COBRA or Oregon portability coverage options available through the previous health carrier.

Stat. Auth.: ORS 735.610(6), 735.615 & 735.616

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 1-2005(Temp), f. & cert. ef. 8-26-05 thru 2-20-06; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2008, f. & cert. ef. 1-2-08

443-002-0070

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration for the OMIP program are set forth in the OMIP individual benefit plan contracts as of January 1, 2008, the OMIP application as of January 1, 2008, the OMIP handbook as of January 1, 2008, the OMIP Premium Rates and Instructions pamphlet as of January 1, 2008, the OMIP Benefit Summary pamphlet as of January 1, 2008 and any applicable endorsements. These documents are hereby incorporated into this rule by reference.

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

Stat. Auth.: ORS 735.610(6) & 735.625

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-5-08; OMIPB 1-2008, f. & cert. ef. 1-2-08

443-002-0100

Member Suspension and Resumption of Coverage

(1) OMIP will suspend coverage if a member or dependent begins receiving health care benefits under Medicare or Medicaid for reasons other than turning 65 pursuant to ORS chapter 414.

(2) If OMIP receives a request to suspend coverage as described above, OMIP shall suspend coverage effective at the first of the month in which the OMIP member or dependent began receiving their health care benefits for Medicare or Medicaid.

(a) OMIP will suspend coverage for a maximum of 12 months.

(b) OMIP will not collect premiums from the member or dependent during the period of suspended coverage.

(c) If the member does not request his/her OMIP coverage be suspended when becoming eligible for Medicare or Medicaid for the reasons listed above, OMIP may terminate coverage effective the first of the month in which the member began receiving Medicare or Medicaid benefits.

(d) If the member or dependent loses eligibility for Medicare or Medicaid, the member may request the OMIP coverage to be reinstated. The member must submit a written request to the administering insurer within 63 days of the termination date for the Medicare or Medicaid coverage.

(3) OMIP will suspend coverage if a member or dependent enrolled in OMIP began receiving group health care benefits and requests suspension of coverage in writing to the administering insurer within 30 days after the effective date of the group health care coverage.

(a) OMIP will suspend coverage effective at the first of the month in which the OMIP member or dependent began receiving their group health care benefits.

(b) OMIP will not collect premiums from the member or dependent during the period of suspended coverage.

(c) If the member or dependent loses eligibility for group health care coverage, the member may request their OMIP policy to be reinstated within 63 days of the termination date for the group insurance. The request must be in writing to the administering insurer.

(A) If the member was previously enrolled in an OMIP portability plan they will not be able to resume the previous OMIP portability coverage unless there were no COBRA or portability options available through the previous group insurance.

(B) If the member was enrolled in a portability plan and COBRA and/or portability is available through the previous group carrier and the

member is unable to obtain individual health insurance because of his/her health status, the member can apply for an OMIP medical plan within 63 days from the end date of the previous group insurance.

(i) If the member is eligible for a medical plan the member will receive credit toward the six-month waiting period for pre-existing conditions based on the number of months previously covered by the OMIP contract and the number of months the person was covered by the other coverage.

(ii) The amount of the deductible met for the prior suspended coverage will carry over if the OMIP coverage was resumed within the same calendar year as the suspended coverage.

(4) If the member requests resumption of coverage, but OMIP no longer offers the same contract, OMIP will offer coverage available through the most similar current OMIP contract.

(5) A person pursuant to OAR 443-002-0100 for whom coverage was suspended and later resumed will receive credit toward the six-month waiting period for pre-existing conditions based on the number of months previously covered by the OMIP contract and the number of months the person was covered by the other coverage.

Stat. Auth.: ORS 735.610(6) & 735.615

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 1-2008, f. & cert. ef. 1-2-08

Rule Caption: To establish a time-frame OMIP can go back retroactively on assessments after indications from audits indicate discrepancies.

Adm. Order No.: OMIPB 2-2008(Temp)

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08 thru 6-30-08

Notice Publication Date:

Rules Amended: 443-002-0030

Subject: Amend rule 443-002-0030 by adding in subsections to allow OMIP to go back three-years for adjusting assessments based on both over and under-counts reported on the OMIP Annual counts of covered lives. Also to include an appeal process for any disputes.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0030

Assessment for Operating Expenses and Counting Insureds

(1) OMIP shall assess insurers and reinsurers, as defined in ORS 735.605, for the purpose of collecting monies to cover expenses and losses of OMIP in excess of premiums, which are not or will not be sufficiently covered by funds in the OMIP Account defined in ORS 735.612.

(a) Pursuant to ORS 735.614(2), OMIP counts both the number of Oregon insureds and Oregon certificate holders for assessment purpose. Health insurance issued in other states for certificate holders in Oregon shall be subject to the assessment count.

(b) OMIP will assess insurance companies based on the number of persons insured in Oregon. The actual insurance transaction does not have to take place in the State of Oregon for it to be counted.

(c) All insurers that are authorized to transact health or medical insurance in Oregon and that insure persons residing in Oregon will be subject to the assessment. All reinsurers that reinsure medical insurance in Oregon on or after September 27, 1987, will be subject to assessment.

(2) The OMIP Board shall determine the frequency of such assessments based on projected cash balances and operating revenues and expenditures.

(3) The projected cash balance shall take into account a reserve intended to cover claims incurred but not reported or paid. The Board shall review the reserve quarterly to determine its adequacy and adjust it as needed.

(4) The amount for which OMIP assesses each insurer or reinsurer as defined in ORS 735.605 shall depend on each insurer's or reinsurer's proportion of the total of all Oregon insureds and certificate holders insured or reinsured and the amount of funds that OMIP needs to cover projected expenses and losses in excess of the premiums:

(a) Annually, OMIP will send a request to all insurers insuring or reinsuring health or medical insurance in Oregon to report the number of persons insured or reinsured in Oregon as of March 31 of the current year.

(A) The insurer or reinsurer will have 30 days from the date of the request to return the requested count.

(B) Based on the information obtained in the requested count, OMIP will issue bi-annual assessments. Insurers, including reinsurers, will have 30 days from the notice of assessment to make payment.

(C) If OMIP discovers that an insurer (including a reinsurer) has inaccurately reported the number of persons insured, OMIP may request that

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the insurer provide an accurate count and may reassess the insurer accordingly.

(b) OMIP shall determine the total number of Oregon insureds and certificate holders insured or reinsured as follows:

(A) OMIP shall limit the count of insureds and certificate holders insured or reinsured to medical insurance as defined in ORS 735.605(5);

(B) The count shall include all insureds and certificate holders, including dependents, other individuals whose medical insurance coverage is insured or reinsured in whole or in part, and, to the extent permitted by federal law, individuals covered under excess loss coverage written on self-funded medical plans;

(C) Reinsurers may exclude from the number reported those individuals that the other insurers or reinsurers have counted;

(D) The insurers and reinsurers may use any reasonable method of estimating or may use actual counts of the number of individuals for whom coverage is provided. They must inform OMIP how they calculated any estimates.

(5) If assessment collections exceed the amount needed to meet OMIP expenses and losses, OMIP shall hold and invest the excess funds and use the earnings and interest, to offset future net losses or to reduce OMIP premiums. For the purposes of this section, "future net losses" include reserves for incurred-but-not-reported claims.

(6) OMIP shall establish a three-year look back period for adjusting assessments based on discrepancies reported on the OMIP Annual Survey of Covered Lives Report.

(a) If OMIP discovers that a carrier over-reported the number of covered lives during the three-year look back period, OMIP will apply a credit to future assessments if applicable. If the actual count of covered lives drops to zero, OMIP would return the assessment payment to the carrier.

(b) If a carrier under-reported the number of covered lives during the three-year look back period, OMIP will charge the carrier the per member per month amount for each assessment applicable to each year. OMIP will also charge interest from the year of the discrepancy and for each additional year in the amount equivalent to what OMIP most recently earned on its cash account.

(c) 443-02-0030(7) If a carrier disputes action resulting from the three-year look back period, the carrier can request an appeal in writing to the OMIP Board within 30 days from the mailing date the carrier received notice. If OMIP receives an appeal request, it may extend the date on which the payment is due up to 30 days.

Stat. Auth.: ORS 735.610(6) & 735.614

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-30-08

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

Rule Caption: Changes to Division 1, General Administrative Rules, with House Bill 2022.

Adm. Order No.: OSHA 11-2007

Filed with Sec. of State: 12-21-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 437-001-0706

Rules Amended: 437-001-0700, 437-001-0740

Subject: This new rules, OAR 437-001-0706, record keeping for Health Care Assaults, implements the record keeping requirements of HB 2022 (ORS 654.011 to 654.295) specific to assaults against employees working for health care employers.

Healthcare employers are defined as hospital and ambulatory surgical centers, and includes home health care services provided by them. The details for recording each incident are specified, as well as a mandatory reporting form, and category codes used to complete the form.

reports must be submitted to the Department of Consumer and Business Services by January 31, 2009 — specific means for reporting are specified in the rule.

OAR 437-001-0700 Record keeping and reporting, is amended to include a cross-reference to this new rule in the section titled Forms.

OAR 437-001-0740 Falsification or Failure to Keep and Post Records or Make reports, is amended to include penalties for failure to keep these records.

Please visit OR-OSHA's website at www.orsosha.org.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0700

Recordkeeping and Reporting

(1) Purpose. This rule requires employers to record and report work-related fatalities, injuries and illnesses.

NOTE: Recording or reporting a work-related injury, illness, or fatality does not assign fault to anybody, does not prove the violation of an OSHA rule, nor establish the employee's eligibility for workers' compensation or other benefits.

(2) Scope. This standard covers all employers covered by the Oregon Safe Employment Act. However, most employers do not have to keep OR-OSHA injury and illness records unless the Director informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OR-OSHA injury and illness records.

(3) Partial Exemptions.

(a) If your company never had more than ten (10) employees during the last calendar year, you do not need to keep OR-OSHA injury and illness records unless the Director informs you in writing that you must keep records. However, all employers covered by the Oregon Safe Employment Act must report to OR-OSHA any workplace fatality, the hospitalization of three or more employees, or overnight hospitalizations. (See (21) below)

(A) The partial exemption for size is based on the number of employees in the entire company.

(b) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OR-OSHA injury and illness records unless your business is in a specific low hazard retail, service, finance, insurance or real estate industry in Table 1. If so, you do not need to keep OR-OSHA injury and illness records unless the government asks you to keep the records under 437-001-0700(23).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep OR-OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under 437-001-0700(3)(a). If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(4) Alternate or Duplicate Records. If you create records to comply with another government agency's injury and illness recordkeeping requirements, those records meet OR-OSHA's recordkeeping requirements if OR-OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this standard requires you to record. Contact your nearest OR-OSHA office for help in determining if your records meet OR-OSHA's requirements. Table 1 – Partially Exempt Industries.

(5) Recording Criteria and Forms. This describes the work-related injuries and illnesses that an employer must enter on the OR-OSHA records and explains the OR-OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

(a) Each employer required to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(A) Is work-related; and

(B) Is a new case; and

(C) Meets one or more of the general recording criteria of OAR 437-001-0700(8) or the application to specific cases of 437-001-0700(9) through (13). Table 2 – Related rules The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination. Graphic

(6) Work-Related. An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. You presume work-relatedness for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Table 3 specifically applies.

(a) If you are notified that a former employee has had a work related injury or illness, record the date of the incident on the appropriate OSHA 300 log for the date of the injury. If the date is not known use the last day of employment.

NOTE: OR-OSHA defines the work environment as the establishment and other locations where one or more employees work or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of their work. Injuries occurring during travel are work-related if the employee was engaged in work activities in the interest of the employer and it is not one of the exceptions in Table 4. If it is not obvious where the precipitating event occurred you must evaluate the employee's work duties and environment to decide whether events or exposures in the work environment either caused or contributed to the condition or significantly aggravated a pre-existing condition.

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(b) A pre-existing injury or illness is significantly aggravated when an event or exposure in the work environment results in any of the following:

(A) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the occupational event or exposure.

(B) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(C) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(D) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

(c) Work at home. Injuries and illnesses that occur while an employee works at home, including work in a home office, is work-related if the injury or illness relates directly to the work rather than to the general home environment or setting.

(7) New Cases. An injury or illness is a "new case" if:

(a) The employee has no previous recorded injury or illness of the same type that affects the same part of the body, or

(b) The employee previously had a recorded injury or illness of the same type that affected the same part of the body but recovered completely (all signs and symptoms disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

(A) For occupational illnesses where the signs or symptoms may recur or continue in the absence of a workplace exposure, record the case only once. Examples include occupational cancer, asbestosis, byssinosis and silicosis.

NOTE: You are not required to seek the advice of a physician or other licensed health care professional. If you do seek such advice, you must follow their recommendation about whether the case is a new case or a recurrence.

(8) General Recording Criteria. An injury or illness meets the general recording criteria, and is recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must record a case if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

NOTE: OR-OSHA believes that most significant injuries and illnesses will result in one of the events listed below. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case. Table 5

(a) You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OR-OSHA within 8 hours.

(b) When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(A) Begin counting days away on the day after the injury occurred or the illness began.

(B) End the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work. This applies regardless of whether the employee returns earlier or later than recommended. If there is no recommendation from the physician or licensed health care professional, enter the actual number of days the employee is off work.

(C) You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Include weekend days, holidays, vacation days or other days off in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(D) You may stop tracking of the number of calendar days away from work once the total reaches 180 days away from work and/or days of job transfer or restriction. Entering 180 in the total days away column is adequate.

(E) If the employee leaves your company for a reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(F) You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log that you prepare for the year in which the incident occurred. If the time off extends into a new year, estimate the number of days for that year and add that amount to the days from the year of occurrence. Do not split the days between years and enter amounts on the logs for two different years. Use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(c) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column.

(A) Restricted work occurs when, as the result of a work-related injury or illness:

(i) you keep the employee from performing one or more of the routine functions of their job, or from working the full day that they would otherwise work; or

(ii) a physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of their job, or not work the full workday that they would otherwise work.

NOTE: For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(iii) A recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job.

(iv) A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(v) Record job transfer and restricted work cases in the same box on the OSHA 300 Log.

(vi) You count days of job transfer or restriction in the same way you count days away from work. The only difference is that, if you permanently assign the injured or ill employee to a job modified or permanently changed to eliminate the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is permanent. You must count at least 1-day of restricted work or job transfer for such cases.

(d) If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the employee received medical treatment but remained at work without transfer or restriction and the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for other recordable cases.

NOTE: You must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(A) "Medical treatment" is the management and care of a patient to combat disease or disorder. For this rule, medical treatment does not include:

(i) Visits to a physician or other licensed health care professional solely for observation or counseling;

(ii) the conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(iii) "First aid" as in (B) below.

(B) First aid is:

(e) You must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time they remain unconscious.

(f) Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of occurrence.

(9) Needlestick and Sharps Injury Recording Criteria.

(a) When an injury is diagnosed later as an infectious bloodborne disease, you must update the classification on the 300 log to reflect the new status or classification.

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(b) You must record all work-related needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material (as defined by OAR 437-002-1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, do not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in OAR 437-001-0700(14)(a) through (14)(i)).

NOTE: If you have an exposure incident that is not a needlestick, you must still record it if it results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or diagnosis of a significant injury or illness, such as HIV, hepatitis B, or hepatitis C.

(10) Medical Removal Recording Criteria. If another OR-OSHA standard requires the medical removal of an employee, you must record the case on the OSHA 300 Log.

(a) You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(A) If the case involves voluntary medical removal before reaching the medical removal levels required by an OR-OSHA standard, do not record the case on the OSHA 300 Log.

(11) Occupational Hearing Loss Recording Criteria.

(a) Hearing loss must be recorded on the OSHA 300 Log by checking the hearing loss column when:

(A) An annual audiogram reveals a Standard Threshold Shift (STS) in either or both ears; and

(B) The hearing level in the same ear is 25 dB above audiometric zero.

NOTE: For the ease of the reader the definitions for STS and audiometric zero are provided here. Standard Threshold Shift (STS) – A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear. Audiometric Zero – The lowest sound pressure level that the average, young adult with normal hearing can hear.

(b) In determining whether an STS has occurred, you may correct for the age of the employee. Use the appropriate table in Appendix A to determine the age adjustment. If the STS is 10 dB or more after the age correction, it still meets the criteria for recordability.

(c) If you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss case within 7 calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the noise standard (OAR 437-002-1910.95) indicates that an STS is not persistent, you may erase, delete, or line-out the recorded entry.

(d) If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, the case is not work-related. Do not record it on the OSHA 300 Log.

(12) Tuberculosis Reporting Criteria. If any of your employees has an occupational exposure to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.

(a) Do not record a pre-employment positive skin test because the exposure was not in your workplace.

(b) Line out or erase a recorded case if you prove that:

(A) the worker lives in a household with a person diagnosed with active TB;

(B) the Public Health Department identifies the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(C) a medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(13) Removed.

(14) Forms.

(a) You must use OSHA 300, 300-A, and DCBS Form 801 or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the DCBS Form 801 or equivalent is the Worker's and Employer's Report of Occupational Injury or Disease.

(A) Even if you are exempt from recordkeeping, you must have at each establishment, a copy of DCBS Form 801 or equivalent for each occupational injury or illness that may result in a compensable claim.

(B) You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(C) You must complete a DCBS Form 801 or equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(D) You must enter each recordable injury or illness on the OSHA 300 Log and DCBS Form 801 or equivalent within 7 calendar days of receiving information that a recordable injury or illness has occurred.

(E) An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the DCBS Form 801, or supplement an insurance form by adding any additional information required by OSHA.

(F) Use a computer to keep your records if it can produce equivalent forms when needed.

(G) If you have a "privacy concern case," do not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative has access to the OSHA 300 Log. You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(H) The following injuries or illnesses are privacy concern cases:

(i) An injury or illness to an intimate body part or the reproductive system;

(ii) An injury or illness resulting from a sexual assault;

(iii) Mental illnesses;

(iv) HIV infection, hepatitis, or tuberculosis;

(v) Needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material; and

(vi) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

NOTE: This is a complete list of all injuries and illnesses that are privacy concern cases.

(I) If you reasonably believe that information describing the privacy concern case may be personally identifiable even though the employee's name is omitted, use discretion in describing the injury or illness on both the OSHA 300 and DCBS 801 Forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, describe a sexual assault case as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(J) If you voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives, you must remove or hide the employees' names and other personally identifying information, except for the following cases:

(i) To an auditor or consultant hired by the employer to evaluate the safety and health program;

(ii) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

(iii) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR.164.512.

(b) In addition, health care employers as defined in ORS 654.001 to 654.295 must record assaults against employees on the Health Care Assault Log. See OAR 437-001-0706.

(15) Multiple Business Establishments. You must keep a separate OSHA 300 Log for each establishment that you expect to operate for 1-year or longer.

(a) You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(b) You may keep the records for an establishment at your headquarters or other central location if you can:

(A) Transmit information about the injuries and illnesses from the establishment to the central location within 7 calendar days of receiving information that a recordable injury or illness has occurred; and

(B) Produce and send the records from the central location to the establishment within the time frames required by OAR 437-001-0700(20) and 437-001-0700(22) when you are required to provide records to a

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government representative, employees, former employees or employee representatives.

(c) You must link each employee with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

(d) If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment where the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment where the employee normally works.

(16) Covered Employees. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(a) Record the injuries and illnesses to workers from temporary help agencies or employee leasing services only if you supervise these employees on a day-to-day basis.

(b) If a contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(c) You and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once: either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(17) Annual Summary and Posting Requirements. At the end of each calendar year, you must:

(a) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any problems;

(b) Use the OSHA 300A or equivalent form to create an annual summary of injuries and illnesses from the OSHA 300 Log;

(c) Certify that one of the following examined the OSHA 300 log and believe, based on knowledge of the process by which the information was recorded, that it is correct and complete.

(A) The highest ranking manager at the location where the log is compiled.

(B) If there is no management at the compiling location, any manager with jurisdiction over that location.

(d) You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

(A) You must post the summary no later than February 1 of the year following the year covered by the records and keep it posted until April 30.

(18) Paperwork Retention and Updating. You must save the OSHA 300 Log, the privacy case list (if any), the annual summary, and the DCBS Form 801 or equivalent forms for 5 years following the end of the calendar year that they cover.

(a) During the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

NOTE: For more information on retention of medical and exposure records, see OAR 437-002-1910.1020.

(19) Change of Business Ownership. If your business changes ownership, you must record and report work-related injuries and illnesses only for the time you owned the establishment. You must transfer the records to the new owner. The new owner must save all records of the establishment kept by the prior owner, but need not update or correct the records of the prior owner.

(20) Employee Involvement. You must involve your employees and their representatives in the recordkeeping system.

(a) Inform each employee of how they are to report an injury or illness to you.

(b) Provide limited access to your injury and illness records for your employees and their representatives.

(A) Your employees, former employees, their personal representatives, and their authorized collective bargaining representatives have the

right to access the OSHA injury and illness records, with some limitations, as below.

(i) A personal representative is anybody designated in writing by the employee or former employee. It also is the legal representative of a deceased or legally incapacitated employee.

(c) When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(A) You must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, do not record the employee's name on the OSHA 300 Log for certain "privacy concern cases."

(d) When an employee, former employee, or personal representative asks for a copy of the DCBS Form 801 or equivalent describing an injury or illness to that employee or former employee, you must give the requester a copy of the DCBS Form 801 or equivalent containing that information by the end of the next business day.

(e) When an authorized employee representative asks for copies of the DCBS Form 801 or equivalent for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the releasable part of the DCBS Form 801 or equivalent section titled "Tell us about the case" or a similar section. You must remove all other information from the copy of the DCBS Form 801 or equivalent form that you give to the authorized employee representative.

(f) You may not charge for these copies the first time. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(21) Reporting Fatalities and Hospitalizations to Oregon OSHA. You must report the following to Oregon OSHA at 1-800-922-2689 or 503-378-3272 within the given time limits:

(a) Fatalities 8 hours after occurrence or employer knowledge. You must report a fatality caused by a heart attack at work. You must report a fatality resulting from motor vehicle accidents that happen during the employees work shift. The local OR-OSHA field office safety or health manager will decide whether to investigate the incident, depending on the circumstances of the heart attack or motor vehicle accident. Report a fatality only if it occurs within 30 days of the accident.

(b) Catastrophe 8 hours after occurrence or employer knowledge. For the ease of the reader the Definition for Catastrophe is – An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

(c) Overnight Hospitalization 24 hours after occurrence or employer knowledge of one or more employees. Overnight hospitalization is for medical treatment only. Hospitalization for observation is not reportable, nor is emergency room treatment. You must report injuries related to a heart attack or motor vehicle accident as well as other work related injuries. Report overnight hospitalizations to the nearest Oregon OSHA field office (Portland, Salem, Bend, Eugene or Medford).

NOTE: Oregon OSHA Field Office locations, telephone and Fax numbers are:

(d) Effective date. The effective date for reporting of a fatality resulting from motor vehicle accidents that happen during the employees work shift is January 1, 2007.

(22) Providing Records to Government Representatives. When an authorized government representative asks for the records you keep in compliance with this standard, you must provide copies of the records within 4 business hours.

(a) Authorized government representatives are:

(A) A representative of the Oregon Department of Consumer and Business Services.

(B) A representative of the Secretary of Labor conducting an inspection or investigation under the Act.

(C) A representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health — NIOSH) conducting an investigation under Section 20(b) of the Act.

(23) Requests from the Bureau of Labor Statistics or DCBS. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, or a request for data from the Oregon Department of Consumer and Business Services, you must promptly complete the form and return it following the instructions on the survey form.

(24) Prohibition against discrimination. Oregon Revised Statute 654.062(5) prohibits discrimination against an employee for reporting a work-related fatality, injury or illness. It also protects the employee who

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files a safety and health complaint, asks for access to this rule, records, or otherwise exercises any rights afforded by law or rule.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 2-2002, f. & cert. ef. 3-12-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 11-2007, f. 12-21-07, cert. ef. 1-1-08

437-001-0706

Recordkeeping for Health Care Assaults

(1) Purpose This rule implements the amendments to the Oregon State Employment Act, ORS 654.001 to 654.295, providing specific provisions for the recordkeeping and reporting requirements of health care assaults, and additional recordkeeping requirements as authorized under ORS 654.025(2) and 656.726(4)(a).

(2) Scope and Definitions This rule applies to health care employers and home health care services provided by health care employers. Health care employers only include hospitals and ambulatory surgical centers, which are defined in ORS 442.015: "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities. "Ambulatory surgical center" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.

(3) Health care assault recordkeeping and reporting In addition to existing general recordkeeping requirements in OAR 437-001-0700, Recordkeeping and Reporting, health care employers must use the Health Care Assault Log, or equivalent, to record assaults.

(a) See ORS 654.001 through 654.295 for details required to be recorded. **Appendix A** of 437-001-0706 provides instructions for completing the form.

(b) The Health Care Assault Log for 2008 (January 1, 2008 – December 31, 2008) must be transmitted to Oregon OSHA by January, 31, 2009. Electronic reporting: oshahealth@state.or.us This is the preferred method. Paper reporting: Oregon OSHA, Attention: Health Care Assault reporting, PO Box 14480, Salem, OR 97309-0405 If email and/or electronic reporting are not available at your location, send the completed log to this address.

(c) The Hospital Administrator, or highest-level officer of the facility, must sign the first page of the Health Care Assault Log, certifying all information contained is true, accurate, and complete. This sheet, with signature, must be sent to Oregon OSHA either in hard-copy, or as a scanned electronic document.

(d) If the incident results in a serious injury or fatality, it must be immediately reported to Oregon OSHA, and recorded on the OSHA 300 Log. See OAR 437-001-0700.

(4) Other recordkeeping information The following sections of OAR 437-001-0700 apply to health care assault recordkeeping and reporting: Section (6) Work-relatedness Section (15) Multiple Business Establishments Section (16) Covered Employees Section (19) Change of Business Ownership.

[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 11-2007, f. 12-21-07, cert. ef. 1-1-08

437-001-0740

Falsification or Failure to Keep and Post Records or Make Reports

Oregon OSHA will cite employers who fail to keep the records, post the summaries or make the reports required by OAR 437-001-0700 (except 437-001-0700(21) which is addressed in 437-001-0170) or 437-001-0706. Citations will be 'other than serious' and carry a penalty of at least \$100 but not more than \$1000 for each violation.

NOTE: ORS 654.991(3) provides that anybody who knowingly makes a false statement, representation or certification in any application, record, report, plan or other document filed or required by ORS 654.001 to 654.295, will, on conviction, be fined not more than \$10,000 or be imprisoned for not more than 6 months, or both. Also, ORS 654.086(1)(e) provides for civil penalties for falsification of a document.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 11-2007, f. 12-21-07, cert. ef. 1-1-08

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

Rule Caption: Promulgation of temporary disability standards to address the impairment of individual injured workers.

Adm. Order No.: WCD 13-2007(Temp)

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 12-28-07 thru 6-24-08

Notice Publication Date:

Rules Amended: 436-035-0500

Subject: Promulgation of temporary disability standards to address the impairment of an individual injured worker in

WCD files CAU-3445, DAT-8820 and G94-9409.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-035-0500

Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases under ORS 656.726(4)(f) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Temporary rules promulgated under ORS 656.726(4)(f) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter under ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

CAR-7960 As a result of the accepted right shoulder strain and rotator cuff tear the worker is unable to abduct his right shoulder to 90 degrees in order to measure external rotation and internal rotation as required by the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Revised 1990 referenced in OAR 436-035-0011(10). The Director finds measuring the range of motion at the side results in similar values in external rotation and internal rotation as when measured in 90 degrees abduction and assigns an impairment value of 1% for external rotation and 2.5% for internal rotation of the right shoulder. See OAR 436-035-0330(9) and (11). These values shall be added to any other range of motion findings in the right shoulder and combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. CAR-7960.

DAU-4251 As a result of the accepted right inguinal hernia the worker experiences a loss of function due to persistent paresthesia of the ilioinguinal nerve resulting in limitations in the ability to perform repetitive heavy lifting. The standards do not address this loss of function in the abdomen. The Director finds this loss of function similar to the loss experienced with permanent damage to the abdominal wall with resulting limitations in lifting and assigns an impairment value of 5% of the right ilioinguinal nerve in the abdomen. See OAR 436-035-0375. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. DAU-4251.

CAU-3445 As a result of the accepted right shoulder strain and rotator cuff tear the worker is unable to abduct his right shoulder to 90 degrees in order to measure external rotation and internal rotation as required by the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Revised 1990 referenced in OAR 436-035-0007(10). The Director finds measuring the range of motion at the maximum position of abduction results in similar values in external rotation and internal rotation as when measured in 90 degrees abduction and assigns an impairment value of 0% for external rotation and 3% for internal rotation of the right shoulder. See OAR 436-035-0330(9) and (11). These values shall be added to any other range of motion findings in the right shoulder and combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. CAU-3445.

DAT-8820 This workers accepted cervical strain has resulted in muscle tension headaches which have resulted in disruption of the activities of daily living and ongoing treatment including prescription medication. The standards do not address this loss of function attributable to an accepted cervical condition. The Director finds this loss of function similar to the loss experienced with an episodic neurological disorder to headaches and assigns an impairment value of 10% whole person. See OAR 436-035-0390(10). This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. DAT-8820.

G94-9409 This worker has psychiatric disability in addition to the disability resulting from her brain injury. The Court of Appeals in Ainsworth v. SAIF 202 Or App 708 (2006) ruled OAR 436-035-0390(12) was inconsistent with former ORS 656.214(5). Since the current OAR 436-035-0390(12) is the same as the former rule, the ruling by the Court applies. Consequently, the standards do not currently address the loss of function attributable to both the brain impairment and the psychiatric impairment. As a result, the Director finds the worker is entitled to a value for both the brain and psychiatric impairment and assigns a value of 50% impairment for loss of function in the brain and 81% for a loss of function due to a moderate Class 3 psychiatric impairment. See OAR 436-035-0390(10) and 436-035-0400(5)(c). These values shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. G94-9409.

Stat Auth: ORS 656.726(4)

Stat Implt: ORS 656.268(6); ORS 656.726(4)(f)(C)

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & ef. 4-28-

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93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #164-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #164-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02 cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. ef. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. ef. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. ef. 1-21-04 thru 7-18-04; WCD 5-2004(Temp), f. & cert. ef. 4-19-04 thru 10-15-04; WCD 7-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2005(Temp), f. & cert. ef. 5-13-05 thru 11-8-05; Administrative correction 11-18-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 6-2006(Temp), f. & cert. ef. 7-17-06 thru 1-12-07; Administrative correction 1-16-07; WCD 5-2007(Temp), f. & cert. ef. 6-27-07 thru 12-23-07; WCD 6-2007(Temp), f. & cert. ef. 10-29-07 thru 4-25-08; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 13-2007(Temp), f. & cert. ef. 12-28-07 thru 6-24-08

Department of Energy
Chapter 330

Rule Caption: 1.5 percent for solar energy in public building construction contracts.

Adm. Order No.: DOE 6-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-2-08

Notice Publication Date: 11-1-2007

Rules Adopted: 330-135-0010, 330-135-0015, 330-135-0020, 330-135-0025, 330-135-0030, 330-135-0035, 330-135-0040, 330-135-0045, 330-135-0050, 330-135-0055

Subject: The purpose of these rules is to implement House Bill 2620, which requires that a public body spend an amount equal to 1.5 percent of a public improvement contract for the construction or major renovation of a public building for the inclusion of appropriate solar energy technology in the building. The rules:

- Establish criteria for determining the dollar amount that is equivalent to 1.5% of the public improvement contract that must be spent on solar energy technology in the public building.
- Establish technical criteria for appropriate solar energy technology.
- Define equipment and other costs eligible to be included in determining whether 1.5% of the public improvement contract has been spent on solar energy technology
- Establish guidelines for deferral of unspent funds to future building projects.
- Establish guidelines for alternative financing of solar energy systems, such as a lease-purchase agreement, power purchase agreement or energy savings performance contract, to ensure that an amount equal to at least 1.5% of the public improvement contract has been spent on solar energy technology.
- Establish procedures for agencies to determine whether inclusion of solar energy technology in an eligible public building project is inappropriate.
- Establish procedures for agencies to report compliance with the provisions of the bill and these administrative rules.

Rules Coordinator: Michael W. Graine—(503) 378-5489

330-135-0010

Purpose

The purpose of these rules is to establish procedures to administer 2007 Or. Laws Chapter 310 (HB2620), which requires that a contracting agency spend an amount equal to at least 1.5 percent of a public improve-

ment contract for the construction or major renovation of a public building for the inclusion of appropriate solar energy technology in the building.

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0015

Definitions

As used in OAR 330-135-0010 through 330-135-0055:

(1) "Building" means any structure used or intended for supporting or sheltering any use or occupancy, as defined in Section 202 of the **2007 Oregon Structural Specialty Code**.

(2) "Contracting agency" has the meaning given the term in ORS 279A.010(1)(b).

(3) "Department" means the Oregon Department of Energy.

(4) "Public body" has the meaning given that term in ORS 174.109 and includes the inter-governmental entities described in ORS 174.108(3).

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Total contract price" means the amount of the awarded public improvement contract for a building.

(7) "Total Solar Resource Fraction" (TSRF) is the percent of a fixed axis solar energy system's annual performance when compared to a system with optimal tilt and orientation and no external shading.

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

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0020

Eligible Building Projects

(1) These rules apply to permanent buildings that use energy and that will be owned or controlled by a public body and which are either:

(a) Used by the public; or

(b) Enclosed by walls and roof to allow employees to use or occupy the building on a regular basis for a significant part of their work.

(2) Eligible public building projects are new capital construction projects for which the total contract price is \$1,000,000 or more and major renovations that exceed \$1,000,000 and 50% of the insured value of the building.

(3) These rules apply to projects advertised, but if not advertised then entered into, on or after the effective date of this law. Projects that are funded by bond measures approved by voters before January 1, 2008, are excluded from the requirements of these rules if an application for building permit is made by December 31, 2009.

(4) Public improvements that are not buildings are not required to comply with the provisions of these rules. This includes, but is not limited to:

(a) Group U occupancies as defined in Section 312 of the **2007 Oregon Structural Specialty Code**.

(b) Motor pools, parking lots, maintenance sheds, highways, bridges, sewers, fishponds, fishways and similar non-architectural structures.

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

Stat. Auth.: 2007 OL, Ch. 310

Stats. Implemented: 2007 OL, Ch. 310

Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0025

Eligible Contract Price

(1) The 1.5 percent to be spent on solar energy technology shall be based on total contract price, defined as the amount of the awarded public improvement contract.

(2) The total contract price does not include architectural, engineering or land surveying services as provided in OAR Chapter 125, unless these services are part of the public improvement contract.

(3) The amount to be spent on solar technology in a building shall be determined without regard to federal, state, or other incentives that may be available for the solar energy technology.

(4) The amount to be spent on solar technology in a building shall be set at the time the initial public improvement contract is signed.

(5) Any constitutionally, statutorily or contractually dedicated government funds for the building that have been determined to be unavailable for the installation of solar energy technology may be excluded when determining eligible costs under this section.

(6) For buildings with a joint public-private ownership and occupancy, the 1.5 percent to be spent on solar technology in the building shall be pro-rated based on the public body's share of the ownership.

(7) For buildings that are being constructed or renovated with private funding but which are intended for use, operation, or ownership by a pub-

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lic body, the 1.5% to be spent on solar technology in the building shall include the privately-funded share of the construction contract.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0030

Eligible Solar Energy Technologies and Performance Requirements

(1) Solar electric (photovoltaic), solar water heating, solar pool heating, and active solar space heating systems must:

- (a) be approved by a Professional Engineer;
- (b) meet the requirements of the Business Energy Tax Credit (BETC) program;

(c) have a Total Solar Resource Fraction (TSRF) of 75 percent or greater; and

- (d) provide a two-year warranty covering all parts and labor.

(2) Photovoltaic systems must be separately metered to record energy production.

(3) The passive solar heating system, daylighting system or combined system must:

(a) reduce the building's regulated energy use by 20% or more as demonstrated with whole building energy modeling prepared under the direction of a professional engineer. For determining whether the system(s) reduce energy use by 20%, a similar building built to the energy provisions of the 2007 Oregon Structural Specialty Code shall be used as the baseline. Regulated energy includes heating, cooling, fan, pump, hot water, and lighting loads. Other equipment and process loads are excluded; and

(b) be commissioned by a third-party commissioning agent to ensure design intent is met and the system functions as designed.

(4) Wind, biomass, hydro, geothermal, and any other "indirect" forms of solar energy are not eligible for inclusion as a solar energy technology.

(5) Purchase of green tags does not constitute compliance with the requirements of 2007 Or. Laws Chapter 310.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0035

Eligible Solar Technology Costs

(1) For photovoltaic systems, eligible costs include the PV modules, mounting structure and hardware, modifications to the building structure specifically to accommodate the solar energy system, associated electrical equipment, metering, labor and system commissioning.

(2) For building integrated photovoltaic (BIPV) systems, eligible costs include the difference between the costs for the BIPV components and the costs of the conventional building components that are modified or replaced to accommodate the installation of the BIPV system components.

(3) For solar water heating and solar pool heating systems, eligible costs include the solar panels, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning.

(4) For active solar space heating systems, eligible costs include the solar panels, mounting structure and hardware, associated plumbing and controls, metering, labor, and system commissioning. Costs for heat distribution systems, such as ductwork or radiant floors, do not qualify.

(5) For passive solar systems and daylighting systems, eligible costs include materials and labor costs that can be directly and exclusively attributed to the passive solar and daylighting system, the cost for modeling the building energy performance, and commissioning to ensure the system is functioning as intended.

(a) For passive solar systems eligible costs may include, but not be limited to, added thermal mass and shading controls.

(b) For daylighting systems eligible costs may include, but not be limited to, automatic controls, light shelves, overhangs, automated louvers and blinds and related controls, skylights in spaces where automatic controls are present, and the portion of windows higher than 7 feet above the floor.

(6) If less than 1.5% is spent on the passive solar system, daylighting system, or both, the remainder must be spent on photovoltaic or active solar systems.

(7) Costs for kiosks or permanent educational displays located in or on the building that explain the solar technology incorporated in the project are allowed.

(8) The contracting agency must be able to certify that costs are consistent with CPA certification of eligible costs according to the Business Energy Tax Credit Program (BETC) rules, OAR chapter 330, division 90.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0040

Alternative Financing

(1) Innovative financing arrangements to allow leveraging of federal, state, utility and other incentives, including but not limited to, lease-purchase agreements, power purchase agreements or energy savings performance contracts qualify under this program if:

(a) The public body documents that the costs of the solar energy system meets or exceeds 1.5 percent of the total contract price of the building project; and

(b) The solar energy system is affixed to the building or building site under the control of the public body, allowing for ballasted and other systems installed under a power purchase agreement.

(2) The minimum term of the agreement under this section shall be ten years, unless ownership of the solar energy system reverts to the public body before that time.

(3) Any agreement shall be exclusive to the solar energy system required under the provisions of 2007 Or Laws Chapter 310. Operation and maintenance costs clearly associated with the solar project are allowed. It shall not include terms relating to operation and maintenance or capital equipment purchase of any other equipment or services. For energy savings performance contracts, photovoltaic systems must be separately metered.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0045

Determining When Solar Energy Technology is Inappropriate

(1) If a contracting agency believes that the use of solar energy technology in a public building project is inappropriate, it shall request a review of these requirements from the Department. The public body must present the reasons for requesting the deferral in a document addressed to the technical panel.

(2) The Department will refer any requests submitted under this section to a technical panel appointed by the Director. The technical panel will be a permanent panel with members serving terms of up to three years. The technical panel will include, but not be limited to, the following membership:

(a) A representative from a school district, education service district, or local government;

(b) A representative from a state agency or a university;

(c) A representative from the solar energy industry;

(d) An engineer or architect; and

(e) A member of the general public.

(3) The technical panel will review the request and make a recommendation to the Department whether solar energy technology is inappropriate within 60 days of the request. In making its recommendation, the technical panel generally will consider whether there are physical constraints in the building or funding constraints that make the installation of solar energy technology inappropriate for the building. For example, it may consider, but not be limited to, the following issues:

(a) Whether the funding sources for the planned building specifically limit how the funds are to be expended;

(b) Whether the building is listed or eligible for listing on the National Register of Historic Places, and the solar installation would be visually disruptive to the historic character;

(c) Whether the Total Solar Resource Fraction (TSRF) is less than 75 percent;

(d) Whether net metering with the electric utility for a photovoltaic system is available on the site, and whether there is opportunity to use solar thermal, passive solar heating, or daylighting in the building;

(e) Whether the installation of solar energy technology would create security risks for staff or inhabitants of the building.

(4) The recommendation of whether solar technology in a building is inappropriate will not consider cost-effectiveness of the solar energy system.

(5) The technical panel may review a contracting agency's request to defer funds to a future building project rather than the next building project, if that future project is clearly identified and construction is planned to begin within the next three years.

(6) The Department will convey the recommendation of the technical panel to the contracting agency requesting the review. The contracting agency or public body, as appropriate, will make the final determination whether installation of solar energy technology on the building is appropriate.

(7) Nothing in this section shall be construed to waive the requirements that funds be deferred to a future building project pursuant to OAR 330-135-0040 if the request to deem the use of solar energy technology in a particular building project as inappropriate is approved.

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(8) The Department will include the technical panel's recommendation as well as the final decision regarding the installation of solar energy technology in the building in the biennial report to the legislature.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0050

Deferral of Required Solar Expenditures to Future Building Projects

(1) When a contracting agency determines that it is inappropriate to include solar energy technology in a building pursuant to OAR 330-135-0050, 1.5 percent of the total contract price for the building so designated shall be included in the next building project undertaken by the contracting agency, in addition to the 1.5 percent otherwise required for the inclusion of solar energy technology in the future building project. This provision does not apply to a public improvement contract for which no state funds are directly or indirectly used. State funds include funds authorized for construction or renovation of the building. Incentives (e.g. Business Energy Tax Credit) and funds intended to support general purpose operations are not considered direct or indirect state funds for the purpose of this section.

(2) Funds may not be used on an existing building or another site. The contracting agency may request a recommendation from the technical panel to defer funds to a future project if that future project is clearly identified and construction is planned to begin within the next three years.

(3) Any amount spent on solar energy technology in excess of 1.5 percent of the total contract price may not be credited to other current or future projects.

(4) If a solar energy system is removed from the building for any reason within 10 years of completion, the public body must spend an equivalent amount for solar energy technology on the next building project undertaken by the public body.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

330-135-0055

Reporting of Expenditures on Solar Energy Technology

(1) For eligible buildings, the contracting agency shall report on compliance with these rules when funding for a building project is approved and upon completion of the project, in a format specified by the Department and which will be available to the public.

(2) Information shall include, but not be limited to;

- (a) Public body name;
- (b) Building name;
- (c) Building use;
- (d) Building location;
- (e) Building size;
- (f) Estimated price of the public improvement contract upon which the amount to be spent on solar technology is calculated;
- (g) Projected completion date of building;
- (h) A description of the solar energy technology or technologies used, or a description of why inclusion of solar energy technology was determined to be inappropriate;
- (i) The costs of the solar energy system installed;
- (j) Estimated energy production or savings of the solar energy system;

and

- (k) Estimated energy cost savings of the solar energy system.

Stat. Auth.: 2007 OL, Ch. 310
Stats. Implemented: 2007 OL, Ch. 310
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08

Department of Fish and Wildlife Chapter 635

Rule Caption: Extend time period licenses can be suspended for convicted wildlife violations in Wildlife violator Compact states.

Adm. Order No.: DFW 130-2007

Filed with Sec. of State: 12-20-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 635-001-0210

Subject: These rules will extend the period of time in which the Oregon Fish and Wildlife Commission can suspend the hunting and angling licenses of individuals convicted of wildlife violations in any of the Wildlife Violator Compact member states.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-001-0210

Standard for License Suspension or Revocation

(1)(a) Upon receipt of the following information from a party state to the Compact, the Director shall initiate license suspension proceedings in accordance with OAR 635-001-0215:

(b) That a person has failed to comply with the terms of a citation for a fish or wildlife offense from the licensing authority of a party state. Such suspension shall remain in effect until the Director receives adequate evidence of compliance with the citation.

(2) Upon receipt of the following information from a party state to the Compact, the Director or Commission may initiate license suspension or revocation proceedings as appropriate in accordance with OAR 635-001-0215.

(a) That a person has had his or her license privileges suspended or revoked in a party state for a fish and wildlife offense which could have been the basis for suspension or revocation of license privileges in Oregon. The period of suspension is the period provided by Oregon statute for an equivalent offense or such longer period imposed by the party state.

(b) That a person has been convicted in a party state of a fish or wildlife offense. The period of suspension is the period provided by the party statute for an equivalent offense or such longer period imposed by the party state.

(3) Any suspension under this rule begins when the Commission or Department issues a final order of suspension.

Stat. Auth.: ORS 496.750
Stats. Implemented:
Hist.: FWC 43-1991, f. 5-1-91, cert. ef. 5-6-91; DFW 40-2006, f. & cert. ef. 6-9-06; DFW 130-2007, f. 12-20-07, cert. ef. 1-1-08

Rule Caption: Reporting requirements for instructor collected fees and housekeeping.

Adm. Order No.: DFW 131-2007

Filed with Sec. of State: 12-20-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 635-048-0005, 635-048-0010, 635-048-0030

Subject: These rules establish: a fee for individual students to attend basic hunter education or bowhunter education class; a process for collection and usage of these course fees; the consistent minimum time period for certified courses; and consistency in the issuance of duplicate certificates of course completions.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-048-0005

Course Length

The course of instruction shall be a minimum of 12 hours in length.

Stat. Auth.: ORS 496 & 497
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.360
Hist.: 3WC 6, f. 2-28-74, ef. 7-1-74, Renumbered from 630-040-0056, Renumbered from 635-025-0005; FWC 73-1986, f. & ef. 11-4-86; FWC 54-1997, f. & cert. ef. 9-3-97; DFW 131-2007, f. 12-20-07, cert. ef. 1-1-08

635-048-0010

Course Fee

A \$10.00 application fee will be collected from students enrolled in a hunter education or bowhunter education course for materials and services furnished by the Hunter Education Program. This fee will be collected by the Department as part of the application to participate in the course, and used to provide stipends to instructors for materials or services authorized by the department and to defray the cost of equipment provided to instructors by the Department. In no instance shall the course application fee serve as a barrier to persons desiring to participate in the training course. The department may waive the application fee for students who cannot pay the class fee due to hardship.

Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 497.360
Hist.: 3WC 6, f. 2-28-74, ef. 7-1-74, Renumbered from 630-040-0058, Renumbered from 635-025-0010; FWC 73-1986, f. & ef. 11-4-86; DFW 97-1998, f. & cert. ef. 12-9-98; DFW 131-2007, f. 12-20-07, cert. ef. 1-1-08

635-048-0030

Issuing Duplicate Certificates of Course Completion

Duplicate certificates of course completion shall be issued only through a field office or the Salem headquarters office of the Department. A permanent duplicate will be issued only when the student's registration card is on file. A temporary duplicate (valid only through the end of that year) will be issued when a student's records are not on file, if the student provides an affidavit, signed by the student and a parent or guardian if the student is a minor, stating that the student has successfully completed the

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required course. Such students may obtain a permanent duplicate only by successfully repeating the required course.

Stat. Auth.: ORS 496 & 497
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.360
Hist.: 3WC 6, f. 2-28-74, ef. 7-1-74, Renumbered from 630-040-0066, Renumbered from 635-025-0030; FWC 73-1986, f. & ef. 11-4-86; FWC 15-1987, f. & ef. 4-15-87; FWC 54-1997, f. & cert. ef. 9-3-97; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 131-2007, f. 12-20-07, cert. ef. 1-1-08

Rule Caption: Removal of Flat Abalone from the Developmental Fisheries Species List.

Adm. Order No.: DFW 132-2007(Temp)

Filed with Sec. of State: 12-20-2007

Certified to be Effective: 1-1-08 thru 1-31-08

Notice Publication Date:

Rules Amended: 635-006-0850

Subject: Amended rules remove flat abalone from the developmental fisheries species list.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-0850

Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH.

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. Hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 5000 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(b) INVERTEBRATES.

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal require-

ment of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(F) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH.

(A) Salmon shark (*Lamna ditropis*);

(B) Carp (*Cyprinus carpio*);

(C) Black hagfish (*Eptatretus deani*);

(D) Yellow perch (*Perca flavescens*);

(E) Eelpouts (family *Zoarcidae*);

(F) Brown bullhead (*Ameiurus nebulosus*);

(G) Skilfish (*Erilepis zonifer*);

(H) Northern squawfish (*Ptychocheilus oregonensis*);

(I) Pacific saury (*Cololabis saira*);

(J) Pacific sandfish (*Trichodon trichodon*);

(K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES.

(A) Pacific sand crab (*Emerita analoga*);

(B) Freshwater mussels (families *Margaritifera*, *Anodonta*, *Gonidea*, and *Corbicula*);

(C) Ocean cockle clams (*Clinocardium nuttallii*);

(D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Alloccentrotus fragilis*);

(F) Sea cucumber (*Parastichopus* spp.).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

(a) FISH.

(A) Spiny dogfish (*Squalus acanthias*);

(B) Soupfin shark (*Galeorhinus zyopterus*);

(C) Skate (family *Rajidae*);

(D) American shad (*Alosa sapidissima*);

(E) Pacific cod (*Gadus macrocephalus*);

(F) Pacific flatnose (*Antimora microlepis*);

(G) Pacific grenadier (*Coryphaenoides acrolepis*);

(H) Jack mackerel (*Trachurus symmetricus*);

(I) Chub (Pacific) mackerel (*Scomber japonicus*);

(J) Greenstriped rockfish (*Sebastes elongatus*);

(K) Redstripe rockfish (*Sebastes proriger*);

(L) Shortbelly rockfish (*Sebastes jordani*);

(M) Sharpchin rockfish (*Sebastes zacentrus*);

(N) Splitnose rockfish (*Sebastes diploproa*);

(O) Pacific sanddab (*Citharichthys sordidus*);

(P) Butter sole (*Pleuronectes isolepis*);

(Q) English sole (*Pleuronectes vetulus*);

(R) Rex sole (*Errex zechirus*);

(S) Rock sole (*Pleuronectes bilineatus*);

(T) Sand sole (*Psettichthys melanostictus*);

(U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);

(V) Spotted ratfish (*Hydrolagus collieii*);

(W) Wolf-eel (*Anarrhichthys ocellatus*);

(X) Walleye pollock (*Theragra chalcogramma*).

(b) INVERTEBRATES.

(A) Red rock crab (*Cancer productus*);

(B) Purple sea urchins (*Strongylocentrotus purpuratus*);

(C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99, DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 67-2005(Temp), f. 7-5-05, cert. ef. 7-6-05 thru 12-31-05; DFW 122-2005(Temp), f. & cert. ef. 10-18-05 thru 11-30-05; DFW 137-2005,

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f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 132-2007(Temp), f. 12-20-07, cert. ef. 1-1-08 thru 1-31-08

Rule Caption: Harvest Quota Set for the 2008 Yaquina Bay Commercial Roe Herring Fishery.

Adm. Order No.: DFW 133-2007(Temp)

Filed with Sec. of State: 12-26-2007

Certified to be Effective: 1-1-08 thru 4-15-08

Notice Publication Date:

Rules Amended: 635-004-0027

Subject: Amend rule to sets the 2008 harvest quota for the Yaquina Bay commercial roe herring fishery.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0027

Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31.

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery, during the period January 1 through April 15, 2008 is 23 tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(d) During the period January 1 through April 15 it is unlawful to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursuing rings on the purse line; lampara net; hook and line "jigging"; or eggs-on-kelp method.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84, FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04; Administrative correction 8-2-04; DFW 119-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 4-15-05; Administrative correction 4-20-05; DFW 143-2005(Temp), f. 12-16-05, cert. ef. 1-1-06 thru 4-15-06; Administrative correction 4-19-06; DFW 132-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 4-15-07; DFW 133-2007(Temp), f. 12-26-07, cert. ef. 1-1-08 thru 4-15-08

Rule Caption: Modification to Sport Angling Deadline on Sandy River Following Removal of Marmot Dam.

Adm. Order No.: DFW 134-2007

Filed with Sec. of State: 12-26-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 635-017-0090

Subject: Due to the removal of Marmot Dam by PGE in the fall of 2007, the former angling deadline, identified by a cable and painted rocks 200 feet below the dam site, was also removed. The adopted rule modifications establish a new angling deadline at the mouth of the Salmon River, approximately seven miles from the original site. The modifications also provide anglers with approximately seven miles of expanded fishing opportunity.

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) Sandy River (Multnomah/Clackamas Co.).

(a) Mainstem upstream to ODFW markers at the mouth of Salmon River:

(A) Open for adipose fin-clipped steelhead entire year;

(B) Open for adipose fin-clipped chinook salmon Feb. 1 through Oct. 31;

(C) Open for adipose fin-clipped coho salmon Aug. 1 through Oct. 31;

(D) Closed within 200 feet of chinook salmon spawning areas located in Oxbow Park where posted by ODFW markers Sept. 16 through Nov. 15;

(E) No angling from a floating device upstream from a point that is 200 feet below the Oxbow Park boat ramp; and

(F) Use of bait allowed.

(b) Mainstem and tributaries upstream from ODFW markers at the mouth of Salmon River.

(c) No limit on the size or number of brook trout taken. Catch limits on other trout species do not apply to brook trout.

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

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004,

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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

Rule Caption: Set 2008 Sturgeon and Smelt Seasons for the Columbia and lower Willamette Rivers.

Adm. Order No.: DFW 135-2007(Temp)

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08 thru 6-28-08

Notice Publication Date:

Rules Amended: 635-017-0095, 635-023-0095, 635-042-0130, 635-042-0135

Rules Suspended: 635-017-0095(T), 635-023-0095(T), 635-042-0130(T)

Subject: Amended rules set commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam and establish recreational fishing seasons in the Columbia River and the Willamette Rive downstream of Willamette Falls (including Multnomah Channel). Revisions are consistent with the action taken December 13, 2007 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-017-0095

Sturgeon Season

(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) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon four days per week, Thursday, Friday, Saturday and Sunday 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 areas identified in section

(2) of this rule is prohibited August 1 through September 30.

(4) 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 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08

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) Tuesday, January 1, 2008 through Thursday, July 31, 2008; and
- (b) Wednesday, October 1 through Wednesday, December 31, 2008.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1, 2008 through September 30, 2008.

(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) Tuesday January 1, 2008 through Wednesday April 30, 2008, and
- (b) Saturday May 10, 2008 through Tuesday June 24, 2008.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 9, 2008 and from June 25 through December 31, 2008.

(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) 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, 2008 through July 31, 2008.

[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

635-042-0130

Smelt Season

(1) Effective 12:01 a.m. Tuesday January 1, 2008, the current commercial smelt fishery in the mainstem Columbia River will be modified to a Level 1 fishery. Smelt may be taken for commercial purposes from the Columbia River in Zones 1 through 5 on Mondays and Thursdays from 7:00 a.m. to 4:00 p.m. (9 hrs.) during the period from January 1 through March 31, 2008.

(2) It is unlawful to use any gear other than those listed below for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08

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.

ADMINISTRATIVE RULES

(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:

6:00 p.m. Tuesday January 8 to 6:00 p.m. Wednesday January 9, 2008;
6:00 p.m. Tuesday January 15 to 6:00 p.m. Wednesday January 16, 2008;
6:00 p.m. Tuesday January 22 to 6:00 p.m. Wednesday January 23, 2008;
6:00 p.m. Tuesday January 29 to 6:00 p.m. Wednesday January 30, 2008;
6:00 p.m. Tuesday February 5 to 6:00 p.m. Wednesday February 6, 2008;
6:00 p.m. Tuesday February 12 to 6:00 p.m. Wednesday February 13, 2008.

(4) White sturgeon and salmon must be delivered to wholesale fish dealers, cannerys, or fish buyers undressed (in the round).

(5) 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 cannery;

(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.

(6) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (3) of this rule.

(7) The retention of green sturgeon is prohibited.

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. & 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

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Rule Caption: Amend rules related to 2008 Oregon Sport Fishing Regulations.

Adm. Order No.: DFW 136-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 7-1-2007

Rules Amended: 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-039-0080, 635-039-0090

Subject: Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2008.

Housekeeping and technical corrections were made to ensure rule consistency.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-011-0100

General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2008 Oregon Sport Fishing Regulations** by reference. 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**.

[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 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-013-0003

Purpose and Scope

(1) The purpose of Division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for 2007, included in the **Pacific Fishery Management Council — Adopted 2007 Ocean Salmon Management Measures and Impacts, dated April 2007**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the **2008 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the **Federal Regulations** may be obtained by contacting Pacific Council News at www.pcouncil.org or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

[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 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; 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 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; 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 136-2007, f. 12-31-07, cert. ef. 1-1-08

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)**.

[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

ADMINISTRATIVE RULES

11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

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.

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

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; FWC 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. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-017-0095

Sturgeon Season

(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) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon three days per week, Thursday, Friday and Saturday, during the following periods:

(a) January 1 through January 31.

(3) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon four days per week, Thursday, Friday, Saturday and Sunday during the following periods:

(a) February 1 through July 31; and

(b) October 1 through December 31.

(4) The retention of white sturgeon in the areas identified in subsections (2) and (3) of this rule is prohibited August 1 through September 30.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-018-0080

Purpose and Scope

(1) The purpose of Division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates by reference the **2008 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2008 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 018 to determine all applicable sport fishing requirements for the Central Zone.

[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; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 30-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-018-0090

Inclusions and Modifications

The **2008 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 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 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4 2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(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

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 during the following periods:

(a) January 1 through January 31, three days per week, Thursday, Friday, and Saturday; and

(b) February 1 through July 31 and October 1 through December 31, four days per week, Thursday, Friday, Saturday and Sunday.

(3) The retention of white sturgeon in the area identified in subsection (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 July 4.

(5) The retention of white sturgeon in the area identified in subsection (4) of this rule is prohibited May 1 through May 9 and from July 5 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) 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.

[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

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) The Columbia River is open from January 1 through April 15, 2008 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16 through April 30, 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 with the following restrictions:

(a) Adipose fin-clipped Chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2008 Oregon Sport Fishing Regulations**.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through May 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.

[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

635-023-0128

Summer Sport Fishery

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2008 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through June 30, 2008, or until the harvest guideline is achieved, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult and jack chinook salmon; and

(b) Effective June 16 through July 31, 2008, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult and jack chinook salmon.

(c) The daily bag limit for adult salmon and adipose fin-clipped steelhead combined is two fish.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-023-0130

Fall Sport Fishery

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However,

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additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2008 Oregon Sport Fishing Regulations**:

(a) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a chinook; except:

(A) Retention of chinook is prohibited during August 1 through August 21, 2008, and September 4 through September 30, 2008, and

(b) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a chinook; except:

(A) During September 5 through September 30, 2008, retention of chinook is prohibited downstream of a line projected from the lower end of Bachelor Island to the Warrior Rock Lighthouse on the Oregon bank.

[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 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-039-0080

Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2008 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2008 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions or News documents dated June and November 2006 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) as amended by Federal Regulations, and Title 50 of the Code of Federal Regulations, Part 660 Vol. 71, No. 189, dated December 29, 2006; to determine regulations applicable to this fishery.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

635-039-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2008 are specified in the Pacific Council Decisions or News documents dated June and November, 2007.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2008 are:

(A) yelloweye rockfish, 3.3 metric tons.

(B) canary rockfish, 6.6 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2008, the sport harvest cap for black rockfish is 318 metric tons.

(4) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).

(5) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2008 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 359 metric tons.

(b) Other nearshore rockfish, 11.3 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the **2008 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2008:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2008 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily bag limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humburg Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions: Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (b) and (c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (b) and (c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50

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Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08

Rule Caption: Amend rule related to 2008 Oregon Sport Fishing Regulations for the Rogue River.

Adm. Order No.: DFW 137-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 9-1-2007

Rules Amended: 635-016-0090

Subject: Amended rule to adopt changes to the sport fishing regulations for the Rogue River for 2008. Housekeeping and technical corrections were made to ensure rule consistency.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-016-0090

Inclusions and Modifications

The 2008 Oregon Sport Fishing Regulations provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2008 Oregon Sport Fishing Regulations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-

1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08

Rule Caption: Amend rules regarding to the sale of domestic elk meat.

Adm. Order No.: DFW 138-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07 thru 5-29-08

Notice Publication Date:

Rules Amended: 635-200-0090

Subject: Rule amendment removes the reference to a statute related to the sale of domestic elk meat. The statute sunsets on January 2, 2008. The intent of the amendment is to clarify that sale of domestic elk meat (as per the requirements of the rule) continues beyond the sunset of that statute.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-200-0090

Sale of Meat

(1) Any person may sell or purchase food items prepared with the meat of game birds (except migratory waterfowl), game mammals or fish donated as part of:

(a) Fund raisers held by trapping, hunting or fishing organizations, or churches, schools and other nonprofit charitable organizations, provided that the wildlife was not taken under a damage control permit; or

(b) Charitable use by churches, schools and other nonprofit charitable organizations.

(2) The exception provided in subsection (1) does not allow the sale of raw meat.

(3) Any person may sell or purchase the meat and by-products of domesticated elk (as defined by ORS 174.106) raised pursuant to a cervid license issued by the Fish and Wildlife Commission, provided that:

(a) The slaughter and processing is conducted in an official exotic animal establishment inspected and certified by the U.S. Department of Agriculture; and

(b) The elk is slaughtered, processed and sold in compliance with the rules of the Oregon Department of Agriculture.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 498.019, 498.022 & 498.042

Stats. Implemented: ORS 496.012, 496.138, 496.146, 498.019, 498.022 & 498.042; DFW 138-2007(Temp), f. & cert. ef. 12-31-07 thru 5-29-08

Rule Caption: Sport Fishing Season Opening Date for Carmen Reservoir Amended.

Adm. Order No.: DFW 1-2008(Temp)

Filed with Sec. of State: 1-9-2008

Certified to be Effective: 1-9-08 thru 7-6-08

Notice Publication Date:

Rules Amended: 635-017-0090

Subject: Amended rule implements an earlier opening date for the 2008 recreational fishing season at Carmen Reservoir. The 2008 Oregon Sport Fishing Regulations, as adopted by the Oregon Fish and Wildlife Commission at their August 3, 2007 meeting, inadvertently set the season opening date of April 26, 2008. The recreational fishing season for Carmen Reservoir was intended to begin January 1, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

ADMINISTRATIVE RULES

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 for 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.

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

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 19-1998, f. & cert. ef. 3-12-98; FWC 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; FWC 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; FWC 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; FWC 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 15-1999, f. & cert. ef. 3-9-99; FWC 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; FWC 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; FWC 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; FWC 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; FWC 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; FWC 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; FWC 78-1999, f. & cert. ef. 10-4-99; FWC 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 13-2000, f. & cert. ef. 3-20-00; FWC 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; FWC 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; FWC 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 6-2001, f. & cert. ef. 3-1-01; FWC 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; FWC 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; FWC 70-2001, f. & cert. ef. 8-10-01; FWC 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; FWC 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; FWC 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; FWC 123-2001, f. 12-31-01, cert. ef. 1-1-02; FWC 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; FWC 26-2002, f. & cert. ef. 3-21-02; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 42-2002, f. & cert. ef. 5-3-02; FWC 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; FWC 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; FWC 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by FWC 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; FWC 42-2003, f. & cert. ef. 5-16-03; FWC 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; FWC 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; FWC 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; FWC 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; FWC 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; FWC 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 33-2004, f. 4-22-04, cert. ef. 5-1-04; FWC 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; FWC 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 24-2005, f. 4-15-05, cert. ef. 5-1-05; FWC 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; FWC 32-2007, f. 5-14-07, cert. ef. 6-1-07; FWC 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; FWC 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; FWC 134-2007, f. 12-26-07, cert. ef. 1-1-08; FWC 136-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08

Rule Caption: Establish average market value of food fish for determining damages related to commercial fishing violations.

Adm. Order No.: DFW 2-2008

Filed with Sec. of State: 1-15-2008

Certified to be Effective: 1-15-08

Notice Publication Date: 12-1-2007

Rules Amended: 635-006-0232

Subject: Amend rules to establish the average value of food fish species used to determine damages for commercial fishing violations.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2008 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

(A) Anchovy, Northern \$0.20.

(B) Cabezon, \$3.48.

(C) Carp \$0.50 (2006 price).

(D) Cod, Pacific \$0.53.

(E) Flounder, arrowtooth \$0.10.

(F) Flounder, starry \$0.37.

(G) Greenling, \$4.55.

(H) Grenadier \$0.11.

(I) Hagfish \$0.55.

(J) Hake, Pacific (Whiting) \$0.08.

(K) Halibut, Pacific, dressed weight with head on \$4.00.

(L) Herring, Pacific \$0.29.

(M) Lingcod, \$1.82.

(N) Mackerel, jack \$0.05, Pacific \$0.03.

(O) Opah \$1.74.

(P) Pacific ocean perch, \$0.48.

(Q) Pollock, Walleye \$0.67 (2001 price).

(R) Rockfish:

(i) Black, \$2.05.

(ii) Blue, \$2.82.

(iii) Canary, \$0.51.

(iv) Darkblotched, \$0.47.

(v) Nearshore, \$6.02.

(vi) Shelf, \$0.45.

(vii) Shortbelly, using trawl gear \$0.29 (2003 price).

(viii) Slope, using trawl gear, \$0.49 using line and pot gear \$0.51.

(ix) Tiger, \$3.91.

(x) Vermilion, \$2.62.

(xi) Widow \$0.49.

(xii) Yelloweye, using trawl gear \$0.54, using line and pot gear \$1.00.

(xiii) Yellowtail, using trawl gear \$0.50, using line and pot gear \$1.66.

(S) Sablefish:

(i) Dressed weight, ungraded \$3.50, extra small \$2.42, small \$3.47, medium \$3.94 and large \$4.14.

(ii) Round weight, ungraded \$1.83, extra small \$1.09, small \$1.35, medium \$1.74 and large \$2.21.

(T) Salmon, Chinook, Ocean dressed weight: large \$5.63, medium \$5.53, small \$5.49 and mixed size \$5.72.

(U) Salmon, coho, Ocean dressed weight: mixed size \$1.90.

(V) Salmon, pink, ocean dressed weight, ungraded, \$1.03.

(W) Sanddab, Pacific \$0.44.

(X) Sardine, Pacific \$0.05.

(Y) Shad, American:

(i) Coast, ungraded, gill net and set net, \$0.30 (2003 price).

(ii) Columbia, ungraded \$0.15.

(Z) Shark, blue \$0.83, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.50 (2006 price), sixgill, \$0.05, soupfin \$0.51, spiny dogfish \$0.13, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.60 and other species \$1.00.

(AA) Skates and Rays \$0.23.

(BB) Smelt, Eulachon (Columbia River), \$3.59 and other species \$2.00 (2004 price).

(CC) Sole, butter \$0.32, curlfin (turbot) \$0.30, Dover \$0.38, English \$0.31, flathead \$0.30, petrale \$0.94, rex \$0.34, rock \$0.35 and sand \$0.64.

(DD) Steelhead \$0.76.

(EE) Sturgeon, green \$1.44 and white \$2.11.

(FF) Surfperch \$1.00 (2006 price).

(GG) Swordfish \$3.25 (2003 price).

ADMINISTRATIVE RULES

(HH) Thornyhead (*Sebastolobus*), longspine \$0.51 and shortspine \$0.63.

(II) Tuna, albacore \$0.90, bluefin \$2.50 (2004 price) and yellowfin \$3.49 (2006 price).

(JJ) Walleye \$2.47.

(KK) Wolf-eel \$0.06.

(LL) Wrymouth \$0.22.

(b) CRUSTACEANS:

(A) Crab: box \$2.00, Dungeness bay \$3.09 and ocean \$2.23, rock \$1.20 and Tanner \$0.69 (2003 price).

(B) Crayfish \$1.88.

(C) Shrimp: brine \$1.00, coonstripe \$1.57, ghost (sand) \$2.68, mud \$1.21, pink \$0.47 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$6.58.

(D) Water flea (*Daphnia*) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$17.00.

(B) Clams: butter \$0.31, cockle \$0.56, gaper \$0.56, littleneck \$2.00 (2006 price), razor \$2.29 and softshell \$0.50.

(C) Mussels, ocean \$0.74 (2006 price).

(D) Octopus \$0.69.

(E) Scallop, rock \$0.70 (2005 price).

(F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).

(G) Squid 0.23.

(d) OTHER INVERTEBRATES:

(A) Jellyfish \$10.00 (2004 price).

(B) Sea cucumber \$0.30 (2005 price).

(C) Sea urchin, red \$0.38 and purple \$0.30 (2004 price).

(D) Sea stars \$1.00 (2006 price).

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08

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Rule Caption: Amended Rules for the Issuance and Management of Limited Entry Sardine Permits.

Adm. Order No.: DFW 3-2008

Filed with Sec. of State: 1-15-2008

Certified to be Effective: 1-15-08

Notice Publication Date: 12-1-2007

Rules Amended: 635-006-1015, 635-006-1065, 635-006-1075

Subject: Amended rules necessary to modify the Limited Entry Sardine Permit renewal deadline date and implement changes as required in Oregon Senate Bill 241 of 2007. Housekeeping and technical corrections were made to ensure rule consistency.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-1015

Requirement for Permit

(1) The following provide general requirements for permits:

(a) Gillnet salmon — see ORS 508.775;

(b) Troll salmon — see ORS 508.801 and 508.828;

(c) Shrimp — see ORS 508.880 and 508.883;

(d) Scallop — see ORS 508.840 and 508.843;

(e) Roe-herring:

(A) It is unlawful for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is unlawful for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.

(f) Sea Urchin:

(A) It is unlawful for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is unlawful for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of ORS 508.941(3), it is unlawful for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(B) If the Oregon Fish and Wildlife Commission (Commission) establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.

(C) In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season's fishery before fishing.

(D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.

(E) Effective December 1, 2006, the number of crab pots allocated to a permit required under section (A) above will be determined as follows:

(i) The allocation will be based on documented landings of Ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;

(ii) The crab pot allocation will be the highest number of pots the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);

(iii) A crab pot allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;

(iv) A crab pot allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(v) A crab pot allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

(h) Developmental Fisheries: See ORS 506.450 through 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish / blue rockfish / nearshore fishery — see ORS 508.945.

(k) Brine Shrimp:

(A) It is unlawful to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is unlawful for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Oregon Department of Fish and Wildlife (Department) may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is unlawful:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time or where

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more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any boat while harvesting, possessing, or transporting bay clams.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule and five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(m) Sardine fishery:

(A) It is unlawful for an individual to operate a vessel in the Sardine fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095. The sardine fishery permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(B) It is unlawful for a wholesaler, canner or buyer to buy or receive sardines taken in the Sardine fishery from a vessel for which the permit required by section (1)(m)(A) of this rule has not been issued.

(C) The Department may issue not more than 26 permits required by section (1)(m)(A) of this rule.

(D) The Sardine Advisory Group as defined under OAR 635-006-1065 may advise the Commission on increasing the number of permits, developing criteria for issuing the new permits, and other regulations concerning the sardine fishery.

(E) By January 1, 2008, vessels permitted under section (1)(m)(A) of this rule shall be operated or owned by the permit holder.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921-508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 114-2007, f. & cert. ef. 10-25-07; DFW 3-2008, f. & cert. ef. 1-15-08

635-006-1065

Review of Denials (Restricted Participation Systems)

(1) An individual whose application for issuance or renewal of a limited entry permit is denied by the Oregon Department of Fish and Wildlife (Department) may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board (Board). The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(c) Shrimp — see ORS 508.910;

(d) Scallop — see ORS 508.867;

(e) Roe-herring — see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin — see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab — see ORS 508.941. For the Ocean Dungeness crab fishery, a permit holder may request review of the Department's initial crab pot allocation or the Department's denial of replacement of lost buoy tags by doing so in writing to the Commercial Fishery Permit Board. The Board may adjust the number of crab pots allocated to a permit or approve replacement of lost buoy tags as follows:

(A) The Board may adjust the number of crab pots allocated to a permit:

(i) Based on additional landings documentation supplied by permit holder according to criteria under OAR 635-006-1015(1)(g)(E); or

(ii) The crab pot allocation may be increased by one tier as described under OAR 635-006-1015(1)(g)(E) based on circumstances during the qualifying seasons described in OAR 635-006-1015(1)(g)(E) beyond the control of the permit holder which created undue hardship as defined by OAR 635-006-1095(7)(d).

(B) The Board may approve replacement of lost buoy tags due to a catastrophic loss as defined under OAR 635-005-0055(1)(6)(g)(B).

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Oregon Fish and Wildlife Commission (Commission), but may be appealed as provided in ORS 183.480 to 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to OAR 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 and 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for renewal or request to transfer a permit according to the applicable provisions of ORS Chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party, including the Department, must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(e) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

(i) Three members shall be chosen to represent the sardine industry.

(ii) Two members shall be chosen to represent the public.

(B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).

(7) Brine shrimp fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the

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Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS Chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109
Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 3-2008, f. & cert. ef. 1-15-08

635-006-1075

Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

- (a) Gillnet salmon — see ORS 508.781;
- (b) Troll salmon — see ORS 508.807;
- (c) Shrimp — see ORS 508.892;
- (d) Scallop — see ORS 508.849;

(e) Roe-herring permit — Permits may be renewed by submission to the Oregon Department of Fish and Wildlife (Department) of a \$75 fee and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought and;

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

(k) Sardine fishery:

(A) Permits may be renewed for the following year:

(i) by submitting a complete application to the Department date-stamped or postmarked by December 31 of the year the permit is sought for renewal and;

(ii) submitting the logbooks required under OAR 635-006-1110; and

(iii) the permitted vessel must have lawfully landed into Oregon, during the year preceding the calendar year for which the permit is sought for

renewal, either (I) a minimum of 10 landings of sardines of a least 5 metric tons each, or (II) landings of sardines having an aggregate ex-vessel price of at least \$40,000.

(B) The Commercial Fishery Permit Board (Board) may waive the landing requirements of section (A)(iii) of this rule if it finds that the failure to meet these requirements is due to the permit holder's illness or injury, or to circumstances beyond the control of the permit holder. Final Orders shall be issued by the Board and may be appealed as provided in ORS 183.480 through 183.550.

(C) The Oregon Fish and Wildlife Commission may, at its discretion, waive the landing requirements of section (A)(iii) of this rule for all limited entry sardine permit holders due to unusual market conditions.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941
Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 1-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 3-2008, f. & cert. ef. 1-15-08

Department of Forestry Chapter 629

Rule Caption: Oregon Smoke Management Plan Revision and Update.

Adm. Order No.: DOF 4-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 7-1-2007

Rules Adopted: 629-048-0001, 629-048-0005, 629-048-0010, 629-048-0020, 629-048-0100, 629-048-0110, 629-048-0120, 629-048-0130, 629-048-0140, 629-048-0150, 629-048-0160, 629-048-0200, 629-048-0210, 629-048-0220, 629-048-0230, 629-048-0300, 629-048-0310, 629-048-0320, 629-048-0330, 629-048-0400, 629-048-0450, 629-048-0500

Rules Amended: 629-043-0040

Rules Repealed: 629-043-0041, 629-043-0043

Subject: Revises and updates the Oregon Smoke Management Plan for prescribed burning of forest land in the State of Oregon. Sets out areas of the state in which forest land burning is controlled and rules for conducting prescribed burning. Designates areas which are to be protected from smoke impacts. Sets criteria for designating additional protected areas. Encourages the use of alternatives to burning and alternative burning practices to minimize particulate emissions. Modifies requirements for burning in and near federal Class I Areas for visibility purposes. Redefines terminology to more clearly identify source areas where burning will be controlled and receptor areas to be protected from smoke impacts. Outlines best burn practices and techniques to reduce emissions. Establishes burning that is subject to fees and the amount of those fees. Clarifies enforcement action that may be taken for violations of the Oregon Smoke Management Plan. Contact Jim Trost for rule specific questions – 503-945-7448.
Rules Coordinator: Gayle Birch—(503) 945-7210

629-043-0040

Burning Permits

(1) Pursuant to ORS 477.515, holders of permits for burning must:

(a) Before burning, clear the area immediately around and above the burn site of material that may carry fire;

(b) When burning in a barrel or similar container, completely cover the container openings with a screen constructed of not less than 14-gauge wire and that has openings which are no larger than one-fourth inch in diameter;

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(c) Not allow the uncontrolled spread of fire away from the permitted burn site;

(d) Not burn on a day when burning has been prohibited by the forester because of increased fire danger or because of air quality conditions;

(e) Not burn without complying with all conditions, hours and dates set forth on the permit; and

(f) Not burn without complying with the open burning prohibitions set forth in OAR 340-264-0050 to 340-264-0170.

(2) The requirements of this rule do not apply to prescribed burning conducted in compliance with ORS 477.013, OAR 629-043-0026(4) and 629-048-0001 to 629-048-0500.

(3) The forester may, in a written order, reduce or waive any requirement of this rule if:

(a) In the judgment of the forester, conditions so warrant; and

(b) The burning complies with the requirements of ORS 477.515, chapter 468, chapter 468A and OAR chapter 340 division 264.

Stat. Auth.: ORS 477.013, 526.016 & 526.041

Stats. Implemented: ORS 477.013 & 477.515

Hist.: FB 6, f. 5-9-60; FB 8-1986, f. & ef. 9-25-86; DOF 11-1998, f. & cert. ef. 8-13-98; DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0001

Title, Scope and Effective Dates

(1) OAR 629-048-0001 through 629-048-0500 are known as the Smoke Management Rules.

(2) The Smoke Management Rules apply to prescribed burning of forest fuels for forest management purposes within any forest protection district in Oregon as described by OAR 629-041-0500 to 629-041-0575.

(3) Except as otherwise specified in these rules, the smoke management rules are effective January 1, 2008.

Stat. Auth.: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0005

Definitions

Unless otherwise defined below, terms used in this rule division shall have the meaning provided in ORS 477.001:

(1) "Board" means the State Board of Forestry.

(2) "Burn boss" means the person, authorized by the owner (may include the owner) or a federal land management agency to conduct and make decisions regarding the practices involved in conducting a prescribed burning operation and who is responsible for compliance with all requirements under this rule division and related laws.

(3) "Burn registration" means the act or product of notifying the forester to the required level of detail, of intent to conduct a prescribed burning operation as required by OAR 629-048-0300.

(4) "Class I Area" means Crater Lake National Park and certain wilderness areas designated by Congress as federal Class I Areas that are subject to visibility protection under the Environmental Protection Agency's Regional Haze Rule and the federal Clean Air Act.

(5) "Class 1 forestland" has the same meaning as given in ORS 526.324 to "timber class" and includes all forestland primarily suitable for the production of timber.

(6) "Class 2 forestland" has the same meaning as given in ORS 526.324 to "timber and grazing class" and includes all forestland primarily suitable for joint use for timber production and the grazing of livestock, as a permanent or semi-permanent joint use, or as a temporary joint use during the interim between logging and reforestation.

(7) "Class 3 forestland" has the same meaning as given in ORS 526.324 to "agricultural class" and includes all forestland primarily suitable for grazing or other agricultural use.

(8) "Department" means the State Forestry Department.

(9) "Eastern Oregon" means the eighteen Oregon counties lying east of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, and Jackson Counties.

(10) "Emissions" means the gaseous and particulate combustion products in smoke resulting from burning forest fuels.

(11) "Federal land management agency" means the United States Department of Agriculture's Forest Service; the United States Department of the Interior's Bureau of Land Management, National Park Service, Fish and Wildlife Service, or Bureau of Indian Affairs; or any other federal agency that may conduct prescribed burning within a forest protection district.

(12) "Field administrator" means an employee of the State Forestry Department, a forest protective association, or federal land management

agency who has, among other responsibilities, an official role in determining whether a prescribed burn should proceed, continue or be suspended.

(13) "Forester" means the State Forester or authorized representative including but not limited to fire wardens appointed under ORS 477.355.

(14) "Forest fuels" means any flammable woody material, grass or other plant matter that may constitute a wildfire hazard or that is intended for disposal by prescribed burning, but does not include products that have had secondary processing such as boards, posts or paper.

(15) "Forest protection district" means an area of forestland designated by the State Forester for protection from fire pursuant to ORS 477.225. Detailed descriptions of the forest protection districts may be found in OAR 629-041-0500 to 629-041-0575.

(16) "Ground level" means at or close to the surface of the earth such that smoke at "ground level" could be inhaled by persons going about their normal business, in or out of doors. It does not include smoke that passes overhead when prescribed burning is conducted in accordance with the smoke management forecast and instructions.

(17) "Level 1 regulation" means the program of requirements that apply to all forestland managed by a federal land management agency statewide, and all class 1 forestland in western Oregon within a forest protection district (OAR 629-048-0100(2)). These requirements include burn registration at least seven days in advance (OAR 629-048-0300), fee administration (OAR 629-048-0310), compliance with smoke management forecast instructions (OAR 629-048-0230), and reporting of accomplishments (OAR 629-048-0320).

(18) "Level 2 regulation" means the program of requirements that apply to all non-federal forestlands in eastern Oregon, and all class 3 forestland in western Oregon within a forest protection district (OAR 629-048-0100(3)). These requirements include burn registration (OAR 629-048-0300) and reporting of accomplishments (OAR 629-048-0320).

(19) "Mop-up" means action, usually involving the application of water or other means to eliminate heat, remove fuel or reduce the supply of oxygen, sufficient to make a fire safe or reduce residual smoke.

(20) "Other areas sensitive to smoke" means specific recreation areas not listed as SSRAs in OAR 629-048-0140 but that are intended to receive consideration for focused forecasting attention for limited times during periods of heavy use by the public such as coastal beaches on holidays, Class I Areas during peak summer use, and other areas during special events. All Oregon and Washington Class I areas shall be considered areas sensitive to smoke during the visibility protection period (July 1 to September 15), defined in the Oregon Visibility Protection Plan (OAR 340-020-0040, Section 5.2).

(21) "Prescribed burning" means the use of fire ignited as a planned management activity on forestland to meet specific objectives involving the reduction or removal of forest fuels. Prescribed burning does not include impromptu fires ignited for purposes such as warming fires, burn-out or backfire operations used in wildfire suppression, or lightning ignited "wildland fire use" as practiced by federal land management agencies.

(22) "Regional haze" means air pollution transported over long distances into Class I Areas that reduces visibility in those areas.

(23) "Residual smoke" means smoke produced after the initial fire has passed through the fuel.

(24) "Smoke intrusion" means the verified entrance of smoke from prescribed burning into a smoke sensitive receptor area at ground level.

(25) "Smoke management forecast unit" means any or all of the persons appointed or assigned by the State Forester to develop and interpret weather forecasts and produce smoke management instructions, usually operating from the department headquarters in Salem.

(26) "Smoke sensitive receptor area or SSRA" means an area designated for the highest level of protection under the smoke management plan, as described and listed in OAR 629-048-0140.

(27) "Underburning" means low intensity prescribed burning to maintain forest health through reduction of fuels in the understory of a forest stand while maintaining the overstory stand characteristics.

(28) "Verified smoke incident" means an entrance of prescribed burning smoke into a community, other than an SSRA, investigated by the forester to:

(a) Validate claims that smoke did, in fact, enter the area described, at ground level;

(b) Determine if the smoke or a portion of it, in fact, derived from forest management prescribed burning from a legally conducted operation; and

(c) If (a) and (b) of this section were affirmed, determine the intensity and approximate duration of the smoke incident as described in OAR 629-048-0110.

(29) "Western Oregon" means the eighteen Oregon counties lying west of Hood River, Wasco, Jefferson, Deschutes and Klamath Counties.

Stat. Auth.: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

ADMINISTRATIVE RULES

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0010

Purpose

(1) ORS 477.013 requires the State Forester and the Department of Environmental Quality to approve a plan for managing smoke in areas that they are to designate, for the purpose of maintaining air quality. The plan must designate areas within which all burning must comply with the plan.

(2) The Smoke Management Rules are intended to establish the areas required by ORS 477.013; describe the objectives of the smoke management plan; establish procedures to be followed in administering prescribed burning; educate the public as to the necessity of prescribed burning and the measures being taken to protect air quality, public health and visibility; and to provide enforceable mechanisms to ensure the requirements of the smoke management plan are met.

(3) The Smoke Management Rules, promulgated by the State Forester, together with department directive 1-4-1-601, Operational Guidance for the Oregon Smoke Management Program, shall comprise the smoke management plan upon approval by the Department of Environmental Quality and filing with the Secretary of State.

(4) The objectives of the smoke management plan are to:

(a) Prevent smoke resulting from prescribed burning on forestlands from being carried to or accumulating in smoke sensitive receptor areas or other areas sensitive to smoke, and to provide maximum opportunity for essential forestland burning while minimizing emissions;

(b) Coordinate with other state smoke management programs;

(c) Comply with state and federal air quality and visibility requirements;

(d) Protect public health; and

(e) Promote the reduction of emissions by encouraging cost effective utilization of forestland biomass, alternatives to burning and alternative burning practices.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0020

Necessity of Prescribed Burning

(1) All of Oregon's forestlands are flammable under the right conditions of fuel dryness, heat and wind.

(2) As a part of the natural ecology of forestlands, wildfire is neither necessarily good nor bad, however, there are a number of characteristics of unplanned, uncontrolled fires that are usually regarded by humans as undesirable. Among these are threats to public safety, destruction of natural resources, destruction of property and the adverse health effects that can occur from breathing a significant amount of fine particulate matter associated with wildfire smoke.

(3) When areas do not experience fire or other means of reducing forest fuels for extended periods, there is a greater wildfire hazard and the likelihood increases that if unplanned ignitions occur, through whatever means, that the resulting wildfire will burn at greater intensity and be more difficult to suppress.

(4) Because wildfires typically burn during hotter, drier conditions than those usually planned for prescribed fires, forest fuels are more completely consumed, producing more emissions. Also, wildfires often occur during periods of atmospheric stability and thus air stagnation, trapping smoke close to the ground where it is more likely to impact humans and less likely to be quickly carried away by higher altitude transport winds.

(5) Prescribed burning is used as a management technique to reduce forest fuels either as the primary mechanism such as in grass and brush areas for maintenance of grazing, and underburning of open forest stands for forest health purposes; or as a secondary fuel reduction method following thinning or final harvesting. It is typically conducted at a time and under planned fuel and weather conditions whereby the fine fuels that more readily ignite and carry fire across the landscape are consumed but the larger fuels are consumed to a lesser degree than in a wildfire. Resulting emissions are both reduced overall, and more likely carried into higher altitudes and dissipated by high level winds, away from concentrations of people.

(6) When adequate forest fuel reduction can be achieved economically without the use of prescribed burning, because of other fire associated risks, that choice is usually favored. Even so, there are often silvicultural or agricultural advantages to prescribed burning such as site preparation, nutrient cycling and reduction of pests and disease that may not be achieved by simply removing the forest fuels. For all of the reasons described above, the Legislative Assembly (ORS 477.552) and the Board of Forestry have

found it necessary to maintain the viability of prescribed burning as a forest management practice.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0100

Regulated Areas

(1) All lands classified as "forestland" under ORS 526.305 to 526.370 and all forestland managed by a federal agency regardless of whether or not classified, within a forest protection district, are subject to regulation of prescribed burning pursuant to ORS 477.013. The level of regulation may vary according to specific classification; e.g., Class 1, 2 or 3 forestland as described in ORS 526.305 to 526.370.

(2) Class 1 forestland in western Oregon, and all forestland managed by a federal land management agency statewide, within a forest protection district, is subject to burn registration at least seven days in advance (OAR 629-048-0300), fee administration (OAR 629-048-0310), compliance with smoke management forecast instructions (OAR 629-048-0230), and reporting of accomplishments (OAR 629-048-0320). The forestlands and applicable regulations listed in this section may be referred to as "level 1 regulation."

(3) All other non-federal forestland within a forest protection district, including, but not limited to, private forestlands in eastern Oregon and Class 3 private forestland in western Oregon is subject to burn registration (OAR 629-048-0300) and reporting of accomplishments (OAR 629-048-0320) but is not subject to fee administration or compliance with smoke management forecast instructions. The forestlands and applicable regulations listed in this section may be referred to as "level 2 regulation."

(4) All prescribed burning on forestland within a forest protection district is subject to suspension of burning by the forester under ORS 477.520 due to conditions such as air stagnation or fire danger.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0110

Characterization of Smoke Incidents or Intrusions

(1)(a) When investigating or collecting information on smoke incidents or intrusions, the department will attempt to characterize the incident or intrusion in terms of its intensity (light, moderate or heavy) and its duration in hours or minutes. To the extent it can reasonably do so, the department may also attempt to determine the amount of populated area affected (in square miles or acres) and an estimate of the number of people present during the incident or intrusion.

(b) As used in the smoke management rules, "smoke intrusion" refers only to prescribed burning smoke that enters a smoke sensitive receptor area at ground level. Nonetheless, the methods and descriptions described in this rule may be applied to the measurement of any smoke incident relevant to the smoke management plan.

(2) When measurements or observations are available, incidents or intrusions are characterized in the following manner based on nephelometer values (averaged over a one hour period) above the clean air background:

(a) A light intensity incident or intrusion is characterized by a light scattering measurement of less than 1.8×10^{-4} B-scat (Beta scatter);

(b) A moderate intensity incident or intrusion is characterized by a light scattering measurement of greater than or equal to 1.8×10^{-4} B-scat but less than or equal to 4.9×10^{-4} B-scat; and

(c) A heavy intensity incident or intrusion is characterized by a light scattering measurement of greater than 4.9×10^{-4} B-scat.

(3) The clean air background is the average nephelometer reading for the three hours prior to the incident or intrusion.

(4) When no nephelometer data are available, incident or intrusion intensity is characterized based on reduction in visibility (also averaged over a one hour period) using standard National Weather Service visibility observation criteria and a table of reductions keyed to various background visibility levels as displayed in department directive 1-4-1-601, *Operational Guidance for the Oregon Smoke Management Program*. As an example, on a day when background visibility has been greater than 50 miles, a light intensity incident or intrusion has reduced visibility to greater than or equal to 11.4 miles; a moderate intensity incident or intrusion has reduced visibility to less than 11.4 miles, but greater than or equal to 4.6 miles; and a heavy intensity incident or intrusion has reduced visibility to less than 4.6 miles.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

ADMINISTRATIVE RULES

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
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Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041
Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0120

Air Quality Maintenance Objectives

(1) When prescribed burning is conducted in proximity to, but outside communities or areas designated as smoke sensitive receptor areas, the objective of the smoke management plan is no smoke intrusions into the SSRA.

(2) When prescribed burning is conducted inside a smoke sensitive receptor area, the smoke management plan objective is to use best burn practices and prompt mop-up, as appropriate, along with tight parameters for burn site conditions that are intended to vent the main smoke plume up and out of the SSRA and minimize residual smoke.

(3) In all other instances of prescribed burning it is the intent under the smoke management plan to minimize the amount and duration of smoke that comes in contact with humans at their places of residence or at other places where they normally gather in numbers such as to work, conduct commerce or participate in public events.

(4) The first element in minimizing smoke contact is encouraging forestland owners to burn only those units which cannot otherwise meet forest management objectives in cost effective alternative ways such as wood or biomass utilization.

(5) When prescribed burning is used, owners are further encouraged to employ the emission reduction techniques described in OAR 629-048-0210 to ensure the least emissions practicable.

(6) In addition to compliance with smoke management instructions issued in the daily forecast and compliance with all conditions of the burn permit required under ORS 477.515, burn bosses and field administrators are encouraged to closely observe local conditions at the burn site and to light, manage, suspend lighting if necessary, and mop-up burns, when appropriate, in a manner that takes into consideration the possible smoke effects from the main smoke plume or significant residual smoke on residences or businesses that may be in close proximity to the burn site.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0130

Visibility Objectives

(1) It is the intent under the smoke management plan to comply with the Oregon Visibility Protection Plan (OAR 340-200-0040, Section 5.2).

(2) It is the intent under the smoke management plan to operate in a manner consistent with the Oregon Regional Haze Plan, including the Enhanced Smoke Management Program (ESMP) criteria contained in the plan, for the purpose of protecting Class I Area visibility. These ESMP criteria include:

- (a) Actions to minimize emissions;
- (b) Evaluation of smoke dispersion;
- (c) Alternatives to fire;
- (d) Public notification;
- (e) Air quality monitoring;
- (f) Surveillance and enforcement;
- (g) Program evaluation;
- (h) Burn authorization; and
- (i) Regional coordination.

(3) When prescribed burning is conducted outside any Class I Area during the visibility protection period (July 1 to September 15), an objective of the smoke management plan is to minimize any smoke that impairs visibility inside the Class I Area.

(4) When prescribed burning is conducted inside a Class I Area, the smoke management plan objective is to use best practices along with tight parameters for burn site conditions that will vent the main smoke plume up and out of the Class I Area and minimize residual smoke.

(5) When prescribed burning is conducted outside the visibility protection period in proximity to, but outside and upwind of Class I Areas, in addition to compliance with smoke management instructions issued in the daily forecast and compliance with all conditions of the burn permit required under ORS 477.515, burn bosses and field administrators are encouraged to closely observe local conditions at the burn site to avoid the main smoke plume entering a Class I Area at ground level.

(6) The Class I Areas in Oregon include Crater Lake National Park, Diamond Peak Wilderness, Eagle Cap Wilderness, Gearhart Mountain Wilderness, Hells Canyon Wilderness, Kalmiopsis Wilderness, Mountain Lakes Wilderness, Mount Hood Wilderness, Mount Jefferson Wilderness, Mount Washington Wilderness, Strawberry Mountain Wilderness and Three Sisters Wilderness.

629-048-0140

Smoke Sensitive Receptor Areas

A smoke sensitive receptor area is an area designated by the board, in consultation with the Department of Environmental Quality, that is provided the highest level of protection under the smoke management plan because of its past history of smoke incidents, density of population or other special legal status related to visibility such as the Columbia River Gorge Scenic Area. The following are smoke sensitive receptor areas:

(1) The area within the State of Oregon commonly understood to be the Willamette Valley that:

(a) Lies east of the forest protection district boundaries of the Northwest Oregon, West Oregon and Western Lane Forest Protection Districts, west of the forest protection district boundaries of the North Cascade and South Cascade Forest Protection Districts and north of where the Western Lane and South Cascade Forest Protection Districts come together in southern Lane County (for detailed district boundary descriptions, see OAR 629-041-0500 to 629-041-0575);

(b) Notwithstanding the actual location of the forest protection district boundaries, includes the area within the city limits of the following cities that straddle, or are within but immediately adjoin, the forest protection district boundary:

- (A) Carlton;
- (B) Corvallis;
- (C) Cottage Grove;
- (D) Eugene;
- (E) McMinnville;
- (F) Portland;
- (G) Sheridan;
- (H) Silverton;
- (I) Springfield;
- (J) St. Helens;
- (K) Stayton;
- (L) Sublimity;
- (M) Veneta;
- (N) Willamina; and
- (O) Yamhill;

(2) Within the acknowledged urban growth boundaries of the following cities:

- (a) Astoria;
- (b) Baker City;
- (c) Bend;
- (d) Burns;
- (e) Coos Bay;
- (f) Enterprise;
- (g) Grants Pass;
- (h) John Day;
- (i) Klamath Falls;
- (j) LaGrande;
- (k) Lakeview;
- (l) Lincoln City;
- (m) Newport;
- (n) North Bend;
- (o) Oakridge;
- (p) Pendleton;
- (q) Redmond;
- (r) Roseburg;
- (s) The Dalles; and
- (t) Tillamook;

(3) The area within the Bear Creek and Rogue River Valleys described in OAR 629-048-0160, including the cities of Ashland, Central Point, Eagle Point, Jacksonville, Medford, Phoenix and Talent; and

(4) The area within the Columbia River Gorge Scenic Area, as described in 16 U.S.C. Section 544b, (2003).

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

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629-048-0150

Criteria for Future Listing of Smoke Sensitive Receptor Areas

To ensure continued accomplishment of the smoke management plan objectives, additional smoke sensitive receptor areas may be listed according to the following procedures:

ADMINISTRATIVE RULES

(1) Not more than once per calendar year, the board must consider additional SSRA listings if:

(a) The department recommends consideration of a community for SSRA listing based on observations of repeated verified smoke incidents as described in section (5) of this rule;

(b) The Department of Environmental Quality recommends consideration of a community for SSRA listing based on evidence of airborne particulate concentrations in the community at levels that make periodic exceedance of ambient air quality standards a significant possibility; or

(c) The governing body of a city, or county for an unincorporated area, requests by official action consideration of a community for SSRA listing, and cites the reasons for its request upon:

(A) The occurrence of a verified smoke incident lasting more than four hours;

(B) More than one verified smoke incident in the same calendar year;

or
(C) Repeated verified smoke incidents as described in section (5) of this rule that have occurred within the five years immediately preceding the request.

(2) When considering whether to list a community as an SSRA, the Board shall evaluate the evidence presented to it, including any information received at one or more public meetings.

(a) Specifically, the board shall consider information regarding:

(A) The frequency, duration and intensity of verified smoke incidents;

(B) Population of the community;

(C) The results, if any, of mechanical or systematic monitoring of airborne particulate concentrations, or other verifiable information regarding existing air quality problems in the community under consideration;

(D) The nature and performance of any local programs addressing airborne particulate concentrations;

(E) Recent trends in, and future plans for, prescribed burning activity on surrounding forestlands;

(F) Any local topographic or meteorological effects that may influence the frequency, duration or intensity of smoke incidents;

(G) Evaluation of the local and regional effect that listing the community as an SSRA will have on the smoke management plan's objectives of maintaining air quality and accomplishing necessary prescribed burning;

(H) The reasons cited in a request received under subsection (1)(c) of this rule;

(I) The joint recommendations of the department and the Department of Environmental Quality regarding whether the community should be listed and why; and

(J) Any other information that is relevant to accomplishing the objectives of the smoke management plan.

(b) If joint recommendations are not achieved under paragraph (2)(a)(I) above, the department shall prepare a report for the board detailing any differences in recommendations and its explanations for the differences.

(3) After considering the evidence presented to it, except as provided in section (4) of this rule, the board may take any one of the following actions:

(a) Reject the recommendation or request;

(b) Acknowledge that smoke incidents have occurred, but direct the department to pursue an alternate course of further information gathering, monitoring, operational modifications or other efforts aimed at reducing the likelihood of continuing smoke incidents; or

(c) Accept the recommendation or request by defining the applicable boundaries of the community to be listed, directing the department to begin treating the community as an SSRA and following a timely process to amend OAR 629-048-0140 accordingly.

(4)(a) The board's choice of actions shall be limited to those described in either subsections (b) or (c) of this section, if it finds that all of the following circumstances exist:

(A) The community proposed for listing has incurred repeated verified smoke incidents as described in section (5) of this rule, that have occurred within the five years immediately preceding the request or recommendation in section (1) above;

(B) The community is a city with a population in excess of 10,000 within the incorporated city limits, according to the most recently published population estimate of the Population Research Center, Portland State University; and

(C) There is a likelihood of continuing frequent use of prescribed burning as a forest management activity on forestland within 30 miles of the city limits.

(b) For communities with no air quality monitoring data, the board may delay a final action determining whether to list the community as an SSRA if monitoring equipment is installed in the community to gather information leading to a final determination; or

(c) The board may define the applicable boundaries of the community to be listed, direct the department to begin treating the community as an SSRA and follow a timely process to amend OAR 629-048-0140 accordingly.

(5) "Repeated verified smoke incidents" as used in this rule refers to any of the following combinations of verified smoke incidents resulting from lawfully conducted prescribed burning on forestland in any continuous period of three years or less:

(a) One heavy intensity smoke incident and one moderate or light intensity smoke incident, the latter lasting at least one hour;

(b) Two moderate intensity smoke incidents, both lasting at least one hour; or

(c) Three or more smoke incidents of any combination of intensity for a combined duration of at least three hours (using the intensity parameters described in OAR 629-048-0110 for all of the above).

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

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629-048-0160

Bear Creek/Rogue River Valley SSRA

The Bear Creek and Rogue River Valley smoke sensitive receptor area listed in OAR 629-048-0140 (3) is defined as beginning at a point approximately one mile NE of the town of Eagle Point, Jackson County, Oregon, at the NE corner of Section 36, T35S, R1W; thence south along the Willamette Meridian to the SE corner of Section 25, T37S, R1W; thence SE to the SE corner of Section 9, 39S, R2E; thence SSE to the SE corner of Section 22, T39S, R2E; thence south to the SE corner of Section 27, T39S, R2E; thence SW to the SE corner of Section 33, T39S, R2E; thence west to the SW corner of Section 31, T39S, R2E; thence NW to the NW corner of Section 36, T39S, R1E; thence west to the SW corner of Section 26, T39S, R1E; thence NW to the SE corner of Section 7, T39S, R1E; thence west to the SW corner of Section 12, T39S, R1W; thence NW to the SW corner of Section 20, T38S, R1W; thence west to the SW corner of Section 24, T38S, R2W; thence NW to the SW corner of Section 4, T38S, R2W; thence west to the SW corner of Section 5, T38S, R2W; thence NW to the SW corner of Section 31, T37S, R2W; thence north to the Rogue River, thence north and east along the Rogue River to the north boundary of Section 32, T35S, R1W; thence east to the point of beginning.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

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629-048-0200

Alternatives to Burning

(1) When planning forest management prescriptions and particularly final harvests (prior to reforestation), owners are encouraged to use practices that will eliminate or significantly reduce the volume of prescribed burning necessary to meet their management objectives. Some practices to consider include, but are not limited to:

(a) Maximizing the cost-effective use of woody material for manufacture of products;

(b) Where cost-effective, using wood or other biomass for energy production or mulch;

(c) Lopping and scattering limbs and other woody material, or operating heavy machinery over the wood to maximize contact with the soil in order to speed its breakdown; or

(d) Re-arranging woody materials, as necessary to accomplish reforestation through the slash (from a fire prevention standpoint, this may not be desirable in areas of heavy fuel concentrations or where soil moistures are not conducive to breakdown of fuels).

(2) When prescribed burning is determined to be necessary to achieve forest management objectives, owners are encouraged to use emission reduction techniques as described in OAR 629-048-0210.

(3) The following publications are recommended reading for forestland managers who frequently engage in prescribed burning:

(a) "Non-burning Alternatives to Prescribed Fire on Wildlands in the Western United States" (Western Regional Air Partnership, February, 2004); and

(b) "Annual Emission Goals for Fire Policy" (Western Regional Air Partnership, April, 2003).

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

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ADMINISTRATIVE RULES

629-048-0210

Best Burn Practices; Emission Reduction Techniques

(1) "Best burn practices" as used in this rule refers to those practices designed to minimize emissions from prescribed burning or accomplish burning at times and under such conditions as to minimize the likelihood that emissions will have adverse effects to the air quality maintenance or visibility objectives (OAR 629-048-0120 and 629-048-0130). Additional practices not described in this rule may be necessary to ensure against the escape of fire or protection of forest resources.

(2) In general, best burn practices involve methods that ensure the most rapid and complete combustion of forest fuels while nearby, "non-target" fuels are prevented from burning, such as:

(a) Physical separation of "target" and "non-target" fuels;

(b) Burn prescriptions, particularly for broadcast burns, that recognize and utilize the natural differences in fuel moistures of larger and smaller pieces of woody material; or

(c) Covering of piles sufficient to facilitate ignition and complete combustion, and then burning them at times of the year when all other fuels are damp, when it is raining or there is snow on the ground.

(3) Rapid combustion is well served by rapid ignition which may involve the use of petroleum accelerants (with appropriate safety precautions) and by maintaining an adequate air supply to the forest fuels being burned. Piles and windrows should be mostly free of soil, rocks and other non-combustible materials and should be loosely stacked to promote aeration. Where practicable, re-stacking or "feeding" the burn pile is encouraged to complete combustion and avoid smoldering.

(4) When piles are covered as a best burn practice and the covers are to be removed before burning, any effective materials may be used, as long as they are removed for re-use or properly disposed of. When covers will not be removed and thus will be burned along with the piled forest fuels, the covers must not consist of materials prohibited under OAR 340-264-0060(3), except that polyethylene sheeting that complies with the following may be used:

(a) Only polyethylene may be used. All other plastics are prohibited;

(b) The size of each polyethylene cover must not exceed 100 square feet. For small piles, covering only an area necessary to achieve rapid ignition and combustion, instead of the entire pile, is encouraged;

(c) The thickness of the polyethylene cover must not exceed 4 mil; and

(d) Layering or multiple covers (exceeding 100 square feet combined) within a pile is prohibited, unless authorized in writing by the forester to meet ignition and combustion needs.

(5) The use of petroleum accelerants and polyethylene covers as "best burn practices" described in this rule is expressly intended as an exception to OAR 340-264-0060(3) as allowed by 340-264-0060.

(6) In general, rapid mop-up of prescribed burning is not needed to meet the objectives of the prescribed burn and protect air quality, however, in instances of prescribed burning within an SSRA or when conditions change significantly from those forecasted or present at the time of ignition, rapid mop-up may become necessary to prevent excessive residual smoke or entry of smoke into an SSRA or other area sensitive to smoke. Burn plans required under OAR 629-043-0026(4), prescribed fire plans required by federal land management agency policy, or burn permits required under ORS 477.515, when appropriate, should address conditions that may require mop-up of the prescribed burn and to what extent.

(7) When local conditions for smoke dispersal appear to be better than forecasted, burn bosses and field administrators are encouraged to communicate such information to the smoke management forecast unit, to further the objective of accomplishing burning during the most favorable conditions.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041
Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
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629-048-0220

Forecast Procedures

(1) There are several concepts and procedural steps involved in accomplishing the smoke management plan objectives, designed to maximize opportunities for accomplishing burning while minimizing the likelihood of public health effects or visibility impairment in Class I Areas. The following sections of this rule attempt to explain some of these concepts.

(2) The basic underlying mechanism in smoke management is the use of an understanding of atmospheric dynamics and combustion processes, in concert with current weather forecasts, to ensure that the bulk of emissions from prescribed burning are transported to areas of low or no adverse effect by:

(a) In the case of broadcast or large pile burning, generating heat rapidly so that the fuel is quickly consumed and emissions rise sufficiently above ground level to either:

(A) Become diluted, and dispersed in the atmosphere via transport winds to areas of minimal impact; or

(B) Mix with the moisture in clouds and fall back to earth as precipitation; or

(b) In the case of low intensity underburning or small piles under the forest canopy, managing the volume of material burned per unit of time and paying careful attention to surface winds to keep total emissions low and disperse the smoke to unpopulated areas.

(3) For each day that prescribed burning is planned on forestland with level 1 regulation, a weather forecast is prepared by meteorologists specializing in smoke management. By examining the atmospheric conditions predicted for the burn day, such as vent heights, mixing layers, wind speed and direction, as well as information about what level of pollutants may already be present in a given area, the meteorologists determine if and where conditions will be favorable to accomplish burning.

(4) In addition to the weather forecast, specific information is required on the location of planned burns, and the tonnage of fuel that is expected to be consumed in a burn. This information is provided on a per unit basis at the time that burns are registered and planned with the forester (see OAR 629-048-0300).

(5) With knowledge of the information described above, and based on dispersion models that have been developed through time and experience, forecasters are able to reasonably predict how much smoke, and at what locations, can be put into the atmosphere without likelihood of threat to air quality objectives. This information is then converted into instructions to field administrators and burn bosses as to what tonnages, in what weather zones and at what distances from SSRAs prescribed burning may be permitted.

(6) The forecast and instructions are made available to field administrators and any interested parties by 3:15 p.m. each day, as necessary. Locally, planned burns are compared against the forecast and instructions, as well as any local prioritization of burns, to determine which burns, if any, will be permitted on the following day. If there are any changes in the forecast for the day of the burn, the smoke management forecast unit will make every effort to place a message on an automatic answering phone by 8:00 a.m.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0230

Burn Procedures

(1) Before any prescribed burning is initiated, burn bosses should have a well thought out plan that takes into account:

(a) How weather will be monitored and changes in conditions will be communicated;

(b) Resources necessary to accomplish ignition and ignition sequences;

(c) Resources and methodology necessary to contain and control the fire and prevent its escape, including communications to access additional resources, if necessary; and

(d) How the burn will be conducted to avoid smoke entering smoke sensitive receptor areas or other areas sensitive to smoke and to minimize smoke effects on other communities.

(2) The forester may require that a written burn plan be prepared for approval under OAR 629-043-0026(4), prior to issuance of a burn permit. A prescribed fire plan is required under federal policy for all prescribed burning on federal lands.

(3) Prescribed burn operations with large tonnages (2000 tons or more) or burns that will occur over multiple days should be adequately planned to provide opportunities to cease lighting and hold the existing burn within smaller compartments to mitigate undesirable smoke effects or changes in the actual burn conditions from those that were forecasted.

(4) For prescription burn units on forestland subject to level 1 regulation, burn bosses must provide specific information to be transmitted to the smoke management forecast unit in a standard format acceptable to the forester, regarding unit location, method of burning, and fuel loading tonnages by 5:00 p.m. on the day before the burn.

(5)(a) Before ignition of any prescribed burning in a fire season (as designated by the forester under ORS 477.505), the burn boss must obtain a permit to burn from the forester as required by ORS 477.515 (not required for federal land management agencies). Federal land management agencies must follow agency policies that provide for an affirmative "go-no go deci-

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sion” before ignition of any prescribed burning as documented and approved by the federal land management agency’s line officer.

(b) A permit to burn from the forester is also required for all prescribed burning on non-federal Class 1 forestland in western Oregon at any time of the year.

(c) Under ORS 477.515(1)(a), the forester may waive the requirement for a burn permit in instances of burning other than described in subsections (a) and (b) of this section, so burn bosses should check with the forester locally to determine whether permits are required outside fire season.

(6) Before ignition of any prescribed burning on forestland subject to level 1 regulation, the burn boss must obtain the current smoke management forecast and instructions and must conduct the burning in compliance with the instructions. Burn bosses must make provisions to be informed if the forecast or instructions are subsequently changed. Through communication among the burn boss, field administrator and the smoke management forecast unit, based on information specifically relevant to the burn location, a burn boss may obtain a variance from the instructions, but must document the time and method of communication and adhere strictly to the conditions of the variance.

(7) For prescribed burn operations with large tonnages (greater than 2000 tons) or burns that will occur over multiple days, burn bosses may request at least two days in advance that a special forecast and instructions be issued to ensure adequate attention to meeting smoke management plan objectives. Issuance of a special forecast and instructions will be solely within the discretion of the smoke management forecast unit based on workload and sufficient local information to support the forecast.

(8) The smoke management forecast unit, in developing instructions, and each field administrator issuing burn permits are directed to manage the prescribed burning on forest land in connection with the management of other aspects of the environment in order to maintain a satisfactory atmospheric environment in smoke sensitive receptor areas. This direction is to be applied to situations in which prescribed burning may impact SSRAs or other areas sensitive to smoke.

(9) Each burn boss or field administrator must validate that forecasted weather conditions are consistent with actual on-site conditions prior to ignition of burns.

(10) A burn boss is required to terminate ignition, in a manner that does not compromise worker safety or the ability to prevent escape of the burn, if either of the following occurs:

(a) The burn boss determines, or is advised by a field administrator, that an SSRA, or other area sensitive to smoke is already adversely affected by the burn or would likely become so with additional burning; or

(b) The burn boss receives notice from the forester, through the smoke management forecast unit, or following consultation with the Department of Environmental Quality, that air in the entire state or portion thereof is, or would likely become adversely affected by smoke.

(11) Upon termination of ignition required by section (10) of this rule, any burning already under way should be completed, residual burning should be extinguished as soon as practicable, and no additional burning may be attempted until approval has been received from the forester.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041
Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0300

Registration of Intent to Burn

(1) In all instances of prescribed burning on forestland within a forest protection district, the operator, federal land manager, landowner, or timber owner must first register with the forester all forestland that is intended to be burned. For forestland subject to level 1 regulation, burn registration must be completed at least seven days before the first day of ignition. Mandatory registration of prescribed burning on forestland subject to level 2 regulation is effective January 1, 2009.

(2) The forester may waive the seven day waiting period required in section (1) of this rule contingent upon the forester’s approval of a burn plan or conditions of federally prescribed fire policies having already been met.

(3) Information provided for burn registration must be complete and recorded in a standard format approved by the forester.

(4) No operator, federal land management agency, landowner or timber owner shall be allowed to register additional forestland for burning if payment for their previous registration or burning, when required pursuant to OAR 629-048-0310, is more than 90 days past due.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041
Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0310

Fees for Prescribed Burning

(1) Any prescribed burning on forestland subject to level 1 regulation (OAR 629-048-0100) requires payment of a non-refundable registration fee of \$.50/acre and upon accomplishment (see section (3) of this rule), a burn fee as further described in sections (2), (3), (5), (6) and (8) below.

(2) Burn fees for all forms of prescribed burning, including but not limited to, broadcast burning and burning of piles (whether in-unit, on landings, or from rights-of-way) shall be assessed (where required) against the total acres in the unit from which the forest fuels were accumulated, as described in the burn registration.

(3) The first time that fire is applied to a prescribed burn unit, regardless of actual accomplishment, payment of a burn fee is required. Burn fees shall be charged according to the following schedule:

(a) If only landing or right-of-way piles are burned, the burn fee shall be \$.50 per acre. Subsequent attempts to improve accomplishment only in landing or right-of-way piles in the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(b) If subsequent to burning only landing or right-of-way piles, the first time fire is applied to any other portion of a registered unit (typically broadcast or in-unit pile burning), an additional burn fee of \$2.60 per acre shall be required.

(c) If the first application of fire to the registered unit includes other than landing or right-of-way piles, the burn fee shall be \$3.10 per acre regardless of whether landing or right-of-way piles are burned. Subsequent attempts to improve accomplishment in any portion of the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(4) (a) As used in this rule, “landing” means any location logs are yarded to for processing (trimming ends or limbs and tops remaining after yarding) and assembling for forwarding or loading onto trucks, including each loading site that may occur along a road. Consequently, a landing pile contains only those residues resulting from the processing, and not additional forest fuels accumulated from growth on the site or the felling process.

(b) As used in this rule, “right-of-way piles” means any accumulated forest fuels that come only from the area cleared in the pioneering stage of road construction after appropriate utilization.

(5) Areas burned as a result of escaped fires that are outside the description of the registered burn area shall not be assessed fees if the fire outside of the described area is immediately attacked for wildfire suppression. If the fire outside of the described area is managed as a prescribed fire then every additional acre burned shall incur a registration fee of \$.50 per acre and a burn fee of \$3.10 per acre.

(6) Notwithstanding section (3) of this rule, forest health maintenance burning on forestland subject to level 1 regulation, where significant fuel reduction has been accomplished through underburning within the last five years and where there are no piled forest fuels on the site, shall be charged a burn fee of \$.50 per acre.

(7) The forester shall prepare monthly billings to collect the appropriate registration and burn fees from the operator, federal land manager, landowner or timber owner whose name is recorded on the registration form for billing purposes.

(8) Notwithstanding sections (1) and (3) of this rule, each burn unit requires a minimum combined registration and burn fee of \$30.00. To reduce processing costs, the forester may elect to collect both registration and burn fees prior to accomplishment, for units less than 20 acres on one combined billing.

(9) Notwithstanding sections (1), (3) and (7) of this rule, in accordance with ORS 477.562(6) (as amended by Chapter 213, Oregon Laws, 2007; enrolled HB 2973), a federal land management agency may enter into a cooperative agreement with the forester for payment of registration and burn fees at an annual flat rate. The rate shall be based on estimated acres to be treated as a percentage of total acres on all ownerships, applied against the overall annual estimated operating cost of the smoke management plan. Any such agreement shall have a provision that allows for periodic adjustment of the rate based on actual experience.

(10) Notwithstanding section (7) of this rule, any person or entity described in ORS 477.406(1) with a prior record of timely payment may, at the discretion of the forester, enter into a cooperative agreement for the efficient administration and payment of registration and burn fees provided all payments equal no less than the registration rate described in section (1) of this rule times the number of acres registered plus the burn fee rate in sections (3) or (6) of this rule, as appropriate, times the number of acres accomplished.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041
Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

629-048-0320

Reporting of Accomplishments

(1) Accomplishment information for all prescribed burning that takes place on forestland within the regulated area described in OAR 629-048-0100 must be recorded in a manner that details the amount of burning and emissions produced for each day of burning and must be reported to the department according to the schedule described below and in standard formats prescribed by the forester.

(2) Prescribed burning on forestland subject to level 1 regulation must be reported the next business day following each day's ignition as described in department directive 1-4-1-601, Operational Guidance for the Oregon Smoke Management Program, **Appendix 1**.

(3) Prescribed burning on forestland subject to level 2 regulation must be reported by the first business day of the week following ignition as described in department directive 1-4-1-601, Operational Guidance for the Oregon Smoke Management Program, **Appendix 1**.

(4) Section (3) of this rule is effective January 1, 2009.

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

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0330

Emission Inventories

(1) In addition to the emissions information collected from prescribed burning under OAR 629-048-0320, the forester will annually estimate, using appropriate models and the best available information on acres burned and fuel type, the emissions produced by wildfires in Oregon. At a minimum, the forester will attempt to collect information about wildfires that burn on forestlands within a forest protection district.

(2) Emissions information from prescribed burning and from wildfires will be maintained as distinct inventories, in appropriate forms, for analysis and distribution to improve the overall understanding of the relationships of wildfire versus prescribed fire emissions.

(3) The forester may include as much information on wildfires as may be readily available from the various protection agencies and other cooperators, provided that gathering of such information does not create an unfunded cost to the smoke management program.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0400

Coordination with Other Regulating Jurisdictions and for Other Pollutants

(1) In order to meet the air quality maintenance and visibility objectives of the smoke management plan (OAR 629-048-0120 and 629-048-0130), it is important that the forester, field administrators and other cooperators be well informed as to the existence of, or potential for smoke or other airborne pollutants other than that which will be produced by any planned prescribed burning in the affected airshed. Local field administrators are encouraged to maintain working relationships with other local jurisdictions that authorize open burning or monitor air quality so that all parties may be adequately informed of planned burns or conditions that cumulatively might exceed standards or objectives.

(2) The forester is required to report the weather forecast, planned and accomplished burning and smoke intrusions, if any, to the Department of Environmental Quality for each applicable day, on a timely basis.

(3) Any wildfire that has the potential for smoke input into an SSRA or other area sensitive to smoke must be reported immediately by the local unit of the state or federal agency with jurisdiction for fire suppression to the State Forester's office.

(4) The smoke management forecast unit will communicate periodically with appropriate prescribed burning regulators in the surrounding states for the purpose of coordination and information sharing, as appropriate.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0450

Periodic Evaluation and Adaptive Management

(1) The department is responsible for analysis and evaluation of the prescribed burning operations conducted under the smoke management plan.

(2) Reports summarizing annual activities of the program shall be published by the department addressing:

(a) The level of burning activity;

(b) Results with regard to avoiding entrance of smoke into SSRAs and other areas sensitive to smoke and reports of any smoke intrusions;

(c) Accomplishment of alternatives to burning and the use of emission reduction techniques;

(d) Evaluation of overall smoke management plan accomplishment;

(e) Evaluation of adequacy of listed SSRAs and protection measures;

(f) Any other pertinent information related to smoke management plan evaluation and improvement; and

(g) Revenues generated from burn fees and related smoke management plan costs.

(3) Copies of the reports described in section (2) of this rule will be made available to all interested parties.

(4) Upon publication of a report in accordance with section (2) of this rule, the forester will consult at least annually with the Smoke Management Advisory Committee created under ORS 477.556. Topics will include, but are not limited to, smoke management plan implementation, status of the Oregon Forest Smoke Management Account (ORS 477.560), and any fee changes that may be appropriate based on the balance in this account.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

629-048-0500

Enforcement

(1) Violations of the smoke management plan may be enforced either as violations of the fire prevention statutes and rules (ORS 477.980 to 477.993) or as violations of the forest practice rules (ORS 527.680 to 527.690 and 527.990 to 527.992).

(2)(a) When, in the judgment of the forester, a violation is related primarily to an act or omission that has caused or might cause fire to burn uncontrolled, enforcement under the provisions of the fire prevention statutes and rules is appropriate.

(b) When, in the judgment of the forester, a violation is related primarily to an act or omission that has caused or might cause deterioration of air quality, enforcement under the provisions of the Forest Practices Act and rules (specifically, OAR 629-615-0300) is appropriate.

(3) Enforceable standards within the smoke management plan include requirements to:

(a) Register burns prior to ignition (OAR 629-048-0230(4) and 629-048-0300);

(b) Obtain approval for and follow a burn plan (OAR 629-048-0230(2) and 629-043-0026(4));

(c) Obtain a burn permit and comply with any conditions included therein (OAR 629-048-0230(5) and ORS 477.515);

(d) Obtain and comply with daily smoke management instructions and updates (OAR 629-048-0230(6));

(e) Comply with restrictions regarding use of polyethylene covers on burn piles (OAR 629-048-0210(4));

(f) Cease burning when directed by the forester (OAR 629-048-0100(4) and 629-048-0230(10));

(g) Report accomplishments (OAR 629-048-0320); and

(h) Pay fees (OAR 629-048-0310).

(4) Section 118 of the federal Clean Air Act provides for enforcement of state air quality regulations against federal agencies. It will be the policy of the Board of Forestry, in the event of a failure of a federal land management agency to comply with the smoke management plan, that the forester will first inform the responsible agency of the failure and coordinate efforts to ensure timely correction of any breakdowns in procedure that may have resulted in the failure. However, if this method does not appear in the judgment of the State Forester to result in necessary correction of procedures, or under other circumstances that in the judgment of the State Forester warrant further action, enforcement action may be taken as with any other responsible party.

Stat. Auth: ORS 477.013, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973), 526.016, 526.041

Stats. Implemented: ORS 477.013, 477.515, 477.562 (as amended by ch. 213, OL 2007, Enrolled HB 2973)

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

Department of Human Services,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309

Rule Caption: Requirement that certain facilities report the number of restraint and seclusion uses to the Division.

Adm. Order No.: MHS 17-2007(Temp)

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08 thru 6-29-08

Notice Publication Date:

Rules Adopted: 309-033-0735

Rules Amended: 309-032-1190

Subject: The Addictions and Mental Health (AMH) Division is adopting temporary rules to comply with the requirements of ORS Chapter 164 (SB 265 Enrolled, 2007 Session). The bill requires that certain facilities must report the number of seclusion and the number of restraint incidents to AMH within 15 days of the end of each calendar quarter.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-032-1190

Special Treatment Procedures

(1) Providers shall have policies and procedures and a quality management system to:

(a) Monitor the use of special treatment procedures to assure that children are safeguarded and their rights are always protected; and

(b) Review and approve experimental practices other than medications that are outside usual and customary clinical practices and research projects. Experimental practices and research require review and approval by the Division Institutional Review Board.

(2) Chemical restraint shall not be used. Medication shall not be used as a restraint, but shall be prescribed and administered according to acceptable nursing, medical, and pharmaceutical practices to treat symptoms of serious emotional disorders.

(3) Mechanical restraint shall be used only in a Sub-Acute program specifically authorized for such use in writing by the Division. Sub-Acute programs that are authorized to use mechanical restraint shall adhere to the standards for special treatment procedures as described in this section and other specific conditions as required by the Division.

(4) The provider shall establish a Special Treatment Procedures Committee or designate this function to an already established Quality Management Committee. Committee membership shall minimally include a staff person with designated clinical leadership responsibilities, the person responsible for staff training in crisis intervention procedures, and other clinical personnel not directly responsible for authorizing the use of special treatment procedures with individual children. The committee shall:

(a) Meet at least monthly and shall report in writing to the provider's Quality Management Committee at least quarterly regarding the committee's activities, findings and recommendations;

(b) Conduct individual and aggregate review of incidents of seclusion and manual restraint;

(c) Conduct individual and aggregate review of incidents of isolation for more than five hours in five days or a single episode of two hours;

(d) Analyze special treatment procedures to determine opportunities to reduce their use, increase the use of alternatives, improve the quality of care of children receiving services, and recommend whether follow up action is needed; and

(e) Review and update special treatment procedures policies and procedures minimally annually.

(f) Any hospital or nonhospital facility certified under these rules must report the number of seclusion and the number of restraint incidents to AMH within 15 days of the end of each calendar quarter.

(5) Obtain informed consent upon admission from the parent(s) or guardian in the use of special treatment procedures. Communicate both verbally and in writing the information to the parent(s) or guardian and the child in a developmentally appropriate manner.

(6) General Conditions of Manual Restraint and Seclusion.

(a) There shall be a systematic approach, documented in written policies and procedures to the treatment of children which employs individualized, preplanned alternatives to manual restraint and seclusion;

(b) Manual restraint and seclusion shall only be used in an emergency to prevent immediate injury to a child who is in danger of physically harming him or her self or others in situations such as the occurrence of, or serious threat of violence, personal injury or attempted suicide;

(c) Any use of manual restraint and seclusion shall respect the dignity and civil rights of the child;

(d) A child shall be manually restrained or secluded only when clinically indicated and alternatives are not sufficient to protect the child or others as determined by the interdisciplinary team responsible for the child's individual care plan;

(e) The use of manual restraint and seclusion shall be directly related to the child's individual symptoms and behaviors and the acuity of the symptoms and behaviors. Manual restraint and seclusion shall not be used as punishment, discipline, or for the convenience of staff;

(f) Manual restraint and seclusion shall only be used for the length of time necessary for the child to resume self-control and prevent harm to the child or others;

(g) If manual restraint and seclusion are considered as part of the child's individualized safety needs, then alternatives to manual restraint and seclusion shall be identified and made a part of the child's individual plan of care. The individual plan of care shall outline use of this procedure, and goals addressing therapeutic alternatives and interventions to reduce its use; and

(h) Each incident of manual restraint and seclusion shall be referred to the Special Treatment Procedures Committee.

(A) Manual Restraint:

(i) Each incident of manual restraint shall be documented in the clinical record. The documentation shall specify less restrictive methods attempted prior to the manual restraint, the required authorization, length of time the manual restraint was used, the events precipitating the manual restraint, assessment of appropriateness of the manual restraint based on threat of harm to self or others, assessment of physical injury, and the child's response to the intervention;

(ii) A minimum of two staff shall implement a manual restraint. If in the event of an emergency a single staff manual restraint has occurred, the provider's on-call administrator shall immediately review the intervention;

(iii) A manual restraint intervention that exceeds 30 minutes shall require a documented review and authorization by a QMHP, interventions which exceed one hour shall require a documented review and authorization by a psychiatrist or designee; and

(iv) A designated individual with clinical leadership responsibilities shall review the manual restraint documentation prior to the end of the shift in which the intervention occurred.

(v) If incidents of manual restraint used with an individual child cumulatively exceed five hours in five days or a single episode of one hour, the psychiatrist or designee shall within 24 hours convene by phone or in person individual(s) in the program with designated clinical leadership responsibilities to review the child's individual plan of care and/or behavior management interventions and make necessary adjustments. This information shall be documented in the child's clinical record and referred to the Special Treatment Procedures Committee.

(B) Seclusion:

(i) Each episode of seclusion shall be authorized immediately after initiation of the episode in the child's clinical record by the psychiatrist. A general order for the use of seclusion is not sufficient. The psychiatrist may delegate the authority to authorize seclusion to QMHP staff who have satisfactorily completed a Division-approved crisis intervention training program;

(ii) Written orders for seclusion are limited to two hours for children age nine and older and one hour for children under age nine. The psychiatrist may extend the original order for one additional hour for children under age nine to two hours total, and the original order for two hours for children age nine and older up to six hours total;

(iii) Visual monitoring of a child in seclusion shall occur and be documented at least every fifteen minutes or more often as clinically indicated;

(iv) The child's right to retain personal possessions and personal articles of clothing may be suspended during a seclusion only when necessary to ensure the safety of the child or others. Articles that a child might use to inflict self-injury must be removed;

(v) The child shall have regular meals, bathing, and use of the bathroom during seclusion and their provision shall be documented in the child's clinical record;

(vi) Each incident of seclusion shall be documented in the child's clinical record. The documentation shall include the clinical justification for use, the written order by the authorized individual, the less restrictive methods attempted, length of time the seclusion was used, the precipitating events, assessment of appropriateness of the intervention based on threat of harm to self or others, assessment of physical injury, and the child's response to the intervention; and

(vii) If incidents of seclusion used with an individual child cumulatively exceed five hours in five days or a single episode of more than two hours for children age nine and older and more than one hour for children

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under age nine, the psychiatrist or designee shall within 24 hours convene by phone or in person individual(s) in the program with designated clinical leadership responsibilities to review the child's individual plan of care and/or behavior management interventions and make necessary adjustments. This information shall be documented in the child's clinical record and referred to the Special Treatment Procedures Committee.

(7) Application for the use of seclusion. Any facility or program in which the use of seclusion occurs shall be authorized by the Division for this purpose and shall meet the following requirements:

(a) A facility or program seeking authorization shall submit a written application to the Division;

(b) Application shall include a comprehensive plan for the need for and use of seclusion of admitted children and copies of the facility's policies and procedures for the utilization and monitoring of seclusion including a statistical analysis of the facility's actual use of seclusion, physical space, staff training, staff authorization, record keeping and quality management practices;

(c) The Division shall review the application and, after a determination that the written application is complete and satisfies all applicable requirements, shall provide for a review of the facility by authorized Division staff;

(d) The Division shall have access to the records of the facility's clients, the physical plant of the facility, the employees of the facility, the professional credentials of employees, and shall have the opportunity to observe fully the treatment and seclusion practices employed by the facility;

(e) After the review, the Assistant Administrator or designee shall approve or disapprove the facility's application and if, approved, shall certify the facility based on the determination of the facility's compliance with all applicable requirements for the seclusion of children;

(f) If disapproved the facility shall be provided with specific recommendations and have the right of appeal to the Division; and

(g) Certification of a facility shall be effective for a maximum of three years and may be renewed thereafter upon approval of a renewal application.

(8) Structural and physical requirements for seclusion. Any facility or program in which the use of seclusion occurs shall be certified by the Division for this purpose. A provider seeking this certification under these rules shall have available at least one room that meets the following specifications and requirements:

(a) The room must be of adequate size to permit three adults to move freely and allows for one adult to lie down. Any newly constructed room shall be no less than 64 square feet;

(b) The door must open outward and contain a port of shatterproof glass or plastic through which the entire room may be viewed from outside;

(c) The room shall contain no protruding, exposed, or sharp objects;

(d) The room shall contain no furniture. A fireproof mattress or mat shall be available for comfort;

(e) Any windows shall be made of unbreakable or shatterproof glass, or plastic. Non-shatterproof glass shall be protected by adequate climb-proof screening;

(f) There shall be no exposed pipes or electrical wiring in the room. Electrical outlets shall be permanently capped or covered with a metal shield secured by tamper-proof screws. Ceiling and wall lights shall be recessed and covered with safety glass or unbreakable plastic. Any cover, cap or shield shall be secured by tamper-proof screws;

(g) The room shall meet State Fire Marshal fire, safety, and health standards. If sprinklers are installed, they shall be recessed and covered with fine mesh screening. If pop-down type, sprinklers must have break-away strength of under 80 pounds. In lieu of sprinklers, combined smoke and heat detector shall be used with similar protective design or installation;

(h) The room shall be ventilated, kept at a temperature no less than 64°F and no more than 85°F. Heating and cooling vents shall be secure and out of reach;

(i) The room shall be designed and equipped in a manner that would not allow a child to climb off the ground;

(j) Walls, floor and ceiling shall be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions; and

(k) Adequate and safe bathrooms shall be available.

Stat. Auth.: ORS 430.041, 430.640(1)(h) & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 6-2000, f. & cert. ef. 2-15-00; MHS 17-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-29-08

309-033-0735

Quarterly Reports

(1) Any hospital or nonhospital facility certified under these rules must report the number of seclusion and the number of restraint incidents to AMH within 15 days of the end of each calendar quarter.

Stat. Auth.: ORS 426.236, 426.385 & 430.041

Stats. Implemented: ORS 426.005 - ORS 426.309

Hist.: MHS 17-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-29-08

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

Rule Caption: Electronic Data Transmission (EDT) Rule Adoption.

Adm. Order No.: DHSD 13-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-28-08

Notice Publication Date:

Rules Adopted: 407-120-0112, 407-120-0114, 407-120-0116, 407-120-0118, 407-120-0165

Subject: The Department of Human Services needs to adopt these rules to ensure the Department's EDT rules compliment the new functionality of the Oregon Replacement Medicaid Management Information System (MMIS) in conjunction with the Health Insurance Portability and Accountability Act (HIPAA) transactions and codes set standards for the exchange of electronic data. These rules are being filed concurrently with the amendment of OAR 410-001-0100 through 410-001-0200.

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

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

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-120-0112

Scope and Sequence of EDT Rules

(1) The Department communicates with and receives communications from its providers, plans, and allied agencies using a variety of methods appropriate to the services being provided, the nature of the entity providing the services, and constantly changing technology. These rules describe some of the basic ways that the Department will exchange data electronically. Additional details may be provided in the Department's access control rules, provider-specific rules, or the applicable contract documents.

(2) Access to eligibility information about covered individuals may occur using one or more of the following methods:

(a) Automated voice response, via a telephone;

(b) Web portal access;

(c) EDI submitter access; or

(d) Point of sale (POS) for pharmacy providers.

(3) Claims for which the Department is responsible for payment, or encounter submissions made to the Department, may occur using one or more of the following methods:

(a) Paper, using the form specified in the provider specific rules and supplemental billing guidance. Providers may submit paper claims, except that pharmacy providers are required to use the POS process for claims submission and plans are required to use the 837 electronic formats;

(b) Web portal access;

(c) EDI submitter access; or

(d) POS for pharmacy providers.

(4) Department informational updates, provider record updates, depository for plan reports, or EDT as specified by the Department for contract compliance.

(5) Other Department network and information system access is governed by specific program requirements, which may include but is not limited to individual user profile (IUP) access. Affected providers, plans, and allied agencies will be separately instructed about the access and requirements. Incidents are subject to these rules.

(6) Providers and allied agencies that continue to use only paper formats for transactions are only subject to the confidentiality and security rule, OAR 410-001-0170.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

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407-120-0114

Provider Enrollment Agreement

(1) When a provider applies to enroll, the application form will include information about how to participate in the web portal for use of DDE and automated voice response (AVR) inquiries. The enrollment agreement will include a section describing the process that will permit the provider, once enrolled, to participate in DDE over the Internet using the secure Department web portal.

(2) When the provider number is issued by the Department, the provider will also receive two PIN's: one that may be used to access the web portal and one that may be used for AVR.

(a) If the PIN's are not activated within 60 days of issuance, the Department will initiate a process to inactivate the PIN. If the provider wants to use PIN based access to the web portal or AVR after deactivation, the provider must submit an update form to obtain another PIN.

(b) Activating the PIN will require Internet access and the provider must supply security data that will be associated with the use of the PIN.

(c) Providers using the PIN are responsible for protecting the confidentiality and security of the PIN pursuant to OAR 410-001-0170.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

407-120-0116

Web Portal Submitter

(1) Any provider activating their web portal access for web portal submission may be a web portal submitter. The provider will be referred to as the web portal submitter when functioning in that capacity, and shall be required to comply with these rules governing web portal submitters.

(2) The authorized signer of the provider enrollment agreement shall be the individual who is responsible for the provider's DDE claims submission process.

(a) If a provider submits their own claims directly, the provider will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules governing web portal submitters.

(b) If a provider uses an agent or clinic to submit DDE claims using the Department's web portal, the agent or clinic will be referred to as the web portal submitter when functioning in that capacity and shall be required to comply with these rules governing web portal submitters.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

407-120-0118

Conduct of Direct Data Entry Using the Web Portal

(1) The web portal submitter is responsible for the conduct of the DDE transactions submitted on behalf of the provider, as follows:

(a) Accuracy of Web Portal Submissions. The web portal submitter must take reasonable care to ensure that data and DDE transmissions are timely, complete, accurate, and secure, and must take reasonable precautions to prevent unauthorized access to the information system or the DDE transmission. The Department will not correct or modify an incorrect DDE transaction prior to processing. The transactions may be rejected and the web portal submitter will be notified of the rejection.

(b) Cost of Equipment. The web portal submitter and the Department must bear their own information system costs. The web portal submitter must, at its own expense, obtain access to Internet service that is compatible with and has the capacity for secure access to the Department's web portal. Web portal submitters must pay their own costs for all charges including but not limited to charges for equipment, software and services, Internet connection and use time, terminals, connections, telephones, and modems. The Department is not responsible for providing technical assistance for access to or use of Internet web portal services or the processing of a DDE transaction.

(c) Format of DDE Transactions. The web portal submitter must send and receive all data transactions in the Department's approved format. Any attempt to modify or alter the DDE transaction format may result in denial of web portal access.

(d) Re-submissions. The web portal submitter must maintain source documents and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by federal or state law, or by contractual agreement. Back ups, archives, or related files are subject to the terms of these rules to the same extent as the original data transmission.

(2) Security and Confidentiality. To protect security and confidentiality, web portal submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data, or data transmissions, except as permitted

by these rules or the contract, or use the same for any purpose other than that which the web portal submitter was specifically given access and authorization by the Department or the provider.

(b) Refrain from obtaining access by any means to any data or the Department's network and information system for any purpose other than that which the web portal submitter has received express authorization to receive access. If the web portal submitter receives data or data transmissions from the Department which are clearly not intended for the receipt of web portal submitter, the web portal submitter will immediately notify the Department and make arrangements to return or re-transmit the data or data transmission to the Department. After re-transmission, the web portal submitter must immediately delete the data contained in the data transmission from its information system.

(c) Install necessary security precautions to ensure the security of the DDE transmission or records relating to the information system of either the Department or the web portal submitter when the information system is not in active use by the web portal submitter.

(d) Protect and maintain, at all times, the confidentiality of security access codes issued by the Department. Security access codes are strictly confidential and specifically subject, without limitation, to all of the restrictions in OAR 410-001-0170. The Department may change the designated security access codes at any time and manner as the Department in its sole discretion considers necessary.

(e) Install, maintain, and use security measures for confidential information transmitted between a provider and the web portal submitter if a provider uses an agent or clinic as the web portal submitter.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

407-120-0165

Pharmacy Point of Sale Access

Pharmacy providers who electronically bill pharmaceutical claims must participate in and submit claims using the POS system, except as provided in OAR 410-121-0150.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 13-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

Rule Caption: Establishment of Security Standards for Access to Department Information Assets, Networks, and Systems.

Adm. Order No.: DHSD 14-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 407-014-0300, 407-014-0305, 407-014-0310, 407-014-0315, 407-014-0320

Subject: This rule applies to anyone who seeks access to the Department of Human Services' information assets, systems, and networks. It establishes access controls for all users and requires entities to establish a risk management plan addressing common safeguards and HIPAA compliance. This rule allows for audits of entities handling Department information assets, addresses privilege changes, and establishes requirements for reporting incidents and resolutions.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-014-0300

Scope

These rules (OAR 407-014-0300 through 407-014-0320) apply to an entity or individual seeking or receiving access to Department information assets or network and information systems for the purpose of carrying out a business transaction between the Department and the user.

(1) These rules are intended to complement, and not supersede, access control or security requirements in the Department's Electronic Data Transmission rules, OAR 407-120-0100 to 407-120-0200, and whichever rule is more specific shall control.

(2) The confidentiality of specific information and the conditions for use and disclosure of specific information are governed by other laws and rules, including but not limited to the Department's rules for the privacy of protected information, OAR 410-014-0000 to 410-014-0070.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 182.122

Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0305

Definitions

For purpose of these rules, the following terms have definitions set forth below. All other terms not defined in this section shall have the mean-

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ing used in the Health Insurance Portability and Accountability Act (HIPAA) security rules found at 45 CFR § 164.304:

(1) "Access" means the ability or the means necessary to read, communicate, or otherwise use any Department information asset.

(2) "Access Control Process" means Department forms and processes used to authorize a user, identify their job assignment, and determine the required access.

(3) "Client Records" means any client, applicant, or participant information regardless of the media or source, provided by the Department to the user, or exchanged between the Department and the user.

(4) "Department" means the Department of Human Services.

(5) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any network and information system or Department information asset including, but not limited to unauthorized disclosure of information; failure to protect user's identification (ID) provided by the Department; or, theft of computer equipment that uses or stores any Department information asset.

(6) "Information Asset" means any information, also known as data, provided through the Department, regardless of the source or media, which requires measures for security and privacy of the information.

(7) "Network and Information System" means the State of Oregon's computer infrastructure, which provides personal communications, client records, regional, wide area and local area networks, and the interworking of various types of networks on behalf of the Department.

(8) "User" means any individual or entity authorized by the Department to access a network and information system or information asset.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0310

Information Access

The user shall utilize the Department access control process for all requested and approved access. The Department shall notify the user of each approval or denial. When approved, the Department shall provide the user with a unique login identifier to access the network and information system or information asset.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0315

Security Information Assets

(1) No user shall access an information asset for any purpose other than that specifically authorized by the Department access control process.

(2) Except as specified or approved by the Department, no user shall alter, delete, or destroy any information asset.

(3) The user shall prohibit unauthorized access by their staff, contractors, agents, or others to the network and information systems, or Department information assets, and shall implement safeguards to prevent unauthorized access in accordance with section (4) of this rule.

(4) The user shall develop a security risk management plan. The user shall ensure that the plan includes, at a minimum, the following:

(a) Administrative, technical and physical safeguards commonly found in the International Standards Organization 27002: 2005 security standard or National Institute of Standards and Technology (NIST) 800 Series;

(b) Standards established in accordance with HIPAA Security Rules, 45 CFR Parts 160 and 164, applicable to a user regarding the security and privacy of a client record, any information asset, or network and information system;

(c) The user's privacy and security policies;

(d) Controls and safeguards that address the security of equipment and storage of any information asset accessed to prevent inadvertent destruction, disclosure, or loss;

(e) Controls and safeguards that ensure the security of an information asset, regardless of the media, as identified below:

(A) The user keeps Department-assigned access control requirements such as identification of authorized users and access control information (passwords and personal identification numbers (PIN's), in a secure location until access is terminated;

(B) Upon request of the Department, the user makes available all information about the user's use or application of the access controlled network and information system or information asset; and

(C) The user ensures the proper handling, storage, and disposal of any information asset obtained or reproduced, and, when the authorized use of that information ends, is consistent with any applicable record retention requirements.

(f) Existing security plans developed to address other regulatory requirements, such as Sarbanes-Oxley Act of 2002 (PL 107-204), Title V of Gramm Leach Bliley Act of 1999, will be deemed acceptable as long as they address the above requirements.

(5) The Department may request additional information related to user's security measures.

(6) The user must immediately notify the Department when access is no longer required, and immediately cease access to or use of all information assets or network and information systems.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

407-014-0320

User Responsibility

The user shall not make any root level changes to any Department or State of Oregon network and information system. The Department recognizes that some application users have root level access to certain functions to allow the user to diagnose problems (such as startup or shutdown operations, disk layouts, user additions, deletions or modifications, or other operation) that require root privileges. This access does not give the user the right to make any changes normally restricted to root without explicit written permission from the Department.

(1) Use and disclosure of any Department information asset is strictly limited to the minimum information necessary to perform the requested and authorized service.

(2) The user shall have established privacy and security measures that meet or exceed the standards set forth in the Department privacy and information security policies, available from the Department, regarding user's disclosure of an information asset.

(3) The user shall comply with all security and privacy federal and state laws, rules, and regulations applicable to the access granted.

(4) The user shall make the security risk plan available to the Department for review upon request.

(5) The user shall report to the Department all privacy or security incidents by the user that compromise, damage, or cause a loss of protection to the Department information assets or the network and information systems. The incident report shall be made no later than five business days from the date on which the user becomes aware of such incident. The user shall provide the Department a written report to include the results of the incident assessment findings and resolution strategies.

(6) Wrongful use of a network and information system, or wrongful use or disclosure of a Department information asset by the user may cause the immediate suspension or revocation of any access granted, at the sole discretion of the Department without advance notice.

(7) The user shall comply with the Department's request for corrective action concerning a privacy or security incident and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 182.122
Hist.: DHSD 14-2007, f. 12-31-07, cert. ef. 1-1-08

Rule Caption: DHS Medicaid Management Information System (MMIS) Provider Enrollment and Claiming.

Adm. Order No.: DHSD 15-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 407-120-0300, 407-120-0310, 407-120-0320, 407-120-0330, 407-120-0340, 407-120-0350, 407-120-0360, 407-120-0370, 407-120-0380

Subject: In June 2008, the Department of Human Services will implement a new Medicaid Management Information System (MMIS). All states operate a MMIS to support Medicaid business functions and maintain information in areas such as provider enrollment; client eligibility, including third party liability; benefit package maintenance; managed care enrollment; claims processing; and prior authorization. These rules support those processes necessary for provider enrollment and claiming procedures.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-120-0300

Definitions

The following definitions apply to OAR 407-120-0300 through 407-120-0380:

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(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Department, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes actions by clients or recipients that result in unnecessary cost to the Department.

(2) "Advance Directive" means a form that allows an individual to have another individual make health care decisions when he or she cannot make decisions and informs a doctor if the individual does not want any life sustaining help if he or she is near death.

(3) "Benefit Package" means the package of covered health care services for which the client is eligible.

(4) "Billing Agent or Billing Service" means a third party or organization that contracts with a provider to perform designated services in order to facilitate claim submission or electronic transaction on behalf of the provider.

(5) "Billing Provider" means an individual, agent, business, corporation, clinic, group, institution, or other entity who submits claims to or receives payment from the Department on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(6) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Division of Medical Assistance Programs (DMAP).

(7) "Claim" means a bill for services, a line item of a service, or all services for one client within a bill. Claim includes a bill or an encounter associated with requesting reimbursement, whether submitted on paper or electronically. Under these rules, claim also includes any other methodology for requesting reimbursement that may be established in contract or program-specific rules.

(8) "Client or Recipient" means an individual found eligible by the Department to receive services under the OHP demonstration, medical assistance program or other public assistance administered by the Department. The following OHP categories are eligible for enrollment:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible families with income under current eligibility rules;

(b) CHIP children under one year of age who have income under 185% Federal Poverty Level (FPL) and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) adults under 100% of the FPL are clients who are pregnant women with income under 100% of FPL;

(d) PLM adults over 100% of the FPL are clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age have family income under 133% of the FPL or were born to mothers who were eligible as PLM adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through eighteen years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP adults and couples are clients age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP families are clients, age 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) recipients are clients who are eligible by virtue of their eligibility under the GA program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare eligibles are clients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare eligibles are clients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare eligibles are clients with concurrent Medicare Part A or Medicare Parts A and B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare eligibles are clients without Medicare with income under current eligibility rules; or

(p) Children, Adults and Families (CAF) children are clients who are children with medical eligibility determined by CAF or Oregon Youth Authority (OYA) receiving OHP under ORS 414.025, 418.034, and

418.187 through 418.970. These individuals are generally in the care or custody of CAF or OYA who are in placement outside of their homes.

(9) "Client Representative" means an individual who can make decisions for clients who are not able to make such decisions themselves. For purposes of medical assistance a client representative may be, in the following order of priority, an individual who is designated as the client's health care representative under ORS 127-505(12), a court-appointed guardian, a spouse, or other family member as designated by the client, the individual service plan team (for developmentally disabled clients), a Department case manager or other Department designee. To the extent that other Department programs recognize other individuals who may act as a client representative, that individual may be considered the client representative in accordance program-specific rules or applicable contracts.

(10) "Clinical Records" means the medical, dental, or mental health records of a client. These records include the Primary Care Provider (PCP's) records, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), complaint and disenrollment for cause records which may be located in the Prepaid Health Plan (PHP's) administrative offices.

(11) "Conviction or Convicted" means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.

(12) "Covered Services" means medically appropriate health services or items that are funded by the Legislature and described in ORS chapter 414, including the OHP authorized under ORS 414.705 through 414.750 and applicable Department rules describing the benefit packages of covered services; except as excluded or limited under OAR 410-141-0500, excluded services and limitations for OHP clients; or such other public assistance services provided to eligible clients under program-specific requirements or contracts by providers required to enroll with the Department under OAR 407-120-0300 to 407-120-0380.

(13) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules.

(14) "Department" means the Department of Human Services.

(15) "Diagnosis Code" means the code as identified in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM). The primary diagnosis code is shown in all billing claims and PHP encounters, unless specifically excluded in individual provider rules. Where they exist, diagnosis codes must be shown to the degree of specificity outlined in OAR 407-120-0340, claim and PHP encounter submission.

(16) "Electronic Data Transaction (EDT)" means the electronic exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, conducted by either web portal or electronic data interchange in accordance with the Department's electronic data transaction rule (OAR 407-120-0100 through 407-120-0200).

(17) "Exclusion" means the Department will not reimburse a specific provider who has defrauded or abused the Department for items or services that provider furnished.

(18) "False Claim" means a claim or PHP encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and such inaccurate or misleading information would result, or has resulted, in an overpayment or improper use for per capita cost calculations.

(19) "Fraud" means an intentional deception or misrepresentation made by an individual with the knowledge that the deception could result in some unauthorized benefit to himself or some other individual. It includes any act that constitutes fraud or false claim under applicable federal or state law.

(20) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures and supplies. HCPCS consists of the Level I - American Medical Association's Physicians' Current Procedural Terminology (CPT), Level II - National Codes and Level III - Local Codes.

(21) "Health Insurance Portability and Accountability Act (HIPAA)" means a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(22) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(23) "Individual Adjustment Request" means a form (DMAP 1036) used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

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(24) “Medicaid” means a federal and state funded portion of the medical assistance program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department.

(25) “Medicaid Management Information System (MMIS)” means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and client eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(26) “Medical Assistance Program” means a program for payment of health care provided to eligible Oregonians. Oregon’s medical assistance program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The medical assistance program is administered and coordinated by DMAP, a division of the Department.

(27) “Medically Appropriate” means services and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions, or injuries and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a client in the provider’s judgment.

(28) “Medicare” means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services (CMS) under Title XVIII of the Social Security Act.

(29) “National Provider Identification (NPI)” means a federally directed provider number mandated for use on HIPAA covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 Code of Federal Regulations (CFR) 160.103) and who conduct HIPAA covered transactions electronically.

(30) “Non-Covered Services” means services or items for which the Department is not responsible for payment. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations;

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) The individual Department provider rules, program-specific rules, and contracts.

(31) “Non-Participating Provider” means a provider who does not have a contractual relationship with the PHP.

(32) “Nursing Facility” means a facility licensed and certified by the Department’s Seniors and People with Disabilities Division (SPD) defined in 411-070-0005.

(33) “Oregon Health Plan (OHP)” means the Medicaid demonstration project that expands Medicaid eligibility to eligible clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(34) “Out-of-State Providers” means any provider located outside the borders of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of Oregon.

(35) “Post-Payment Review” means review of billings or other medical information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.

(36) “Prepaid Health Plan (PHP)” means a managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP or Addictions and Mental Health Division (AMH) on a case managed, prepaid, capitated basis under the OHP. PHP’s may be a Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), Primary Care Organization (PCO) or Chemical Dependency Organization (CDO).

(37) “Prohibited Kickback Relationships” means remuneration or payment practices that may result in federal civil penalties or exclusion for violation of 42 CFR 1001.951.

(38) “PHP Encounter” means encounter data submitted by a PHP or by a provider in connection with services or items reimbursed by a PHP.

(39) “Prior Authorization” means payment authorization for specified covered services or items given by Department staff, or its contracted agencies, or a county if required by the county, prior to provision of the service. A physician or other referral is not a prior authorization.

(40) “Provider” means an individual, facility, institution, corporate entity, or other organization which supplies health care or other covered services or items, also termed a performing provider, that must be enrolled with the Department in accordance with OAR 407-120-0300 to 407-120-0380 in order to seek reimbursement from the Department, including services provided, under program-specific rules or contracts with the Department or with a county or PHP.

(41) “Quality Improvement” means the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality improvement includes the goals of quality assurance, quality control, quality planning and quality management in health care where “quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge.”

(42) “Quality Improvement Organization (QIO)” means an entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid clients; formerly known as a “Peer Review Organization.”

(43) “Remittance Advice” means the automated notice a provider receives explaining payments or other claim actions.

(44) “Subrogation” means the right of the state to stand in place of the client in the collection of third party resources, including Medicare.

(45) “Suspension” means a sanction prohibiting a provider’s participation in the Department’s medical assistance or other programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(46) “Termination” means a sanction prohibiting a provider’s participation in the Department’s programs by canceling the assigned provider number and agreement.

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Department at the time of termination.

(47) “Third Party Resource (TPR)” means a medical or financial resource, including Medicare, which, under law, is available and applicable to pay for covered services and items for a medical assistance client.

(48) “Usual Charge” means when program-specific or contract reimbursement is based on usual charge, the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider’s charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month’s charges;

(b) The provider’s lowest charge per unit of service on the same date that is advertised, quoted, or posted. The lesser of these applies regardless of the payment source or means of payment; or

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the FPL, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to TPR are to be considered.

(49) “Visit Data” means program-specific or contract data collection requirements associated with the delivery of service to clients on the basis of an event such as a visit.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08

407-120-0310

Provider Requirements

(1) Scope of Rule. All providers seeking reimbursement from the Department, a PHP, or a county pursuant to a county agreement with the Department for the provision of covered services or items to eligible recipients, must comply with these rules, OAR 407-120-0300 to 407-120-0380, and the applicable rules or contracts of the specific programs described below:

(a) Programs administered by DMAP including the OHP and the medical assistance program that reimburses providers for services or items provided to eligible recipients;

(b) Programs administered by AMH that reimburse providers for services or items provided to eligible AMH recipients; and

(c) Programs administered by SPD that reimburse providers for services or items provided to eligible SPD recipients.

(2) Visit Data.

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(a) Some programs require providers to document visit data in connection with service delivery.

(A) Department programs use visit data to monitor service delivery, planning, and quality improvement activities.

(B) Visit data is required to be submitted by a program-specific rule or contract. A provider is required to make accurate, complete, and timely submission of visit data as a material term of provider participation in the applicable Department program.

(b) Visit data is not a HIPAA transaction and does not constitute a claim for reimbursement.

(3) CHIP and Medicaid-Funded Covered Services and Items.

(a) Covered services or items paid for with Medicaid (Title XIX) and CHIP (Title XXI) funds (referred to as the medical assistance program) are also subject to federal and state Medicaid rules and requirements. In interpreting these rules and program-specific rules or contracts, the Department will construe them as much as possible in a manner that will comply with federal and state medical assistance program laws and regulations, and the terms and conditions of federal waivers and the state plans

(b) If a provider is reimbursed with medical assistance program funds, the provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid services under the Medicaid Act, Title XIX, 42 United States Code (USC) Section 1396 et. seq., and CHIP services under Title XXI, including without limitation:

(A) Maintaining all records necessary to fully disclose the extent of the services provided to individuals receiving medical assistance and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program regarding any payments claimed by an individual or institution for providing Medicaid services as the state or federal agency may from time to time request;

(B) Complying with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B);

(C) Maintaining written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(D) Certifying that the information is true, accurate and complete when submitting claims or PHP encounters for the provision of medical assistance services or items. Submission of a claim or PHP encounter constitutes a representation of the provider's understanding that payment of the claim will be from federal or state funds, or both, and that any falsification or concealment of a material fact may result in prosecution under federal or state laws.

(c) Hospitals, nursing facilities, home health agencies (including those providing personal care), hospices and HMOs must comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above-listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named providers and organizations must give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-state providers of these services should comply with Medicare and Medicaid regulations in their state. Submittal to the Department of the appropriate claim form requesting payment for medical services provided to a Medicaid eligible shall be deemed representation to the Department of the medical provider's compliance with the above-listed laws.

(d) Payment for any service or item furnished by a provider of CHIP or Medicaid-funded services or items may not be made by or through (directly or by power of attorney) any individual or organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold or transferred to the individual or organization for an added fee or a deduction of a portion of the accounts receivable.

(e) The Department will make medical assistance provider payments only to the following:

(A) The provider who actually performed the service or provided the item;

(B) In accordance with a reassignment from the provider to a government agency or reassignment by a court order;

(C) To the employer of the provider, if the provider is required as a condition of employment to turn over his or her fees to the employer;

(D) To the facility in which the service is provided, if the provider has a contract under which the facility submits the claim;

(E) To a foundation, PHP, clinic, or similar organization operating as an organized health care delivery system, if the provider has a contract under which the organization submits the claim; or

(F) To an enrolled billing provider, such as a billing service or an accounting firm that furnishes statements and receives payments in the

name of the provider, if the billing provider's compensation for this service is:

(i) Related to the cost of processing the billing;

(ii) Not related on percentage or other basis to the amount that is billed or collected; and not dependent upon the collection of the payment.

(f) Providers must comply with TPR requirements in program-specific rules or contracts.

(4) Required State and Federal Statutes. When a provider submits a claim for services or supplies provided to a client or a PHP encounter, it is a representation by the provider that the provider has complied with all the requirements of these rules, and if applicable, program-specific rules or contracts.

(5) Program Integrity. The Department uses several approaches to promote program integrity. These rules describe program integrity actions related to provider payments, including provider reimbursement under program-specific rules, county agreements, and contracts. The program integrity goal is to pay the correct amount to a properly enrolled provider for covered services provided to an eligible client according to the program-specific coverage criteria in effect on the date of service.

(a) Program integrity activities include but are not limited to the following:

(A) Medical or professional review including but not limited to following the evaluation of care in accordance with evidence-based principles, medical error identification, and prior authorization processes, including all actions taken to determine the coverage and appropriateness of services or items in accordance with program-specific rules or contract;

(B) Provider obligations to submit correct claims and PHP encounters;

(C) Onsite visits to verify compliance with standards;

(D) Implementation of HIPAA electronic transaction standards to improve accuracy and timeliness of claims processing and encounter reporting;

(E) Provider credentialing activities;

(F) Accessing federal Department of Health and Human Services (DHHS) database (exclusions);

(G) Quality improvement activities;

(H) Cost report settlement processes;

(I) Audits;

(J) Investigation of false claims, fraud or prohibited kickback relationships; and

(K) Coordination with the Department of Justice Medicaid Fraud Control Unit (MFCU) and other health oversight authorities.

(b) The following people may review a request for services or items, or audit a claim or PHP encounter for care, services, or items, before or after payment, for assurance that the specific care, item, or service was provided in accordance with the program-specific and the generally accepted standards of a provider's field of practice or specialty:

(A) Department staff or designee;

(B) Medical utilization and professional review contractor;

(C) Dental utilization and professional review contractor; or

(D) Federal or state oversight authority.

(c) Payment may be denied or subject to recovery if the review or audit determines the care, service, or item was not provided in accordance with provider rules or does not meet the criteria for quality or medical appropriateness of the care, service, or item or payment. Related provider and hospital billings will also be denied or subject to recovery.

(d) If the Department determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery.

(e) The Department may communicate with and coordinate any program integrity actions with the MFCU, DHHS, and other federal and state oversight authorities.

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

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08

407-120-0320

Provider Enrollment

(1) In some Department program areas, being an enrolled Department provider is a condition of eligibility for a Department contract for certain services or activities. If reimbursement for covered services will be made under a contract with the Department, the provider must also meet the Department's contract requirements. Contract requirements are separate from the requirements of these provider enrollment rules. Enrollment as a provider with the Department is not a promise that the enrolled provider will receive any amount of work from the Department, a PHP, or a county.

(2) Relation to Program-Specific or Contract Requirements. Provider enrollment establishes essential Department provider participation requirements for becoming an enrolled Department provider. The details of

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provider qualification requirements, client eligibility, covered services, how to obtain prior authorization or review (if required), documentation requirements, claims submission, and available electronic access instructions, and other pertinent instructions and requirements are contained in the program-specific rules or contract.

(3) Criteria for Enrollment. Prior to enrollment, providers must:

(a) Meet all program-specific or contract requirements identified in program-specific rules or contracts in addition to those requirements identified in these rules;

(b) Meet Department contracting requirements, as specified by the Department's Office of Contracts and Procurement (OC&P);

(c) Meet Department and federal licensing requirements for the type of service for which the provider is enrolling;

(d) Meet Department and federal certification requirements for the type of service for which the provider is enrolling; and

(e) Obtain a provider number from the Department for the specific service for which the provider is enrolling.

(4) Participation as an Enrolled Provider. Participation with the Department as an enrolled provider is open to qualified providers that:

(a) Meet the qualification requirements established in these rules and program-specific rules or contracts;

(b) Enroll as a Department provider in accordance with these rules;

(c) Provide a covered service or item within their scope of practice and licensure to an eligible Department recipient in accordance with program-specific rules or contracts; and

(d) Accept the reimbursement amounts established in accordance with the Department's program-specific fee structures or contracts for the service or item.

(5) Enrollment Process. To be enrolled as a Department provider, an individual or organization must submit a complete and accurate provider enrollment form, available from the Department, including all required documentation, and a signed provider enrollment agreement.

(a) Provider Enrollment Form. The provider enrollment form requests basic demographic information about the provider that will be permanently associated with the individual or organization until changed on an update form.

(b) Provider and Program Addendum. Each Department program establishes provider-specific qualifications and program criteria that must be provided as part of the provider enrollment form.

(A) The provider must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules, and must comply with all Oregon statutes and regulations applicable to the provider's scope of service as well as the program-specific rules or contract applicable to the provision of covered services. The provider and program addendum will specify the required documentation of professional qualifications that must be provided with the provider enrollment form.

(B) All providers of services within Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county, or city government to operate a business or to provide services. In addition providers must be registered to do business in Oregon by registering with the Oregon Secretary of State, Corporation Division, if registration is required.

(c) Provider Disclosure Form. All individuals and entities are required to disclose information used by the Department to determine whether an exclusion applies that would prevent the Department from enrolling the provider. Individual performing providers must submit a disclosure statement. All providers that are enrolling as an entity (corporation, non-profit, partnership, sole proprietorship, governmental) must submit a disclosure of ownership and control interest statement. Payment cannot be made to any individual or entity that has been excluded from participation in federal or state programs or that employs or is managed by excluded individuals or entities.

(A) Entities must disclose all the information required on the disclosure of ownership and control interest statement. Information that must be disclosed includes the name, address, and taxpayer identification number of each individual with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership of five percent or more; whether any of the named individuals are related as spouse, parent, child, or sibling; and the name and taxpayer identification number of any other disclosing entity in which an individual with an ownership or control interest in the disclosing entity also has an ownership or control interest.

(B) A provider must submit, within 35 days of the date of a request by DHHS or the Department, full and complete information about the ownership of any subcontractor with whom the provider had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and any significant business transactions between the

provider and any wholly owned supplier, or between the provider and any subcontractor, during the five-year period ending on the date of the request.

(C) Before the Department enters into a provider enrollment agreement with a provider, or renews a provider agreement, or at any time upon written request of the Department, the provider must disclose to the Department the identity and taxpayer identification number of any individual who has an ownership or control interest in the provider; or is an agent or managing employee of the provider; or the individual performing provider that has been convicted of a criminal offense related to that individual's involvement in any program under Medicare, Medicaid, or Title XX services program, since the inception of those programs.

(D) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement if the individual performing provider or any individual who has an ownership or control interest in the entity, or who is an agent or managing employee of the provider, has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under Medicare, Medicaid, Children's Health Insurance, Title XX services, or other public assistance program.

(E) The Department may refuse to enter into or may suspend or terminate a provider enrollment agreement, or contract for provider services, if it determines that the provider did not fully and accurately make any disclosure required under subsection (c) of this rule.

(F) Taxpayer identification numbers, including social security numbers (SSN) and employer identification numbers (EIN), must be provided where indicated on the Disclosure Statement or the Disclosure of Ownership and Control Interest Statement. The taxpayer identification number will be used to confirm whether the individual or entity is subject to exclusion from participation in the Oregon Medicaid program.

(6) Provider Enrollment Agreement. The provider must sign the provider enrollment agreement, and submit it for review to the Department at the time the provider submits the provider enrollment form and related documentation. Signing the provider enrollment agreement constitutes agreement by a provider to comply with all applicable Department provider and program rules, and applicable federal and state laws and regulations in effect on the date of service.

(7) Request to Conduct Electronic Transactions. A provider may request to conduct electronic transactions with the Department by enrolling and completing the appropriate authorization forms in accordance with the electronic data transaction rules (OAR 407-120-0100 through 407-120-0200).

(8) Enrollment of Providers. A provider will be enrolled and assigned a provider number for use in specific payment or business operations and will be issued to the enrolled provider upon:

(a) Provider submission of a complete and signed (when applicable), provider enrollment form, provider enrollment agreement, provider certification and all required documents to the Department program responsible for enrolling the provider. Provider signature must be the provider or an individual with actual authority from the provider to legally bind the provider to attest and certify to the accuracy and completeness of the information submitted;

(b) The Department's verification of licensing or certification or other authority to perform the service or provide the item within the lawful scope of practice recognized under Oregon law. The Department may confirm any information on the provider enrollment form or documentation submitted with the provider enrollment form, and may request additional information; and

(c) The Department's acceptance of the provider enrollment form, provider enrollment agreement and provider certification by the Department unit responsible for approving the enrollment of the provider.

(9) Claim or Encounter Submission. Submission of a claim or encounter or other reimbursement document constitutes the enrolled provider's agreement that:

(a) The service or item was provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The provider has created and maintained all records necessary to disclose the extent of services or items provided and provider's compliance with applicable program and financial requirements, and that the provider agrees to make such information available upon request to the Department, the MFCU (for Medicaid-funded services or items), the Oregon Secretary of State, and (for federally-funded services or items) the federal funding authority and the Comptroller General of the United States, or their designees;

(c) The information on the claim or encounter, regardless of the format or other reimbursement document is true, accurate and complete; and

(d) The provider understands that payment of the claim or encounter or other reimbursement document will be from federal or state funds, or a combination of federal and state funds, and that any falsification, or con-

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cealment of a material fact, may result in prosecution under federal and state laws.

(10) Providers Required to Use a NPI. The Department has taken action to ensure compliance with the NPI requirements pursuant to 45 CFR Part 162 when those requirements became effective on May 23, 2007. In the event of a transition period approved by CMS beyond May 23, 2008, the following requirements for contractors, providers, and provider-applicants will apply:

(a) Providers and contractors that obtain a NPI are required to use their NPI where indicated. In situations where a taxonomy code may be used in conjunction with the NPI, providers must update their records as specified with the Department's provider enrollment unit. Providers applying for enrollment with the Department that have been issued a NPI must include that NPI and any associated taxonomy codes with the provider enrollment form;

(b) A provider enrolled with the Department must bill using the NPI pursuant to 45 CFR 162.410, in addition to the Department-assigned provider number, where applicable, and continue to bill using the Department assigned provider number until the Department informs the provider that the Department assigned provider number is no longer allowed, or the NPI transition period has ended, whichever occurs first. Failure to use the NPI and Department-assigned provider number as indicated during this transition period may result in delay or rejection of claims and other transactions;

(c) The NPI and applicable taxonomy code combinations will be cross-referenced to the Department assigned provider number for purposes of processing all applicable electronic transactions as specified in OAR 407-120-0100;

(d) The provider and PHP must cooperate with the Department with reasonable consultation and testing procedures, if any, related to implementation of the use of NPI's; and

(e) Certain provider types are not eligible for a NPI based on federal criteria for obtaining a NPI. Providers not eligible for a NPI must always use their Department provider number on claims, encounters or other reimbursement documents for that specific provider type.

(11) Retroactive Enrollment of Medical Assistance Providers. The effective date of provider enrollment is the date the provider's request is received by the Department if on that date the provider met all applicable requirements. The effective date may be retroactive for up to one year to encompass dates on which the provider furnished covered services to a medical assistance recipient for which it has not been paid, if on the retroactive effective date the provider met all applicable requirements.

(12) Provider numbers are specific to the category of service or items authorized by the Department to be provided. Issuance of a Department-assigned provider number establishes enrollment of an individual or organization as a provider for the specific category of services covered by the provider and program addendum submitted with the provider enrollment form and provider enrollment agreement.

(13) Required Updates:

(a) An enrolled provider must notify the Department in writing of a material change in any status or condition on any element of their provider enrollment form. Providers must notify the Department of changes in any of this information in writing within 30 calendar days of any of the following changes:

- (A) Business affiliation;
- (B) Ownership;
- (C) NPI;
- (D) Associated taxonomy codes;
- (E) Federal Tax Identification number;
- (F) Ownership and control information; or
- (G) Criminal convictions.

(b) These changes may require the submission of a provider enrollment form, provider enrollment agreement, provider certification or other related documentation.

(c) Claims submitted by, or payments made to, providers who have not timely furnished the notification of changes or have not submitted any of the items that are required due to a change may be denied or recovered.

(d) Notice of bankruptcy proceedings must be immediately provided to the Department in writing.

(14) Tax Reporting and Withholding.

(a) Providers must submit the provider's SSN unless the contractor provides a federal EIN, whichever is required for tax reporting purposes on IRS Form 1099. Providing this number is mandatory to be eligible to enroll as a provider. The provider's SSN or EIN is required pursuant to 42 CFR 433.37 federal tax laws at 26 USC 6041. SSN's and EIN's provided pursuant to this authority are used for the administration of state, federal, and local tax laws and the administration of this program for internal verifica-

tion and administrative purposes including but not limited to identifying the provider for payment and collection activities.

(b) The Department must comply with the tax information reporting requirements of section 6041 of the Internal Revenue Code (26 USC 6041). Section 6041 requires the filing of annual information returns showing amounts paid to providers, who are identified by name, address, and SSN or EIN. The Department files its information returns with the Internal Revenue Service (IRS) using Form 1099MISC.

(c) The IRS Code section 3406(a)(1)(B) requires the Department to begin backup withholding when notified by the IRS that a taxpayer identification number reported on an information return is incorrect. If a provider receives notice of backup withholding from the Department, the provider is responsible for timely complying with the notice and providing the Department with accurate information. The Department will comply with IRS requirements for backup withholding.

(d) Failure to notify the Department of a change in federal tax identification number (SSN or EIN) may result in the Department imposing a sanction as specified in OAR 407-120-0360.

(e) If the Department notifies a provider about an error in federal tax identification number, the provider must supply a valid federal tax identification number within 30 calendar days of the date of the Department's notice. Failure to comply with this requirement may result in the Department imposing a sanction as specified in OAR 407-120-0360, for each time the provider submits an inaccurate federal tax identification number, and may require back-up withholding. Federal tax identification number requirements described in this rule refer to any requirements established by the IRS.

(15) Enrollment of Out-of-State Providers. Providers of services to clients outside the State of Oregon will be enrolled as a provider under section (8) of this rule if they comply with the requirements of section (8) and under the following conditions:

(a) The provider is appropriately licensed or certified and is enrolled in the provider's home state for participation in that state's Medicaid program or, for non-Medicaid services, enrolled or contracted with the state agency in the provider's state to provide the same program-specific service in the provider's state. Disenrollment or sanction from the other state's Medicaid program, or exclusion from any other federal or state health care program or comparable program-specific service delivery system is a basis for denial of enrollment, termination, or suspension from participation as a Department provider;

(b) The Oregon Board of Pharmacy issued a license to provide pharmacy services to a noncontiguous out-of-state pharmacy provider;

(c) The services must be authorized in the manner required for out-of-state services under the program-specific rules or contract for an eligible client;

(d) The services for which the provider bills are covered services under the OHP or other Department program for which covered services are authorized to be provided to the client;

(e) A facility, including but not limited to a hospital, rehabilitative facility, institution for care of individuals with mental retardation, psychiatric hospital, or residential care facility, is enrolled or contracted by the state agency in the state in which the facility is located or is licensed as a facility provider of services by Oregon; and

(f) If the provider is not domiciled in or registered to do business in Oregon, the provider must promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State, Corporation Division all information required by those agencies relative to the provider enrollment form and provider enrollment agreement. The Department will withhold enrollment and payments until the out-of-state provider has provided documentation of compliance with this requirement to the Department unit responsible for enrollment.

(16) Provider Enrollment Agreement Termination.

(a) Mutual Consent. The provider may ask the Department to terminate the provider enrollment agreement at any time, subject to any specific provider termination requirements in program-specific rules or contracts.

(A) The request must be in writing, and signed by the provider, and mailed or delivered to the Department provider enrollment unit. The notice must specify the Department-assigned provider number, if known.

(B) When accepted, the Department will assign the provider number a termination status and the effective date of the termination status.

(C) Termination of the provider enrollment agreement does not relieve the provider of any obligations for covered services or items provided under these rules, program-specific rules or contracts in effect for dates of services during which the provider enrollment agreement was in effect.

(D) If the provider fails to submit any claims for reimbursement for an 18-month period, the Department will terminate the agreement in accordance with this rule. The provider may reapply for enrollment.

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(b) Department Termination. The Department may terminate the provider enrollment agreement immediately upon notice to the provider, or a later date as the Department may establish in the notice, upon the occurrence of any of the following events:

(A) The Department fails to receive funding, appropriations, limitations or other expenditure authority at levels that the Department or the specific program determines to be sufficient to pay for the services or items covered under the agreement;

(B) Federal or state laws, regulations, or guidelines are modified or interpreted by the Department in a manner that either providing the services or items under the agreement is prohibited or the Department is prohibited from paying for such services or items from the planned funding source;

(C) The Department has issued a final order revoking the Department-assigned provider number based on a sanction under termination terms and conditions established in program-specific rules or contract; or

(D) The provider no longer holds a required license, certificate or other authority to qualify as a provider. The termination will be effective on the date the license, certificate, or other authority is no longer valid.

(c) In the event of any dispute arising out of the termination of the provider enrollment agreement, the provider's sole monetary remedy is limited to covered services or items the Department determines to be compensable under the provider agreement, a claim for unpaid invoices, hours worked within any limits set forth in the agreement but not yet billed, and Department-authorized expenses incurred prior to termination. Providers are not entitled to recover indirect or consequential damages. Providers are not entitled to attorney fees, costs, or expenses of any kind.

(17) Immediate Suspension. When a provider fails to meet one or more of the requirements governing participation as a Department enrolled provider, the provider's Department-assigned provider number may be immediately suspended, in accordance with OAR 407-120-0360. The provider shall not provide services or items to clients during a period of suspension. The Department shall deny claims for payment or other reimbursement requests for dates of service during a period of suspension.

(18) Provider Participation is Voluntary. The provision of program-specific or contract covered services or items to eligible clients is a voluntary action on the part of the provider. Providers are not required to serve all clients seeking service. If a provider undertakes to provide a covered service or item to an eligible client, the provider must comply with these rules, program-specific rules or contract.

(19) For Medicaid services, a provider may not deny services to any eligible individual because of the client's inability to pay the cost sharing amount imposed by the applicable program-specific or provider-specific rule or contract. A client's inability to pay does not eliminate the client's liability for the cost sharing charge.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08

407-120-0330

Billing Procedures

(1) Billing Procedures. These rules only apply to covered services and items provided to clients that are paid for by the Department based on a Department fee schedule or other reimbursement method (often referred to as fee-for-service), or for services that are paid for by the Department at the request of a county for county-authorized services, in accordance with program-specific rules or contract.

(a) If a client's service or item is paid for by a PHP, the provider must comply with the billing and procedures related to claim submission established under contract with that PHP, or the rules applicable to non-participating providers if the provider is not under contract with that PHP.

(b) If the client is enrolled in a PHP, but the client is permitted by a contract or program-specific rules to obtain covered services reimbursed by the Department (such as family planning services that may be obtained from any provider), the provider must comply with the billing and claim procedures established under these rules.

(2) Use of Provider Number. All Department-assigned provider numbers are issued at enrollment and are directly associated with the provider as defined in OAR 407-120-0320(12) and have the following use:

(a) Log-on identification for the Department web portal;

(b) Claim submission in the approved paper formats; and

(c) For electronic claims submission including the web portal for atypical providers pursuant to 45 CFR 160 and 162 where a NPI is not mandated. Use of the Department-assigned provider number will be considered authorized by the provider and the Department will hold the provider accountable for its use.

(3) Limitations on Billing. Except as provided in section (4) below, an enrolled provider may not seek payment for any covered services from:

(a) A client for covered benefits; or

(b) A financially responsible relative or representative of that client.

(4) Exceptions on Billing Limitations. Providers may seek payment from an eligible client or client representative as follows:

(a) The provider may seek payment from any applicable coinsurance, co-payments, deductibles, or other client financial obligation to the extent and as expressly authorized by program-specific rules or contract;

(b) From a client who failed to inform the provider of Department program eligibility, of OHP or PHP enrollment, or of other third party insurance coverage at the time the service was provided or subsequent to the provision of the service or item. In this case, the provider could not bill the Department, the PHP, or third party payer for any reason, including, but not limited to; timeliness of claims and lack of prior authorization. The provider must document attempts to obtain information on eligibility or enrollment;

(c) The client became eligible for Department benefits retroactively but did not meet other established criteria described in the applicable program-specific rules or contracts.

(d) The provider can document that a TPR made payments directly to the client for services provided that are subject to recovery by the provider in accordance with program-specific rules or contract;

(e) The service or item is not covered under the client's benefit package. The provider must document that prior to the delivery of services or items, the provider informed the client the service or item would not be covered by the Department;

(f) The client requested continuation of benefits during the administrative hearing process and the final decision was not in favor of the client. The client will be responsible for any charges since the effective date of the initial notice of denial; or

(g) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this circumstance, a provider may bill the client for a covered service only if the client is informed in advance of receiving the specific service of all of the following:

(A) The requested service is a covered service and the provider would be paid in full for the covered service if the claim is submitted to the Department or the client's PHP, if the client is a member of a PHP;

(B) The estimated cost of the covered service, including all related charges, that the Department or PHP would pay, and for which the client is billed cannot be an amount greater than the maximum Department reimbursable rate or PHP rate, if the client is a member of a PHP;

(C) The provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(D) The provider must be able to document, in writing, signed by the client or the client's representative, that the client was provided the information described above; client was provided an opportunity to ask questions, obtain additional information, and consult with the client's caseworker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The provider must provide a copy of the signed agreement to the client. A provider must not submit a claim for payment for the service or item to the Department or to the client's PHP that is subject to such an agreement.

(5) Reimbursement for Non-Covered Services.

(a) Client Waiver for Non-Covered Services. A provider may bill a client for services that are not covered by the Department or a PHP, except as provided in these rules. The client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must provide written documentation, signed by the client, or the client's representative, dated prior to the delivery of services or item indicating that the client was provided this information and that the client knowingly and voluntarily agreed to be responsible for payment.

(b) Providers must not bill or accept payment from the Department or a managed care plan for a covered service when a non-covered service has been provided and additional payment is sought or accepted from the client. Examples include, but are not limited to, charging the client an additional payment to obtain a gold crown (not covered) instead of the stainless steel crown (covered) or charging an additional client payment to obtain eyeglass frames not on the covered list of frames. This practice is called buying-up, which is not permitted, and a provider may be sanctioned for this practice regardless of whether a client waiver is documented.

(c) Providers must not bill clients or the Department for a client's missed appointment.

(d) Providers must not bill clients or the Department for services or items provided free of charge. This limitation does not apply to established

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sliding fee schedules where the client is subject to the same standards as other members of the public or clients of the provider.

(e) Providers must not bill clients for services or items that have been denied due to provider error such as required documentation not submitted or prior authorization not obtained.

(6) Providers must verify that the individual receiving covered services is, in fact, an eligible client on the date of service for the service provided and that the services is covered in the client's benefit package.

(a) Providers are responsible for costs incurred for failing to confirm eligibility or that services are covered.

(b) Providers must confirm the Department's client eligibility and benefit package coverage using the web portal, or the Department telephone eligibility system, and by other methods specified in program-specific or contract instructions.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135

Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08

407-120-0340

Claim and PHP Encounter Submission

(1) Claim and PHP Encounter Submission. All claims must be submitted using one of the following methods:

(a) Paper forms, using the appropriate form as described in the program-specific rules or contract;

(b) Electronically using the web portal accessed by provider-specific PIN and password. Initial activation by provider of Department-assigned provider number and PIN for web portal access invokes provider's agreement to meet all of the standards for HIPAA privacy, security, and transactions and codes sets standards as defined in 45 CFR 162;

(c) Electronically in a manner authorized by the Department's EDT rules (OAR 407-120-0100 through 407-120-0200); or

(d) Electronically, for PHP encounters, in the manner required by the PHP contract with the Department and authorized by the Department's EDT rules.

(2) Claims must not be submitted prior to delivery of service unless otherwise authorized by program-specific rules or contracts. A claim for an item must not be submitted prior to dispensing, shipping, or mailing the item unless otherwise specified in the Department's program-specific rules or contracts.

(3) Claims and PHP encounters must be submitted in compliance HIPAA transaction and code set rules. The HIPAA transaction and code set rules, 45 CFR 162, apply to all electronic transactions for which DHHS has adopted a standard.

(a) The Department may deny or reject electronic transactions that fail to comply with the federal standard.

(b) The Department is required to comply with the HIPAA code set requirements in 45 CFR 162.1000 through 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically, and with regard to the electronic claims and encounter remittance advice information, including the web portal. Compliance with the code set requirements includes the codes and the descriptors of the codes established by the official entity that maintains the code set. These federal code set requirements are mandatory and the Department has no authority to delay or alter their application or effective dates as established by DHHS.

(A) The issuance of a federal code does not mean that the Department covers the item or service described by the federal code. In the event of an alleged variation between a Department-listed code and a national code, the provider should seek clarification from the Department program. The Department will apply the national code in effect on the date of request or date of service and the Department-listed code may be used for the limited purpose of describing the Department's intent in identifying whether the applicable national code represents a Department covered service or item.

(B) For purposes of maintaining HIPAA code set compliance, the Department adopts, by reference, the required use of the version of all national code set revisions, deletions, and additions in accordance with the HIPAA transaction and code set rules in effect on the date of this rule. This code set adoption may not be construed as Department coverage or that the existence of a particular national code constitutes a determination by the Department that the particular code is a covered service or item. If the provider is unable to identify an appropriate procedure code to use on the claim or PHP encounter, the provider should contact the Department for assistance in identifying an appropriate procedure code:

(i) Current Procedural Terminology, Fourth Edition (CPT-4), (American Medical Association);

(ii) Current Dental Terminology (CDT), (American Dental Association);

(iii) Diagnosis Related Group (DRG), (DHHS);

(iv) Health Care Financing Administration Common Procedural Coding System (HCPCS), (DHHS);

(v) National Drug Codes (NDC), (DHHS); and

(vi) HIPAA related codes, DHHS, claims adjustment reason, claim status, taxonomy codes, and decision reason as available at the Washington Publishing Company web site: <http://www.wpc.edi.com/content/view/180/223>.

(C) For electronic claims and PHP encounters, the appropriate HIPAA claim adjustment reason code for third party payer, including Medicare, explanation of payment must be used.

(c) Diagnosis Code Requirement.

(A) For claims and PHP encounters that require the listing of a diagnosis code as the basis for the service provided, the code listed on the claim must be the code that most accurately describes the client's condition and the service or item provided.

(B) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis code set including the code and the descriptor of the code by the official entity that maintains the code set, unless the requirement for a primary diagnosis code is specifically excluded in the Department's program-specific rules or contract. All diagnosis codes are required to the highest degree of specificity. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate program-specific rules or contract.

(C) Hospitals must follow national coding guidelines and must bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(d) Procedure Code Requirement.

(A) The provider must identify the appropriate procedure code on claims and PHP encounters as instructed in the appropriate Department program-specific rules or contract and must use the appropriate HIPAA procedure code set, set forth in 45 CFR 162.1000 through 162.1011, which best describes the specific service or item provided.

(B) Where there is one CPT, CDT, or HCPCS code that according to CPT, CDT, and HCPCS coding guidelines or standards, describes an array of services, the provider must use that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase payment or to mischaracterize the service.

(4) Prohibition of False Claims. No provider or its contracted agent (including billing service or billing agent) shall submit or cause to be submitted to the Department:

(a) Any false claim for payment or false PHP encounter;

(b) Any claim or PHP encounter altered in such a way as to result in a duplicate payment for a service that has already been paid;

(c) Any claim or PHP encounter upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form or PHP encounter format; or

(d) Any claim or PHP encounter for providing services or items that have not been provided.

(5) Third Party Resources.

(a) A provider shall not refuse to furnish covered services or items to an eligible client on account of a third party's potential liability for the service or item.

(b) Providers must take all reasonable measures to ensure that the Department will be the payer of last resort, consistent with program-specific rules or contracts. If available, private insurance, Medicare, or worker's compensation must be billed before the provider submits a claim for payment to the Department, county, or PHP. For services provided to a Medicare and Medicaid dual eligible client, Medicare is the primary payer and the provider must first pursue Medicare payment (including appeals) prior to submitting a claim for payment to the Department, county or PHP. For services that are not covered by Medicare or other third party resource, the provider must follow the program-specific rules or contracts for appropriate billing procedures.

(c) When another party may be liable for paying the expenses of a client's injury or illness, the provider must follow program-specific rules or contract addressing billing procedures.

(6) Full Use of Alternate Community Resources.

(a) The Department will generally make payment only when other resources are not available for the client's needs. Full use must be made of reasonable alternate resources in the local community; and

(b) Providers must not accept reimbursement from more than one resource for the same service or item, except as allowed in program-specific or contract TPR requirements.

(7) Timely Submission of Claim or Encounter Data.

(a) Subsection (a) through (c) below only apply to the submission of claims data or other reimbursement document to the Department, including provider reimbursement by the Department pursuant to an agreement with a county. Unless requirements for timely filing provided for in program-specific rules or applicable contracts are more specific than the timely

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filing standard established in this rule, all claims for services or items must be submitted no later than 12 months from the date of service.

(b) A denied claim submitted within 12 months of the date of service may be resubmitted (with resubmission documentation, as indicated within the program-specific rules or contracts) within 18 months of the date of service. These claims must be submitted to the Department in writing. The provider must present documentation acceptable to the Department verifying the claim was originally submitted within 12 months of the date of service, unless otherwise stated in program-specific rules or contracts. Acceptable documentation is:

(A) A remittance advice or other claim denial documentation from the Department to the provider showing the claim was submitted before the claim was one year old; or

(B) A copy of a billing record or ledger showing dates of submission to the Department.

(c) Exceptions to the 12-month requirement that may be submitted to the Department are as follows:

(A) When the Department confirms the Department or the client's branch office has made an error that caused the provider not to be able to bill within 12 months of the date of service;

(B) When a court or an administrative law judge in a final agency order has ordered the Department to make payment;

(C) When the Department determines a client is retroactively eligible for Department program coverage and more than 12 months have passed between the date of service and the determination of the client's eligibility, to the extent authorized in the program-specific rules or contracts.

(d) PHP encounter data must be submitted in accordance with 45 CFR 162.1001 and 162.1102 and the time periods established in the PHP contract with the Department.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135
Hist.: DHS 15-2007, f. 12-31-07, cert. ef. 1-1-08

407-120-0350

Payments and Overpayments

(1) Authorization of Payment.

(a) Some services or items covered by the Department require authorization before a service, item or level of care can be provided or before payment will be made. Providers are responsible for checking the appropriate program-specific rules or contracts for information on services or items requiring prior authorization and the process to follow to obtain authorization.

(b) Documentation submitted when requesting authorization must support the program-specific or contract justification for the service or item or level of care. A request is considered complete if it contains all necessary documentation and meets any other requirements as described in the appropriate program-specific rules or contract.

(c) The authorizing program will authorize the covered level of care or type of service or item that meets the client's program-eligible need. The authorizing program shall only authorize services which meet the program-specific or contract coverage criteria and for which the required documentation has been supplied. The authorizing program may request additional information from the provider to determine the appropriateness of authorizing the service or item or level of care within the scope of program coverage.

(d) Authorizing programs are not required to authorize services or to make payment for authorized services under the following circumstances:

(i) The client was not eligible at the time services were provided. The provider is responsible for checking the client's eligibility each time services are provided;

(ii) The provider cannot produce appropriate documentation to support the level of care, type of service, or item meets the program-specific or contract criteria, or the appropriate documentation was not submitted to the authorizing program;

(iii) The delivery of the service, item, or level of care has not been adequately documented per OAR 407-120-0370, Requirements for Financial, Clinical and Other Records, and the documentation in the provider's files is not adequate to determine the type, medical appropriateness, or quantity of services or items provided or the required documentation is not in the provider's files;

(iv) The services or items identified in the claim are not consistent with the information submitted when authorization was requested or the services or items provided are retrospectively determined not to be authorized under the program-specific or contract criteria;

(v) The services or items identified in the claim are not consistent with those provided;

(vi) The services or items were not provided within the timeframe specified on the authorization of services document; or

(vii) The services or items were not authorized or provided in compliance with the program-specific rules or contracts.

(e) Payment made for services or items described in subsections (d)(i) through (vii) of this rule will be recovered.

(f) Retroactive Department Client Eligibility.

(A) When a client is determined to be retroactively eligible for a Department program, or is retroactively disenrolled from a PHP or services provided after the client was disenrolled from a PHP, authorization for payment may be given if the conditions set forth in (A) through (D) of this section are met;

(i) The client was eligible on the date of service and the program-specific rules or contract authorize the Department to reimburse the provider for services provided to clients made retroactively eligible;

(ii) The services or items provided to the client meet all other program-specific or contract criteria and Oregon Administrative Rules;

(iii) The request for authorization is received by the appropriate Department branch or Department program office within 90 days of the date of service; and

(iv) The provider is enrolled with the Department on the date of service, or becomes enrolled with the Department not later than the date of service as provided in OAR 407-120-0320(11).

(B) Requests for authorization received after 90 days from date of service require all the documentation required in (6)(a)(i), (ii) and (iv) and documentation from the provider that states that authorization could not have been obtained within 90 days of the date of service.

(g) Service authorization is valid for the time period specified on the authorization notice, but not to exceed 12 months, unless the client's benefit package no longer covers the service, in which case the authorization terminates on the date coverage ended.

(h) Service authorization for clients with other insurance or for Medicare beneficiaries is governed by program-specific rules or contracts.

(2) Payments.

(a) This rule only applies to covered services and items provided to eligible clients within the program-specific or contract covered services or items in effect on the date of service that are paid for by the Department based on program-specific or contract fee schedules or other reimbursement methods, or for services that are paid for by the Department at the request of a county for county-authorized services in accordance with program-specific or provider-specific rules or contracts.

(b) If the client's service or item is paid for by a PHP, the provider must comply with the payment requirements established under contract with that PHP, and in accordance with OAR 410-120 and 410-141, applicable to non-participating providers.

(c) The Department will pay for services or items based on the reimbursement rates and methods specified in the applicable program-specific rules or contract. Provider reimbursement on behalf of a county must include county service authorization information.

(d) Providers must accept, as payment in full, the amounts paid by the Department in accordance with the fee schedule or reimbursement method specified in the program-specific rules or contract, plus any deductible, co-payment, or coinsurance required to be paid by the client. Payment in full includes:

(A) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding the Department's allowable payment; or

(B) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the program-specific rules or contracts.

(e) The Department will not make payments for duplicate services or items. The Department will not make a separate payment or co-payment to a provider for services included in the provider's all-inclusive rate if the provider has been or will be reimbursed by other resources for the service or item.

(f) Prepayment and Post-Payment Review. Payment by the Department does not limit the Department or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical, clinical, program-specific or contract review, audit, or other post-payment review determines the service or item was not provided in accordance with applicable rules or contracts or does not meet the program-specific or contract criteria for quality of care, or appropriateness of the care, or authorized basis for payment.

(3) Recovery of Overpayments to Providers — Recoupments and Refunds

(a) The Department may deny payment or may deem payments subject to recovery as an overpayment if a review or audit determines the item or service was not provided in accordance with the Department's rules,

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agreement of contract, or does not meet the criteria for quality of care, or appropriateness of the care or payment. Related provider billings will also be denied or subject to recovery.

(b) If a provider determines that a submitted claim or encounter is incorrect, the provider must submit an individual adjustment request and refund the amount of the overpayment, if any, or adjust the claim or encounter, as is consistent with the requirements in program-specific rules or contracts.

(c) The Department may determine, as a result of review or other information, that a payment should be denied or that an overpayment has been made to a provider, which indicates that a provider may have submitted claims or encounters, or received payment to which the provider is not properly entitled. Such payment denial or overpayment determinations may be based on, but not limited to, the following grounds:

(A) The Department paid the provider an amount in excess of the amount authorized under a contract, state plan or Department rule;

(B) A third party paid the provider for services, or portion thereof, previously paid by the Department;

(C) The Department paid the provider for services, items, or drugs that the provider did not perform or provide;

(D) The Department paid for claims submitted by a data processing agent for whom a written provider or billing agent or billing service agreement was not on file at the time of submission;

(E) The Department paid for services and later determined they were not part of the client's program-specific or contract-covered services;

(F) Coding, data processing submission, or data entry errors;

(G) Medical, dental, or professional review determines the service or item was not provided in accordance with the Department's rules or contract or does not meet the program-specific or contract criteria for coverage, quality of care, or appropriateness of the care or payment;

(H) The Department paid the provider for services, items, or drugs when the provider did not comply with the Department's rules and requirements for reimbursement; or

(I) The provider submitted inaccurate, incomplete or untrue encounter data to the Department.

(d) Prior to identifying an overpayment, the Department may contact the provider for the purpose of providing preliminary information and requesting additional documentation. The provider must provide the requested documentation within the time frame requested.

(e) When an overpayment is identified, the Department will notify the provider in writing as to the nature of the discrepancy, the method of computing the overpayment, and any further action that the Department may take on the matter. The notice may require the provider to submit applicable documentation for review prior to requesting an appeal from the Department, and may impose reasonable time limits for when documentation must be provided for Department consideration. The notice will inform the provider of the process for appealing the overpayment determination.

(f) The Department may recover overpayments made to a provider by direct reimbursement, offset, civil action, or other legal action:

(A) The provider must make a direct reimbursement to the Department within 30 calendar days from the date of the notice of the overpayment, unless other regulations apply;

(B) The Department may grant the provider an additional period of time to reimburse the Department upon written request made within 30 calendar days from the date of the notice of overpayment if the provider includes a statement of the facts and reasons sufficient to show that repayment of the overpayment amount should be delayed pending appeal because;

(i) The provider will suffer irreparable injury if the overpayment notice is not delayed;

(ii) There is a plausible reason to believe that the overpayment is not correct or is less than the amount in the notice, and the provider has timely filed an appeal of the overpayment, or that the provider accepts the amount of the overpayment but is requesting to make repayment over a period of time;

(iii) A proposed method for assuring that the amount of the overpayment can be repaid when due with interest, including but not limited to a bond, irrevocable letter of credit or other undertaking, or a repayment plan for making payments, including interest, over a period of time;

(iv) Granting the delay will not result in substantial public harm; and

(v) Affidavits containing evidence relied upon in support of the request for stay.

(C) The Department may consider all information in the record of the overpayment determination, including provider cooperation with timely provision of documentation, in addition to the information supplied in provider's request. If provider requests a repayment plan, the Department may require conditions acceptable to the Department before agreeing to a

repayment plan. The Department must issue an order granting or denying a repayment delay request within 30 calendar days after receiving it;

(D) A request for hearing or administrative review does not change the date the repayment of the overpayment is due; and

(E) The Department may withhold payment on pending claims and on subsequently received claims for the amount of the overpayment when overpayments are not paid as a result of subsection (e)(i);

(f) In addition to any overpayment, the Department may impose a sanction on the provider in connection with the actions that resulted in the overpayment. The Department may, at its discretion, combine a notice of sanction with a notice of overpayment.

(g) Voluntary submission of an adjustment claim or encounter transaction or an individual adjustment request or overpayment amount after notice from the Department does not prevent the Department from issuing a notice of sanction. The Department may take such voluntary payment into account in determining the sanction.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.080

Stats. Implemented: ORS 414.115, 414.125, 414.135

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407-120-0360

Consequences of Non-Compliance and Provider Sanctions

(1) There are two classes of provider sanctions, mandatory and discretionary, that may be imposed for non-compliance with the provider enrollment agreement.

(2) Except as otherwise provided, the Department will impose provider sanctions at the direction of the assistant director of the Department's division whose budget includes payment for the services involved.

(3) Mandatory Sanctions. The Department shall impose mandatory sanctions and suspend the provider from participation in the Department's programs:

(a) When a provider has been convicted (as that term is defined in 42 CFR 1001.2) of a felony or misdemeanor related to a crime, or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws, or other disqualifying criminal conviction pursuant to program-specific rules or contract;

(b) When a provider is excluded from participation in federal or state health care programs by the Office of the Inspector General of DHHS or from the Medicare (Title XVIII) program of the Social Security Act as determined by the secretary of DHHS. The provider will be excluded and suspended from participation with the Department for the duration of exclusion or suspension from the Medicare program or by the Office of the Inspector General; or

(c) If the provider fails to disclose ownership or control information required under 42 CFR 455.104 that is required to be reported at the time the provider submits a provider enrollment form or when there is a material change in the information that must be reported, or information related to business transactions required to be provided under 42 CFR 455.105 upon request of federal or state authorities.

(4) Discretionary Sanctions. When the Department determines the provider fails to meet one or more of the Department's requirements governing participation in its programs the Department may impose discretionary sanctions. Conditions that may result in a discretionary sanction include, but are not limited to, when a provider has:

(a) Been convicted of fraud related to any federal, state, or locally financed health care program or committed fraud, received kickbacks, or committed other acts that are subject to criminal or civil penalties under the Medicare or Medicaid statutes;

(b) Been convicted of interfering with the investigation of health care fraud;

(c) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance or other potentially disqualifying crime, as determined under program-specific rules or contracts;

(d) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity either:

(A) Had his or her professional license suspended or revoked, or otherwise lost such license; or

(B) Surrendered his or her license while a formal disciplinary proceeding is pending before the relevant licensing authority.

(e) Been suspended or excluded from participation in any federal or state program for reasons related to professional competence, professional performance, or other reason;

(f) Billed excessive charges including, but not limited to, charging in excess of the usual charge, furnished items or services in excess of the client's needs or in excess of those services ordered by a provider, or in excess of generally accepted standards or quality that fail to meet professionally recognized standards;

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- (g) Failed to furnish necessary covered services as required by law or contract with the Department if the failure has adversely affected or has a substantial likelihood of adversely affecting the client;
- (h) Failed to disclose required ownership information;
- (i) Failed to supply requested information on subcontractors and suppliers of goods or services;
- (j) Failed to supply requested payment information;
- (k) Failed to grant access or to furnish as requested, records, or grant access to facilities upon request of the Department or the MFCU conducting their regulatory or statutory functions;
- (l) In the case of a hospital, failed to take corrective action as required by the Department, based on information supplied by the QIO to prevent or correct inappropriate admissions or practice patterns, within the time specified by the Department;
- (m) In the case of a licensed facility, failed to take corrective action under the license as required by the Department within the time specified by the Department;
- (n) Defaulted on repayment of federal or state government scholarship obligations or loans in connection with the provider's health profession education;
- (A) Providers must have made a reasonable effort to secure payment;
- (B) The Department must take into account access of beneficiaries to services; and
- (C) Will not exclude a community's sole physician or source of essential specialized services;
- (o) Repeatedly submitted a claim with required data missing or incorrect:
- (A) When the missing or incorrect data has allowed the provider to:
- (i) Obtain greater payment than is appropriate;
- (ii) Circumvent prior authorization requirements;
- (iii) Charge more than the provider's usual charge to the general public;
- (iv) Receive payments for services provided to individuals who were not eligible; or
- (v) Establish multiple claims using procedure codes that overstate or misrepresent the level, amount, or type of services or items provided.
- (B) Does not comply with the requirements of OAR 410-120-1280.
- (p) Failed to develop, maintain, and retain, in accordance with relevant rules and standards, adequate clinical or other records that document the client's eligibility and coverage, authorization (if required by program-specific rules or contracts), appropriateness, nature, and extent of the services or items provided;
- (q) Failed to develop, maintain, and retain in accordance with relevant rules and standards, adequate financial records that document charges incurred by a client and payments received from any source;
- (r) Failed to develop, maintain, and retain adequate financial or other records that support information submitted on a cost report;
- (s) Failed to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulations;
- (t) Submitted claims or written orders contrary to generally accepted standards of professional practice;
- (u) Submitted claims for services that exceed the requested or agreed upon amount by the OHP client, the client representative, or requested by another qualified provider;
- (v) Breached the terms of the provider contract or agreement;
- (x) Failed to comply with the terms of the provider certifications on the claim form;
- (y) Rebated or accepted a fee or portion of a fee for a client referral; or collected a portion of a service fee from the client and billed the Department for the same service;
- (z) Submitted false or fraudulent information when applying for a Department-assigned provider number, or failed to disclose information requested on the provider enrollment form;
- (aa) Failed to correct deficiencies in operations after receiving written notice of the deficiencies from the Department;
- (bb) Submitted any claim for payment for which the Department has already made payment or any other source unless the amount of the payment from the other source is clearly identified;
- (cc) Threatened, intimidated, or harassed clients, client representatives, or client relatives in an attempt to influence payment rates or affect the outcome of disputes between the provider and the Department;
- (dd) Failed to properly account for a client's personal incidental funds including, but not limited to, using a client's personal incidental funds for payment of services which are included in a medical facility's all-inclusive rates;
- (ee) Provided or billed for services provided by ineligible or unsupervised staff;
- (ff) Participated in collusion that resulted in an inappropriate money flow between the parties involved;
- (gg) Refused or failed to repay, in accordance with an accepted schedule, an overpayment established by the Department;
- (hh) Failed to report to Department payments received from any other source after the Department has made payment for the service; or
- (ii) Collected or made repeated attempts to collect payment from clients for services covered by the Department, pursuant to OAR 410-120-1280.
- (5) A provider who has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, must not submit claims for payment, either personally or through claims submitted by any billing agent or service, billing provider or other provider, for any services or supplies provided under the medical assistance programs, except those services or supplies provided prior to the date of exclusion, suspension or termination.
- (6) Providers must not submit claims for payment to the Department for any services or supplies provided by an individual or provider entity that has been excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of exclusion, suspension or termination.
- (7) When the provisions of sections (5) or (6) are violated, the Department may suspend or terminate the billing provider or any provider who is responsible for the violation.
- (8) Type and Conditions of Sanction.
- (a) A mandatory sanction imposed by the Department pursuant to section (3) may result in any of the following:
- (A) The provider will either be terminated or suspended from participation in Department's programs. No payments of Title XIX, Title XXI or other federal or state funds will be made for services provided after the date of termination. Termination is permanent unless:
- (i) The exceptions cited in 42CFR 1001.221 are met; or
- (ii) Otherwise stated by the Department at the time of termination.
- (B) No payments of Title XIX, Title XXI, or other federal or state funds will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved. The minimum duration of a suspension will be determined by the DHHS secretary, under the provisions of 42 CFR Parts 420, 455, 1001, or 1002. The state may suspend a provider from participation in the medical assistance programs longer than the minimum suspension determined by the DHHS secretary.
- (b) The Department may impose the following discretionary sanctions on a provider pursuant to OAR 410-120-1400(4):
- (A) The provider may be terminated from participation in the Department's programs. No payments of Title XIX, Title XXI or other federal or state funds will be made for services provided after the date of termination. Termination is permanent unless:
- (i) The exceptions cited in 42 CFR 1001.221 are met; or
- (ii) Otherwise stated by the Department at the time of termination.
- (B) The provider may be suspended from participation in the Department's programs for a specified length of time, or until specified conditions for reinstatement are met and approved by the Department. No payments of Title XIX, Title XXI, or other federal or state funds will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed if the conditions that caused the suspension have been resolved.
- (C) The Department may withhold payments to a provider;
- (D) The provider may be required to attend provider education sessions at the expense of the sanctioned provider;
- (E) The Department may require that payment for certain services are made only after the Department has reviewed documentation supporting the services;
- (F) The Department may require repayment of amounts paid or provide for reduction of any amount otherwise due the provider; and
- (G) Any other sanctions reasonably designed to remedy or compel future compliances with federal, state, or Department regulations.
- (c) The Department will consider the following factors in determining the sanction to be imposed. Factors include but are not limited to:
- (A) Seriousness of the offense;
- (B) Extent of violations by the provider;
- (C) History of prior violations by the provider;
- (D) Prior imposition of sanctions;
- (E) Prior provider education;
- (F) Provider willingness to comply with program rules;

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(G) Actions taken or recommended by licensing boards or a QIO;

(H) Adverse impact on the availability of program-specific or contract covered services or the health of clients living in the provider's service area; and

(I) Potential financial sanctions related to the non-compliance may be imposed in an amount that is reasonable in light of the anticipated or actual harm caused by the non-compliance, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

(d) When a provider fails to meet one or more of the requirements identified in OAR 407-120-0300 through 407-120-0380, the Department, in its sole discretion, may immediately suspend the provider's Department assigned billing number and any electronic system access code to prevent public harm or inappropriate expenditure of public funds.

(A) The provider subject to immediate suspension is entitled to a contested case hearing as outlined in ORS 183 to determine whether the provider's Department assigned number and electronic system access code will be revoked; and

(B) The notice requirements described in section (5) of this rule do not preclude immediate suspension in the Department's sole discretion to prevent public harm or inappropriate expenditure of public funds. Suspension may be invoked immediately while the notice and contested case hearing rights are exercised.

(e) If the Department sanctions a provider, the Department will notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction will identify:

(A) The factual basis used to determine the alleged deficiencies and a reference to the particular sections of the statutes and rules involved;

(B) Explanation of actions expected of the provider;

(C) Explanation of the Department's intended action;

(D) The provider's right to dispute the Department's allegations and submit evidence to support the provider's position;

(E) The provider's right to appeal the Department's proposed actions pursuant to ORS 183;

(F) A statement of the authority and jurisdiction under which the appeal is to be held, with a description of the procedure and time to request an appeal; and

(G) A statement indicating whether and under what circumstances an order by default may be entered.

(f) If the Department decides to sanction a provider, the Department will notify the provider in writing at least 15 days before the effective date of action, except in the case of immediate suspension to avoid public harm or inappropriate expenditure of funds.

(g) The provider may appeal the Department's immediate or proposed sanction or other actions the Department intends to take. The provider must appeal this action separately from any appeal of audit findings and overpayments. These include, but are not limited to, the following:

(A) Termination or suspension from participation in the Medicaid-funded medical assistance programs;

(B) Termination or suspension from participation in the Department's state-funded programs; and

(C) Revocation of the provider's Department assigned provider number.

(h) Other provisions:

(A) When a provider has been sanctioned, all other provider entities in which the provider has ownership (five percent or greater) or control of, may also be sanctioned;

(B) When a provider has been sanctioned, the Department may notify the applicable professional society, board of registration or licensure, federal or state agencies, OHP, PHP's and the National Practitioner Data Base of the findings and the sanctions imposed;

(C) At the discretion of the Department, providers who have previously been sanctioned or suspended may or may not be re-enrolled as Department providers;

(D) Nothing in this rule prevents the Department from simultaneously seeking monetary recovery and imposing sanctions against the provider;

(E) Following a contested case hearing in which a provider has been found to violate ORS 411.675, the provider shall be liable to the Department for treble the amount of payments received as a result of each violation.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060

Stats. Implemented: ORS 414.115, 414.125, 414.135

Hist.: DHS 15-2007, f. 12-31-07, cert. eff. 1-1-08

407-120-0370

Requirements for Financial, Clinical, and Other Records

(1) The Department shall analyze and monitor the operation of its programs and audit and verify the accuracy and appropriateness of payment, utilization of services, or items.

(2) The Department shall comply with client coverage criteria and requirements for the level of care or service or item authorized or reimbursed by the Department and the quality of covered services or items and service or item delivery, and access to covered services or items.

(3) The provider and the provider's designated billing service or other entity responsible for the maintenance of financial, service delivery, and other records must:

(a) Develop and maintain adequate financial and service delivery records and other documentation which supports the specific care, items, or services for which payment has been requested. Payment will be made only for services that are adequately documented. The following documentation must be completed before the service is billed to the Department:

(A) All records documenting the specific service provided, the number of services or items comprising the service provided, the extent of the service provided, the dates on which the service was provided, and identification of the individual who provided the service. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. For cost reimbursed services, the provider must maintain adequate records to thoroughly and accurately explain how the amounts reported on the cost statement were determined.

(B) Service delivery, clinical records, and visit data, including records of all therapeutic services, must document the basis for service delivery and record visit data if required under program-specific rules or contracts. A client's clinical record must be annotated each time a service is provided and signed or initialed by the individual providing the service or must clearly identify the individual providing the service. Information contained in the record must be sufficient in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule, program-specific rules, and any pertinent contracts.

(C) All information about a client obtained by the provider or its officers, employees, or agents in the performance of covered services, including information obtained in the course of determining eligibility, seeking authorization, and providing services, is confidential. The client information must be used and disclosed only to the extent necessary to perform these functions.

(b) Implement policies and procedures to ensure confidentiality and security of the client's information. These procedures must ensure the provider may release such information in accordance with program-specific federal and state statutes or contract, which may include but is not limited to, ORS 179.505 through 179.507, 411.320, 433.045, 42 CFR Part 2, 42 CFR Part 431 subpart F, 45 CFR 205.50, and ORS 433.045(3) with respect to HIV test information.

(c) Ensure the use of electronic record-keeping systems does not alter the requirements of this rule.

(A) A provider's electronic record-keeping system includes electronic transactions governed by HIPAA transaction and code set requirements and records, documents, documentation, and information include all information, whether maintained or stored in electronic media, including electronic record-keeping systems, and information stored or backed up in an electronic medium.

(B) If a provider maintains financial or clinical records electronically, the provider must be able to provide the Department with hard-copy versions. The provider must also be able to provide an auditable means of demonstrating the date the record was created and the identity of the creator of a record, the date the record was modified, what was changed in the record and the identity of any individual who has modified the record. The provider must supply the information to individuals authorized to review the provider's records under section (e) of this rule.

(C) Providers may comply with the documentation review requirements in this rule by providing the electronic record in an electronic format acceptable to an authorized reviewer. The authorized reviewer must agree to receive the documentation electronically.

(d) Retain service delivery, visit, and clinical records for seven years and all other records described in this rule, program-specific rules and contract for at least five years from the date of service.

(e) Furnish requested documentation (including electronically recorded information or information stored or backed up in an electronic medium) immediately or within the time-frame specified in the written request received from the Department, the Oregon Secretary of State, DHHS or other federal funding agency, Office of Inspector General, the Comptroller General of the United States (for federally funded programs), MFCU (for Medicaid-funded services or items), or the client representative. Copies of the documents may be furnished unless the originals are requested. At their discretion, official representatives of the Department, Medicaid Fraud Unit, DHHS, or other authorized reviewers may review and copy the original

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documentation in the provider's place of business. Upon written request of the provider, the program or the unit, may, at their sole discretion, modify or extend the time for provision of such records if, in the opinion of the program or unit good cause for such extension is shown. Factors used in determining if good cause exists include:

- (A) Whether the written request was made prior to the deadline for production;
 - (B) If the written request is made after the deadline for production, the amount of time elapsed since that deadline;
 - (C) The efforts already made to comply with the request;
 - (D) The reasons the deadline cannot be met;
 - (E) The degree of control that the provider had over its ability to produce the records prior to the deadline; and
 - (F) Other extenuating factors.
- (f) Access to records, inclusive of clinical charts and financial records does not require authorization or release from the client, unless otherwise required by more restrictive state and federal regulations if the purpose of such access is:

- (A) To perform billing review activities;
 - (B) To perform utilization review activities;
 - (C) To review quality, quantity, medical appropriateness of care, items, and services provided;
 - (D) To facilitate service authorization and related services;
 - (E) To investigate a client's hearing request;
 - (F) To facilitate investigation by the MFCU or DHHS; or
 - (G) To review records necessary to the operation of the program.
- (g) Failure to comply with requests for documents within the specified time-frame means that the records subject to the request may be deemed by the Department not to exist for purposes of verifying appropriateness of payment, clinical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and subjects the provider to possible denial or recovery of payments made by the Department or to sanctions.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08

407-120-0380

Fraud and Abuse

(1) Providers are required to promptly refer all suspected fraud and abuse, including fraud or abuse by its employees or in Department administration, to the MFCU, or to the Department's audit unit.

(2) Providers must permit the MFCU and the Department to inspect, copy, evaluate, or audit books, records, documents, files, accounts, and facilities, without charge, as required to investigate allegations or incidents of fraud or abuse.

(3) Providers aware of suspected fraud or abuse by a client must report the incident to the Department's fraud unit.

(4) The Department may share information for health oversight purposes with the MFCU and other federal or state health oversight authorities.

(5) The Department may take actions necessary to investigate and respond to substantiated allegations of fraud and abuse, including but not limited to suspending or terminating the provider from participation in the Department's programs, withholding payments or seeking recovery of payments made to the provider, or imposing other sanctions provided under state law or regulations. Such actions by the Department may be reported to CMS or other federal or state entities as appropriate.

Stat. Auth.: ORS 409.010, 409.050, 409.060, 409.070, 409.093 - 409.160, 411.060
Stats. Implemented: ORS 414.115, 414.125, 414.135
Hist.: DHSD 15-2007, f. 12-31-07, cert. ef. 1-1-08

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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.

Adm. Order No.: CWP 24-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 4-11-08

Notice Publication Date:

Rules Amended: 413-015-0115, 413-015-0205, 413-015-0415

Rules Suspended: 413-015-0115(T), 413-015-0205(T), 413-015-0415(T)

Subject: OAR 413-015-0115 is being amended to implement HB 3113 and add definitions of "day care facility" and "private child car-

ing agency" for use in Child Protective Services rules. This amendment amends a recent temporary amendment to this rule.

OAR 413-015-0205 about screening activities in Child Protective Services is being amended to clarify screening activities a screener must complete, including existing policy on the handling of "unable to locate" dispositions at screening when found in the history of the family's case. This amendment amends a recent temporary amendment to this rule.

OAR 413-015-0415 about Child Protective Services assessment activities is being amended to clarify the Department's responsibility for review of "unable to locate" dispositions when found in the history of a family and add consultation with supervisor when using the "unable to locate" disposition. This amendment amends a recent temporary amendment to this rule.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0115

Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse or neglect" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services (CPS)" means a specialized social service program that the Department provides on behalf of children who may be unsafe after a report of child abuse or neglect is received.

(5) "Child protective services assessment" means activities and interventions that identify and analyze safety threats, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective actions or ongoing safety planning.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of Child Welfare trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of Child Welfare who has completed the mandatory Department training for child protective service workers.

(8) "Child Safety Meeting" means a facilitated meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.

(9) "Children's Care Provider (CCP)" means a licensed or certified Residential Care Agency, Day Treatment Program, Foster Care Agency, Therapeutic Boarding School, or Outdoor Youth Program that has assumed responsibility for all or a portion of the care of a child as a result of a contract or agreement. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(10) "Day Care Facility" means each of the following:

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(d) A Listed Facility, which is a child care provider who is exempt from CCD licensing and who receives subsidy payments for child care on behalf of clients of the Department of Human Services.

(11) "Department" means the Department of Human Services, Child Welfare.

(12) "Department response" means how the Department intends to respond to information that a child is unsafe after a report of alleged abuse or neglect is received.

(13) "Designated medical professional" means (as defined in ORS 418.747(8)) a physician, physician assistant, or nurse practitioner who has been designated by the local multi-disciplinary team and trained to conduct child abuse medical assessments (as defined in ORS 418.782), and who is — or who may designate another physician, physician assistant, or nurse practitioner who is — regularly available to conduct these medical assessments.

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(14) "Face-to-face" means an in-person interaction between individuals.

(15) "FACIS" means the Family and Child Information System.

(16) "Former foster child" means a person under 21 years of age, who was in substitute care in Oregon, including substitute care provided by the Federally Recognized Tribes, after the age of 14 and remained in substitute care for an accumulative 180 days or longer.

(17) "Guided Assessment Process (GAP)" is a tool used to document the CPS assessment.

(18) "Harm" means any kind of impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning. Harm is the result of child abuse or neglect and may vary from mild to severe.

(19) "ICWA" means the Indian Child Welfare Act.

(20) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.

(21) "Legal guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

(a) Authorize surgery for the child;

(b) Authorize enlistment in the armed forces;

(c) Consent to the child's adoption when the child is in the permanent custody of the agency; and

(d) Make other decisions of substantial legal significance concerning the child (but a guardian is not a conservator of the child's property or estate).

(22) "Multi-disciplinary team (MDT)" means a county investigative team described in ORS 418.747 that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(23) "Observable" means specific, definite, real, can be seen and described. Observable does not include suspicion and gut feeling.

(24) "OIT" means Department of Human Services, Office of Investigations and Training.

(25) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(26) "Out of control" means family behaviors, conditions, or circumstances that can affect a child are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

(27) "Personal representative" means a person who is at least 18 years of age and is selected to be present and supportive during the CPS assessment by a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the crime. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(28) "Private child-caring agency" is defined by the definitions in ORS 418.205, and means a "child caring agency" that is not owned, operated, or administered by any governmental agency or unit.

(a) A "child-caring agency" means an agency or organization providing:

(A) Day treatment for disturbed children;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs as defined in OAR 413-215-0911; or

(E) Other similar services for children.

(b) A child-caring agency does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(29) "Protective action" means an immediate, same day, short-term plan sufficient to protect a child from a safety threat in order to allow completion of the CPS assessment.

(30) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(31) "Protective custody" means custody authorized by ORS 419B.150.

(32) "Reasonable suspicion" means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse. Explanation: The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. Instinct and experience cannot be the entire basis of the belief. But the circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.

(33) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(34) "Report" means an allegation of child abuse or neglect provided to Child Welfare that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(35) "Reporter" means an individual who makes a report.

(36) "Safe" means there is an absence of safety threats, the child is not vulnerable to identified safety threats, or there is sufficient parent or caregiver protective capacity to protect the vulnerable child from the identified safety threats.

(37) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety or increasing the protective capacities of the child's parent or caregiver.

(38) "Safety services" mean the actions, assistance, and supervision provided by safety service providers to manage the identified safety threats to a child.

(39) "Safety threat" means family behavior, conditions, or circumstances that could result in harm to a child.

(40) "Screener" means a Child Welfare employee with training required to provide screening services.

(41) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(42) "Severe harm" means 'substantial', as used in ORS 419B.005; immobilizing impairment; life-threatening damage; or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

(43) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over the counter medications, or alcoholic beverages.

(44) "Suspicious physical injury" (as defined in 2007 Oregon Laws Chapter 674) includes, but is not limited to:

(a) Burns or scalds;

(b) Extensive bruising or abrasions on any part of the body;

(c) Bruising, swelling, or abrasions on the head, neck, or face;

(d) Fractures of any bone in a child under the age of three;

(e) Multiple fractures in a child of any age;

(f) Dislocations, soft tissue swelling, or moderate to severe cuts;

(g) Loss of the ability to walk or move normally according to the child's developmental ability;

(h) Unconsciousness or difficulty maintaining consciousness;

(i) Multiple injuries of different types;

(j) Injuries causing serious or protracted disfigurement or loss of impairment of the function of any bodily organ; or

(k) Any other injury that threatens the physical well-being of the child.

(45) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

(46) "Unsafe" means there is a safety threat to which the child is vulnerable and there is insufficient parent or caregiver protective capacity to protect a vulnerable child from the identified safety threats.

(47) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A vulnerable child is defenseless, exposed to behavior, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050, 2007 OL 674

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f.

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12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08

413-015-0205

Screening Activities

The screener must complete the following activities:

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse and neglect regardless of where the child resides or where the alleged child abuse or neglect may have occurred. If the report is about a child that does not reside in the county where the report is received, the screener must forward the report to the local child welfare office in the county or state where the child resides. The screener must forward the report on the same day the report is received and confirm that the report has been successfully forwarded.

(b) Accept and handle anonymous reports of child abuse and neglect in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) If appropriate, refer the person to community services and resources.

(3) Determine the type of information received, Child Protective Services, Family Support Services, or Interstate Compact on the Placement of Children, and where and when to document the information received.

(a) Child Protective Services. This type of information is related to reports of child abuse or neglect.

(A) Child Protective Services information is documented in FACIS using the Guided Assessment Process (GAP).

(B) The time line for screeners to complete and document their actions, and document information gathered, unless a CPS supervisor grants the screener an extension as provided in OAR 413-015-0220, is:

(i) Immediately when a within 24 hours response time line is assigned;

(ii) Within the same day when a within five days response time line is assigned; or

(iii) No later than the next working day after the screening determination is made when the report is closed at screening.

(b) Family Support Services. This type of information is not a report of alleged child abuse or neglect, and it does not include information that indicates a child is unsafe.

(A) This information is documented in FACIS using a screening form.

(B) The time line for screeners to complete and document their actions, and document information gathered is within two days of receiving the request for services.

(C) Family Support Services information falls within one of the categories described below:

(i) Request for Placement — Information falls within this category when:

(I) A parent or legal guardian requests out-of-home placement of their child due solely to obtain services for the emotional, behavioral, or mental disorder or developmental or physical disability of the child;

(II) The parent or legal guardian requests the Department take legal custody of their child; or

(III) The court has ordered a pre-adjudicated delinquent into the care of the Department.

(ii) Request for Independent Living Program Services — Information falls within this category when a former foster child qualifies for Independent Living Program (ILP) services, is not a member on an open case, and requests to enroll in the Department's ILP.

(iii) Request for Post Legal Adoption and Post Guardianship Services — Information falls within this category when a family requests post legal adoption or post guardianship services, if the adoption or guardianship occurred through the Department.

(iv) Request for Voluntary Services — Information falls within this category when it does not meet the criteria in subparagraphs (i), (ii), or (iii) of this paragraph, a parent or caregiver requests assistance with a child in the home, and all of the following apply:

(I) Other community resources have been utilized and determined to be ineffective.

(II) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(III) The parent or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical condition or a mental health diagnosis.

(IV) The parent's or caregiver's inability to fulfill parental responsibilities is temporary and immediate, and will be alleviated with short term services or short term services will transition the family to community services.

(V) A Child Welfare program manager approves the request for voluntary services.

(c) Request for Interstate Compact on the Placement of Children (ICPC) supervision and services. This type of information is not a report of child abuse or neglect. Information falls within the ICPC category when a screener receives a request from central office to provide ICPC supervision and services. This information is documented in FACIS using a screening form.

(4) When the screener receives Child Protective Services information, the screener must complete the screening activities described below.

(a) The screener must use the GAP screening template to collect the following information, which is critical to effectively identify if there is a report of child abuse or neglect as defined in ORS 419B.005 and if the information indicates or alleges that behavior, conditions, or circumstances could result in harm to the child:

(A) The type of alleged child abuse or neglect and the circumstances surrounding the report;

(B) How the alleged child abuse or neglect or the surrounding circumstances are reported to affect the safety of the child;

(C) Information that identifies how the child is vulnerable; and

(D) Reported parent or caregiver functioning and behavior.

(b) After completing and documenting the information required in subsection (a) of this section, if the report is an allegation of child abuse or neglect that occurred in a Children's Care Program (CCP), the screener will immediately do the following:

(A) When the report is new information on an open Child Welfare case, the screener must:

(i) Notify the CPS supervisor;

(ii) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in FACIS case notes; and

(iii) Complete notification on the same day the information is received.

(B) Send an e-mail to the OIT screener to let them know that a FACIS screening report has been assigned to their workload.

(C) Pend the screening information to the OIT screener's workload. OIT then follows the screening procedures set forth in OAR chapter 407 division 045.

(D) CPS screening activities for CCP referrals are complete at this point and additional screening activities in this rule do not apply.

(c) Gather information from individuals who can provide firsthand information necessary to determine the appropriate Department response. This may include individuals who have regular contact with the child, doctors or others who have evaluated or maintain records on the child, people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior, and those who have records or reason to know things about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.

(d) Research Department history of every identified child, parent, caregiver, and household member for information about current or previous Department involvement relevant to the current child abuse or neglect report. If the research reveals an "unable to locate" disposition that has not been assessed, the screener must reference that referral number and those allegations in the current referral summary.

(e) Inquire regarding possible Indian or Alaskan Native heritage (for further direction see OAR 413-015-0215(5)).

(f) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, restraining orders, probation status, and parole status.

(g) Determine the location and corresponding law enforcement jurisdiction of the family's residence and the site where the alleged child abuse or neglect may have occurred.

(h) Immediately comply with Child Welfare Policy I-B.2.2.3 when information is related to a Department approved and certified home that is a foster home, relative caregiver home, or adoptive home.

(i) Immediately comply with Child Welfare Policy II-E.1, "Child-Caring Agencies", OAR 413-210-0000 to 413-210-0250 when information is related to a licensed child caring agency.

(j) Immediately comply with the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters:

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(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter;

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report;

(c) The Department's decision about whether the report will be assigned for a CPS assessment. If this decision has not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decision;

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the child abuse information system; and

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with ORS 419B.010 and 419B.015.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.020

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08

413-015-0415

CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior "Unable to Locate" Dispositions that Have Not Been Assessed. The assigned CPS worker must include the "unable to locate" allegations in the current assessment and complete the following:

(a) Discuss the unassessed allegations during interviews;

(b) Consider all information in the safety analysis; and

(c) Document the consideration of these allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned self sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with Child Welfare.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a licensed child caring agency;

(D) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(E) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(F) When the referral involves a child fatality;

(G) When making dispositions in complicated or sensitive situations or cases;

(H) When closing an assessment with the disposition of "unable to locate"; or

(I) Prior to a decision to close a case during or at the end of the CPS assessment.

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to develop a sufficient protective action or ongoing safety plan, to analyze safety threats, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must contact and work with other entities as follows:

(A) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a registered day-care home or a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Seniors and People with Disabilities Division (SPD).

(i) The CPS worker must notify the Office of Investigations and Training with the Department when the allegation involves a child with developmental disabilities in an SPD licensed group home.

(ii) The CPS worker must make a report to the Office of Investigations and Training with the Department when the CPS worker has reasonable cause to believe:

(I) That any person 18 years of age or older with a mental illness or a developmental disability whom the CPS worker comes into contact with, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness or developmental disability.

(iii) The CPS worker must make a report to SPD when the CPS worker has reasonable cause to believe:

(I) That any person 65 years of age or older with whom the CPS worker comes into contact, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 65 years of age or older.

(D) Child Caring Agency Licensing Program. The CPS worker must notify the Department's Child Caring Agency Licensing Program when the allegation involves a licensed child caring facility.

(E) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(F) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(G) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to OAR 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in OAR 413-015-0400. Whenever

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possible, the CPS worker must coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behavior, circumstances, or situation could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(H) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker should confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(I) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Determine ICWA Status and Comply with ICWA, if Applicable. The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by Child Welfare.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the Tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources; and

(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable. During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child:

(A) The CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, and the reasons why the child or parents came to the United States. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(B) The CPS worker is not required to determine whether the child is a refugee child, but if the child appears to be a refugee child the CPS worker must proceed as if they are, until or unless it is known that the child is not a refugee child.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) No refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

(B) Extended family member.

(C) Members from the same cultural heritage.

(D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

(A) The preferred placement presents safety threats to the child;

(B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

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(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.

(g) The CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the Cultural Competency Coordinator for Child Welfare to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

(A) Invite the CPS supervisor to the staffing; and

(B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) Take Photographs. The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse, neglect, and observable safety threats.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if a law enforcement officer or the CPS worker conducting an investigation of an allegation of child abuse or neglect under ORS 419B.020 observes a child who has suffered suspicious physical injury and the law enforcement officer or CPS worker has a reasonable suspicion that the injury may be the result of abuse, the law enforcement officer or CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries:

(A) During the investigation of a new allegation of abuse, each time, during the investigation, an injury is observed that was not previously observed by a person conducting the investigation; and

(B) Regardless of whether the child has previously been photographed or assessed during an investigation of an allegation of abuse.

(c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the child welfare record labeled with the case name, case number, sequence number, person letter, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and any observable safety threats in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) Obtain Medical Assessment. The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety threats.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an investigation under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person has a reasonable suspicion that the injury may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

(B) An available physician conducts a medical assessment if, after reasonable efforts to locate, a designated medical professional is not available to conduct a medical assessment within 48 hours. The CPS worker is required to document in FACIS efforts to locate the designated medical professional when an available physician is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child

to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information."

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child;

(iii) Delaying medical examination or treatment could harm the child; or

(iv) The CPS worker has reason to believe medical examination will reveal evidence of child abuse or neglect.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with Child Welfare Policy I-B.2.2.2, "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety threats when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050, 2007 OL 674

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08

Rule Caption: Changing OARs affecting Child Welfare programs.

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ADMINISTRATIVE RULES

Rules Amended: 413-015-0210, 413-015-0211, 413-015-0212, 413-015-0215, 413-015-0220, 413-015-0405, 413-015-1000

Subject: OAR 413-015-0210 about the Department response and timelines after screening activities are completed is being amended to add 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 notifications to specific agencies or entities, and OAR 413-015-0220 about screening extensions are being amended to clarify the rules.

OAR 413-015-0212 is being amended to include 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 413-015-0405 is being amended to clarify 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 comply with HB 3113 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.

OAR 413-015-1000 is being amended to clarify the dispositions of “unable to locate” and “No CPS assessment completed.”

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0210

Determining Department’s Response and Required Time Lines for CPS Information

(1) After the screener completes screening activities required by OAR 413-015-0205, the screener must determine the Department response, either CPS assessment required or close at screening. If a CPS assessment is required, the screener must then determine the time line for the Department response, either within 24 hours or within five calendar days.

(2) CPS assessment required. A CPS assessment is required if:

(a) The screener determines that information received constitutes a report of child abuse or neglect, as defined in ORS 419B.005, and the information indicates:

(A) The alleged perpetrator is a legal parent of the alleged child victim;

(B) The alleged perpetrator resides in the alleged child victim’s home;

(C) The alleged perpetrator may have access to the alleged child victim, and the parent or caregiver may not be able or willing to protect the child; or

(D) The alleged child abuse occurred in a day care facility, a certified foster home, or a private child caring agency that is not a Children’s Care Provider (CCP).

(b) A Tribe or LEA requests assistance from Child Welfare with an investigation of child abuse or neglect, and a CPS supervisor agrees that assistance from Child Welfare is appropriate.

(3) If the screener determines that a CPS assessment is required, the screener must:

(a) Determine the CPS assessment response time line. The time line for the Department response refers to the amount of time between when the report is received at screening and when the CPS worker is required to make an initial contact. When determining the response time, the screener must take into account the location of the child, how long the child will be in that location, and access that others have to the child.

(A) Within 24 hours: This response time line is required, unless paragraph (B) of this subsection applies, when the information received constitutes a report of child abuse or neglect as defined in ORS 419B.005 in which a child is alleged to be unsafe.

(B) Within five calendar days: This response time line must only be used when the screener can clearly document how the information indicates the child’s safety will not be compromised by not responding within 24 hours and whether an intentional delay to allow for a planned response is less likely to compromise the safety of the child.

(b) Complete a GAP screening form immediately when a within 24 hour response time line is assigned or the same day when a within five cal-

endar days response time is assigned, unless a CPS supervisor grants an extension as provided in OAR 413-015-0220.

(c) Refer the CPS assessment to the appropriate county as described in OAR 413-015-0213.

(4) Close at Screening: A report will be closed at screening if one of the following subsections applies:

(a) The screener determines that information received does not constitute a report of child abuse or neglect, as defined in ORS 419B.005, and the screener determines that the information describes family conditions, behaviors, or circumstances that pose a risk to a child but does not meet the definition of a safety threat.

(b) The screener determines that the information received is third party child abuse or neglect that does not require a CPS assessment because the alleged perpetrator does not have access to the child, and the parent or caregiver is willing and able to protect the child.

(c) It is a report that an expectant mother or a household member has had his or her parental rights to another child terminated, is abusing substances during the pregnancy, or has known conditions or circumstances that would endanger the child when born; and there are no children in the home.

(d) The screener, after extensive efforts, is unable to obtain sufficient information to locate the child. Name and exact address are not necessary if a location is obtained.

(5) If a report is closed at screening, the screener must:

(a) Document the current information that supports the decision to close the report at screening.

(b) Decide whether other services are appropriate and make service or resource referrals, as necessary. Document what service or resource referrals are made, if any.

(c) If contact information was provided, make diligent efforts to contact the reporter when the reporter was not informed of the decision prior to completing the report.

(d) Complete a GAP screening form no later than the next working day after the screening determination is made, unless a CPS supervisor grants an extension, as provided in OAR 413-015-0220.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0211

Additional Screening Activities

In the specific circumstances described below, the screener must complete additional activities to complete the screening process.

(1) The screener receives information on an open CPS assessment.

(a) When a screener receives duplicate information (same alleged victim, same alleged perpetrator, same allegation of child abuse or neglect, and same incident dates) on an open CPS assessment, the screener must:

(A) Inform the reporter that a new report will not be assigned because the information has already been received;

(B) Provide the reporter with the assigned caseworker’s name and phone number; and

(C) Provide contact information about the reporter and any information the screener received to the assigned caseworker.

(b) When a screener receives information that constitutes a new report of child abuse or neglect as defined in ORS 419B.005 on an open CPS assessment:

(A) The screener must document the information in a new GAP screening form unless paragraph (B) of this subsection applies.

(B) If a CPS worker assigned to an open CPS assessment reports child abuse or neglect in the household that is the subject of the open CPS assessment, the screener must direct the CPS worker to incorporate the new information into the existing, open CPS assessment.

(2) The screener receives new information on an open Child Welfare case.

(a) When a screener receives new information on an open Child Welfare case, the screener must:

(A) Consult with a CPS supervisor;

(B) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in FACIS case notes; and

(C) Complete notification on the same day the information is received.

(b) When a screener receives a new report of child abuse or neglect, as defined in ORS 419B.005, but there is no open CPS assessment, the screener must document the information in a new GAP screening form.

ADMINISTRATIVE RULES

(c) The information received by a screener on an open Child Welfare case that will not be documented in the GAP but must be documented in FACIS case notes includes:

(A) Additional information on an open case that does not meet the criteria for a new CPS assessment or closed at screening;

(B) When an in-home ongoing safety plan is violated, but the violation is not a new incident of child abuse or neglect;

(C) Reports of an ongoing concern in an open case, which Child Welfare is currently addressing;

(D) Reports of child runaways; and

(E) Any requests for case information received by the screener.

(3) When a screener receives information related to the home of a Department certified foster parent or relative caregiver, the screener must notify and document that the screener has notified each assigned case worker, assigned certifier, and their respective supervisors of all information received (see Child Welfare Policy I-B.2.2.3, "Department Responsibilities During Screening and Assessment of a Child Abuse or Neglect Report Involving the Home of a Department Certified Foster Parent or Relative Caregiver", OAR 413-200-0404 to 413-200-0424).

(4) When a screener receives the report of a child fatality alleged to be the result of abuse or neglect or involving a child known to the Department, the screener must:

(a) Consult with a CPS supervisor;

(b) Refer to the Child Welfare "Fatality Protocol";

(c) Complete a GAP screening form documenting the "allegation" as a "fatality" in addition to other allegations that apply;

(d) Notify the CPS consultant; and

(e) Complete subsections (a) through (d) of this section even when there are no siblings to the deceased child and no other children in the home where the fatality occurred.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0212

Screener Consultation with a CPS Supervisor

Screeners may consult with a CPS supervisor about any screening determination. Screeners must consult with a CPS supervisor in each of the following situations:

(1) A report of child abuse or neglect involving a child, parent, caregiver, or perpetrator who was a child, parent, caregiver, or perpetrator in a CPS assessment that resulted in a founded disposition in the preceding six months.

(2) A review of Department records on a family that is the subject of a child abuse or neglect report finds multiple consecutive reports were closed at screening, and the information received in the current report, in combination with the prior reports regarding the same family, may meet the criteria to refer the report for a CPS assessment.

(3) A new report involving a family that has an open Child Welfare case.

(4) A report involving the home of a Department certified foster parent or relative caregiver.

(5) A report involving a licensed child-caring agency.

(6) A report involving a day care facility.

(7) A report of a child fatality.

(8) A decision not to refer for assessment a report of a baby who is born with substances in his or her system.

(9) A report of child abuse or neglect in which a community partner or an employee of any program, office, or division of the Department or the Oregon Youth Authority is the alleged perpetrator.

(10) A report of child abuse or neglect that is expected to receive media attention or that already is being reported by the media.

(11) A decision that an additional GAP screening form is needed because the reported information alleges a threat of harm to additional children in other families.

(12) A review of Department history reveals an unable to locate disposition that has not been assessed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0215

Notifications to Specific Agencies or Entities

The screener must notify specific agencies or entities of reports that the screener determines will be referred for a CPS assessment or will be closed at screening.

(1) Law Enforcement Agency (LEA). The screener must cross report to LEA as required by OAR 413-015-0305(1).

(2) Child Care Division. The screener must notify the Child Care Division when a report involves a day care facility, as required by ORS 418.747(2)(e) and 419B.020(1). If the report is closed at screening, a copy of the report must be sent to the Child Care Division after information related to the reporter's identity and other confidential information is removed.

(3) Child Caring Agency Licensing Program. The screener must notify the Department's Child Caring Agency Licensing Program when a report involves a licensed child caring facility (see OAR 413-200-0000).

(4) Senior and People with Disabilities Division (SPD). The screener must notify the Office of Investigations and Training with the Public Health Division of the Department when a report involves a child with developmental disabilities in an SPD licensed group home.

(5) ICWA. If the screener knows or has reason to know that the child is an Indian child, the screener must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted.

Stat. Auth.: ORS 418.005, 419B.017

Stats. Implemented: ORS 418.005, 419B.015, 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0220

Screening Extensions

(1) Except as provided in section (2) of this rule, the CPS supervisor may grant an extension to the deadline in OAR 413-015-0205 if the screener is unable to complete all required screening activities the same day that the report alleging child abuse or neglect is received because critical information, such as the child's location, is still needed to determine the Department response. The screener must document in GAP the reason for the extension, including the critical information that remains to be collected, and the CPS supervisor's approval.

(a) The CPS supervisor may grant a one-business day extension up to two times; and

(b) Screening activities may not exceed two business days beyond the day the report alleging child abuse or neglect is received by Child Welfare.

(2) If the screener has the critical information needed to determine the Department response or has information that indicates the child is unsafe, no extension to the deadline in OAR 413-015-0205 may be allowed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0405

CPS Assessment Response Time Lines

(1) The time line for the Department response refers to the amount of time from the receipt of a report at screening to the time when the CPS worker is required to make an initial contact.

(2) Except as provided in sections (3) and (4) of this rule, every CPS assessment must be assigned one of the following response time lines and the CPS worker must make an initial contact within the assigned response time line:

(a) Within 24 hours.

(b) Within five calendar days.

(3) A supervisor may change the initial contact time lines established in section (2) of this rule as follows:

(a) The supervisor may change the response time line from within five calendar days to within 24 hours.

(b) The supervisor may change the response timeline from within 24 hours to within five calendar days, but the supervisor must explain in writing why the time line was changed and how the child's safety needs were considered when the change was approved.

(4) If a screener was granted an extension to complete the screening process, the CPS supervisor may adjust the initial contact time lines as follows:

(a) Within 24 hours: The CPS worker must make an initial contact within 24 hours of the end date of either the last screening extension or the date the CPS assessment was assigned, whichever is earlier.

(b) Within five calendar days: The CPS worker must make an initial contact within five calendar days of the end date of either the last screening extension or the date the CPS assessment was assigned, whichever is earlier.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 17-2005(Temp) f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 1-2006, f. & cert. ef. 2-1-06; Suspended by CWP 3-2006(Temp), f. & cert. ef. 2-1-06 thru 6-30-06; CWP 12-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

ADMINISTRATIVE RULES

413-015-0520

Purpose and Overview of the Day Care Facility Investigation

(1) OAR 413-015-0520 to 413-015-0565 describe the activities required to complete a child abuse or neglect investigation in a day care facility. A day care facility is:

(a) A registered family child care home, which is the residence of a provider, who has a current family child care registration at that address and who provides care in the family living quarters;

(b) A certified family child care home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time;

(c) A certified child care center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling;

(d) A listed facility, which is a child care provider who is exempt from Child Care Division licensing and who receives subsidy payments for child care on behalf of the Department of Human Services' clients.

(2) Completing a Day Care Facility Investigation involves all of the following:

(a) Making initial contact within the assigned response time lines, which includes:

(A) Face-to-face contact with the alleged victim or victims;

(B) Contact with the each parent or caregiver of the victim or victims;

and

(C) Contact with other children as needed for child safety.

(b) Gathering safety-related information regarding the day care facility through interviews and observation.

(c) Determining if the parent or caregiver can and will protect and explain the basis for that determination.

(d) Determining if there is reasonable cause to believe that child abuse or neglect occurred and explain the basis for that determination.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0525

Contact and Work with Other Entities

The CPS worker may need to work with representatives of other entities to complete a day care facility investigation.

(1) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a day care facility as required by OAR 418.747(2)(e) and 419B.020(1).

(2) Law Enforcement. If the screener did not cross report to appropriate law enforcement agencies, the CPS worker must contact one or more law enforcement agency in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to 413-015-0310. The Department and the law enforcement agency (LEA) shall jointly determine the roles and responsibilities of the department and the LEA in their respective investigations. When there is a joint response involving CPS and law enforcement, the CPS worker is responsible for all of the activities necessary to complete the day care investigation. Whenever possible, the CPS worker must coordinate investigation activities with LEA.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0530

Day Care Facility Investigation Response Time Lines

The response time lines for investigations in day care facilities are the same as the response timelines for any other CPS assessment. Those time lines are established in OAR 413-015-0405.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0535

Day Care Facility Investigation Activities

The required investigation activities are outlined below. The activities are described in a logical order in these rules (OAR 413-015-0520 to 413-015-0565), but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records. The assigned CPS worker must:

(a) Thoroughly review the documentation in the referral;

(b) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the alleged child victim, the alleged perpetrator and their families, which must include a review for the following:

(A) History or a pattern of abuse or neglect by the alleged perpetrator and

(B) History of abuse or neglect of the child victim or victims.

(c) When the CPS worker has information that the alleged perpetrator has lived in another state, make diligent efforts to contact the child welfare agency in the other states where the alleged perpetrator has lived and obtain records, if any, that may be relevant to the current investigation.

(2) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed. These collaterals may include:

(A) Doctors or others who have evaluated or maintain records on the alleged child victim in regard to the abuse or any effects of the abuse;

(B) Other people who may have information about the day care facility or the alleged perpetrator;

(C) Staff members, including past staff members, of the day care facility that may have information regarding the abuse or the alleged perpetrator;

(D) Other children that attend the day care facility and their parents that may have information about the day care facility or the alleged perpetrator.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with child welfare.

(3) Consult with CPS Supervisor. The CPS worker must consult with a CPS supervisor or designee:

(a) At the beginning of the investigation of a day care facility;

(b) At any time during the investigation when there is additional child victims identified;

(c) At any time during the investigation when information obtained indicates a licensing or a safety concern that requires an immediate protective action.

(d) A report of child abuse or neglect that is expected to receive media attention or that already is being reported by the media.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0540

Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line with the alleged child victim's custodial parent or caregiver and the alleged child victim as follows:

(1) As required by OAR 413-015-0420, notify the custodial parents or caregivers of the intent to interview an alleged child victim.

(2) Have face-to-face contact with and interview the alleged child victim or victims. The purpose of the face-to-face contact and each interview is to gather information regarding possible child abuse, observe any signs of neglect or child injuries, determine if there are other alleged child victims, assess if the child or children are vulnerable to identified safety threats, and assess the immediate safety of the child or children.

(3) Have face-to-face contact with and interview each custodial parent or caregiver of the alleged child victim or victims. The purpose of this face-to-face contact and interview is to find out what the parent or caregiver knows about the alleged child abuse or neglect and to gather information about their ability and willingness to protect.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0545

Other Contacts and Observations Required During the Investigation

The CPS worker must:

(1) Interview the non-custodial parent of the alleged child victim during the investigation. This is not required during the initial contact but must be completed as part of the investigation.

(2) Notify and interview the provider, owner or director of the day care facility. Except as provided below, the CPS worker must meet with the provider, owner or director of the day care at the beginning of the investigation to notify them of the allegations, arrange for access to the facility, plan interviews that will take place at the facility, and gain access to names of other children and their parents who may have been a witness or could be a collateral source for the investigation. The CPS worker is not required to meet with the provider, owner, or director of the facility if it would interfere with the investigation or endanger children.

ADMINISTRATIVE RULES

(3) Interview staff of the day care facility that may have information regarding the alleged abuse or the alleged perpetrator.

(4) Identify and Select Other Children to be Interviewed. Other children that attend the day care facility where the abuse allegedly occurred may need to be interviewed. They are children who:

(a) Witnessed the alleged abuse or neglect, and/or;

(b) Have information pertinent to the investigation about the day care facility

(c) Have information pertinent to the investigation about the alleged perpetrator

(5) Notify and interview the parent or caregiver of any children who are selected to be interviewed during the investigation. The intent of the interview is to gain permission to interview their child and to learn of any information they may have about the alleged perpetrator and the alleged incident. Interviews with children that are not alleged victims must not occur prior to receiving permission by a parent or caregiver.

(6) Interview the selected children. The purpose of the interview is to gain information about the alleged abuse and the alleged perpetrator and assess the child's safety at the day care facility.

(7) Interview the alleged perpetrator. The purpose of the interview is to notify the alleged perpetrator of the allegations, allow them to respond to the allegations, determine if the alleged perpetrator poses a threat to other children, and notify them of the steps needed to complete the investigation. When interviewing the alleged perpetrator, the CPS worker must:

(a) Coordinate the interviews of the alleged perpetrator with the law enforcement agency (LEA) when law enforcement is conducting an investigation;

(b) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe; and

(c) Provide the alleged perpetrator with a written notice that a criminal records check may be or has been conducted on them.

(8) Observation of the day care facility. The purpose of observing the day care facility is to gather information about the alleged incident and to assess the overall safety of the setting.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0550

Determining If the Parent or Caregiver Can or Cannot and Will or Will Not Protect

The CPS worker must comply with OAR 413-015-0430 in determining if the parent or caregiver can or cannot and will or will not protect a child.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0555

Determine Disposition of the CPS Assessment

The CPS worker must comply with OAR 413-015-0440 to determine the disposition of the CPS assessment.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0560

Notification of Disposition

In addition to requirements of OAR 413-015-0470, the CPS worker must notify:

(1) Child Care Division. A copy of the investigation must be sent to the Child Care Division after information relating to the reporter's identity and other confidential information is removed. Any recommendations regarding the day care facility may also be included.

(2) Provider, owner, director of the day care facility. If the owner is not the alleged perpetrator, parent or caregiver, the notification will include whether the Department determined that child abuse or neglect occurred and information necessary to protect children from abuse and neglect in the facility in the future.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-0565

Documentation and Supervisory Review Requirements

The CPS worker must:

(1) Refer to and comply with OAR 413-015-0475; and

(2) Complete the Out of Home Care Assessment and Investigation report.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-015-1000

The CPS Assessment Dispositions

(1) This rule describes child abuse and neglect for the purpose of making CPS assessment dispositions.

(2) As part of completing the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse or neglect occurred. The possible determinations are:

(a) "Founded," which means there is reasonable cause to believe that child abuse or neglect occurred.

(b) "Unfounded," which means no evidence of child abuse or neglect was identified or disclosed.

(c) "Unable to determine," which means there are some indications of child abuse or neglect, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse or neglect occurred. The "unable to determine" disposition may be used only in the following circumstances:

(A) After extensive efforts have been made, the CPS worker is unable to locate the family; or

(B) After completing an assessment that complies with the Department's rules:

(i) The child is unable or unwilling to provide consistent information and there is insufficient information to support a founded or unfounded determination; or

(ii) There is conflicting or inconsistent information from collateral contacts or family, and there is insufficient information to support a founded or unfounded determination.

(d) "No CPS assessment completed" which means a CPS supervisor has determined that no face-to-face contact was necessary with the alleged child victim and the alleged perpetrator of abuse because of the following:

(A) Addressed in Another Open Assessment. This reason is chosen when the report content is being included in another, currently open referral, under the same case number.

(B) Assessment Opened in Error. This reason is chosen when the referral is mistakenly opened.

(C) Cleared through Collateral Contact. This reason is chosen when the CPS worker has, through collateral contacts, received information that indicates there is and was no safety threat.

(3) When determining whether there is reasonable cause to believe child abuse or neglect occurred, the CPS worker shall consider, among others, the following parent or caregiver behavior, conditions, and circumstances:

(a) Abandonment, including parental behavior showing an intent to permanently give up all rights and claims to the child.

(b) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(c) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the parent or caregiver that has a direct effect on the child. The parent or caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional, or social well-being and functioning.

(d) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child resulting in an accumulation of harm that can have long term effect on the child's overall physical, mental, or emotional development. Neglect includes each of the following:

(A) Physical neglect, which includes each of the following:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety. When the CPS worker is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide the child with immunizations or routine well-child care alone does not constitute medical neglect. When the CPS worker is making a determination of medical neglect, the CPS worker must consult with a health care professional.

ADMINISTRATIVE RULES

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the parent or caregiver leaving the child with another person and failing to reclaim the child, or parent or caregiver failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The parent or caregiver behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(e) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include:

- (A) Head injuries;
- (B) Bruises, cuts, lacerations;
- (C) Internal injuries;
- (D) Burns or scalds;
- (E) Injuries to bone, muscle, cartilage, and ligaments;
- (F) Poisoning;
- (G) Electrical shock;
- (H) Death.

(f) Sexual abuse, which includes a person's use or attempted use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(g) Sexual exploitation, including the use of a child in a sexually explicit way for personal gain, for example, to make money, in exchange for food stamps or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(h) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other child abuse or neglect.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 6-2005, f. & cert. ef. 4-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 26-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0640

Subject: OAR 413-070-0600, 413-070-0620, 413-070-0625, and 413-070-0640 are being amended to incorporate the Department's responsibility to make diligent efforts to place siblings together when substitute care is required to manage child safety.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0600

Purpose

The purpose of these rules (OAR 413-070-0600 to 413-070-0645) is:

(1) To describe the requirements for assessing the child's needs when the Department places the child in substitute care to assure the child's safety;

(2) To identify the most appropriate, available substitute care provider who can meet the child or young adult's needs; and

(3) To describe the requirements for assessing the substitute care placement in meeting the child or young adult's need for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.192
Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-070-0620

Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) "Caregiver relationship" means a relationship between a person and a child — that has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age — and the person had physical custody of the child or resided in the same household as the child; the person provided the child on a daily basis with the love, nurturing and other necessities required to meet the child's psychological and physical needs; and the child depended on the relationship to meet the child's needs. "Caregiver relationship" does not include a relationship between a child and a person who is an unrelated foster parent of the child unless the relationship continued for a period of at least six consecutive months.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "FACIS" means the Family and Child Information System.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(7) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(8) "Relative Caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(9) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or young adults' legal or biological parents.

(10) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(11) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(12) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419A.004, 419B.192
Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-070-0625

Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To determine a child or young adult's immediate needs when substitute care is required to manage safety, the caseworker must:

(a) Involve the child or young adult's parent or legal guardian in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Consider potential substitute care placements that meet the needs of the child or young adult in the following order of preference:

(A) A relative who can and will meet the child or young adult's need for safety and can be certified by the Department through a diligent search for the child or young adult's relatives;

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department;

(C) An unrelated person to whom the child or young adult has significant attachment or who has significant attachment to the child or young adult, and can be certified by the Department; or

(D) A foster parent who is certified by the Department, or a provider who is certified through a licensed child-caring agency.

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(d) If a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, make diligent efforts to place siblings together.

(e) Identify which person has the closest existing personal relationship with the child or young adult if more than one person requests to have the child placed with them.

(f) Consider whether the substitute care placement --

(A) Has the ability to provide safety for the child or young adult and the siblings when consideration is being given to placing siblings together;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult, and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult; and

(E) Has the ability to meet the child or young adult's physical, emotional, and educational needs, including the child or young adult's need to continue in the same school or educational placement.

(g) Assure that the substitute care placement is the most home-like, least restrictive available to meet the child or young adult's needs.

(h) Assure that the race, color, or national origin of the child, young adult, or substitute care placement is not a consideration when assessing a substitute care placement.

(i) If the child is an Indian or Refugee child, follow OAR 413-070-0220 and 413-070-0320 regarding placement preferences.

(2) Within 30 days of the child's placement in substitute care, the caseworker must reconsider whether the substitute caregiver is able to meet the considerations in subsection (1)(f) of this rule and assess whether the substitute caregiver meets the following placement preferences:

(a) Is in close proximity to the child's parents or legal guardians;

(b) Is in close proximity to the child's community;

(c) Can keep siblings together; and

(d) Can support the child's culture and family identity.

(3) When the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (2) of this rule, the caseworker must determine whether remaining in the substitute care placement is in the best interests of the child.

(a) If the caseworker determines that remaining in the current substitute care placement is in the best interests of the child, the child should remain in the placement.

(b) If the caseworker determines that remaining in the current substitute care placement is not in the best interests of the child, the caseworker must work with Department staff to secure another substitute care placement for the child.

(4) The caseworker must document the section (3) determination in FACIS and explain the basis for the determination as it relates to the best interests of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-070-0640

Review of the Substitute Care Placement During Case Plan Review

(1) When the child or young adult is in substitute care at the time of each 90 day case plan review, the caseworker must include in the review written documentation of the extent to which the child or young adult's substitute care placement meets the child or young adult's ongoing need for safety, permanency, and well-being.

(a) To determine the extent to which the placement meets the child or young adult's needs for physical and emotional safety, the caseworker must determine whether the following conditions exist in the home.

(A) The substitute caregiver has the skill level or willingness to acquire the skills necessary to meet the physical, emotional and supervisory needs for each child or young adult in the placement;

(B) The substitute caregiver has the skill level to care for the age, number, and gender of the children or young adults currently in the placement;

(C) The behavioral characteristics of children or young adults currently in the placement are such that the child or young adult will be protected from further victimization and from harming self or others;

(D) The substitute caregiver has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(E) The physical layout of the home permits the substitute caregiver to safely supervise the children or young adults in the home.

(b) To determine the extent to which the placement meets the need of the child or young adult to preserve existing attachment to the family, the caseworker must consider whether:

(A) The family has expressed a preference in placement;

(B) The child or young adult has requested a particular placement;

(C) The relative caregiver, foster parent, or provider has demonstrated the ability:

(i) To support the attachment of the child or young adult through visitation and other types of contact with the child's family;

(ii) To accommodate the placement of siblings in the substitute caregiver's home;

(iii) To accommodate regular contact between siblings when siblings cannot be placed together and regular contact is in the best interests of the child or young adult; and

(iv) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(c) To determine the extent that the placement meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(A) The extent of the child or young adult's pre-existing relationship with the relative caregiver, foster parent, or provider;

(B) The placement is appropriate to meet the permanency and well-being needs of the child because of its proximity to the child or young adult's neighborhood, school or educational placement, and parent or legal guardian; and

(C) Whether the relative caregiver, foster parent, or provider can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(d) To determine the extent that a particular placement meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider demonstrates competency in meeting the child or young adult's specific and unique needs or is acquiring the skills necessary to meet the child or young adult's specific and unique needs;

(B) Whether the ability of the relative caregiver, foster parent, or provider to meet the child or young adult's specific and unique needs is influenced by the number and type of children in the placement; and

(C) Whether the ability and willingness of the relative caregiver, foster parent, or provider to assist, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan is sufficient to meet the needs of the child or young adult.

(e) To determine the extent to which the placement meets the need of the child or young adult for stability, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has expressed a desire to provide permanency for a particular child or young adult;

(B) Whether the ability of the relative caregiver, foster parent, or provider to provide support and to nurture the child or young adult is influenced by the number of children or young adults in placement;

(C) Whether the relative caregiver, foster parent, or provider is willing to provide care for the child or young adult as long as needed;

(D) Whether the capacity of the relative caregiver, foster parent, or provider to recognize the child or young adult's needs and build on the child or young adult's strengths is sufficient to meet the long-term placement needs of the child or young adult.

(f) To determine whether the placement can support the child or young adult's identity, development, and cultural and religious background, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has the ability to appreciate, nurture, support, and reinforce the identity and cultural and religious background of the child or young adult;

(B) Whether the relative caregiver, foster parent, or provider has the ability to support the development of the individual child or young adult, and help the individual child or young adult with problems that the child or young adult may encounter. (Refer to Child Welfare Policies I-E.2, "Multiethnic Placements", OAR 413-070-0000 to 413-070-0033 and I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260);

(C) Whether the relative caregiver, foster parent, or provider has the ability to communicate effectively with the child or young adult; and

(D) Whether the child or young adult has adjusted to the placement.

(2) The caseworker must document the extent to which the child or young adult's relative caregiver, foster parent, or provider meets the child or young adult's need for safety and well-being:

(a) In FACIS case notes at the 90-day case plan review; or

(b) In the case plan (0333a), Child Description, Their Needs and Well Being section, at the six-month case plan review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

ADMINISTRATIVE RULES

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 27-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 413-070-0810, 413-070-0860, 413-070-0880

Subject: OAR 413-070-0810, 413-070-0860, and 413-070-0880 are being amended to incorporate the Department's responsibility to document and track a child's visits with his or her parents and siblings when the child is in substitute care.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0810

Definitions

The following definitions apply to OAR 413-070-0800 to 413-070-0880:

- (1) "Child" means a person under 18 years of age.
- (2) "Child-family contact" means communication between the child or young adult and family and includes but is not limited to visitation with the child or young adult, participation in the child or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.
- (3) "Department" means the Department of Human Services, Child Welfare.
- (4) "FACIS" means the Family and Child Information System.
- (5) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes a child 12 years of age or older and a child younger than 12 years of age, when appropriate. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.
- (6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated child or young adult placed in the home by the Department.
- (7) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.
- (8) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.
- (9) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.
- (10) "Sibling" means one of two or more children or young adults related:
 - (a) By blood or adoption through a common legal parent; or
 - (b) Through the marriage of the children's or young adults' legal or biological parents.
- (11) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.
- (12) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.
- (13) "Supervised visit" means a child-family contact that includes a designated third party to protect the emotional and physical safety of a child or young adult.
- (14) "Visit" means planned, in-person contact between the child or young adult and one or more family members.
- (15) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

413-070-0860

Types of Visit and Contact Plans

- (1) The Temporary Visit and Contact Plan.
 - (a) The caseworker must jointly develop a written Temporary Visit and Contact Plan (CF 0831A) with the parents or legal guardians, and should involve other family members who are able to participate in facilitating visitation and supporting the ongoing safety plan when the child first enters substitute care or at the time of the first court hearing required by ORS 419B.183, whichever is first.
 - (b) The court may make an order regarding visitation between the child's or young adult's parents or siblings.
 - (c) The caseworker must arrange a Temporary Visit and Contact Plan (CF 0831A) that assures child safety.
 - (d) The plan must include the following:
 - (A) The names of each person, including the child's siblings, with whom the child may have contact; and
 - (B) A description of the contact permitted with each person that includes:
 - (i) The type, time of day, frequency, length, and location of the visits; and
 - (ii) The reason for supervised visits when supervision is required.
 - (e) If the first visit does not occur within the first week of a child's placement in substitute care, the caseworker must document the reason the visit did not occur in FACIS case notes.
 - (f) The caseworker must provide a copy of the Temporary Visit and Contact Plan to the parents or legal guardians and, when appropriate, to others participating in the Temporary Visit and Contact Plan.
 - (2) The Ongoing Visit and Contact Plan.
 - (a) The caseworker must develop an Ongoing Visit and Contact Plan (CF 0831B) within 30 days from the date that the child enters substitute care. The caseworker should involve the child or young adult whenever appropriate, the child or young adult's parents or legal guardians, the substitute caregiver, and others in the development of the visit and contact plan as appropriate. A copy of the written plan is given to each participant.
 - (b) The caseworker must arrange an Ongoing Visit and Contact Plan that supports child safety and the ongoing safety plan.
 - (c) When an Ongoing Visit and Contact Plan is revised, the caseworker completes a revised Ongoing Visit and Contact Plan and provides a copy of the revised plan to each participant.
 - (d) A plan that prohibits a parent, legal guardian, or sibling's visit must include the reason for each prohibition and state, if applicable, the conditions under which the Department would begin or resume contact.
 - (e) The caseworker must document the implementation of the Ongoing Visit and Contact Plan in the case plan.
 - (f) The caseworker must develop the written Ongoing Visit and Contact Plan which must:
 - (A) Include the purpose and conditions of visits and contacts including type, time of day, frequency, length, and location;
 - (B) Describe the reason for supervision when supervision is required;
 - (C) Identify the individual who will supervise the visit or assist a parent or legal guardian in meeting the needs of the child or young adult during visitation;
 - (D) Support the ongoing safety plan; and
 - (E) Use language that parents or legal guardians can understand.
 - (g) In developing an Ongoing Visit and Contact Plan, the caseworker must:
 - (A) Arrange visits so that the type, time of day, frequency, length, and location of visits maximize contact between the parents or legal guardians and the child or young adult and support the ongoing safety plan;
 - (B) Meet the unique needs of the child or young adult, especially the child or young adult's chronological or developmental age and sense of time as they affect the child or young adult's attachment to a parent or legal guardian and other family members;
 - (C) Arrange visits that do not disrupt the school schedule of the child or young adult whenever possible;
 - (D) Arrange additional contact such as telephone calls, e-mail, and letters, and other activities the family and child or young adult may do together that support the ongoing safety plan, such as attendance by parents or legal guardians at doctor appointments, school events, and church;
 - (E) Address barriers to visitation that must be overcome in order for the parent, legal guardian, child or young adult to participate in the visits, including transportation, adaptations for those traveling long distances, health care requirements, and arranging child care for a child's sibling;
 - (F) Work within each parent's or legal guardian's employment and treatment obligations;

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(G) Ensure that the Ongoing Visit and Contact Plan considers the safety needs of any non-offending parent or legal guardian in cases involving domestic violence, including but not limited to different visiting schedules or arranging safe drop-off and pick-up locations;

(H) Explain to a parent or legal guardian the consequences of failure to attend a visit;

(I) Explain known or anticipated reasons for ending the visit (such as health or safety);

(J) Take the actions necessary to assure culturally relevant and language appropriate visitation services; and

(K) Discuss alternatives when visits are canceled due to circumstances of the parent or legal guardian, substitute caregiver, or the Department.

(3) The Ongoing Visit and Contact Plan may be reviewed or revised at any time and must be reviewed every 90 days.

(4) An Ongoing Visit and Contact Plan must comply with the Interstate Compact on the Placement of Children.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-070-0880

Documentation of Contact

(1) When Department staff supervise a visit, documentation of the visit must be included in the case file and must document:

- (a) The location of the visit, who attended, and the length of the visit;
- (b) Activities that occurred during the supervised visit;
- (c) The impact of the visit on the child or young adult;
- (d) Any missed visit and the reasons for the missed visit; and
- (e) Any interrupted or terminated visits and reasons for the interruption or termination.

(2) When the caseworker arranges supervision by a person other than Department staff, the caseworker must require that the person supervising the visit provides complete written documentation of the visit, as required by section (1) of this rule, to the caseworker within seven days of each visit.

(3) When the child is in the legal custody or guardianship of the Department, the caseworker must report to the court no less frequently than every six months, the place and date of the child's visits with his or her parents or siblings. Reports must be filed with the court more frequently if the court so orders.

(4) When other types of contact in addition to face-to-face visits are included in the Ongoing Visit and Contact Plan, the caseworker must request regular feedback from the participants regarding the impact of the contact on the child or young adult.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.337, 419B.440
Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 27-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 28-2007(Temp)

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Notice Publication Date:

Rules Amended: 413-090-0010

Subject: OAR 413-090-0010 is being amended to incorporate the foster care reimbursement rates approved by the 2007 legislature. This rule is also being amended to implement ORS 418.625(3) (as amended by SB 282, 2007 Oregon Laws Chapter 801) by adding relative caregivers to those eligible to receive a reimbursement.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-090-0010

Payments — General Guidelines

(1) Family Foster Care:

(a) Payment by the Department — to foster parents or relative caregivers — for a child or young adult's room, food, clothing, incidentals, and cash allowance (known as the regular foster care rate) is made on a monthly basis, or prorated for portions of a month, after the month in which the care has been provided. It includes the day the child or young adult enters the home, but excludes the day the child or young adult leaves the home. Costs of special care or service may also be provided if essential for the child or young adult's well being and if specifically authorized by Child Welfare. See Child Welfare Policy I-E.5.1.2, "Special Rates/Personal Care" OAR 413-090-0100 to 413-090-0220.

(b) Regular foster care rates are based upon the age of the child or young adult and the type of program services they are receiving; Family

Foster Care, Relative Care, Family Shelter Care, or Family Group Home. The rate structure is established by the Department, subject to the availability of funds, and is uniform throughout the state. The current monthly reimbursed regular rates effective July 1, 2007 are:

(A) Monthly Family Foster Care and Relative Care Rates:

(i) Age of Child or Young Adult— 0-5 — 6-12 — 13-21

(ii) Room/Board/Other — \$ 346 — \$ 343 — \$ 410

(iii) Clothing Replacement — \$ 45 — \$ 51 — \$ 73

(iv) Personal Allowance — \$ 8 — \$ 20 — \$ 29

(v) Total — \$ 399 — \$ 414 — \$ 512

(B) Family Shelter Care — \$ 21.35 per day;

(C) Foster Family Group Home — \$ 1,256 per month.

(c) Payments to foster parents or relative caregivers certified by the Department shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

(2) Residential Treatment. Payment by the Department to purchase of care providers must be made as provided in signed contracts.

(3) Payments Prohibited.

(a) Payment may not be made for two simultaneous 24 hour out-of-home care services, such as foster care, relative care, family group homes, or residential treatment.

(b) Neither payment nor utilization credit may be given for simultaneous contracted treatment services, such as day treatment and residential treatment.

(c) Payment by the Department may not be authorized for the care of children or young adults in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court.

(d) Any exceptions to these rules must be approved in writing by the director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

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

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 418.625, 418.470
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 28-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 29-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Suspended: 413-100-0040

Subject: OAR 413-100-0040 is being suspended implement ORS 418.625(3) as amended by SB 282 which changed the definition of foster home to include relative caregivers. This change requires the Department to eliminate language that states a relative caregiver does not receive a foster care reimbursement if the child they are care-taking for is not Title IV-E eligible.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0040

Placement in Relative Homes

(1) Relative Payments for an Indian Child. Under ORS 418.627(2), a person providing a foster home to an American Indian child shall be eligible for payments under ORS 418.625 to 418.645 regardless of the relationship by blood or marriage that the person has to the child where the child's placement in the foster home is pursuant to the Indian Child Welfare Act (25 U.S.C. 1901 et seq.).

(2) Relative Foster Care Placements. With the exception of an Indian child, a child in the following homes must be found Title IV-E eligible for the relative to receive foster care payments:

(a) The home of any blood or half blood relative or adoptive relative, including a person of a preceding generation denoted by the prefix grand, great, or great-great. Individuals with one common birth parent are half-blood relatives.

(b) The home of any sibling, aunt, uncle, first cousin, first cousin once-removed, nephew, niece, and grandparent.

(3) Rights of Relative Foster Parents. Relative foster parents have a right to:

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(a) Information about the Title IV-E foster care program administered by the Department, including the program's eligibility requirements and required verification methods.

(b) Receive these benefits without discrimination when the related child in their care meets the eligibility requirement of the Title IV-E foster care program and the home of the relative foster parents meets foster care certification requirements.

(4) Eligibility Determination Time Lines. Title IV-E eligibility will be determined within 45 days from the date of the FACIS eligibility notice. The limit may be extended for any of the following reasons:

(a) Information needed to determine eligibility is expected to be received after the 45 day limit; or

(b) The eligibility decision is delayed beyond the 45-day limit due to other circumstances which are not within the control of the client or the Department.

(5) Notice of Closing of Relative Payment. The Title IV-E Eligibility Specialist will send written notification to the relative foster parents when a child is no longer Title IV-E eligible.

(6) Notice of Denial of Relative Payment. The Title IV-E Eligibility Specialist will send written notification of denial of benefits to the relatives requesting foster care payments if a child placed in their home is not Title IV-E eligible.

(7) Any relative foster parents that disagree with the closure or denial of Title IV-E foster care payments and medical coverage may request a conference with local Department staff. At the conference, the relatives' legal counsel or other representative may be present and local Department staff will:

(a) Discuss the decision;

(b) Explain the specific reasons for the decision; and

(c) Allow the relatives to explain why they think the decision is erroneous.

(8) Contested case hearing. Relative foster parents may ask for a contested case hearing, as provided in ORS Chapter 183, before an Administrative Law Judge of the Office of Administrative Hearings.

(a) The relative foster parents or their authorized representative must provide a written request for a contested case hearing to DHS, Children, Adults and Families, Federal Compliance Specialist, 500 Summer Street NE, E-69, Salem, OR 97301-1067 within 30 days of the date that the Department mailed the notice of the closure or denial of Title IV-E foster care payments and medical coverage.

(b) The purpose of the hearing is to determine whether the Department's denial of Title IV-E eligibility is consistent with state and federal law governing the program.

(c) If the relative foster parents request a contested case hearing, they may be represented by legal counsel and may present witnesses. The Department will not pay the expenses of an attorney or witnesses for the relative foster parents.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; Suspended by CWP 29-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

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Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 30-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Adopted: 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0935, 413-100-0940

Subject: OAR 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0935, and 413-100-0940 are being adopted to describe the activities required to assure that regular education, special education, pre-school, and post-secondary education services are provided to a child or young adult for whom the Child Welfare Program of the Department is legally responsible. These rules include policies about school placement, transportation, GED, Charter Schools, private school, international study, home schooling, consent for schooling, paying for education expenses, early education, and post-secondary education. These rules include the Department activities required as a result of HB 3075 enacted during the 2005 legislative session. These rules

will replace current Department Policy I-E.8, "Educational Services" which was not adopted through the rulemaking process.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0900

Purpose

The purpose of these rules, OAR 413-100-0900 to 413-100-0940, is to describe the activities required to:

(1) Ensure that regular education and special education services are provided to promote academic achievement of a child or young adult in the care and custody of the Department; and

(2) Ensure that available pre-school education and post-secondary education or training opportunities are explored for a child or young adult in the care and custody of the Department.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0905

Definitions

The following definitions apply to OAR 413-100-0900 to 413-100-0940:

(1) "CASA" means Court Appointed Special Advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the child pursuant to ORS 419A.170.

(2) "Department" means the Department of Human Services, Child Welfare.

(3) "GED" means a General Educational Development certificate issued pursuant to ORS 326.550.

(4) "Parent", for the purposes of these rules, means the biological or adoptive mother or the biological, legal, or adoptive father of the child, except as provided otherwise in OAR 413-100-0930.

(5) "Special education," as defined in OAR 581-015-2000(33), means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction in the classroom, instruction in the home, and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.

(6) "Special education services" means assistance provided to a child with a disability to meet the child's unique needs and includes instruction in the classroom, in the home, and in hospitals, institutions, special schools, and other settings.

(7) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child who is in the legal or physical custody of the Department.

(8) "Surrogate" means a person who has been appointed to safeguard a child's rights in the special education decision-making process. The person may be appointed pursuant to OAR 581-015-2320, for school-age children, OAR 581-015-2760 for preschool children, or by the juvenile court under ORS 419B.220.

(9) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department, and lives in substitute care or lives independently, through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0910

Role of the Department in the Education of a Child or Young Adult

The Department promotes the academic achievement of a child or young adult by participating as a member of the team that performs the child or young adult's academic assessment, planning, and goal setting. The caseworker must work collaboratively with the parent or legal guardian whenever appropriate; the local school district and school officials; the substitute caregiver; the surrogate, if one is appointed; and service providers in the child or young adult's case plan, as appropriate, in order to facilitate information and record sharing, case planning, and educational advocacy.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0915

Determination of a Child or Young Adult's School or Educational Placement

(1) Preferred school or educational placement when a child first enters substitute care. The preferred school or educational placement when a child first enters substitute care is the school or educational placement the

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child attended prior to entry into substitute care whenever possible and when:

(a) Remaining in the same school or educational placement is in the best interest of the child; and

(b) Continuing to attend the same school or educational placement is consistent with the ongoing safety plan and does not jeopardize the child's safety.

(2) Responsibilities for determination of any school or educational placement. The Department must determine a school or educational placement for a child or young adult in the Department's care and custody.

(a) The caseworker must involve the following persons in school or educational placement selection and other decisions regarding the child or young adult's education whenever appropriate:

(A) The child or young adult;

(B) The child's or young adult's legal parent or legal guardian; and

(C) Consider the recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(D) The child's or young adult's surrogate.

(b) Before determining any school or educational placement for a child or young adult, the caseworker must determine that:

(A) The school or educational placement is the most appropriate available for the child or young adult; and

(B) The school or educational placement is consistent with the child's ongoing safety plan or is a safe setting for a young adult.

(c) If the juvenile court makes a finding that it is in the child's or young adult's best interest to continue to attend the school that the child or young adult attended prior to placement in the care and custody of the Department, the child shall be a resident of the school district the child attended prior to placement and may continue to attend the school the child attended prior to placement through the highest grade level of the school, in accordance with ORS 339.133.

(d) When a child is in the care and custody of the Department under a Voluntary Placement Agreement, the parent or legal guardian retains legal authority over the child and is obligated to continue to exercise and perform all parental duties and legal responsibilities except those that the parent or legal guardian specifically delegates to the Department by the signed agreement.

(3) Additional responsibilities when selecting a private school, charter school, alternative school, or international study program for a child or young adult.

(a) When considering the enrollment of the child or young adult in a private school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan and educational goals;

(B) Verify that the school is accredited in the state where the school is located;

(C) Verify that an entity or person other than the Department will pay all costs except those approved under OAR 413-100-0935.

(D) Consider the religious affiliation of the child or young adult and the parent or legal guardian when considering enrollment in a religiously-affiliated private school;

(E) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(F) The Child Welfare program manager must review information gathered in paragraphs (A) through (E) of this subsection, and may approve enrollment.

(b) When considering the enrollment of a child or young adult in a charter school or alternative school, the caseworker must:

(A) Ensure that enrollment would be consistent with the child's or young adult's permanency plan and educational goals;

(B) Verify that the charter school is approved by the local school district board or the Oregon Department of Education;

(C) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(D) The Child Welfare program manager must review information gathered in paragraphs (A) through (C) of this subsection, and may approve enrollment.

(c) When considering enrolling a child or young adult in an international study program, the caseworker must:

(A) Ensure that enrollment is consistent with the child's or young adult's permanency plan and educational goals;

(B) Verify that the international study program has documented program credentials;

(C) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver;

(D) Obtain approval from the Child Welfare program manager, the District Manager, and the Foster Care Program Manager; and

(E) Obtain approval from the juvenile court.

(4) Additional responsibilities when considering a GED program or obtaining a modified diploma. When considering a GED program or a modified diploma for the child or young adult, whether the program is held at a public school or at a location other than a public school, prior to the approval of the Child Welfare program manager, the caseworker must:

(a) Determine, in conjunction with a child's or young adult's educational providers, that obtaining a GED or modified diploma meets the child's or young adult's educational needs better than attending a public school or obtaining a regular diploma;

(b) Verify that a GED program or modified diploma is consistent with the child's or young adult's case plan and educational goals;

(c) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver; and

(d) The Child Welfare program manager must review information gathered in subsections (a) through (c) of this section, and may approve enrollment.

(5) Additional responsibilities when considering home schooling. When considering home schooling for the child or young adult in the substitute caregiver's home, the caseworker must:

(a) Determine that a home schooling environment would not interfere with the child's or young adult's social development;

(b) Determine that home schooling would promote inclusion in the substitute caregiver's home;

(c) Determine that a home school environment is consistent with the child's or young adult's permanency plan and educational goals;

(d) Determine that the child's or young adult's enrollment in a home school program is permitted by state law in another state if the child or young adult is placed in another state through the Interstate Compact on the Placement of Children;

(e) Obtain the approval of the child's or young adult's legal parent or legal guardian for the substitute caregiver to act as a private teacher;

(f) Obtain the approval of a child's surrogate when OAR 413-100-0925 applies;

(g) Verify the substitute caregiver has provided written notification to the education service district of intent to provide home schooling; and

(h) Consider recommendations from the child's or young adult's attorney, CASA, and substitute caregiver.

(i) The Child Welfare program manager must review information gathered in subsections (a) through (h) of this section, and may approve recommendation for enrollment to the juvenile court.

(j) Obtain the approval of the juvenile court.

(6) Transportation to school. After the school or educational placement has been determined, the caseworker must assess the school district's available transportation options and, if school district transportation is unavailable, select and arrange the most reliable, safe, cost-effective transportation option to transport the child or young adult to and from the school or educational placement.

(7) Once a school or educational placement has been selected for a child or young adult, the caseworker must notify the school that the child or young adult is in the legal custody of the Department and may provide information about the reason the child or young adult is in substitute care to the staff of the school or educational placement only if providing such information to a particular staff person is necessary for the child's or young adult's education planning or to ensure the safety of the child, young adult, or others in the school with whom the child or young adult has contact.

(8) The caseworker must document in the child's or young adult's case plan and report to the court:

(a) The name and address of the current school or educational placement of the child or young adult;

(b) The name and address of each school or educational placement the child or young adult has attended since the date the child or young adult has been in the custody of the Department;

(c) The length of time the child or young adult has spent in each school or educational placement;

(d) The number of high school credits each child or young adult fourteen years of age or older has earned;

(e) The grade level of the child or young adult's academic performance;

(f) The child's surrogate, if one has been appointed;

(g) The reason for any change in the child's or young adult's school or educational placement; and

(h) Information regarding the child's or young adult's educational records, which may include but is not limited to report cards, transcripts, Individual Education Plan or 504 plan, and transition plan.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

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413-100-0920

Consent for School Activities

Once the Department has determined the child's or young adult's school or educational placement, the substitute caregiver may give permission for the child or young adult to attend to school-related activities such as, but not limited to, school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0925

Consent for Special Education Services

(1) When a child is in the care and custody of the Department, and there is reason to believe the child has a disability under the Individuals with Disabilities Education Act, 20 USC §§ 1400, et seq. or the Oregon Department of Education administrative rules regarding special education (OAR 581, division 015), the child's parent is responsible for safeguarding a child's rights in the special education decision-making process.

(2) "Parent," for the purposes of special education decision-making, means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

(B) A foster parent of the child;

(C) A legal guardian, other than a state agency;

(D) An individual acting in the place or a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or a person who is legally responsible for a child's welfare; or

(E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or 581-015-2760 for pre-school children.

(b) Except as provided in subsection (c) of this section, if more than one party is qualified under subsection (a) of this section to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) of this section to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

(3) The caseworker must verify who has been authorized to make educational decisions for the child who qualifies for special education.

(4) When a child with a disability is being considered for home schooling, in addition to the requirements of OAR 413-100-0915, the caseworker must:

(a) Ensure the child's parent, as defined in OAR 413-100-0925(2), or surrogate has approved home schooling; and

(b) Ensure the surrogate participates in the special education planning for the child in the home school environment.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0930

Rights to a Child's Education Records

(1) The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, protects the authority of parents to review their minor children's education records, limit the records' release without written consent by the parents, and correct errors in those records. 34 CFR 99.3, one of FERPA's implementing regulations, defines "parent" as "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." Under this definition, a Department employee may act as a "parent," for FERPA purposes, if the Department is the legal guardian of the child.

(2) A Department employee may demonstrate his or her authority to exercise the FERPA rights of a child's parent by providing the educational agency or institution with evidence that the Department is the legal guardian of the child, which may include a juvenile court order appointing the Department as the legal guardian of the child.

(3) This rule does not apply to the special education records of a child that is eligible for special education services or is suspected of being eligible for special education services under the Individuals with Disabilities Education Act, 20 USC §§ 1400, et seq. or the Oregon Department of Education administrative rules regarding special education (OAR 581, Division 015). A Department employee must obtain a release of information from a child's or young adult's legal parent, legal guardian or surrogate to obtain the special education records.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0935

Educational Expenses

The Department may authorize "Payments for Special or Extraordinary Needs" or "Flexible Funds" for some allowable school costs other than transportation, if sufficient funds are available and the school district does not cover the expense. Authorization for these expenses is outlined in Child Welfare Policies I-E.5.2, "Payments for Special or Extraordinary Needs", OAR 413-090-0365 and I-E.5.4, "Flexible Fund".

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-100-0940

Early Education and Post-Secondary Education

(1) The caseworker must ensure that a child in the care and custody of the Department has the same access to pre-school education programs as eligible children not in the care and custody of the Department. In meeting this obligation, the caseworker must make reasonable efforts to refer and enroll children who meet the enrollment criteria of licensed pre-school education programs available at no cost to the Department.

(2) The caseworker must ensure that a child or young adult in the care and custody of the Department has access to the information and resources available to explore post-secondary education and training opportunities. In meeting this obligation the caseworker must include education in any child's or young adult's planning for transition to independent living.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.050, 418.005, 419B.192, 419B.220, 419B.343

Hist.: CWP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.

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Rules Amended: 413-120-0400, 413-120-0410, 413-120-0420, 413-120-0440, 413-120-0450, 413-120-0455, 413-120-0460, 413-120-0470

Rules Suspended: 413-120-0430

Subject: OAR 413-120-0400 through 413-120-0470 are the Department's rules about the procedures for obtaining and evaluating criminal offender information on individuals who are seeking to provide relative, foster, or adoptive care to children in DHS custody. These rules are being amended and OAR 413-120-0430 is being suspended to make these rules consistent with the Department's existing foster care and adoption rules, including but not limited to the recent change in foster care standards (OAR 413-200-0390) allowing for recertification of foster homes once every two years as opposed to once annually. The Department is also amending these rules to replace old terminology with new terminology, to add cross-references to other rules and laws and to follow standard formatting.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0400

Purpose

(1) It is the goal of DHS to reduce the risk of neglect and abuse of children entrusted in the care of or receiving services from DHS. Therefore, DHS will conduct criminal offender information background checks as described in these rules (OAR 413-120-0400 to 413-120-0470).

(2) These rules establish procedures by which DHS obtains criminal offender information on subject individuals who are seeking to provide relative, foster, or adoptive care to children in DHS custody under Child Welfare administrative rules, and how DHS uses criminal offender information to determine the suitability of the subject individual to provide relative, foster, or adoptive care.

(3) These rules provide guidelines on the procedures DHS will use when DHS receives requests to conduct criminal offender information record checks from licensed private agencies who are studying adoptive families for placement of children in the custody of DHS under Child Welfare administrative rules.

(4) These rules provide the standards DHS will use in granting exceptions for subject individuals convicted of certain felony and misdemeanor crimes to provide relative, foster, or adoptive care if an exception is permitted under these rules.

(5) These rules shall be used in conjunction with other applicable standards when determining a subject individual's suitability to provide relative, foster, or adoptive care for children in DHS custody.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0410

Scope of Rules

(1) Consistent with the purpose of these rules (OAR 413-120-0400 to 413-120-0470), DHS will issue decisions regarding the suitability for approval of subject individuals to provide relative, foster, or adoptive care.

(2) Notwithstanding the prohibitions contained in OAR 413-120-0450(2) and (3), if a subject individual was certified to provide relative or foster care or approved as an adoptive home before November 19, 1997, DHS may place additional children in the home, renew the family's relative caregiver or foster home certificate of approval or approve the home as an adoptive placement if the DHS Assistant Director for CAF or a designee has determined that:

(a) Denial of the renewal or adoption application would result in the disruption of a child or children's placement or prevent future substitute care or adoptive placements of the child or children's siblings;

(b) The certification, adoption or licensing file for the relative caregiver, foster family or adoptive family contains documentation that safety considerations with respect to the subject individual have been addressed; and

(c) One or more convictions for the crime or crimes described in OAR 413-120-0450(3) occurred prior to the certification or approval.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0420

Definitions

For purposes of these rules (OAR 413-120-0400 to 413-120-0470):

(1) "Adoption Applicant" is a person who applies for adoption approval.

(2) "Agency Agreement" means a written agreement between the Oregon State Police and a Criminal Justice or designated agency as defined by ORS 181.010 authorized to receive criminal offender information, specifying the terms and conditions of accessing and receiving Oregon computerized criminal history information to assure compliance with state and federal regulations.

(3) "Battery" means the use of physical force to injure, damage or abuse or to cause offensive physical contact.

(4) "CAF" means the Children, Adults and Families Division of DHS.

(5) "Child or Children" means a person or persons under the age of 18.

(6) "Computerized Criminal History (CCH) System" means the administration and maintenance of on-line computer files of significant criminal offender information by OSP.

(7) "Contested Case Hearing" means a hearing conducted under ORS Chapter 183 and applicable administrative rules.

(8) "Criminal Offender Information" is defined in ORS 181.010(3) and includes records, fingerprints and photographs, received, compiled and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders, as to such persons' records of arrests, the nature and disposition of criminal charges, including sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(9) "Designated Agency" means any DHS unit required to access Oregon criminal offender information: to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on criminal conduct; for agency employment or licensing purposes; or for other demonstrated and legitimate needs when designated by order of the Governor.

(10) "DHS" means the Department of Human Services, which accesses criminal offender information as a designated agency or a criminal justice agency, and requests fingerprint-based criminal offender information from the FBI and OSP on certain persons or programs who provide care or treatment to children as regulated by DHS.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "Fingerprint-Based Criminal Offender Information" means criminal offender information compiled and maintained by the Oregon State Police Bureau of Criminal Identification regarding persons who have been arrested for crimes where law enforcement agencies have submitted finger-

prints and other identifying data as required by ORS 181.515 and/or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

(13) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(14) "Information required" means all information requested by DHS for processing criminal record checks, including fingerprint checks.

(15) "OSP" means the Oregon State Police.

(16) "Other person in household" means:

(a) A person 18 years of age or older who is living in the home, and is not a child or young adult as defined by this rule;

(b) A person assisting in the home to enrich the care provided to children placed in the home by tutoring, providing recreation, relief care, or other services such as household chores, whether paid or unpaid; or

(c) A member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the home.

(17) "Private Adoption Agency" means an agency licensed by the State of Oregon to provide adoption services within the state and which contracts with DHS to study adoptive parents seeking to adopt children in the custody of DHS.

(18) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(19) "Subject Individual" means a person who:

(a) Applies to adopt a child in the custody of DHS as described in Child Welfare Policies I-G.1.3, "Adoption Applications", OAR 413-120-0190 to 413-120-0240 and I-G.2.1, "Minimum Standards for Adoptive Homes", 413-120-0300 to 413-120-0310;

(b) Applies to be a foster parent, relative caregiver, or pre-adoptive parent as described in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0401; or

(c) Is *an other person in the household* as described in OAR 413-120-0420.

(20) "Violence" means the use of physical force to injure, damage, or abuse.

(21) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0430

Subject Individuals

For purposes of these rules, "Subject Individual" means a person who:

(1) Applies to adopt a child in the custody of DHS as described in OAR 413-120-0200 through 413-120-0230 and 413-120-0300 through 413-120-0310; or

(2) Applies to be a foster parent as described in OAR 413-200-0301 through 413-200-0401; or

(3) Is an other person in the household as described in 413-120-0420(17); or

(4) Applies to be a relative caregiver as described in 413-200-0301 through 413-200-0401.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537 & 181.010 - 181.560
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; Suspended by CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0440

Limitations of Inquiries

(1) Only DHS employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal offender information pursuant to a valid agency agreement. All criminal offender information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal offender information (OAR 257-010-0010 to 257-010-0050). It is the responsibility of DHS to assure strict compliance with federal and state laws, rules and procedures regarding criminal offender information access and dissemination.

ADMINISTRATIVE RULES

(2) Criminal offender information obtained from OSP or the FBI may not be given to unauthorized persons or agencies or used for any purpose other than that for which the information was obtained.

(3) Criminal offender information, including fingerprint-based criminal offender information, shall be obtained by DHS under Chapter 413 of the Oregon Administrative Rules to ascertain whether a subject individual as defined at OAR 413-120-0420 has been convicted of a crime that is substantially related to their qualifications as a relative caregiver, foster parent, or adoptive parent, or their suitability to be an other person in the household.

(4) For purposes of emergency foster care certification, child welfare staff in a local DHS office may obtain criminal history information from the OSP Law Enforcement Data System (LEDS) accordance with Child Welfare Policy I-AB.6, "Access to Law Enforcement Data System (LEDS) in Local Child Welfare Offices", OAR 413-015-1100 to 413-015-1125. In addition to any criminal history checks completed in the local DHS office for purposes of emergency foster care certification, whenever a fingerprint-based criminal history check is required, a completed and signed form 1011F and two properly completed FBI fingerprint cards (FD 258) must be provided to the DHS Criminal Records Unit (CRU) for processing.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0450

Consideration of Criminal History

(1) DHS has determined that persons who engage in certain criminal conduct may not be qualified to be a relative caregiver, foster or adoptive parent, or suitable to be an other person in a relative caregiver, foster or adoptive home because that criminal conduct is fundamentally inconsistent with any responsibility for care, treatment or supervision of children or other vulnerable persons. Unless an exception is allowed under these rules (OAR 413-120-0400 to 413-120-0470), convictions for crimes listed in these rules or a false statement about a conviction for any crime may disqualify a subject individual from being approved as a relative caregiver, foster or adoptive parent, or to be an other person in the household.

(2) If a subject individual has been convicted of a crime described in section (3) of this rule, that individual may not be approved or certified as a relative caregiver, foster parent, adoptive parent or other person in the household and no exception may be granted. A subject individual who has been convicted of any crime other than one described in section (3) of this rule may be approved or certified as a relative caregiver, foster parent, adoptive parent, or other person in the household only if an exception is granted as provided in sections (4) — (6) of this rule.

(3) Crimes with no exceptions.

(a) DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home, or approve an adoption application, and no exception may be granted if a subject individual has been convicted in Oregon or any other jurisdiction of a felony crime that involves:

- (A) Rape, sodomy or sexual abuse;
- (B) Intentional starvation or torture;
- (C) Murder or voluntary manslaughter;
- (D) Abuse or neglect of a child that causes death of the child or serious physical injury to the child; or
- (E) Aiding, abetting, attempting, soliciting or conspiring to cause the death of a child.

(b) Crimes described under subsection (a) of this section include, but are not limited to, the following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:

- (A) ORS 163.095 — Aggravated murder
- (B) ORS 163.115 — Murder
- (C) ORS 163.118 — Manslaughter in the first degree
- (D) ORS 163.125 — Manslaughter in the second degree
- (E) ORS 163.355 — Rape in the third degree
- (F) ORS 163.365 — Rape in the second degree
- (G) ORS 163.375 — Rape in the first degree
- (H) ORS 163.385 — Sodomy in the third degree
- (I) ORS 163.395 — Sodomy in the second degree
- (J) ORS 163.405 — Sodomy in the first degree
- (K) ORS 163.408 — Unlawful sexual penetration in the second degree

- (L) ORS 163.411 — Unlawful sexual penetration in the first degree
- (M) ORS 163.425 — Sexual abuse in the second degree
- (N) ORS 163.427 — Sexual abuse in the first degree
- (O) ORS 163.525 — Incest, if the victim of the offense is a child
- (P) ORS 163.537 — Buying or selling a person under 18 years of age

(Q) ORS 163.670 — Using a child in display of sexually explicit conduct

(4) Crimes for which an exception is possible.

(a) Unless an exception is granted as provided in subsection (c) of this section and section (6) of this rule, DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application if a subject individual has been convicted of one of the following crimes (which exclude those described in section (3) of this rule).

- (A) Any felony or misdemeanor crime of violence against a child.
- (B) Any felony involving:
 - (i) Child abuse or neglect.
 - (ii) A child as the victim.
 - (iii) Violence, including domestic violence.
- (C) A felony drug related offense.

(b) Examples of Crimes described under subsection (a) of this section include, but are not limited to, the following crimes under Oregon law or substantially similar crimes in Oregon or any other jurisdiction:

- (A) ORS 162.155 — Escape in the second degree, if the offense involves the use or threatened use of violence
- (B) ORS 162.165 — Escape in the first degree, if the offense involves the use or threatened use of violence or a dangerous or deadly weapon
- (C) ORS 162.325 — Hindering prosecution, if the crime involves the use of violence
- (D) ORS 163.145 — Criminally negligent homicide
- (E) ORS 163.160 — Assault in the fourth degree, if the victim is a spouse or a child and the person has previously been convicted of assaulting the same victim

(F) ORS 163.160 — Assault in the fourth degree, if person previously convicted of assaulting same victim or assault witnessed by child/step child of defendant or victim or other child living in household of defendant or victim

- (G) ORS 163.160 — Assault in the fourth degree if the victim is a child (misdemeanor)
- (H) ORS 163.165 — Assault in the third degree
- (I) ORS 163.175 — Assault in the second degree
- (J) ORS 163.185 — Assault in the first degree
- (K) ORS 163.205 — Criminal mistreatment in the first degree, if the victim is a child or if the crime involves violence
- (L) ORS 163.213 — Unlawful use of an electrical stun gun, tear gas or mace in the first degree
- (M) ORS 163.225 — Kidnapping in the second degree, if the victim is a child or spouse or if the crime involves violence
- (N) ORS 163.235 — Kidnapping in the first degree, if the victim is a child or spouse or if the crime involves violence
- (O) ORS 163.535 — Abandonment of a child
- (P) ORS 163.547 — Child neglect in the first degree
- (Q) ORS 163.555 — Criminal nonsupport
- (R) ORS 163.684 — Encouraging child sexual abuse in the first degree

(S) ORS 163.686 — Encouraging child sexual abuse in the second degree

(T) ORS 163.688 — Possession of materials depicting sexually explicit conduct of a child in the first degree

(U) ORS 163.689 — Possession of materials depicting sexually explicit conduct of a child in the second degree

(V) ORS 164.125 — Theft of services, if the theft is by force for services valued at \$750 or more

(W) ORS 164.225 — Burglary in the first degree, if the offense involves violence

- (X) ORS 164.395 — Robbery in the third degree
- (Y) ORS 164.405 — Robbery in the second degree
- (Z) ORS 164.415 — Robbery in the first degree
- (AA) ORS 166.015 — Riot
- (AB) ORS 166.165 — Intimidation in the first degree
- (AC) ORS 166.220 — Unlawful use of weapon
- (AD) ORS 167.017 — Compelling prostitution
- (AE) ORS 167.212 — Tampering with drug records
- (AF) ORS 167.262 — Adult using minor in commission of controlled substance offense (for controlled substance other than less than 5 grams of marijuana)

(AG) ORS 475.992 — Subsection (1) — Manufacture or delivery of Schedule I, II or III counterfeit substance. Subsection (2) — Delivery of marijuana for consideration. Subsection (3) — Creation or delivery of Schedule I, II or III counterfeit substance. Subsection (4) — Possession of Schedule I or II controlled substance.

(AH) ORS 475.993 — Prohibited acts for registrants related to Schedule I controlled substance

ADMINISTRATIVE RULES

(AI) ORS 475.995 — Distribution of Schedule I, II or III controlled substances to minors

(AJ) ORS 475.999 — Manufacture or delivery of Schedule I, II or III controlled substance within 1000 feet of school

(c) Written approval of the DHS Assistant Director for CAF is required for an exception to operate a relative caregiver or foster home or be approved as an adoption applicant if a subject individual has been convicted of a crime described in this section. The DHS Assistant Director for CAF may designate administrative staff not assigned to or located in a District to grant an approval authorized under this section.

(5) If a subject individual has been convicted of any felony or misdemeanor, other than those described in sections (3) or (4) of this rule, DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application unless an exception to approve the home is granted as provided in this section and section (6) of this rule. The following persons are authorized to grant an exception as provided in this section and section (6) of this rule:

(a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in sections (3) or (4) of this rule, written approval of the District Manager is required for an exception to approve the home. The District Manager may designate the District Assistant Manager, the Child Welfare Program Manager, or a child welfare supervisor to grant an exception under this subsection.

(b) If a subject individual has been convicted of a felony or any crime involving domestic violence, other than one described in sections (3) or (4) of this rule, written approval of the District Manager is required for an exception to approve the home. The District Manager may designate the District Assistant Manager or the Child Welfare Program Manager to grant an exception under this subsection.

(6) A person authorized to grant an exception under sections (4) or (5) of this rule shall determine whether the subject individual possesses the qualifications to be a relative caregiver, foster parent, adoptive parent, or is suitable to be an other person in the household, regardless of the criminal conviction or convictions. The person authorized to grant an exception shall document the approval on form DHS 1011D, "Criminal History Exception Request". In determining whether to grant an exception under sections (4) or (5) of this rule, the person authorized to grant the exception shall consider:

- (a) The severity and nature of the crime;
- (b) The number of criminal offenses;
- (c) The time elapsed since commission of the crime;
- (d) The circumstances surrounding the crime;
- (e) Content of the police report or reports concerning the crime;
- (f) The subject individual's explanation of the crime;
- (g) The relationship of the criminal activity to the subject individual's capacity to safely provide the proposed care;
- (h) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior; and

(i) When the person is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the person would be a safe placement that is in the best interests of the child.

(7) If allowed by current or previously effective rules, an exception for a specific misdemeanor or felony conviction need only be granted one time for a specific subject individual.

(8) Granting an exception for a specific misdemeanor or felony crime does not establish a precedent for other cases in which a conviction for the same crime is being considered.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 181.537, 181.010-181.560, 418.016
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0455

Consideration of Arrests

(1) Behavior that results in an arrest or a history of arrests may raise concerns about a subject individual's suitability to be a relative caregiver, foster or adoptive parent, or other person in the household. If a subject individual has a history of one or more arrests for any of the following offenses, the field staff must assess whether, considering the behavior that resulted in the arrest, the subject individual meets the qualifications to be a relative caregiver, foster or adoptive parent, or other person in the household:

- (a) Child abuse or neglect;
- (b) Spousal abuse;
- (c) A crime against children, including pornography;

(d) A crime involving violence, including rape, sexual abuse, manslaughter or homicide;

(e) Physical assault;

(f) Battery;

(g) Drug or alcohol offenses; or

(h) Weapons-related offenses.

(2) If a subject individual has been arrested for any of the offenses listed in section (1) of this rule, the supervisor and caseworker or certifier, in consultation with the management staff as designated by the District Manager, shall assess the suitability of the subject individual to be a relative caregiver, foster or adoptive parent, or other person in the household and document their findings. The persons conducting the assessment shall consider and document their findings regarding the behavior or conduct that led to the arrest, how that behavior relates to the subject individual's qualifications to be a relative caregiver, foster or adoptive parent or other person in the household and whether, given the behavior that led to the arrest, the subject individual is qualified to be a relative caregiver, foster parent or adoptive parent or other person in the household. In conducting this assessment, the supervisor and caseworker or certifier shall consider the following:

(a) The subject individual's explanation of the circumstances surrounding and the behavior that led to the arrest or arrests.

(b) The severity and nature of the behavior that led to the arrest or arrests;

(c) The number of arrests in the subject individual's history for behavior that relates to and raises concerns about that individual's qualifications to be a relative caregiver, foster or adoptive parent, or suitability to be an other person in the household;

(d) The time elapsed since the arrest or arrests;

(e) The circumstances surrounding the arrest or arrests;

(f) Whether the subject individual was charged or indicted for a crime related to the arrest or arrests;

(g) The disposition of any charge or indictment related to the arrest or arrests;

(h) If applicable, whether the subject individual has participated in counseling, therapy, educational, or employment opportunities since the arrest or arrests;

(i) When the person is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the person would be a safe placement that is in the best interests of the child.

(j) Any other information related to the circumstances of the arrest or arrests or the behavior that led to the arrest or arrests that may relate to the subject individual's qualifications to be a relative caregiver, foster parent, adoptive parent, or other person in the household.

(3) The supervisor and worker may also obtain and review a copy of the police report of the arrest and interview the subject individual about the arrest.

(4) Under no circumstances will DHS bar or refuse to approve an individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 or 419A.262.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560

Hist.: SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0460

Procedures

(1) Any subject individual applying to be a relative caregiver, foster or adoptive parent, or an other person in the household must consent to a criminal offender information records check at the time of application. After an initial certification, relative caregivers, foster parents, and other persons in the households of foster parents and relative caregivers must consent to a criminal offender information records check prior to re-certification every two years. Adoption applicants and other persons in their households must consent to a criminal offender information records check once a year after the initial criminal records check is completed. All applicants must be notified of this requirement at the time they apply for a certificate of approval or adoption approval. Criminal record check consent forms must contain a notice that applicants for a certificate of approval, or adoption approval and an other person in a household are subject to a fingerprint-based criminal offender information records check that will be conducted as required by ORS 181.537, 181.557, and OAR 413-120-0460(5) and (6).

(2) Adoptive applicants who have been approved as relative caregivers, foster parents, or adoptive parents and who have submitted to a criminal history check within the 12 months preceding the date on which they apply to adopt may be exempt from a new criminal records check.

ADMINISTRATIVE RULES

(3) DHS may not issue a certificate of approval for relative or foster care or approve an adoption home if a subject individual refuses to be fingerprinted when required. DHS may deny a certificate of approval or approval as an adoptive home if a subject individual makes a false statement about having been arrested for or convicted of any crime or crimes.

(4) Subject individuals must provide all information required for a criminal offender information records check, including fingerprints where required, on forms and fingerprint cards provided by DHS and according to procedures established by DHS, including:

(a) A properly completed and signed form CF 1011F from the subject individual;

(b) If the subject individual acknowledges a prior arrest or conviction for a crime listed in these administrative rules, an explanation of the relationship between the facts that support the arrest or conviction and all intervening circumstances and written authorization for DHS to verify the information; and

(c) Two properly completed FBI fingerprint cards (FD 258) with red overprinting in the reason fingerprinted block from the subject individual when required.

(5) As part of the consent to a criminal records check, DHS may request subject individuals to consent to the use of their social security numbers in conducting the criminal records check. Subject individuals will indicate their consent by their signatures.

(6) DHS shall obtain and forward fingerprint cards to request criminal offender information on subject individuals from OSP and FBI as follows:

(a) If the subject individual has disclosed, or their Oregon record indicates, that they now live or have lived outside the State of Oregon anytime during the five years prior to application, DHS shall instruct OSP to conduct a fingerprint criminal offender records check through the FBI;

(b) If the subject individual has disclosed an arrest or conviction for a crime, DHS shall instruct OSP to conduct a fingerprint-based criminal offender records check through the FBI;

(c) If the subject individual's Oregon record indicates an arrest or conviction for a crime, DHS shall forward the fingerprint cards to OSP for a positive identification verification prior to issuing a denial and may instruct OSP to conduct a fingerprint criminal offender records check through the FBI.

(7) DHS may grant an exception to the fingerprint requirement of this rule if DHS determines that the subject individual is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to applicant or staff. The Criminal History Exception Request (DHS 1011D) must be signed by the District Manager or designee.

(8) No applicant may be issued or may retain a certificate of approval as a relative caregiver or a foster parent, or approval as an adoptive parent unless these criminal history safety standards are met:

(a) Completion of a documented check of Oregon LEDS;

(b) Authorization and initiation of the other requirements to complete the criminal history check process, including a fingerprint based criminal offender check when required for subject individuals;

(c) Granting of exceptional approval as required and authorized by OAR 413-120-0450 for any criminal convictions either acknowledged by the applicant or reported by the criminal offender information system; and

(d) Reconsideration of the approval upon receipt of any criminal history information not available at the time of previous approval.

(9) DHS will review the criminal offender information, including fingerprint-based criminal offender information when obtained, of subject individuals. The assessment of suitability, based on the criminal history, that reflects the decision-making criteria, shall be documented and filed in the relative caregiver, foster home, or adoption home record. The LEDS, OSP, and FBI reports may not be filed in these records and shall be destroyed within 90 days. A denial of the application or certification, based on criminal history, will be considered preliminary until the subject individual has been given notice of an opportunity to challenge the criminal record report, or to request a contested case hearing pursuant to OAR 413-120-0460. Except as provided in OAR 413-120-0450(3), a finding of suitability based on criminal history is only one factor DHS will use in deciding whether to issue a certificate of approval for a relative caregiver or foster home, or approve an adoption home. The final determination to grant or deny a certificate of approval or approval of an adoption home based solely on criminal history will be made by the District Manager or designee. Criminal offender information received from the OSP or the FBI is confidential and may not be released to unauthorized persons or agencies.

(10) Subject individuals who have been determined not suitable to be approved as an adoptive resource pursuant to these rules (OAR 413-120-0400 to 413-120-0470) shall be denied approval for adoption of a child in the custody of DHS.

(11) Unless an exception for approval is granted under these rules, DHS shall revoke a certificate of approval for a foster parent or relative caregiver, deny a renewal application, or remove from consideration for child placement an approved relative caregiver, family foster home, or approved adoption applicant if a subject individual is convicted of a crime in Oregon or any other jurisdiction since the time of the last approval.

(12) If DHS determines that the subject individual is not suitable for a certificate of approval for relative care or foster care, or adoption approval, based on criminal history or false statement on the application related to criminal history, unless the subject individual voluntarily withdraws from the process, the Child Welfare field office will notify the subject individual, via certified mail, that the subject individual:

(a) Has a right to inspect and challenge his or her Oregon criminal offender information through the Oregon State Police procedures as adopted per ORS 181.555(3) and OAR 257-010-0035;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, DC, 20537-9700; and

(c) May appeal DHS's determination of unsuitability or indicate an intent to challenge information in the OSP or FBI report by requesting a contested case hearing pursuant to ORS 183.413 to 183.470 and OAR 413-120-0470 provided that DHS receives the request for a contested case hearing in writing within 30 days from the date of mailing the notice. After 30 days from the date of mailing have elapsed, designated staff within the District will inform the certifier or adoption worker or private agency adoption worker that either:

(A) The subject individual has been notified that he or she is not suitable for approval for relative care, foster care, or adoption based on criminal history or false statement in the application about criminal history and that the worker may not approve the relative care, foster care, or adoption application because the subject individual has waived or timely declined, to exercise his or her right to a contested case hearing regarding his or her suitability; or

(B) The subject individual has requested a contested case hearing and that the field office will be notified of the subject individual's suitability as a relative caregiver, foster care, or adoptive home provider upon issuance of the hearing decision.

(13) Upon the determination of DHS that an applicant for relative care, foster care, or adoption of a child in the custody of DHS under Child Welfare administrative rules is not suitable based on the criminal history of an other person in the household or false statement of criminal history of an other person in the household, the certifier, adoption worker, or private agency adoption worker must:

(a) Inform the other person in the household whose record was reviewed of the right to inspect and challenge the person's Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035 and the person's rights under ORS 181.557(2)(b); and

(b) Inform the relative caregiver, foster care, or adoption applicant whose approval is affected by the other person's criminal history or false statement about criminal history, via certified mail, that:

(A) Based on the other person in the household's criminal history or false statement about their criminal history, DHS may not approve the relative care, foster care, or adoption applicant as long as the other person in the household remains in the home or provides care to children in the home; and

(B) The relative care, foster care, or adoption applicant may appeal in a contested case hearing the DHS determination of unsuitability based on the criminal history or false statement of criminal history concerning an other person in the home, provided that DHS receives the applicant's request for a contested case hearing in writing within 30 days from the date of mailing the notice to the applicant.

(14) The DHS relative care or foster care certifier, adoption worker or private adoption agency worker must, after 30 days have elapsed from the date of mailing the notice, either:

(a) Notify the relative care, foster care, or adoption applicant that he or she is not suitable for approval for placement of a child in the custody of DHS under Child Welfare administrative rules based on criminal history of an other person in the household or false statement in the application of the other person, and that DHS may not approve the applicant because the applicant has waived or declined to exercise his or her right to a contested case hearing regarding his or her suitability; or

(b) Notify the relative care, foster care, or adoption applicant that since he or she has requested a contested case hearing, the field office will be notified of the applicant's suitability for certification upon issuance of the final order.

Stat. Auth.: ORS 418.005

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

ADMINISTRATIVE RULES

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-120-0470

Rights for Review and Contested Case Hearings

(1) Contested case hearings are conducted by the Office of Administrative Hearings (OAH) under ORS Chapter 183 and OAR 137-003-0501 to 137-003-0700. Relative care, foster care, or adoption applicants have the right to appeal a decision made by DHS under its rules that the applicant is not suitable for approval for placement of a child in the custody of DHS based on an authorized criminal offender information records check, or a false statement concerning a criminal records check of the applicant or other person in the household. Applicants must notify DHS in writing of their request for a contested case hearing within 30 calendar days after the notice is mailed by DHS to the applicant.

(2) DHS and OAH have no jurisdiction in a contested case hearing over allegations that the criminal offender information received from OSP or the FBI is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) DHS is entitled to rely on the criminal offender information supplied by OSP and the FBI until OSP or the FBI notifies DHS that information has been changed or corrected. If an applicant has timely requested a contested case hearing, DHS will refer the matter to OAH for a hearing after the subject individual has been afforded a reasonable time to correct or complete the record, or has declined to do so.

(4) Prior to a contested case hearing being referred to OAH, DHS will convene an informal conference between DHS, the subject individual and his or her legal representative, if any, to review all available information and determine the need for a contested case hearing. At this informal conference, the subject individual must verify whether he or she has exercised his or her right to inspect or challenge the criminal offender information record or records or has declined to do so.

(5) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing under this rule will not be open to the public.

(6) The issues at a contested case hearing under this rule must be limited to the following matters:

(a) Whether the subject individual made a false statement in the application about a conviction or an arrest, has refused to consent to the criminal records check, or refused to be fingerprinted.

(b) Whether the subject individual has been convicted of a crime described in OAR 413-120-0450(3).

(c) If the subject individual has been convicted of any crime, other than those described in OAR 413-120-0450(3):

(A) The DHS determination that the behavior which resulted in the conviction is relevant to qualification to provide care as a relative caregiver, foster or adoptive parent, or suitability to be an other person in the household; and

(B) The relationship between the facts supporting the conviction and the intervening circumstances as affecting the qualification to provide care as a relative caregiver, foster or adoptive parent, or suitability to be an other person in the household.

(d) The relationship between the behavior that led to an arrest or arrests as affecting the qualification to provide care as a relative caregiver, foster or adoption parent, or suitability to be an other person in the household.

(7) Fingerprint cards required for evidence in a contested case hearing must be destroyed by DHS when the contested case hearing procedure and any judicial review are concluded and final.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010-181.560, 409.015

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 32-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 413-200-0210, 413-200-0220

Subject: OAR 413-200-0210 about family group homes serving children and young adults in Child Welfare custody is being amended to identify additional rules that are used in conjunction with the rules pertaining to family group homes. OAR 413-200-0220 about

requirements for family group homes is being amended to correct a mistake in the text about caregiver to child ratios in homes certified by the Department. This rule is being corrected to match the four-to-one caregiver to child ratio in OAR 413-200-0348. OAR 413-200-0220 is also being amended to correct the definition of one term to match its usage in the family group home rules.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-200-0210

Family Group Home — Statement of Purpose

(1) The family group home program was developed to meet the needs of children and young adults in Child Welfare custody who, because of emotional or behavioral characteristics, require a group living situation more structured than a foster home, but less structured than a group residential program. The purpose of family group home placement is to:

(a) Provide safety for the child or young adult in the least restrictive environment appropriate to meet the needs of the child or young adult;

(b) Improve the functioning of the child or young adult at home and in the community;

(c) Improve the relationship of the child or young adult with supportive adults; and

(d) Improve the ability of the child or young adult to successfully solve the problems of daily living.

(2) OAR 413-200-0210 and 413-200-0220 must be used in conjunction with Child Welfare Policies II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396 and II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296.

Stat. Auth.: ORS 418.005, 418.640

Stats. Implemented: ORS 418.005, 418.635

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 28-2000(Temp) f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 6-2001, f. & cert. ef. 3-23-01; CWP 9-2006(Temp), f. & cert. ef. 5-15-06 thru 11-9-06; CWP 21-2006, f. & cert. ef. 11-1-06; CWP 32-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-200-0220

Family Group Home Requirements

(1) The following definitions apply to OAR 413-200-0210 and 413-200-0220:

(a) "Caseworker" means a Child Welfare employee assigned primary responsibility for a child or young adult served by Child Welfare.

(b) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing foster or relative care to children in the legal or voluntary custody of Child Welfare, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification standards.

(c) "Child" means a person under 18 years of age.

(d) "Department" means the Department of Human Services, Child Welfare.

(e) "Family group home provider" means the persons listed on the contract to provide Family Group Home services.

(f) "Individual service plan" means a goal-oriented, time limited written document which identifies the strengths and needs of the child or young adult, prioritizes desired behavior changes, and identifies appropriate services and supports to achieve the identified behavior changes.

(g) "Liaison" means a Child Welfare employee, assigned by the local branch office, with primary responsibility for supporting referral, intake, and placement of children and young adults in the family group home.

(h) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of Child Welfare and lives in substitute care or lives independently, through the Child Welfare Independent Living Subsidy Program.

(2) A family group home provider must:

(a) Meet all the safety standards defined in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396;

(b) Receive a "Certificate of Approval to Operate a Family Foster Home"; and

(c) Have the capacity to provide a safe and caring environment for a child or young adult whose emotional and behavioral characteristics are appropriate for family group home care.

(3) The family group home provider may contract for a minimum of four and a maximum of eight children and young adults. The total number of children and young adults living in the home, including the provider's children, may not exceed eight.

ADMINISTRATIVE RULES

(4) The family group home provider may not provide emergency or shelter care for children or young adults.

(5) The family group home provider and the family group home liaison must jointly establish intake procedures for children and young adults being placed in the home. The intake procedure must include:

(a) Consultation between the caseworker, the family group home liaison, and the family group home provider to discuss the child or young adult being referred; and

(b) A pre-placement visit in the family group home by the child or young adult being referred.

(6) Individual service plans:

(a) Within 30 days of placement, an individual service plan must be developed for each child or young adult. The child, the foster family home liaison, the caseworker, and the family group home provider must be included in the development of the individual service plan. Other service providers may also be included.

(b) Individual service plans must be goal-oriented and time-limited. Each plan must consider the strengths and needs of the child or young adult, identify desired behavior changes, and estimate when the behavior changes will be achieved. The individual service plan must prioritize the behavior change goals, identify services and supports that will address each goal, and must include an after-care plan.

(c) For any child or young adult 16 years or older, the individual service plan must incorporate the Comprehensive Transition Plan (referred to as a youth's service plan in Child Welfare Policy I-B.2.3.5, "Independent Living Programs", OAR 413-030-0400 to 413-030-0455).

(7) The family group home provider must establish procedures for review of the individual service plan and after-care plan of the child or young adult. The after-care plan identifies the placement for the child or young adult after the child or young adult leaves the family group home.

(a) Each element of the individual service plan of the child or young adult is reviewed by the child or young adult, the family group home provider, the family group home liaison, and the caseworker every three months after the development of the plan. The individual service plan is revised or modified as necessary based on the progress of the child or young adult in meeting the behavior change goals.

(b) The after-care plan is reviewed by the child or young adult, the family group home provider, the family group home liaison, and the caseworker at the time of each individual service plan review, and the after-care plan is revised or modified as necessary based on the progress of the child or young adult in meeting the behavior change goals.

(8) Transitions.

(a) When a child or young adult has completed his or her individual service plan, the child or young adult is transitioned to the after-care resource in accordance with the individual service plan.

(b) If the child or young adult needs to be moved before the child or young adult has completed the individual service plan, the child or young adult, the family group home provider, the family group home liaison, and the caseworker of the child or young adult develop the transition plan for the move of the child or young adult. Whenever possible, the family group home provider provides 10 working days notice to the caseworker and the family group home liaison, requesting a child or young adult be moved from the home. Whenever possible, the caseworker provides 10 working days notice to the family group home provider and the family group home liaison when a child or young adult will be moved from the home.

(9) Staffing.

(a) A family group home must be staffed by the family group home provider.

(b) There must be a minimum of one adult to every four children and young adults who are present in the home.

(c) Any other adult providing care and supervision of a child or young adult in the home must meet the alternative caregiver requirements of Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.

(10) The family group home provider must plan for a minimum of 48 hours per month away from child care responsibilities. The family group home provider must prepare a written plan for respite care with the family group home liaison.

(11) Each family group home provider must participate in 30 hours of professional training each year. The certifier and the family group home provider jointly agree upon a written training plan.

Stat. Auth.: ORS 418.005, 418.640

Stats. Implemented: ORS 418.005, 418.635

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 28-2000(Temp) f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 6-2001, f. & cert. ef. 3-23-01; CWP 9-2006(Temp), f. & cert. ef. 5-15-06 thru 11-9-06; CWP 21-2006, f. & cert. ef. 11-1-06; CWP 32-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

Rule Caption: Changing OARs affecting Child Welfare programs.
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Notice Publication Date:

Rules Adopted: 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, 413-200-0424

Subject: The Department is adopting OAR 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, and 413-200-0424 about the responsibilities of screeners in Child Protective Services, the child's assigned caseworker, and certifiers in the Child Welfare program during the screening and assessment of a report of abuse or neglect in a home of a certified foster parent or relative caregiver approved by the Department. These rules will replace current Child Welfare Policy I-B.2.2.3, "Assessment of Abuse Allegations in Family Foster Care, Family Group Homes and Family Shelter Homes", which was not adopted through the public rulemaking process.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-200-0404

Purpose

(1) The purpose of these rules (OAR 413-200-0404 to 413-200-0424) is to describe Department responsibilities during the screening and assessment of a report of child abuse or neglect involving the home of a Department certified foster parent or relative caregiver. A report involves the home of a Department-certified foster parent or relative caregiver if the report alleges that someone in the home abused or neglected any child.

(2) When a report is received involving the home of a Department-certified foster parent or relative caregiver, these rules, Child Welfare Policies I-AB.1 to I-AB.6, Child Protective Services (OAR 413-015-0100 to 413-015-1125), II-B.1, Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents (OAR 413-200-0301 to 413-200-0396), II-B.1.1, Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents (OAR 413-200-0270 to 413-200-0296), and I-B.1, Monitoring Child Safety (OAR 413-080-0040 to 413-080-0067) apply.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-200-0409

Definitions

The following definitions apply to OAR 413-200-0404 to 413-200-0424:

(1) "Certification supervisor" means an employee of the Department, designated as a supervisor, supervising staff responsible for certification, training, and monitoring homes certified by the Department.

(2) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(3) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(4) "Child" means a person under 18 years of age.

(5) "Child protective services assessment (CPS assessment)" means activities and interventions that identify and analyze safety threats, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective actions or ongoing safety planning.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of the Department trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of the Department who has completed the mandatory Department training for child protective service workers.

(8) "Consulting foster parent or relative caregiver" means an individual who maintains or has held a Certificate of Approval to operate a foster or relative caregiver home, received training on the role of a consulting foster parent or relative caregiver through the Department, and agrees to serve in this role.

(9) "Department" means the Department of Human Services, Child Welfare.

ADMINISTRATIVE RULES

(10) "Designee" means a person whom the designator directly and immediately supervises, or a person of equal or greater management responsibility than the designator.

(11) "FACIS" means the Family and Child Information System.

(12) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated children or young adult placed in the home by the Department.

(13) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the inactive referral status.

(14) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.

(15) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(16) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(17) "Report" means an allegation of child abuse or neglect provided to Child Welfare that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(18) "Screener" means a Department employee with training required to provide screening services.

(19) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-200-0414

Department Actions During Screening

(1) Screener Actions.

(a) When a screener receives information involving the home of a certified family, the screener must:

(A) Refer to and follow Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0200 to 413-015-0225 to gather and share information;

(B) Consult with the CPS supervisor before determining the Department's response;

(C) Notify the assigned caseworker of each child or young adult placed in the home, each assigned caseworker's supervisor, the assigned certifier, and the certifier's supervisor of all information received; and

(D) If the information is closed at screening as described in Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0210(4), document the information in FACIS provider case notes and notify the individuals listed in paragraph (C) of this subsection that the information was closed at screening.

(b) When a screener receives information alleging abuse or neglect of a young adult living in the home of a certified family, the screener must report the information to the young adult's caseworker; and

(A) Report the information to DHS, Seniors and People with Disabilities Division when the young adult is an individual with a diagnosed disability; or

(B) Report the information to law enforcement.

(2) Certifier Actions. When the assigned certifier is notified by a screener that information involving the home of a certified family was closed at screening, the certifier must examine the information received and follow Child Welfare Policy II-B.1.1., Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents (OAR 413-200-0270 to 413-200-0296).

(3) Assigned Caseworker Actions.

(a) When a report of information alleging abuse or neglect of a young adult has been shared with Seniors and People with Disabilities Division because the young adult is an individual with a diagnosed disability, the young adult's caseworker must coordinate the Department's response with the Seniors and People with Disabilities Division.

(b) When a report of information alleging abuse or neglect of a young adult has been shared with law enforcement, the young adult's caseworker must coordinate the Department's response with law enforcement.

(c) When a report is received alleging that a child or young adult in the home of a certified family may have been subjected to abuse or neglect, within three business days of the Department's receipt of the report, the caseworker of the child or young adult who is the alleged victim must notify the following individuals that a report was received:

(A) The attorney for the child or young adult;

(B) The court appointed special advocate (CASA) for the child or young adult;

(C) The child or young adult's parents;

(D) Any attorney representing the child or young adult's parents; and

(E) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(d) The notification of the child or young adult's parents and any attorney representing the child or young adult's parents in paragraphs (3)(a)(C) and (D) of this rule is not required if the notification may interfere with an investigation or assessment or jeopardize the child or young adult's safety. The CPS supervisor, or the supervisor of a young adult's caseworker may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-200-0419

Department Actions During the CPS Assessment

(1) CPS Worker and CPS Supervisor Actions.

(a) If the report involving the home of a certified family is referred for a CPS assessment, the assigned CPS worker must convene a staffing before making initial contact unless the timing of the staffing will compromise child safety. The purpose of the staffing is:

(A) To determine and coordinate the response to the referral;

(B) To notify the certifier assigned to the home, the caseworkers assigned to each child or young adult placed in the home, and their respective supervisors of the referral; and

(C) To share information known by the Department regarding the children or young adults placed in the home and the certified family.

(b) The CPS worker must ensure that the following people are invited to the staffing:

(A) The assigned certifier or the certification supervisor; and

(B) The assigned caseworker of each child or young adult in the home or each caseworker's supervisor.

(c) The CPS supervisor or his or her designee must:

(A) Ensure that the staffing discussed in subsection (a) of this section occurs prior to the initial contact unless the timing of the staffing will compromise child safety;

(B) Determine whether the Child Welfare Program Manager, CPS Consultant, and Foster Care Coordinator should be invited to the staffing; and

(C) If the staffing does not occur prior to the initial contact, ensure the staffing occurs the next business day and that all persons identified in subsection (b) of this section share information known by the Department regarding children or young adults placed in the home, the certified family, and any other individuals living in the home.

(d) The CPS worker must complete the following activities during the CPS assessment:

(A) At initial contact, in addition to the requirements in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485 provide the certified family with a "What you need to know about a Child Protective Service Assessment (Foster Care)" pamphlet, which includes written information regarding the CPS assessment process, including the rights of the foster parent or relative caregiver;

(B) Consult with a CPS supervisor before making the decision to remove any child or young adult from the home;

(C) Provide on-going information to the assigned certifier and to the caseworkers of each child or young adult placed in the home on the status of the CPS assessment; and

(D) Complete the Out of Home Care Investigation report.

(2) Certifier and Certification Supervisor Actions. When the assigned certifier is notified that information received by a screener involving the home of a certified family is referred for a CPS assessment:

(a) Within one business day after the CPS worker has made initial contact, the certifier must contact and notify the certified family and provide them with the following information:

(A) The certifier is available to answer questions related to certification but will not discuss the specifics of the CPS assessment;

(B) The certified family is immediately placed on inactive referral status pending the completion of the CPS assessment;

(C) The certified family has the option of having a consulting foster parent or relative caregiver available for support during the assessment; and

(D) The names of foster parents and relative caregivers who have agreed to serve in this role.

(b) Within one business day, the certifier must document the initiation of a CPS assessment and the placement of the certified family on inactive referral status in FACIS provider notes.

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(c) Within one business day, the certifier must notify Department staff responsible for placement that the certified family's home is on inactive referral status.

(d) Within 14 days of the notification required in paragraph (2)(a)(B) of this rule, the certifier or designee must provide written notification to the certified family that the home has been placed on inactive referral status and place a copy of the written notification in the certification file.

(e) The certifier must provide ongoing information regarding the certified family and any individuals living in the home to the assigned CPS worker and the caseworkers of each child or young adult placed in the home.

(f) The certification supervisor must ensure that the actions required in subsections (a) through (e) of this section are completed if the certifier is unavailable.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

413-200-0424

Department Actions at the Conclusion of the CPS Assessment

(1) CPS Worker and Supervisor Actions.

(a) In addition to the actions required in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485, the CPS worker must convene a staffing within five business days of the completion of the CPS assessment to:

(A) Share information acquired during the CPS assessment, and the results of the CPS assessment;

(B) Discuss and determine whether any additional actions described in Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485 are appropriate;

(C) Determine who needs to be notified of the disposition of the CPS assessment and determine which staff will be responsible for providing notification;

(D) Discuss certification actions that have been taken and whether any additional actions described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervisor of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396 are appropriate.

(b) The CPS worker must ensure that the following staff members are invited to the staffing:

(A) The CPS supervisor;

(B) The assigned certifier or the certification supervisor; and

(C) The caseworkers assigned to each child or young adult placed in the home of the certified family or their respective supervisors.

(c) The CPS supervisor or his or her designee must:

(A) Ensure that the staffing, discussed in subsection (a) of this section occurs;

(B) Determine whether the Child Welfare Program Manager, CPS Consultant, and Foster Care Coordinator should be invited to the staffing; and

(C) Approve notification of the following individuals of the disposition of the CPS assessment:

(i) The attorney for the child;

(ii) The court appointed special advocate (CASA) for the child;

(iii) The child's parents;

(iv) Any attorney representing the child's parents; and

(v) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(D) The supervisor may authorize an exception to the notification of a child's parents and any attorney representing a child's parents required in paragraph (C) of this subsection if the notification may jeopardize a child's safety.

(d) At the conclusion of any CPS assessment, regardless of the disposition, the CPS supervisor must immediately forward a copy of the Out of Home Care Investigation Report to the assigned caseworkers, the certifier, the CPS Consultant, and the Foster Care Coordinator.

(2) Assigned caseworker actions.

(a) Within ten business days of the Department determining the disposition of a CPS assessment involving the alleged abuse of a child placed in the home of a certified family, the caseworker for the child must notify the individuals identified in paragraph (1)(c)(C) of this rule of the disposition unless an exception is authorized by the CPS supervisor or his or her designee.

(b) Within ten business days of the conclusion of a law enforcement determination involving the alleged abuse of a young adult placed in the home of a certified family, unless an exception is authorized by the caseworker's supervisor or his or her designee, the caseworker for the young adult must notify the following individuals of the determination:

(A) The attorney for the young adult;

(B) The court appointed special advocate (CASA) for the young adult;

(C) The young adult's parents;

(D) Any attorney representing the young adult's parents; and

(E) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(3) Certifier and Certification Supervisor Actions.

(a) At the conclusion of the CPS assessment, during or within five business days of the meeting required in subsection (1)(a) of this rule, the certifier and certification supervisor must:

(A) Staff the case and review all the information gathered during the CPS assessment;

(B) Determine whether the information indicates certification actions described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396 should be taken; and

(C) Document the results of the staffing in FACIS provider's notes and in the certification file.

(b) After completing the staffing required in subsection (1)(a) of this rule, if the Department determines:

(A) That the Certificate of Approval for the certified family should be revoked, the assigned certifier must initiate revocation of the Certificate of Approval as described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers", Foster Parents, and Pre-Adoptive Parents, OAR 413-200-0296.

(B) That inactive referral status should continue because one or more of the conditions in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0294 are present, the assigned certifier must summarize the outcome of the assessment and the reasons for continuing inactive referral status in a letter delivered to the certified family within 10 days of receiving the completed CPS assessment. The certifier must retain a copy of the letter in the certification file.

(C) That no certification action will be initiated, the assigned certifier must:

(i) Submit written documentation supporting the continued certification of the certified family to the District Manager, Assistant District Manager, or Child Welfare Program Manager for approval;

(ii) Upon receiving approval for continued certification from the District Manager, Assistant District Manager, or Child Welfare Program Manager, remove the certified family from inactive referral status;

(iii) Within ten business days of receiving approval from the District Manager, Assistant District Manager, or Child Welfare Program Manager, send written notification to the certified family that the home is no longer on inactive referral status and retain a copy of the written notification in the certification file; and

(iv) Notify Department staff responsible for placement that the certified family is no longer on inactive referral status.

(4) The CPS worker or supervisor, and the certifier or supervisor must meet with the certified family within ten business days of the completion of the CPS assessment to explain the disposition and any certification actions that will be taken.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

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

Rule Caption: Eligibility for Disaster Food Stamp Program.

Adm. Order No.: SSP 13-2007(Temp)

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 12-17-07 thru 12-31-07

Notice Publication Date:

Rules Amended: 461-135-0493

Subject: OAR 461-135-0493 about the eligibility criteria and benefit amount in the Disaster Food Stamp Program (DFSP) is being amended retroactively to December 11, 2007 as a temporary rule to provide and set the eligibility requirements for disaster relief to households with individuals who reside in counties without Food and Nutrition Services, United States Department of Agriculture (FNS) disaster designation but an individual in the household group worked in a county with a FNS designation as a disaster area. Under this

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amendment, eligible individuals will qualify for disaster food stamp program even though they reside in a county that was not designated as a disaster area if the individual's place of employment when the disaster struck was in an area that FNS has declared a disaster area.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0493

Eligibility and Benefit Amount for DFSP

(1) To be eligible for emergency food stamp assistance during a disaster, a household must meet all the following criteria:

(a) At the time the disaster struck:

(A) The household must have resided within the geographical area authorized by FNS for disaster procedures. The household may be certified for emergency food stamp assistance even if at the time of application it is occupying temporary accommodations outside the disaster area. However, the representative of the household must be present at the disaster certification site to be certified for disaster food stamp assistance; or

(B) The place of employment for at least one member of the household was within the geographical area that FNS has authorized for disaster procedures.

(C) The temporary amendments to this subsection are retroactive to December 11, 2007.

(b) The household must purchase food during the disaster period authorized by FNS. A household residing in a temporary shelter but not expected to remain in the shelter for the entire benefit period is eligible for Disaster Food Stamp Program (DFSP) benefits.

(c) The household must have experienced at least one of the following adverse effects due to the disaster:

(A) Loss or inaccessibility of income involving a reduction or termination of income or a significant delay in receipt of income. This effect could occur if the disaster has caused a place of employment to close or reduce its work days, if pay checks or other payments are lost or destroyed, or if there is a significant delay in the issuance of pay checks or other payments. This effect could also occur if the work location is inaccessible due to the disaster.

(B) Inaccessibility of liquid resources. The household is unable to reach its cash resources and is not expected to be able to access its liquid resources for most of the disaster benefit period authorized by FNS. This inaccessibility may occur because the financial institutions where the household has its resources are closed due to the disaster.

(C) Loss of food.

(D) Real property damage. Damage to or destruction of the home or self-employment business of the household.

(2) To be eligible for emergency food stamp assistance during a disaster, the take-home pay of the household for the disaster benefits period authorized by FNS, plus its cash resources (cash on hand and accessible funds in checking and savings accounts), less disaster-related expenses, must be less than or equal to the DFSP income standard for the size of the household.

(a) For DFSP, take-home pay includes all of the following to the extent accessible during the benefit period:

(A) The wages a household actually receives after taxes and other payroll withholdings are taken out.

(B) The assistance payment or other unearned income a household received.

(C) Self-employment income earned after taxes for personal income and social security as well as costs of producing the self-employment income are subtracted. Allowable costs of producing the self-employment income are described in OAR 461-145-0920, 461-145-0930, and 461-145-0931.

(b) For DFSP, disaster-related expenses include expenses the household has paid or is expected to pay for one of the following expenses during the disaster benefit period authorized by FNS if full reimbursement is not expected during this disaster benefit period. If the household has received or reasonably anticipates receiving a reimbursement for part or all of the expense during the disaster benefit period, only the net expense to the household is deductible. No expenses are considered other than the following:

(A) Expenses to repair damages to the home or other property of the household essential to the employment or self-employment of a household member;

(B) Expenses for temporary shelter if the home of the household is not livable or if the household cannot reach its home;

(C) Expenses for moving out of an area evacuated due to the disaster;

(D) Expenses related to protecting property from disaster damage, including payment for storage of the items;

(E) Medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death);

(F) Food destroyed in the disaster; and

(G) Dependent care expenses incurred during the disaster.

(3) If the disaster benefit period is one month:

(a) Income over that full month period and all accessible resources are counted;

(b) Disaster-related expenses (described in subsection (2)(b) of this rule) paid, or expected to be paid over that full month period, are deducted; and

(c) The maximum income limit is for a one-month period.

(4) If the disaster benefit period is for one-half month --

(a) Income over the half-month period and all accessible resources are counted;

(b) Disaster-related expenses (described in subsection (2)(b) of this rule) paid, or expected to be paid over this period, are deducted; and

(c) The disaster eligibility limit is one-half of the monthly food stamp maximum limit.

(5) The full amount of accessible cash resources must be counted, regardless of the length of the disaster benefit period.

(6) No disaster food stamp benefits are authorized after the expiration of the period for which the Department is authorized by FNS to process and approve applications for this emergency food stamp assistance.

(7) A household determined eligible must receive benefits no later than three days after the date of application. If the third day falls on a weekend or holiday, benefits must be issued on either --

(a) The second day; or

(b) The first day if the second day is also a weekend or holiday.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 13-2007(Temp), f. & cert. ef. 12-17-07 thru 12-31-07

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

Adm. Order No.: SSP 14-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 461-160-0855

Rules Amended: 461-001-0000, 461-001-0035, 461-115-0700, 461-135-0725, 461-135-0780, 461-135-0835, 461-140-0220, 461-145-0030, 461-145-0108, 461-145-0220, 461-145-0580, 461-150-0047, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0040, 461-160-0055, 461-160-0410, 461-160-0415, 461-160-0550, 461-160-0580, 461-160-0620, 461-170-0130, 461-175-0270, 461-180-0085, 461-195-0501, 461-195-0511, 461-195-0521, 461-195-0551

Rules Repealed: 461-001-0000(T), 461-145-0180, 461-195-0501(T), 461-195-0551(T)

Subject: OAR 461-001-0000, 461-135-0835, and 461-140-0220 are being amended and OAR 461-160-0855 is being adopted to implement a Long Term Care Partnership Program in Oregon. Under this program, a client in the Oregon Supplemental Income Program Medical (OSIPM) - providing services to the aged and people with disabilities) who has purchased a qualified long term care insurance partnership policy and has received payments under that policy will receive two additional benefits when he or she applies for Medicaid. First, the client will receive a resource exclusion in the amount of the long term care payments that he or she has received. Second, the client will have an amount equal to the long term payments that he or she had received at Medicaid application protected from estate administration collection when he or she passes away. OAR 461-001-0000 is being amended to add a definition for "Qualified Partnership Policy." OAR 461-135-0835 is being amended to prohibit collection on a deceased client's estate in the amount of total payments received from a Qualified Partnership Policy at the time of Medicaid application. OAR 461-140-0220 is being amended to specify that the amount of resources excluded due to payments received from a Qualified Partnership Policy can be transferred by the client without causing a Medicaid disqualification. OAR 461-160-0855 is being adopted to require exclusion of an amount of resources equal to the total amount of payments received by the client from a Qual-

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ified Partnership Policy at Medicaid application, and to cross-reference to the prohibition on estate collection in OAR 461-135-0835.

OAR 461-001-0000(T), 461-195-0501(T), and 461-195-0551(T) were included in a Temporary Rule filing effective October 1, 2007. In order to have both the Permanent Rule changes become effective January 1, 2008 and to maintain the Temporary Rule changes that were effective October 1, 2007 continue through the planned 180 day timeframe, these rules must be repealed in this Permanent Rule filing and filed again as Temporary Rule.

OAR 461-001-0035, 461-135-0725 and 461-155-0250 are being amended to clarify the Department's policy and implement changes to the OSIP/OSIPM Employed Persons with Disabilities (EPD) program. The "employment" eligibility requirement will only cover a person who pays Federal Insurance Contribution Act (FICA) taxes, Self-Employment Contribution Act (SECA) taxes, or shows clear and convincing evidence of self-employment. The current rule included anyone receiving credit for employment toward Social Security benefits. These changes eliminate the definition and references to "attached to the workforce".

OAR 461-115-0700 about required verification in the General Assistance(GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) Programs is being amended to change the policy regarding the requirement to verify countable liquid resources. The rule is being amended to state that if total countable liquid resources for the financial group do not exceed \$1,250, verification of the value of the resource is generally not required.

OAR 461-135-0780 (eligibility for Pickle Amendment clients in the OSIPM program), 461-155-0250 (income and payment standard for OSIP and OSIPM), 461-155-0270 (payment standard for OSIP and OSIPM clients in nonstandard living arrangements), 461-155-0300 (shelter-in-kind standard for OSIP, OSIPM, QMB), 461-160-0580 (excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD and OSIPM-EPD), and 461-160-0620 (income deductions and client liability for Long Term Care Services and Waivered Services) are being amended to adjust these standard to reflect the annual federal cost of living adjustments that happen every January. These amendments keep Oregon in line with current federal standards for Department Medicaid programs and changes in the cost of living. OAR 461-155-0250 is also being amended to indicate that the allowances for clothing and personal incidentals apply to individual in a nursing facility, not individuals in long-term care. This rule is being further amended to remove the earnings standard for the OSIP/OSIPM EPD program as part of other rule changes designed to comply with federal requirements that apply to this program.

OAR 461-145-0030 about bank accounts is being amended to change the treatment of interest and dividends earned on funds in bank accounts in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) Programs. The rule is being amended to state that interest and dividends earned on funds in a bank account are excluded as income.

OAR 461-145-0108 about dividends, interest, and royalties is being amended to change the treatment of interest and dividends earned on funds in bank accounts in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This rule is being amended to state that interest and dividends earned on funds in a bank account are excluded as income. Previously, in most circumstances, this income was counted as unearned income.

OAR 461-145-0180 about the treatment of family support payments is being repealed because family support payments no longer exist as a distinct category. Many of the payments that might have

been considered "family support payments" are covered in OAR 461-145-0410 about the treatment of program benefits.

OAR 461-145-0220 is being amended to change the treatment of the value of a home in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) programs during temporary periods of absence. This rule is being amended to expand an exclusion of the value of a home to cover temporary periods of absence if the absent client has provided evidence that he or she will return to the home. Currently, this exclusion only applies to single adults.

OAR 461-145-0580 about the treatment of veterans' benefits in the eligibility process is being amended to state that OSIP (Oregon Supplemental Income Program, OSIPM (OSIP Medical), and Title XIX waived service clients who receive a payment covering a previous period of eligibility and fail to turn over the payment to the Department are liable for an overpayment. This rule is also being amended to state that the recovery of other reimbursements to clients in other programs is the recovery of an overpayment. This rule is being further amended to reorganize and clarify the rule, update citations to excluded Vietnam veterans payments, and make the excluded Vietnam Veterans benefits consistent with the Family Services Manual and current practice.

OAR 461-150-0047 about budgeting income for cases in the Simplified Reporting System (SRS) is being amended to clarify that self employment income that has been annualized is not automatically recalculated at the time an Interim Change Report form is processed.

OAR 461-160-0040 is being amended to list specific situations in which child care is not covered in the ERDC-BAS (child care for working families), REF (Refugee), and TANF programs. These situations concern clients who work from home, are self-employed, provide child care in a residence, or work for a non-certified child care provider in the provider's residence. This rule is also being amended to correct a mistaken reference to the REFM (Refugee Medical) program when the rule should state the REF program.

OAR 461-160-0055 is being amended to clarify the programs to which the rule applies and to clarify that in order to allow costs of an animal as a medical deduction in the Food Stamp program, the animal must have received special training to provide a service to the client. The term companion animal is also being removed because most companion animals are pets with no special training and will not be eligible for this deduction.

OAR 461-160-0410 is being amended to correct policy about the proration of deductions for filing groups in the Food Stamp program that contain unqualified, ineligible noncitizens. Currently, this rule requires proration when utility costs are billed to the noncitizen. This rule will be amended to indicate that costs are not prorated when billed to a noncitizen if the income of a filing group member who meets the citizenship or alien status requirement is used to pay the cost. The filing group consists of the household members whose circumstances are considered in the Food Stamp eligibility process. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-160-0415 about medical deductions in the Food Stamp program is being amended to state that medical costs paid via credit card are treated the same way as medical costs paid in full and that the resulting ongoing credit card payments are not allowable as ongoing medical costs. This rule is also being amended to state that medical costs that have been paid in a previous eligibility certification period are not allowable medical deductions. This rule is also being amended to add cross-references.

OAR 461-160-0550 about determining adjusted income for clients in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), QMB (Qualified Medicare Beneficiaries) programs and for clients in the Oregon Supplemental Income Program (except OSIP EPD) and Oregon Supplemental

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Income Program Medical Program (except OSIPM EPD) who live in the community, do not receive SSI, and do not receive Title XIX waived services is being amended to add the allocation and deeming mechanisms of the federal regulations. Under this amendment, when an adult individual applies for Oregon Supplemental Income Medical (OSIPM) or Qualified Medicare Beneficiary (QMB) programs and has an ineligible spouse and ineligible children in the household, some of the income is allocated and deemed from the ineligible spouse to those children before it is considered in the eligibility determination for the applying adult. Under this amendment, if a child is applying, some of the income from the ineligible parents must be deemed to the children in the house who are not applying before it is considered as potential income to the child applicant.

OAR 461-170-0130 about acting on reported changes in several medical programs and OAR 461-180-0085 about the effective date for a redetermination of eligibility in several medical programs are being amended to more clearly identify the other medical programs for which eligibility is reviewed prior to a reduction or closure of medical benefits.

OAR 461-175-0270 about the types of notices sent to clients who start or change specific reporting systems is being amended to state more clearly that the continuing benefit decision notice is sent when the Department changes a client's reporting system. A client who receives a continuing benefit hearing notice may request continuing benefits while a hearing request is pending.

OAR 461-195-0501 is being amended to expand the scope of what is considered an overpayment, pursuant to ORS 411.640 as amended by HB 2191. The expanded definition covers misspent and misappropriated payments and failure to reimburse the Department when required by law. This rule is also being amended to define a fraud overpayment.

OAR 461-195-0511 about child care overpayments is being amended to expand the scope of what is considered a child care overpayment pursuant to ORS 411.640 as amended by HB 2191. The expanded definition covers misspent and misappropriated payments.

OAR 461-195-0521 about special rules for the calculation of overpayments is being amended as part of the implementation of HB 2191 which amended ORS 411.640. This rule is being amended to cover overpayments incurred when a client receives assistance payments from the Department and is also compensated from another source for the same services. This amendment clarifies the calculation of these types of overpayments. This amendment also clarifies how cash medical child support is treated.

OAR 461-195-0551 is being amended (as part of the implementation of HB2191) to address the authority of the Department to issue a notice of garnishment upon issuance of a warrant for the recovery of overpayments.

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461-001-0000

Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDS), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from *countable* income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a *decision notice* mailed no later than the date of action given in the notice.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means a caretaker who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

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(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) “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.

(24) “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.

(25) “Eligibility” means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(26) “Equity value” means fair market value minus encumbrances.

(27) “Fair market value” means the amount an item is worth on the open market.

(28) “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.

(29) “HPN” means a health plan new/noncategorical client eligible under OHP-OPU.

(30) “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.

(31) “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.

(32) “In-kind income” means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(33) “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.

(34) “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.

(35) “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.

(36) “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).

(37) “Lump-sum income” means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(38) “Marriage” means the union of a man and a woman who are legally married.

(39) “Microenterprise” means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(40) “Minor parent”, in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(41) “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.

(42) “Ongoing month” means one of the following:

(a) For all programs except FS and OHP, any month following the *initial month* of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

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(43) "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.

(44) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(45) "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.

(46) "Periodic income" means income received on a regular basis less often than monthly.

(47) "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.

(48) "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.

(49) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(50) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(51) "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.

(52) "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.

(53) "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.

(54) "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.

(55) "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).

(56) "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.

(57) "Stable income" means income that is the same amount each time it is received.

(58) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(59) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(60) "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.

(61) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(62) "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.

(63) "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, 418.100

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

461-001-0035

Definitions; OSIP-EPD and OSIPM-EPD

The following definitions apply to the rules of the OSIP-EPD and OSIPM-EPD programs in Chapter 461:

(1) Approved account refers to a segregated account in a financial institution, the purpose of which is to save to use for future disability-related expenses that would increase the individual's independence and employment potential. Also included in this definition are accounts regulated by the Internal Revenue Code and used for retirement planning, such as IRAs, 401(k)s, TSAs, and KEOGHs.

(2) Blind work expenses (BWEs) refers to those costs defined by SSA that can be used as reductions to earned income as defined in 20 CFR 416.1112(c)(8).

(3) Client contribution refers to the amount that must be paid monthly as a condition of eligibility for the EPD program. This contribution is the combination of the Cost Share and the Premium.

(4) Cost share refers to the amount of unearned income in excess of the OSIP income and payment standard that is given to the state.

(5) Disabled or has a disability refers to having a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) as defined in 20 CFR Part 404.

(6) Disability determination refers to the process used to establish whether the individual's disability meets the definitions used by SSA in determining eligibility for SSI and SSDI.

(7) Employment refers to an ongoing work activity for which a client provides the Department with one of the following:

(a) Tax payments or filing for Federal Insurance Contribution Act (FICA).

(b) Tax payments or filing for Self-Employment Contributions Act (SECA).

(c) Clear and convincing evidence of self-employment.

(8) Employment and independence expense (EIE) refers to the cost of any expense that can be reasonably expected to enhance the independence and employment potential of the individual.

(9) Impairment related work expenses (IRWEs) refers to those costs defined by SSA that can be used as reductions to earned income. To be allowed, the item or service must be related to the impairment and necessary to enable the individual to perform the individual's job as defined in 20 CFR 416.976.

(10) Past relevant work (PRW) refers to work done within the past 15 years, that was substantial gainful activity, and that lasted long enough for the worker to learn how to do it.

(11) Premium refers to the payment given to the state that is based on a graduated percentage of the total income of the individual.

(12) Substantial gainful activity (SGA) refers to the term used by SSA to describe a level of work activity and earnings. In the OSIP-EPD or OSIPM-EPD programs, an individual is engaging in SGA if the earnings of the individual are at or above the OSIP-EPD or OSIPM-EPD income standard.

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; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-

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05; Renumbered from 461-110-0115, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-115-0700

Required Verification; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs:

(1) Except as provided in section (2) of this rule, all eligibility factors must be verified at initial application, when there is a change to any factor and whenever eligibility for benefits becomes questionable.

(2) If the total *countable* (see OAR 461-001-0000) liquid resources of the *financial group* (see OAR 461-110-0530) do not exceed \$1,250, verification of the value of the resources is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days.

Stat. Auth.: ORS 411.060, 414.042

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 19-1993, f. & cert. ef. 10-1-93; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-135-0725

Specific Requirements; OSIP-EPD, OSIPM-EPD

(1) To be eligible for the OSIP-EPD and OSIPM-EPD programs, an individual must:

(a) Have a disability, as defined in OAR 461-125-0370(2);

(b) Have adjusted income below the limit provided in OAR 461-155-0250(6);

(c) Have employment as defined in OAR 461-001-0035. Once found eligible, a client remains eligible under this subsection for the OSIP-EPD or OSIPM-EPD program while not working if the employer treats the client as an employee, such as when the client is absent from the job under the provisions of the Family Medical Leave Act; and

(d) Not be assumed eligible for OSIPM, as defined in OAR 461-135-0010(6).

(2) If an OSIP-EPD or OSIPM-EPD client becomes unemployed and meets all financial and non-financial eligibility requirements for another OSIP or OSIPM sub-program except for resources, the client may retain eligibility for OSIP-EPD or OSIPM-EPD for up to 12 months in order to spend down to the OSIP or OSIPM resource limit. The 12-month period begins the first of the month following the loss of employment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

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 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03; 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 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-135-0780

Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the person was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the person's and if applicable the spouse's Social Security benefits by the applicable percentage. This amount is the person's countable Social Security for purposes of the Pickle Amendment. Add that figure to any other countable income the person has, if the total is less than the OSIP income standard plus the \$20 unearned income disregard the person is Pickle eligible. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert.

ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-135-0835

Limits on Estate Claims

(1) In the BCCM, GA, GAM, OHP, OSIP, OSIPM, and QMB programs:

(a) The Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS Chapters 410, 411, and 414. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

(b) In determining the extent of the estate resources subject to the Department's claim, except as provided in subsection (c) of this section, the Department must disregard resources in an amount equal to the value of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a *qualified partnership policy* (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to Medicaid benefits received after the effective date of the Medicaid eligibility determination in which a *qualified partnership policy* was considered and approved. The amount of any Medicaid assistance incurred in a prior Medicaid eligibility period where qualified partnership policy benefits were not considered would not be subject to the estate resource disregard.

(c) There is no disregard of resources under subsection (b) of this section if the client, or the spouse of the client, at any time transferred the value of the *qualified partnership policy* excluded resource amount to another individual for less than fair market value prior to the death of the client or the client's surviving spouse, or exhausted the disregarded resource amount by purchasing things of value to the client or the client's surviving spouse while either was living.

(2) If there is a surviving spouse, the Department shall have a claim against the estate of the surviving spouse for aid paid to the surviving spouse. In addition, the Department shall have a claim against the estate of the surviving spouse for aid paid to the deceased client, but only to the extent that the surviving spouse received property or other assets from the deceased client through probate or through operation of law. If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value of the property in the surviving spouse's estate. However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under age 21, no surviving blind child of any age, and no surviving disabled child.

(3) The amount of the claim is as follows:

(a) In the GA and GAM programs, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include benefits provided under the Home and Community-Based Care Waiver program. This applies to all General Assistance programs, even those that are no longer active.

(b) In the BCCM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB programs, the amount of the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was permanently institutionalized (see OAR 461-135-0832), the claim shall include the total amount of cash and medical benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled clients, including those served by Home and Community-Based Care Waiver programs. It also includes clients covered by programs that are no longer active.

(c) In the OHP, OSIP-AB, and OSIPM-AB programs, the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was *permanently institutionalized*, the claim shall include the total amount of cash and medical benefits paid at any age. The claim shall include benefits provided under the Home and Community-Based Care Waiver program.

(d) In the OSIP, OSIPM-AB, OSIPM-AD, and OSIPM-OAA programs, the amount of the claim shall also include the total amount of medical benefits provided to clients who were age 55 to 64 on the date the medical benefits were provided if the benefits were provided after July 18, 1995. Medical benefits will be considered to have been provided to a client on the day of provision of medical services for which medical assistance payments are made.

(4) The priority for payment of claims against the estate will be as established under ORS 115.125.

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(5) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(6) Property disposal will be in accordance with OAR 461-135-0838. Stat. Auth.: ORS 410.070, 411.060, 414.042
Stats. Implemented: ORS 410.070, 411.060, 411.708, 411.795, 414.025, 414.042
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-140-0220

Determining if a Transfer of an Asset is Disqualifying

A transfer of an asset is not disqualifying if the requirements of one of the following sections are met:

(1) Except as otherwise provided in OAR 461-140-0242, the transferred item was either:

- (a) An excluded asset other than a home or real property; or
- (b) Personal property such as jewelry or furniture.

(2) The asset was sold or traded:

(a) In all programs except the Food Stamp program, for compensation equal to or greater than fair market value.

(b) In the Food Stamp program, for compensation near, equal to or greater than fair market value.

(3) The asset was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.

(4) The transfer settled a legally enforceable claim against the asset or client.

(5) The amount of the resource was equal to or less than the amount that was excluded at the *initial month* (see OAR 461-001-0000) of eligibility under OAR 461-160-0855 due to payments received under a *qualified partnership policy* (see OAR 461-001-0000).

(6) Except in the OSIP and OSIPM programs, a court ordered the transfer.

(7) In the OSIP and OSIPM programs, a court ordered the transfer and:

(a) The transfer occurs more than 36 months or 60 months before the date of request (see OAR 461-115-0030), whichever is applicable under OAR 461-140-0210(5); or

(b) There is an institutionalized spouse, and — after performing the calculations required in OAR 461-160-0580(2) — the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(2)(f).

(8) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the asset.

(9) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000), the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(10) In the OSIP and OSIPM programs, the client is in a standard living arrangement (see OAR 461-001-0000).

(11) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000):

(a) The asset is an annuity purchased from January 1, 2006 through June 30, 2006, and the client or the spouse of the client is the annuitant.

(b) The asset is an annuity purchased on or after July 1, 2006, and the annuity meets the requirements of OAR 461-145-0022(10).

Stat. Auth.: ORS 410.070, 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 410.070, 411.060, 411.070, 411.708, 411.816, 414.025, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 2-2002(Temp), f. & cert. ef. 2-26-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-145-0030

Bank Account

(1) As used in this rule, a bank account includes a money market account and an account in a *financial institution* (see OAR 461-001-0000), except that accounts in financial institutions for stocks, bonds, and certificates of deposit (CDs) are covered in OAR 461-145-0520.

(2) Money in a *bank account* available to one or more members of the financial group (see OAR 461-110-0530) is counted as a resource in accordance with OAR 461-140-0020, unless it is excluded under this rule or another rule in this chapter of rules.

(3) In each of the following situations, money in a bank account is excluded as a resource:

(a) An approved account if excluded under OAR 461-145-0025.

(b) A burial fund if excluded under OAR 461-145-0040.

(c) A designated bank account for an OSIP-IC and OSIPM-IC client

if:

(A) The account is designated to receive program benefits by direct deposit through electronic funds transfer; and

(B) The benefit funds are not commingled with other assets of the client.

(d) Funds from excluded income if excluded as a resource under OAR 461-140-0070.

(e) An Individual Education Account if excluded under OAR 461-145-0265.

(f) Money for a plan for self-support if excluded under OAR 461-145-0405.

(g) Proceeds from the sale of a home if excluded as a resource under OAR 461-145-0460.

(4) In the OSIP, OSIPM, and QMB programs, interest and dividends earned on funds in a bank account are excluded as income.

(5) In all programs except the OSIP, OSIPM, and QMB programs, interest and dividends earned on funds in a *bank account* are counted as unearned income, unless the account is excluded as a resource under section (3) of this rule or under another rule in this chapter of rules.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-145-0108

Dividends, Interest and Royalties

(1) In the OSIP, OSIPM, and QMB programs, dividends and interest income is treated as unearned income except as follows:

(a) Interest income and dividends earned on funds in a bank account are excluded as income (see OAR 461-145-0030).

(b) Interest income and dividends from a trust described in OAR 461-145-0540(9) are excluded.

(2) In all programs except the OSIP, OSIPM, and QMB programs:

(a) Dividends are counted as unearned income.

(b) Interest income is counted as unearned income.

(3) Royalties are counted as unearned income, except that royalties are counted as earned income if the client is actively engaged in the activity from which the royalties are accrued.

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.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-145-0220

Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except FS, GA, GAM, OSIP, OSIPM, and QMB, property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group.

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the FS, GA, GAM, OSIP, OSIPM, and QMB programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an *initial month* (see OAR 461-001-0000) of long-term care or waived services on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The value of a home is excluded if the client or the spouse of the client occupies the home and the equity in the home is \$500,000 or less.

(C) The home is countable as a resource if the client has equity in the home of more than \$500,000, unless one of the following requirements is met:

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- (i) The spouse of the client occupies the home.
- (ii) The child of the client occupies the home.
- (iii) The client is legally unable to convert the equity value in the home to cash.

(iv) The home equity is excluded under OAR 461-145-0250.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the Food Stamp program only, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the Food Stamp program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-145-0580

Veterans' Benefits

(1) Veterans' benefits, other than the aid-and-attendance, educational, and training and rehabilitation program benefits, are treated as follows:

(a) Except as specified in sections (2) and (5) of this rule, monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Veterans' benefits that include aid-and-attendance payments are treated as follows:

(a) For OSIP and OSIPM clients receiving long-term care or Title XIX waived services:

(A) When determining eligibility, the entire veterans' benefit payment is excluded.

(B) When calculating monthly benefits or patient liability, the entire veterans' benefit payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waived care provided to the client during the months covered by the payment. A client's failure to reimburse the Department in this instance constitutes an overpayment of public assistance in accordance with OAR 461-195-0501 and 461-195-0521 and ORS 411.640 and 411.690. Any excess veterans' benefit payment made to the client is counted as lump-sum or periodic income.

(b) For all other clients not covered under subsection (a) of this section:

(A) In the FS, OHP, and QMB programs, the aid-and-attendance payments are excluded. The remaining benefits are counted unless excluded under another rule or another section of this rule.

(B) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client as an overpayment of public assistance pursuant to OAR 461-195-0501, 461-195-0521, and 461-195-0551. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income (see OAR 461-140-0110 and 461-140-0120).

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated:

(a) In the Food Stamp program, as earned income (see OAR 461-145-0130).

(b) In all other programs, as unearned income.

(5) The following payments are excluded:

(a) Payments under 38 U.S.C. 1805 to biological children of Vietnam veterans who are born with spina bifida.

(b) Payments under 38 U.S.C. 1815 to children with birth defects born to female Vietnam veterans.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.620, 411.640, 411.690, 411.700, 411.816, 414.042, 418.100

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 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-150-0047

Budgeting Income for Cases In the Simplified Reporting System (SRS)

(1) Prospective eligibility and budgeting are used for initial and ongoing months in SRS.

(2) Income is budgeted so that the anticipated amount is the same for each month. To do this, the type of income (stable, variable, annualized) the client anticipates receiving must be determined and the monthly income is then determined using the appropriate administrative rules on annualizing, averaging or converting income.

(3) Income reported on the interim change report is used according to section (4) of this rule to determine eligibility and benefit level.

(4) Income for the fifth month of the certification period (see OAR 461-001-0000) is used to determine the income for the seventh and following months in the certification period if the client believes it will remain the same throughout the period. If the client believes it will not remain the same, the client and the case manager jointly estimate the income for those months. For clients who have had their self employment income annualized, no change is made unless there has been a substantial change in their business.

Stat. Auth.: 411.816

Stats. Implemented: 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived nonstandard living arrangement (see OAR 461-001-0000), the countable income limit standard is 300 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.]

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(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 2007 federal poverty level for a family of one. This 250 percent limit equals \$2,128 per month or \$25,536 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

461-155-0270

Room and Board and Personal Allowance Standards for Waivered NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in a *waivered nonstandard living arrangement* (see OAR 461-001-0000), the OSIP/OSIPM Income Standard is allocated as follows:

(1) Room and board allowance is \$494.70.

(2) Personal needs allowance: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-155-0300

Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$392 for total shelter or \$236 for housing costs only.

(b) Living with others, \$182 for total shelter or \$109 for housing costs only.

(2) For a couple:

(a) Living alone, \$485 for total shelter or \$291 for housing costs only.

(b) Living with others, \$180 for total shelter or \$108 for housing costs only.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: 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 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94;

AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, 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 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0040

Dependent Care Costs; Deduction and Coverage

(1) In the EXT and MAF programs, the cost of child care for a *dependent child* (see OAR 461-001-0000) may be deducted from the income of a client in accordance with the following:

(a) The *dependent child* must live with the filing group;

(b) The provider of child care may not be in the filing group;

(c) The provider of child care may not be the *parent* (see OAR 461-001-0000) of the dependent child; and

(d) The amount of the deduction is determined as follows:

(A) In the EXT program, the amount is limited to the cost necessary for the caretaker relative (see OAR 461-001-0000) to maintain employment, including time required to commute, work, and take a meal break.

(B) In the MAF program, as set out in OAR 461-160-0190.

(2) In the FS program, dependent care is deductible (see OAR 461-160-0430) when all of the following are true:

(a) The dependent is a member of the filing group and is in the care, control, and custody of an individual in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent of the dependent.

(c) The dependent care is necessary because the client is working, commuting, on a meal break, in training, participating in pre-employment education, or participating in an OFSET case plan (see OAR 461-001-0020).

(3) In the ERDC-BAS, ERDC-SBG, REF, and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if all of the following requirements are met.

(a) In the ERDC-BAS, REF, and TANF programs, dependent child care is necessary for the working client to maintain employment, including time required to work, commute, or take a meal break. For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(b) In the ERDC-SBG program, dependent child care is necessary for a client to continue his or her education, training, or employment and the client is attending class, studying, working, commuting, or is on a meal break.

(4) In the ERDC, JOBS, REF, and TANF programs, the cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children.

(5) Child care is not covered in the ERDC-BAS, REF, and TANF programs if the nature of the work of the caretaker does not make it necessary for a person other than the caretaker (see OAR 461-001-0000) to provide the care. Child care is not covered during a period of time when:

(a) The caretaker works at home, or is self-employed, and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) The caretaker provides child care in a residence; or

(c) The caretaker works for a provider of child care in a residence that is not certified under OAR 414-350-0000 and following.

(6) In the JOBS and REF programs, the cost of child care may be covered while the care is necessary to enable the client to participate in a case plan (see OAR 461-190-0211).

(7) In the ERDC, JOBS, JOBS Plus, REF, and TANF programs, the cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:

(a) The dependent child:

(A) In the ERDC program, is a member of the benefit group (see OAR 461-110-0750) and is in the care, control, and custody of an individual in the group.

(B) In the JOBS, JOBS Plus, REF, and TANF programs, lives with the filing group.

(b) The provider of child care is not in the filing group.

(c) The provider of child care is not the parent of the dependent.

(8) Coverage of the cost of dependent care is subject to the requirements in Chapter 461 of the Oregon Administrative Rules, including OAR 461-120-0510(4), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 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 20-1992, f. 7-31-

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92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; 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 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0055

Medical Costs That are Deductible; FS, GA, GAM, OSIP, OSIPM

(1) This rule applies only to FS clients who are elderly (see OAR 461-001-0015) or who have a disability (see OAR 461-001-0015), and to clients in the GA, GAM, OSIP, and OSIPM programs.

(2) Medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(3) Health and hospitalization insurance premiums and coinsurance are deductible. In the FS and OSIPM programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(4) In the FS and OSIPM programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while an individual is:

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(5) The cost of a medical service is deductible if it is---

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the Food Stamp program, a medical necessity approved by the Department.

(6) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the FS program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for an individual who was a member of the household group (see OAR 461-110-0210) immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for an individual who was a member of the household group immediately prior to death if the remaining household members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper, or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person FS benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey) that have received special training to provide a service to the client. This deduction includes the cost of acquiring these animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; 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 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0410

Use of Income and Income Deductions When There Are Ineligible or Disqualified Group Members; FS

When a member of the *financial group* (see OAR 461-110-0530) is not in the *need group* (see OAR 461-110-0630), benefits in the Food Stamp program are calculated as follows:

(1) If the member is a qualified non-citizen (defined in OAR 461-120-0125(1)(a)-(g)) who does not meet the alien status requirements, the following procedure is used:

(a) Benefits are calculated as if the qualified non-citizen were eligible.

(b) Benefits are then calculated as if the qualified non-citizen were not a member of the *filing group* (see OAR 461-110-0370). Any income received by another member of the filing group from the non-citizen is counted as income of the financial group. No expenses paid by the non-citizen are deducted from gross income.

(c) The household's benefits are the lesser of the amounts calculated in subsections (a) and (b) of this section.

(2) The process described in sections (3) and (4) of this rule is used if the member:

(a) Is a qualified non-citizen (as defined in OAR 461-120-0125(1)(i)) who does not meet the alien status requirements of OAR 461-120-0110;

(b) Is a non-citizen but not a qualified non-citizen;

(c) Is unwilling to disclose his or her alien status; or

(d) Is disqualified for failing to obtain or provide a SSN.

(3) If the member is in a group described in section (2) of this rule:

(a) The member's *countable income* is prorated among the people in the financial group.

(b) The pro rata share of each individual not in the need group is excluded.

(c) The rest of the prorated income is countable income for the financial group.

(4) An ineligible or disqualified member covered by section (2) of this rule is entitled to all income deductions for which the member qualifies. When paid by these members, or billed to these members and unpaid, deductions for shelter, child support, and dependent care, are calculated as follows:

(a) The deductions, except deductions for the utility standard, are prorated among the members of the financial group.

(b) The prorated share of the members of the need group is deducted.

(c) The deduction for the utility standard is made in accordance with OAR 461-160-0420(4).

(5) The countable income of the following financial group members, subject to allowable deductions, is used to determine benefits:

(a) A client who is disqualified for failure to comply with the requirements of the OFSET program or because of an intentional program violation.

(b) A client who is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) Violating a condition of probation or parole imposed under a federal or state law.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; 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 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; 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 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 6-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0415

Medical Deduction; FS

(1) This rule explains how to calculate the deduction for medical costs in the Food Stamp program allowed under OAR 461-160-0055 when incurred by an elderly (see OAR 461-001-0015) member of a household or by a household member with a *disability* (see OAR 461-001-0015).

(2) For each *certification period* (see OAR 461-001-0000), the Department estimates the amount of the client's medical deduction and apportions the amount evenly among the months in the certification period. For medical costs payable during the month of certification, the client may choose to deduct each cost in the month of certification or to average the cost over the certification period.

(3) For medical costs that were not anticipated when the deduction was estimated but are incurred and reported to the Department during the *certification period*, the client may choose to deduct each cost:

(a) In the month after the cost is reported; or

(b) By averaging the cost over the period from the month after the cost was reported to the end of the certification period.

(4) If the client is billed in the last month of a certification period for a medical cost that is due after the certification period, and the client does not pay the bill during the certification period, the cost may be used to compute the deduction in the next certification period.

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(5) Medical costs paid with a credit card are treated the same as if the cost were paid in full. The ongoing credit card payments are not an allowable medical deduction.

(6) A medical cost is not deductible in any of the following situations:

(a) The client reports a paid medical cost in the last month of the re-termination period, but reports this cost after their benefits for that month have already been issued.

(b) The medical cost is past due, is an amount carried forward from a previous billing period, or has been paid by the client in a previous certification period.

(c) The client and creditor have agreed on a monthly payment amount, but the client defaults on the agreement.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; Suspended by AFS 31-2000(Temp), f. & cert. ef. 12-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0550

Income Deductions; GA, GAM, QMB and Non-SSI OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD) in the Community

(1) This rule is used to determine adjusted income (see OAR 461-001-0000) for all GA, GAM, and QMB clients and for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Do not receive SSI; and

(c) Do not receive Title XIX waived services.

(2) To determine adjusted income for clients described in section (1) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, income is allocated from an ineligible spouse of the client to each ineligible child of the couple. If the remaining countable income of the ineligible spouse is equal to or less than the difference between the SSI FBR (Federal Benefit Rate) for an eligible couple and the FBR for an eligible individual (\$319 in 2008), there is no income to deem to the eligible individual. In this situation, to determine eligibility, the individual's own countable income is compared to the FBR for an individual.

(B) When a child is applying:

(i) Income from ineligible parents is first allocated to each ineligible child in the household.

(ii) Second, the remaining income is reduced as provided in subsections (b) to (e) of this section.

(iii) Third, the remaining income is reduced by the SSI FBR of the:

(I) Couple if both parents live with the child; or

(II) Individual if only one ineligible parent lives with the child.

(iv) Fourth, the remainder is deemed equally to each child applicant in the household.

(C) The maximum amount of the allocation under paragraphs (A) and (B) of this subsection is the difference between the countable income of the couple and the individual SSI FBR. The FBR is \$319 during 2008. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other countable income of each ineligible child.

(D) For purposes of this rule, "ineligible" refers to an individual who does not receive either SSI or TANF cash benefits.

(b) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(c) One standard earned income deduction of:

(A) \$65 for GA, GAM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB clients who are not blind; or

(B) \$85 for GA, GAM, OSIP-AB, OSIPM-AB, and QMB clients who are blind.

(d) An income deduction for documented impairment-related work costs for:

(A) OSIP-AB, OSIP-AD, OSIPM-AB and OSIPM-AD clients; and

(B) QMB clients under age 65.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs, and QMB clients less than the age of 65.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002,

f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0580

Excluded Resource; Community Spouse Provision (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

(1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who has applied for benefits because he or she is in or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIP describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$104,400.

(B) \$20,880 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph (D) is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIP resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$104,400) plus the OSIP resource standard for one person.

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(B) \$20,880 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIP resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.700

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 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; 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 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; 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 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in section (3) of this rule as explained in subsections (3)(a) through (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waived services.

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(b) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-145-0405.

(c) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,712 is added to the amount over \$514 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,610, whichever is less, is the maintenance needs allowance. For the purpose of

this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The gross income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance is deducted as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,712. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,712.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(g) In the OSIPM program, medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-160-0855

Excluded Resources for Payments Received Under a Qualified Partnership Policy; OSIPM

In the OSIPM program:

(1) When a client in a non-standard living arrangement (see OAR 461-001-0000) applies for Medical benefits, the Department excludes as a resource an amount equal to the insurance payments received under a qual-

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ified partnership policy (see OAR 461-001-0000) as of the initial month (see OAR 461-001-0000) of eligibility.

(2) The exclusion in section (1) of this rule:

(a) Does not apply when home equity exceeds the limit in OAR 461-145-0220(2)(a); and

(b) Applies to all other resources (not covered by subsection (a) of this section), notwithstanding other rules in this chapter of rules that designate the resources as countable.

(3) For the amount of resources excluded under this rule, the Department will not establish a claim against the deceased person's estate in accordance with OAR 461-135-0835.

Stat. Auth.: ORS 410.070, 411.060, 411.070, 414.042

Stats Implemented: ORS 410.070, 411.060, 411.070, 411.708, 414.025, 414.042

Hist.: SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-170-0130

Acting on Reported Changes; EXT, MAA, MAF, OHP, OSIPM, QMB, SAC

(1) When an EXT, MAA, MAF, OHP, OSIPM, QMB, or SAC client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or end medical benefits, the Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule prior to reducing or ending medical benefits.

(2) If the Department needs additional information to act on the timely reported change, members of the *benefit group* (see OAR 461-110-0750) remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060, 414.042

Stats. Implemented: ORS 409.050, 411.060, 414.042

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 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 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-175-0270

Notice Situation; APR, MRS, SRS or TBA

(1) When a benefit group (see OAR 461-110-0750) is entered into the MRS (see OAR 461-170-0100), the Department sends a basic decision notice (see OAR 461-001-0000) for the GA, GAM, OSIP, OSIPM, and QMB programs and a continuing benefit decision notice (see OAR 461-001-0000) for all other programs.

(2) When the Department takes action on information reported on the monthly change report, interim change report, or periodic review, the Department sends a continuing benefit decision notice for clients in the ERDC, FS, MAA, MAF, OSIP, OSIPM, QMB, REF, REFM, and TANF programs. Except in the ERDC and FS programs, the notice includes:

(a) The amount of income used to determine the benefits or ineligibility; and

(b) The amount of each deduction; or

(c) The reported nonfinancial changes that affect eligibility.

(3) For all changes not reported on the monthly change report, interim change report or periodic review, the Department sends a timely continuing benefit decision notice.

(4) For a benefit group in the MRS, when ending TANF benefits because of information acquired through the information match with the Child Support program, the Department sends a continuing benefit decision notice.

(5) When the Department changes the reporting system from one reporting system to another reporting system, the Department provides a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 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 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-180-0085

Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OHP, OSIPM, SAC

In the EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group (see OAR 461-110-0750) remain eligible from the date the review is initiated until the Department determines

their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060, 414.042

Stats. Implemented: ORS 409.050, 411.060, 414.042

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 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 14-2007, f. 12-31-07, cert. ef. 1-1-08

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.

(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 program for a month for which the client receives a retroactive SSI lump-sum payment.

(f) A JOBS 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 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, 418.100

Stats. Implemented: ORS 411.060, 411.620, 411.640, 411.690, 411.816, 418.100

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

ADMINISTRATIVE RULES

461-195-0511

Child Care Overpayments

(1) This rule defines overpayments in the Department's child care programs and explains when clients and providers are liable for an overpayment.

(2) Except as provided otherwise in section (3) of this rule, a child care overpayment is any of the following:

(a) A payment for child care made by the Department to, or on behalf of, a client that is paid to an ineligible provider or exceeds the amount authorized by law for the care provided.

(b) A payment designated by the Department for child care services which is spent by a client for some other purpose not approved by the Department and not considered a basic requirement under standards adopted by the Department pursuant to ORS 411.070.

(c) A misappropriated child care payment when a client cashes and retains the proceeds of a check from the Department on which the client is not the payee and the check has not been lawfully endorsed or assigned to the client.

(3) It is not a child care overpayment if any of the following subsections apply:

(a) A client fails to make a required report of a change in income during a reporting period, other than the changes covered in OAR 461-170-0015.

(b) The total due and paid to two or more providers exceeds the monthly limit the Department may pay on behalf of the client. The exception provided by this subsection does not apply if:

(A) Two or more providers are paid at the full-time rate; or

(B) One of the providers provides child care under a contract with the Department.

(c) A client unintentionally provides an inaccurate estimate of prospective income or other information.

(d) A client would otherwise be eligible for a payment and provides inaccurate information due to an aspect of a documented disability of the client.

(4) A child care payment is a client overpayment if made for care provided when a client:

(a) Was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 as well as 461-190-0151 and following);

(b) Was not eligible for child care benefits;

(c) Has received and spent the payment intended for child care assistance for some other purpose not approved by the Department and not considered a basic requirement under standards adopted by the Department pursuant to ORS 411.070; or

(d) Misappropriated the child care payment by cashing and retaining the proceeds of a check from the Department on which the client is not the payee and the check has not been lawfully endorsed or assigned to the client.

(5) A child care overpayment occurring after November 30, 1999, not caused by the client or the provider is collectible as follows:

(a) The provider is liable for a provider overpayment made on behalf of a client eligible for child care payments.

(b) The client is liable for an overpayment if the client was not eligible for the payment.

(6) A client is liable for a client overpayment, and a provider is liable for an overpayment caused by the provider. The client and provider are jointly and severally liable for an overpayment caused by both. In the case of an alleged provider overpayment, a provider's failure to provide contemporaneous records of care provided creates a rebuttable presumption that the care was not provided.

(7) The Department may recover a child care overpayment for which a provider is liable by reducing up to 100 percent any future child care payments for which the provider bills the Department.

(8) An adult who cosigned an application with a minor provider applicant is responsible to repay an overpayment incurred by the minor provider.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.122, 411.620, 411.640, 411.690, 418.100

Hist.: AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; 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 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

461-195-0521

Special Rules for Calculation of Overpayments

This rule contains special rules for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reduce benefits, there is an overpayment for the amount of support the client received directly that should have been used to reduce benefits. This

section does not apply if the support received makes the client ineligible for benefits.

(2) When an overpayment occurs due to the failure of a person to reimburse the Department, when required by law, for assistance (including cash medical support) furnished for a need for which that person is compensated by another source, the liability of such person shall be limited to the lesser of the following amounts:

(a) The amount of the payment from the Department; or

(b) The amount by which the aggregate sum of all payments exceeds the maximum amount payable for such need under Department rules.

(3) If a client failed to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client failed to meet a requirement of the OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(4) If the benefit group was categorically eligible for food stamps, there is no Food Stamp overpayment based on resources, Social Security number, or residency. A Food Stamp overpayment may exist based on incorrect income.

(a) For a group found eligible for food stamps under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food stamps. Benefit groups of one or two persons would be entitled to at least \$10 in food stamp benefits.

(b) For a group found eligible for food stamps only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185% Federal Poverty Level, the group is no longer categorically eligible and the overpayment is the food stamp benefit amount.

(5) When a client receives benefits in the OSIPM program and does not pay their share of the cost of service (client liability), the overpayment consists of all payments made by the Department on behalf of the client, including but not limited to capitation payments, Medicare Part D payments, all medical expenses for that period, waived service payments (including home-delivered meals and non-medical transportation), Medicare Buy-In (if not concurrently eligible for a Medicare Savings Program such as QMB), and mileage reimbursement.

(6) Credit against an overpayment is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the FS program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(7) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(8) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department were received by the client in equal amounts during the months identified in the report.

(9) Earned income deductions are applied in calculating an overpayment except as follows:

(a) In the MAA, MAF, REF, and TANF programs, no earned income deduction (see OAR 461-160-0160 and 461-160-0190) is allowed for a client who, without good cause (see section (9) of this rule), did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) In the FS program, no deduction is applied to earned income not timely reported.

(10) For the purposes of section (8) of this rule, good cause means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(11) When support has been retained by the Department.

ADMINISTRATIVE RULES

(a) In the TANF program, the amount of support (other than cash medical support) retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(b) In the medical programs, the amount of the cash medical support retained by the Department each month is excluded income and not used to determine eligibility for medical benefits. When a client has incurred a medical overpayment, it is offset by the amount of the cash medical support retained by the Department during each month of the overpayment.

(12) When a client has incurred an overpayment due to both an administrative error (see OAR 461-195-0501) and a client error (see OAR 461-195-0501) in the same month, the client error overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error.

(13) In the medical programs:

(a) There is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment is caused by administrative error (see OAR 461-195-0501), there is no corresponding overpayment if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM, or SAC. In such cases, the overpaid cash benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM, or SAC and are not used in determining the client's spend down (see OAR 461-160-0080).

Stat. Auth.: ORS 411.060, 411.660, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08

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 will reduce current benefits to collect an overpayment only as follows:

(a) For overpayments in REF and TANF, the Department will:

(A) Allow only half of the 50 percent earned income deduction described in OAR 461-160-0160.

(B) Reduce the benefit payment for REF and TANF, in an amount equal to ten percent of the benefit group's total benefit requirement 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.

(b) The Department may recover an overpayment in the GA, GAM, or OSIP program by reducing cash benefit payments by the lesser of the following:

(A) The total overpayment amount.

(B) The total benefit amount.

(C) Ten percent of the client's total benefit requirement at the standard of need.

(c) Unless the Department and the client agree to a repayment plan and the filing group meets the terms of the plan, the Department will collect an overpayment from a liable filing group participating in the Food Stamp program by reducing the benefit group's food stamp allotment each month as follows:

(A) For an overpayment caused by client error or administrative error, ten 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, 20 percent of the group's monthly entitlement or \$20 a month, whichever is greater.

(3) For overpayment of child care benefits, the Department will 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 will offset 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 chapter 663, Oregon Laws 2003. Upon issuance of the warrant, the Department may issue a notice of garnishment in accordance with ORS 18.854.

(5) A confession of judgement is used in the case of a client error overpayment. The Department will not file a confession of judgement while the client receives public assistance and will file one only if the client has refused to agree to or has defaulted on a repayment plan.

(6) The Department will 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

Stats. Implemented: ORS 18.854, 411.630, 411.635, 411.660

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

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

Adm. Order No.: SSP 15-2007(Temp)

Filed with Sec. of State: 12-31-2007

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Rules Amended: 461-001-0000, 461-155-0320, 461-195-0501, 461-195-0551

Subject: OAR 461-001-0000 about definitions for terms used in OAR Chapter 461 is being amended to add definitions for "disability" in the REF (Refugee), SFPSS (State Family Pre-SSI/SSDI), TA-DVS (Temporary Assistance for Domestic Violence Survivors), and TANF programs (for purposes other than determining eligibility); "family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs; and "family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs. This amendment continues the temporary amendment which was effective October 1, 2007 in addition to the permanent rule amendments completed on January 1, 2008.

OAR 461-155-0320 State Family Pre-SSI/SSDI (SFPSS) is being amended to increase the payment standards in the SFPSS program. This increase is a result of an increase in social security benefits on January 1, 2008.

OAR 461-195-0501 is being amended to state how the terms "overpayment" and "client error" are defined in the SFPSS (State Family Pre-SSI/SSDI) program. This amendment continues the temporary amendment which was effective October 1, 2007 in addition to the permanent rule amendments completed on January 1, 2008.

OAR 461-195-0551 about methods of recovering overpayments in medical, public assistance and food stamp programs, is being amended to state when the Department may reduce current benefits in the State Family Pre-SSI/SSDI (SFPSS) program to collect an overpayment. This amendment continues the temporary amendment which was effective October 1, 2007 in addition to the permanent rule amendments completed on January 1, 2008.

Rules Coordinator: Annette Tesch—(503) 945-6067

ADMINISTRATIVE RULES

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 SDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means a caretaker who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(20) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(21) "Department" means the Department of Human Services (DHS).

(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.

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(d) Using coercive or controlling behavior.

(25) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(26) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(27) "Equity value" means fair market value minus encumbrances.

(28) "Fair market value" means the amount an item is worth on the open market.

(29) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(30) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(31) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(32) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(33) "Income-producing property" means any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(34) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(35) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(36) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(37) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(38) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(39) "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time.

This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(40) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(41) "Marriage" means the union of a man and a woman who are legally married.

(42) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(43) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(44) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care Facilities.

(C) Drug or Alcohol Residential Treatment Facilities.

(D) Homeless or Domestic Violence Shelters.

(E) Lodging house if paying for room and board.

(F) Correctional facilities.

(G) Medical institutions.

(45) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(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:

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(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

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.]

[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

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.

(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 unredacted 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 hearing 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

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

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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

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

Adm. Order No.: SSP 16-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 461-025-0350, 461-175-0200, 461-175-0340

Subject: OAR 461-025-0350 about withdrawals of hearing requests is being amended to implement HB 2423, 2007 Or. Laws, ch. 288 and adjust the process that applies to a client withdrawal from contested case. This amendment specifies when an individual may withdraw a request for hearing, the actions taken after a withdrawal occurs, and how an individual may cancel a withdrawal of a request for hearing.

OAR 461-175-0200 about the types of decision notices that are required in certain circumstances is being amended to implement HB 2423, 2007 Or. Laws, ch. 288, and restate the Department's policy about amending a decision notice, when a decision notice becomes void, and when no decision notice is needed. This 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 461-175-0340 about the type of decision notice that is required when an individual makes a voluntary decision to withdraw the individual's application or make a voluntary withdrawal or reduction in benefit amount is being amended to implement HB 2423, 2007 Or. Laws, ch. 288 and clarify Department policy when an individual notifies the Department that the individual wishes to withdraw his or her application for benefits or wishes to reduce or to no longer receive benefits. This amendment specifies that the Department sends a basic decision when a client withdraws a request for benefits. Under this amendment, to voluntarily reduce or close benefits, the individual completes a voluntary agreement. This amendment also specifies that voluntary agreement is a final order and states the grounds and time limits to set aside the agreement.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-025-0350

Withdrawals of Hearing Requests

(1) A *claimant* (see OAR 461-025-0305) may withdraw a request for hearing (see OAR 461-025-0305) at any time before a final order has been issued on the contested case.

(a) In the DFSP program, the withdrawal of a *request for hearing* must be in writing.

(b) In all programs other than the DFSP program, a claimant may withdraw a request for hearing orally or in writing.

(2) The Department or the Office of Administrative Hearings will send an order confirming the withdrawal of a hearing request to the claimant's last known address. The claimant may cancel the withdrawal in writing if received by the Department hearing representative up to the tenth work day following the date such an order is served.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100, 2007 OL Ch. 288

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the FS program:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is sent to cases that are recertified early to align the FS certification end date with the end date of TANF or medical benefits.

(b) A basic decision notice is sent for all other actions on applications for assistance.

(3) In the JOBS program:

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(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the MAA, MAF, REF, REFM, and TANF programs, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(7) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement (see OAR 461-175-0340) on a Department form that describes the agreement as a final order.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100, 2007 OL Ch. 288
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

461-175-0340

Notice Situation; Voluntary Action

(1) When a filing group states they wish to withdraw their application for benefits, a basic decision notice (see OAR 461-001-0000) is sent.

(2) The Department may reduce or terminate benefits to an individual if the individual completes a voluntary agreement on a Department form used for this purpose. The Department provides the individual with a copy of the completed agreement and no other notice is required. The individual may request a hearing to set aside this agreement on the grounds of fraud or duress, subject to the time limits for hearing requests in OAR 461-025-0310.

(3) In the FS program, a timely continuing benefit decision notice is sent if the benefit group returns a signed Change Report form with information that requires a reduction or closure of benefits.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100, OL Ch. 288
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08

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

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

Adm. Order No.: DMAP 27-2007(Temp)

Filed with Sec. of State: 12-20-2007

Certified to be Effective: 12-20-07 thru 5-15-08

Notice Publication Date:

Rules Amended: 410-125-0080, 410-130-0200, 410-130-0580

Subject: Subject Matter: The Oregon Health Plan (OHP-Division 141) Administrative rules govern payment for the Division of Medical Assistance Programs' payments for services provided to clients.

Coverage included in the January 1, 2008, Biennial List is bariatric surgery, which due to the extensive Health Services Commission guidelines, requires prior authorization. Based upon the October 31, 2007, CMS approval of the Biennial List, DMAP temporarily amends OAR 410-125-0080 and 410-130-0200 to specify the prior authorization required for this new coverage of bariatric surgery effective with the new Biennial List effective January 1, 2008.

DMAP temporarily amends the Medical-Surgical program administrative rule OAR 410-130-0580 to reflect the CMS approval of the revised Sterilization and Hysterectomy forms, and the resulting administrative requirements.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0080

Inpatient Services

(1) Elective (not urgent or emergent) admission:

(a) Fully Capitated Health Plan (FCHP) and Mental Health Organization (MHO) clients — contact the client's MHO or FCHP (phone number is on the client's Medical Care Identification). The health plan may have different prior authorization requirements than the Division of Medical Assistance Programs (DMAP);

(b) Medicare Clients — DMAP does not require prior authorization for inpatient services provided to clients with Medicare Part A or B coverage;

(c) For DMAP clients covered by the Oregon Health Plan (OHP) Plus Benefit Package:

(A) Hospital admissions for any of the medical and surgical procedures shown in **Table 125-0080-1** require prior authorization, unless they are urgent or emergent;

(B) For prior authorization contact the DMAP contracted Quality Improvement Organization (QIO) unless otherwise indicated in **Table 125-0080-1**;

(d) DMAP clients covered by the OHP Standard Benefit Package have a limited hospital benefit package. Specific coverage and prior authorization requirements are listed in the DMAP Hospital Services Supplemental Information or at DMAP Web site <http://www.dhs.state.or.us/healthplan/guides/hospital> (referenced in OAR 410-125-0047).

(2) Transplant services:

(a) Complete rules for transplant services are in the DMAP Transplant Services rules (OAR 410 division 124);

(b) Clients are eligible for transplants covered by the Health Services Commission's Prioritized List of Health Services. See the Transplant Services rules for criteria. For clients enrolled in a FCHP, contact the plan for authorization. Clients not enrolled in an FCHP, contact the DMAP Medical Director's office.

(3) Out-of-state non-contiguous hospitals:

(a) All non-emergent/non-urgent services provided by hospitals more than 75 miles from the Oregon border require prior authorization;

(b) Contact the DMAP Medical Director's office for authorization for clients not enrolled in a Prepaid Health Plan (PHP). For clients enrolled in a PHP, contact the plan.

(4) Out-of-state contiguous hospitals: services provided by contiguous-area hospitals, less than 75 miles from the Oregon border, are prior authorized following the same rules and procedures as in-state providers.

(5) Transfers to another hospital:

(a) Transfers for the purpose of providing a service listed in **Table 125-0080-1**, e.g., inpatient physical rehabilitation care, require prior authorization — contact the DMAP contracted QIO;

(b) Transfers to a skilled nursing facility, intermediate care facility or swing bed — contact Seniors and People with Disabilities (SPD). SPD

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reimburses nursing facilities and swing beds through contracts with the facilities. For FCHP clients — transfers require authorization and payment (for first 20 days) from the FCHP;

(c) Transfers to the same or lesser level of inpatient care — DMAP will cover transfers, including back transfers, which are primarily for the purpose of locating the patient closer to home and family, when the transfer is expected to result in significant social/psychological benefit to the patient:

(A) The assessment of significant benefit shall be based on the amount of continued care the patient is expected to need (at least seven days) and the extent to which the transfer locates the patient closer to familial support;

(B) Transfers not meeting these guidelines may be denied on the basis of post-payment review;

(d) Exceptions:

(A) Emergency transfers do not require prior authorization;

(B) In state or contiguous non-emergency transfers for the purpose of providing care which is unavailable in the transferring hospital do not require prior authorization unless the planned service is listed in Table 125-0080-1 of this rule;

(C) All non-urgent transfers to out-of-state non-contiguous hospitals require prior authorization.

(6) Dental procedures provided in a hospital setting:

(a) DMAP will reimburse for hospital services when covered dental services are provided in a hospital setting for clients not enrolled in a FCHP, when a hospital setting is medically appropriate;

(b) For prior authorization for fee-for-service clients, contact the DMAP Dental Services Program coordinator;

(c) For clients enrolled in a FCHP, contact the client's FCHP;

(d) Emergency dental services do not require prior authorization.

(7) Prior notification is required for the following radiology tests: MRI, MRA, CT, CTA, and SPECT scans:

(a) Providers ordering these procedures must submit a prior notification form to DMAP prior to the performance of the tests;

(b) Refer to OAR 410-130-0200, **Table 130-0200-2**, for radiology test codes requiring prior notification;

(c) Refer to the Medical-Surgical Supplemental Information for instructions and forms.

(8) Prior notification is not required when these tests are performed during an emergency department visit or an inpatient stay.

(9) **Table 125-0080-1**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 11-1983, f. 3-8-83, ef. 4-1-83; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 22-1985, f. 4-23-85, ef. 6-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 45-1989, f. & cert. ef. 8-21-89; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0190; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 7-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 9-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08

410-130-0200

Prior Authorization/Prior Notification

(1) Prior Authorization (PA):

(a) PA for services provided to clients enrolled in a prepaid health plan (PHP) must be obtained from the appropriate PHP. Contact the PHP for their PA requirements and billing instructions.

(b) PA is not required for services covered by Medicare to clients who have both Medicare and Medical Assistance Program coverage. However, PA is required for most transplants, even if they are covered by Medicare.

(c) PA is not required for kidney and cornea transplants unless they are performed out-of-state.

(d) PA must be obtained from the Division of Medical Assistance Program's (DMAP) Transplant Coordinator for transplants and non-emergent, non-urgent out-of-state services. Refer to the DMAP Transplant Services rules (chapter 410, division 124) for further information on transplants and refer to the DMAP General Rules (chapter 410, division 120) for further information concerning out-of-state services.

(e) PA must be obtained from the Department of Human Services (DHS) Medically Fragile Children's Unit (MFCU) for services provided to MFCU clients.

(f) PA for services provided to clients enrolled in the fee-for-service (FFS) High Risk Medical Case Managed program must be obtained from the Case Management Contractor shown on the client's Medical Care ID. See the Medical-Surgical Services Supplemental Information guide for details.

(g) PA is required for all procedure codes listed in **Table 130-0200-1** in this rule. PA for these procedures must be obtained from the Oregon Medical Professional Review Organization (OMPRO) regardless of the setting they are performed in. A second opinion may be requested by DMAP or OMPRO before PA is given for a surgery;

(h) PA is not required for hospital admissions unless the procedure requires PA;

(i) PA is not required for emergent or urgent procedures or services;

(j) PA must be obtained by the treating and performing practitioners;

(k) Refer to **Table 130-0200-1** for all services/procedures requiring prior authorization.

(2) Prior Notification:

(a) Prior notification is required before performing the following radiology tests:

(A) MRIs;

(B) MRAs;

(C) CTs;

(D) CTAs; and

(E) SPECT scans.

(b) Prior notification is not required when these tests are performed during an emergency department visit or an inpatient stay;

(c) Providers ordering these tests must submit a prior notification form to DMAP prior to the performance of the tests;

(d) Refer to the Medical-Surgical Supplemental Information guide for instructions and forms;

(e) Refer to Table 130-0200-2 for radiology codes requiring prior notification.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08

410-130-0580

Hysterectomies and Sterilization

(1) Refer to OAR 410-130-0200 Prior Authorization, **Table 130-0200-1** and 410-130-0220 Not Covered/Bundled Services, **Table 130-0220-1**.

(2) Hysterectomies performed for the sole purpose of sterilization are not covered.

(3) All hysterectomies, except radical hysterectomies, require prior authorization (PA).

(4) A properly completed Hysterectomy Consent form (DMAP 741) or a statement signed by the performing physician, depending upon the following circumstances, is required for all hysterectomies:

(a) When a woman is capable of bearing children:

(A) Prior to the surgery, the person securing authorization to perform the hysterectomy must inform the woman and her representative, if any, orally and in writing, that the hysterectomy will render her permanently incapable of reproducing;

(B) The woman or her representative, if any, must sign the consent form to acknowledge she received that information.

(b) When a woman is sterile prior to the hysterectomy, the physician who performs the hysterectomy must certify in writing that the woman was already sterile prior to the hysterectomy and state the cause of the sterility;

(c) When there is a life-threatening emergency situation that requires a hysterectomy in which the physician determines that prior acknowledgment is not possible, the physician performing the hysterectomy must certify in writing that the hysterectomy was performed under a life-threatening emergency situation in which he or she determined prior acknowledgment was not possible and describe the nature of the emergency.

(5) In cases of retroactive eligibility: The physician who performs the hysterectomy must certify in writing one of the following:

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(a) The woman was informed before the operation that the hysterectomy would make her permanently incapable of reproducing;

(b) The woman was previously sterile and states the cause of the sterility;

(c) The hysterectomy was performed because of a life-threatening emergency situation in which prior acknowledgment was not possible and describes the nature of the emergency.

(6) Do not use the Consent to Sterilization form (DMAP 742A or B) for hysterectomies.

(7) Submit a copy of the Hysterectomy consent form with the claim.

(8) Sterilization Male & Female: A copy of a properly completed Consent to Sterilization form (DMAP 742 A or B), the consent form in the federal brochure DHHS Publication No. (05) 79-50062 (Male), DHHS Publication No. (05) 79-50061 (Female) or another federally approved form must be submitted to DMAP for all sterilizations. The original consent form must be retained in the clinical records. Prior authorization is not required.

(9) Voluntary Sterilization:

(a) Consent for sterilization must be an informed choice. The consent is not valid if signed when the client is:

(A) In labor;

(B) Seeking or obtaining an abortion; or

(C) Under the influence of alcohol or drugs.

(b) Ages 15 years or older who are mentally competent to give informed consent:

(A) At least 30 days, but not more than 180 days, must have passed between the date of the informed written consent (date of signature) and the date of the sterilization except:

(i) In the case of premature delivery by vaginal or cesarean section the consent form must have been signed at least 72 hours before the sterilization is performed and more than 30 days before the expected date of confinement;

(ii) In cases of emergency abdominal surgery (other than cesarean section), the consent form must have been signed at least 72 hours before the sterilization was performed.

(B) The client must sign and date the consent form before it is signed and dated by the person obtaining the consent. The date of signature must meet the above criteria. The person obtaining the consent must sign the consent form anytime after the client has signed but before the date of the sterilization. If an interpreter is provided to assist the individual being sterilized, the interpreter must also sign the consent form on the same date as the client;

(C) The client must be legally competent to give informed consent. The physician performing the procedure, and the person obtaining the consent, if other than the physician, must review with the client the detailed information appearing on the Consent to Sterilization form regarding effects and permanence of the procedure, alternative birth control methods, and explain that withdrawal of consent at any time prior to the surgery will not result in any loss of other program benefits.

(10) Involuntary Sterilization — Clients who lack the ability to give informed consent and are 18 years of age or older:

(a) Only the Circuit Court of the county in which the client resides can determine that the client is unable to give informed consent;

(b) The Circuit Court must determine that the client requires sterilization;

(c) When the court orders sterilization, it issues a Sterilization Order. The order must be attached to the billing invoice. No waiting period or additional documentation is required.

(11) Submit the Consent to Sterilization Form (DMAP 742 A or B) along with the claim. The Consent to Sterilization form must be completed in full:

(a) Consent forms submitted to DMAP without signatures and/or dates of signature by the client or the person obtaining consent are invalid;

(b) The client and the person obtaining consent may not sign or date the consent retroactively;

(c) The performing physician must sign the consent form. The date of signature must be either the date the sterilization was performed or a date following the sterilization.

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

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 803(Temp), f. & ef. 7-1-76; PWC 813, f. & ef. 10-1-76; PWC 834, f. 3-31-77, ef. 5-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 4-1979(Temp), f. & ef. 3-8-79; AFS 11-1979, f. 6-18-79, ef. 7-1-79; AFS 50-1981(Temp), f. & ef. 8-5-81; AFS 79-1981, f. 11-24-81, ef. 12-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 42-1985, f. & ef. 7-1-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; Renumbered from 461-014-0030, AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered

from 461-014-0840; HR 43-1991, f. & cert. ef. 10-1-91; HR 23-1992, f. 7-31-92, cert. ef. 8-1-92; HR 6-1994, f. & cert. ef. 2-1-94; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08

Rule Caption: Technical changes to the Prioritized List of Health Services.

Adm. Order No.: DMAP 28-2007(Temp)

Filed with Sec. of State: 12-20-2007

Certified to be Effective: 12-20-07 thru 3-28-08

Notice Publication Date:

Rules Amended: 410-141-0520

Rules Suspended: 410-141-0520(T)

Subject: Subject Matter: The Oregon Health Plan (OHP-Division 141) Administrative rules govern payment for the Division of Medical Assistance Programs' payments for services provided to clients. DMAP temporarily amended OAR 410-141-0520 in September to reflect interim modification and technical changes made, subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2007, to the January 1, 2006, Prioritized List of health Services. DMAP temporarily amends OAR 410-141-0520, Health Services Commission's Prioritized List of Health Services to reference the most current list effective January 1, 2008, to the January 1, 2008, through December 31, 2009, Prioritized List of Health Services including interim modifications and technical changes made for 2008 national code sets, based upon Centers for CMS approval date, October 31, 2007, with DHS acceptance letter dated November 30, 2007.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/health-plan/priorlist/main, or, for a hardcopy contact the Office of Oregon Health Policy and Research. This rule incorporates by reference the January 1, 2006 Prioritized List, with technical revisions effective October 1, 2007, including expanded definitions and practice guidelines that are available on the HSC website. Effective January 1, 2008, this rule incorporates by reference the CMS approved Biennial January 1, 2008-December 31, 2009, Prioritized List, including technical revisions.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) The January 1, 2006 Prioritized List, with technical revisions effective October 1, 2007, is in effect and condition/treatment pairs through line 530 are funded.

(5) Effective January 1, 2008, the January 1, 2008-December 31, 2009, Prioritized List, with technical revisions, is in effect and condition treatment pairs through line 503 are funded.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04,

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cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08

Rule Caption: Hospital Provider Tax Rate Reduction.
Adm. Order No.: DMAP 29-2007
Filed with Sec. of State: 12-31-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 12-1-2007
Rules Amended: 410-050-0861
Subject: The hospital provider tax rule change reduces the tax rate from .82% to .63%, effective January 1, 2008.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

410-050-0861

Tax Rate

The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent. The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent. The tax rate for the period beginning January 1, 2008 is .63 percent.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: OL 2003, Ch. 736; OL 2007, Ch. 780 (HB 3057)(2007)
Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05; OMAP 14-2006, f. 6-1-06, cert. ef. 7-1-06; DMAP 29-2007, f. 12-31-07, cert. ef. 1-1-08

Rule Caption: Electronic Data Transmission (EDT) Rule Amendment.

Adm. Order No.: DMAP 30-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08 thru 6-28-08

Notice Publication Date:

Rules Amended: 410-001-0100, 410-001-0110, 410-001-0120, 410-001-0130, 410-001-0140, 410-001-0150, 410-001-0160, 410-001-0170, 410-001-0180, 410-001-0190, 410-001-0200

Subject: The Department of Human Services needs to amend these rules to ensure the Department's EDT rules compliment the new functionality of the Oregon Replacement Medicaid Management Information System (MMIS) in conjunction with the Health Insurance Portability and Accountability Act (HIPAA) transactions and codes set standards for the exchange of electronic data. These rules are being filed concurrently with the adoption of OAR 407-120-0112 through 407-120-0118 and OAR 407-120-0165.

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

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

Rules Coordinator: Jennifer Bittel—(503) 947-5250

410-001-0100

Definitions

The following definitions apply to OAR 410-001-0100 through 410-001-0200:

(1) "Access" means the ability or means necessary to read, write, modify, or communicate data or information or otherwise use any information system resource.

(2) "Agent" means a third party or organization that contracts with a provider, allied agency, or Prepaid Health Plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission (EDT) submitters.

(3) "Allied Agency" means local and regional allied agencies and includes local mental health authority, community mental health programs, Oregon Youth Authority, Department of Corrections, local health depart-

ments, schools, education service districts, developmental disability service programs, area agencies on aging, federally recognized American Indian tribes, and other governmental agencies or regional authorities that have a contract (including an interagency, intergovernmental, or grant agreement, or an agreement with an American Indian tribe pursuant to ORS 190.110) with the Department to provide for the delivery of services to covered individuals and that request to conduct EDT's in relation to the contract.

(4) "Clinic" means a group practice, facility, or organization that is an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim; and the group practice, facility, or organization is enrolled with the Department, and payments are made to the group practice, facility, or organization. If the entity solely submits billings on behalf of providers and payments are made to each provider, then the entity is an agent.

(5) "Confidential Information" means information relating to covered individuals which is exchanged by and between the Department, a provider, PHP, clinic, allied agency, or agents for various business purposes, but which is protected from disclosure to unauthorized individuals or entities by applicable state and federal statutes such as ORS 344.600, 410.150, 411.320, 418.130, or the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations. These statutes and regulations are collectively referred to as "Privacy Statutes and Regulations."

(6) "Contract" means a specific written agreement between the Department and a provider, PHP, clinic, or allied agency that provides, or manages the provision of, services, goods, or supplies to covered individuals and where the Department and a provider, PHP, clinic, or allied agency may exchange data. A contract specifically includes, without limitation, a Department provider enrollment agreement, fully capitated health plan managed care contract, dental care organization managed care contract, mental health organization managed care contract, chemical dependency organization managed care contract, physician care organization managed care contract, a county financial assistance agreement, or any other applicable written agreement, interagency agreement, intergovernmental agreement, or grant agreement between the Department and a provider, PHP, clinic, or allied agency.

(7) "Covered Entity" means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including Direct Data Entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414.

(8) "Covered Individual" means individuals who are eligible for payment of certain services or supplies provided to them or their eligible dependents by or through a provider, PHP, clinic, or allied agency under the terms of a contract applicable to a governmental program for which the Department processes or administers data transmissions.

(9) "Data" means a formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by individuals or by automatic means.

(10) "Data Transmission" means the transfer or exchange of data between the Department and a web portal or Electronic Data Interchange (EDI) submitter by means of an information system which is compatible for that purpose, and includes without limitation, web portal, EDI, Electronic Remittance Advice (ERA), or Electronic Media Claims (EMC) transmissions.

(11) "Department" means the Department of Human Services.

(12) "Department Network and Information Systems" means the Department's computer infrastructure that provides personal communications, confidential information, regional, wide area and local networks, and the internetworking of various types of networks on behalf of the Department.

(13) "Direct Data Entry (DDE)" means the process using dumb terminals or computer browser screens where data is directly keyed into a health plan's computer by a provider or its agent, such as through the use of a web portal.

(14) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Department designates for EDI transactions. For purposes of these rules (OAR 410-001-0100 through 410-001-0200), EDI does not include electronic transmission by web portal.

(15) "Electronic Data Interchange Submitter" means an individual or entity authorized to establish the electronic media connection with the

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Department to conduct an EDI transaction. An EDI submitter may be a trading partner, or an agent of a trading partner.

(16) "Electronic Media" means electronic storage media including memory devices in computers, computer hard drives; any removable or transportable digital memory medium, such as magnetic tape or disk, optical disk, digital memory card; or transmission media used to exchange information already in electronic storage media. Transmission media includes, but is not limited to, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic storage media. Certain transmissions, including paper via facsimile, and voice via telephone, are not considered transmissions by electronic media because the information being exchanged did not exist in electronic form before transmission.

(17) "Electronic Media Claims (EMC)" means an electronic media means of submitting claims or encounters for payment of services or supplies provided by a provider, PHP, clinic, or allied agency to a covered individual.

(18) "Electronic Remittance Advice (ERA)" means an electronic file in X12 format containing information pertaining to the disposition of a specific claim for payment of services or supplies rendered to covered individuals which are filed with the Department on behalf of covered individuals by providers, clinics or allied agencies. The documents include, without limitation, the provider name and address, individual name, date of service, amount billed, amount paid, whether the claim was approved or denied, and if denied, the specific reason for the denial. For PHP's, the remittance advice file contains information on the adjudication status of encounter claims submitted.

(19) "Electronic Data Transaction (EDT)" means a transaction governed by the Health Insurance Portability and Accountability Act (HIPAA) transaction rule, conducted by either web portal or EDI.

(20) "Envelope" means a control structure in a mutually agreed upon format for the electronic interchange of one or more encoded data transmissions either sent or received by an EDI submitter or the Department.

(21) "HIPAA Transaction Rule" means the standards for electronic transactions at 45 CFR Part 160 and 162 (version in effect on January 1, 2008) adopted by DHHS to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et. seq.

(22) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of an information system or information asset including, but not limited to, unauthorized disclosure of information, failure to protect user IDs, and theft of computer equipment using or storing Department information assets or confidential information.

(23) "Individual User Profile" means Department forms used to authorize a user, identify their job assignment, and the required access to the Department's network and information system. It generates a unique security access code used to access the Department's network and information system.

(24) "Information Asset" means all information, also known as data, provided through the Department, regardless of the source, which requires measures for security and privacy of the information.

(25) "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and trained personnel necessary for successful data transmission.

(26) "Lost or Indecipherable Transmission" means a data transmission which is never received by or cannot be processed to completion by the receiving party in the format or composition received because it is garbled or incomplete, regardless of how or why the message was rendered garbled or incomplete.

(27) "Mailbox" means the term used by the Department to indicate trading partner-specific locations on the Department's secure file transfer protocol (SFTP) server to deposit and retrieve electronic data identified by a unique Department assigned trading partner number.

(28) "Password" means the alpha-numeric codes assigned to an EDI submitter by the Department for the purpose of allowing access to the Department's information system, including the web portal, for the purpose of successfully executing data transmissions or otherwise carrying out the express terms of a trading partner agreement or provider enrollment agreement and these rules.

(29) "Personal Identification Number (PIN)" means the alpha-numeric codes assigned to web portal submitters by the Department for the purpose of allowing access to the Department's information system, including the web portal, for the purpose of successfully executing DDE, data trans-

missions, or otherwise carrying out the express terms of a trading partner agreement, provider enrollment agreement, and these rules.

(30) "Prepaid Health Plan (PHP) or Plan" means a managed health care, dental care, chemical dependency, physician care organization, or mental health care organization that contracts with the Department on a case managed, prepaid, capitated basis under the Oregon Health Plan (OHP).

(31) "Provider" means an individual, facility, institution, corporate entity, or other organization which supplies or provides for the supply of services, goods or supplies to covered individuals pursuant to a contract, including, but not limited to, a provider enrollment agreement with the Department. A provider does not include billing providers as used in the Division of Medical Assistance (DMAP) general rules. DMAP billing providers are defined in these rules as agents, except for DMAP billing providers that are clinics.

(32) "Provider Enrollment Agreement" means an agreement between the Department and a provider for payment for the provision of covered services to covered individuals.

(33) "Registered Transaction" means each type of EDI transaction applicable to a trading partner that must be registered with the Department before it can be tested or approved for EDI transmission.

(34) "Security Access Codes" means the alpha-numeric codes assigned by the Department to the web portal submitter or EDI submitter for the purpose of allowing access to the Department's information system, including the web portal, to execute data transmissions or otherwise carry out the express terms of a trading partner agreement, provider enrollment agreement, and these rules. Security access codes may include passwords, PIN's, or other codes.

(35) "Source Documents" means documents or electronic files containing underlying data which is or may be required as part of a data transmission with respect to a claim for payment of charges for medical services or supplies provided to a covered individual, or with respect to any other transaction. Examples of data contained within a specific source document includes, but is not limited to, an individual's name and identification number; claim number; diagnosis code for the services provided; dates of service; service procedure description; applicable charges for the services provided; a provider's, PHP's, clinic's or allied agency's name; identification number; and signature.

(36) "Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

- (a) Classification of components;
- (b) Specification of materials, performance, or operations; or
- (c) Delineation of procedures.

(37) "Standards for Electronic Transactions" mean a transaction that complies with the applicable standard adopted by DHHS to implement standards for electronic transactions.

(38) "Transaction" means the exchange of data between the Department and a provider using web portal access or a trading partner using electronic media to carry out financial or administrative activities.

(39) "Trade Data Log" means the complete written summary of data and data transmissions exchanged between the Department and an EDI submitter during the period of time a trading partner agreement is in effect and includes, but is not limited to, sender and receiver information, date and time of transmission, and the general nature of the transmission.

(40) "Trading Partner" means a provider, PHP, clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of EDI, ERA, or EMC, or any other mutually agreed means of electronic exchange or transfer of data.

(41) "Trading Partner Agreement (TPA)" means a specific written request by a provider, PHP, clinic, or allied agency to conduct EDI transactions and that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(42) "User" means any individual or entity authorized by the Department to access network and information systems or information assets.

(43) "User Identification Security (UIS)" means a control method required by the Department to ensure that only authorized users gain access to specified information assets. One method of control is the use of passwords and PIN's with unique user identifications.

(44) "Web Portal" means a site on the World Wide Web that typically provides personalized capabilities to its visitors and a pathway to other content. It is designed to use distributed applications, different numbers, and types of middleware and hardware to provide services from a number of different sources.

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(45) “Web Portal Submitter” means an individual or entity authorized to establish an electronic media connection with the Department to conduct a DDE transaction. A web portal submitter may be a provider or a provider’s agent.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0110

Purpose

(1) These rules establish requirements applicable to providers, plans and allied agencies that want to conduct electronic data transactions with the Department. These rules govern the conduct of all web portal or EDI transactions with the Department. These rules only apply to services or items that are paid for by the Department. If the service or item is paid for by a plan or an allied agency, these rules do not apply.

(2) These rules establish the Department’s electronic data transaction requirements for purposes of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d — 1320d-8, Public Law 104-191, sec. 262 and sec 264, and the implementing standards for electronic transactions rules. Where a federal HIPAA standard has been adopted for an electronic data transaction, this rule implements and does not alter the federal standard.

(3) These rules establish procedures that must be followed by any provider, plan, or allied agency in the event of a security or privacy incident, regardless of whether the incident is related to the use of an electronic data transaction.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0120

Registration Process — EDI Transactions

(1) The EDI transaction process is preferred by providers, PHP’s, and allied agencies for conducting batch or real time transactions, rather than the individual data entry process used for DDE. EDI registration is an administrative process governed by these rules. The EDI registration process begins with the submission of a TPA by a provider, PHP, clinic, or allied agency, including all requirements and documentation required by these rules.

(2) Trading partners must be Department providers, PHP’s, clinics, or allied agencies with a current Department contract. The Department will not accept a TPA from individuals or entities who do not have a current contract with the Department.

(a) The Department may receive and hold the TPA for individuals or entities that have submitted a provider enrollment agreement or other pending contract, subject to the satisfactory execution of the pending document.

(b) Termination, revocation, suspension, or expiration of the contract will result in the concurrent termination, revocation, suspension, or expiration of the TPA without any additional notice; except that the TPA will remain in effect to the extent necessary for a trading partner or the Department to complete obligations involving EDI under the contract for dates of service when the contract was in effect. Contracts that are periodically renewed or extended do not require renewal or extension of the TPA unless there is a lapse of time between contracts.

(c) Failure to identify a current Department contract during the registration process will result in a rejection of the TPA. The Department will verify that the contract numbers identified by a provider, PHP, clinic, or allied agency are current contracts.

(d) If contract number or contract status changes, the trading partner must provide the Department with updated information within five business days of the change in contract status. If the Department determines that a valid contract no longer exists, the Department shall discontinue EDI transactions applicable for any time period in which the contract no longer exists; except that the TPA will remain in effect to the extent necessary for the trading partner or the Department to complete obligations involving EDI under the contract for dates of service when the contract was in effect.

(3) Trading Partner Agreement. To register as a trading partner with the Department, a provider, PHP, clinic, or allied agency must submit a signed TPA to the Department.

(4) Application for Authorization. In addition to the requirements of section (3) of this rule, a trading partner must submit an application for authorization to the Department. The application provides specific identification of and legal authorization from the trading partner for an EDI submitter to conduct EDI transactions on behalf of a trading partner.

(5) Trading Partner Agents. A trading partner may use agents to facilitate the electronic transmission of data. If a trading partner will be using an agent as an EDI submitter, the application for authorization required under

section (4) of this rule must identify and authorize an EDI submitter and must include the EDI certification signed by an EDI submitter before the Department may accept an electronic submission from, or send an electronic transmission to, an EDI submitter.

(6) EDI Registration. In addition to the requirements of section (3) of this rule, a trading partner must also submit its EDI registration form. This form requires the trading partner or its authorized EDI submitter to register an EDI submitter and the name and type of EDI transaction they are prepared to conduct. Signature of the trading partner or authorized EDI submitter is required on the EDI registration form. The registration form will also permit the trading partner to identify the individuals or EDI submitters who are authorized to submit or receive EDI registered transactions.

(7) Review and Acceptance Process. The Department will review the documentation provided to determine compliance with sections (1) through (6) of this rule. The information provided may be subject to verification by the Department. When the Department determines that the information complies with these rules, the Department will notify the trading partner and EDI submitter by email about any testing or other requirements applicable to place the registered transaction into a production environment.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0130

Trading Partner as EDI Submitter — EDI Transactions

(1) A trading partner may be an EDI submitter. Registered trading partners that also qualify as an EDI submitter may submit their own EDI transactions directly to the Department. A trading partner will be referred to as an EDI submitter when functioning in that capacity and will be required to comply with applicable EDI submitter rules, except as provided in section (3) of this rule.

(2) Authorization and Registration Designating Trading Partner as EDI Submitter. Before acting as an EDI submitter, a trading partner must designate in the application for they are an EDI submitter who is authorized to send and receive data transmissions in the performance of EDI transactions. A trading partner must complete the “Trading Partner Application for Authorization to Submit EDI Transactions” and the “EDI Submitter Information” required in the application. A trading partner must also submit the EDI registration form identifying them as an EDI submitter. A trading partner must notify the Department of any material changes in the information no less than ten days prior to the effective date of the change.

(3) EDI Submitter Certification Conditions. Where a trading partner is acting as its own EDI submitter, the trading partner is not required to submit the EDI submitter certification conditions in the application for authorization applicable to agents.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0140

Trading Partner Agents as EDI Submitters — EDI Transactions

(1) Responsibility for Agents. If a trading partner uses the services of an agent, including, but not limited to, an EDI submitter, in any capacity in order to receive, transmit, store, or otherwise process data or data transmissions or perform related activities, a trading partner shall be fully responsible to the Department for the agent’s acts.

(2) Notices Regarding EDI Submitter. Prior to the commencement of an EDI submitter’s services, a trading partner must designate, in the application for authorization, the specific EDI submitters that are authorized to send and receive data transmissions in the performance of EDI transactions of a trading partner. A trading partner must complete the “Trading Partner Authorization of EDI Submitter” and the “EDI Submitter Information” required in the application. A trading partner must also submit the EDI registration form identifying and providing information about an EDI submitter. A trading partner or authorized EDI submitter must notify the Department of any material changes in the EDI submitter authorization or information not less than five days prior to the effective date of the changes.

(3) EDI Submitter Authority. A trading partner must authorize the actions that an EDI submitter may take on behalf of a trading partner. The application for authorization permits a trading partner to authorize which decisions may be made only by a trading partner and which decisions are authorized to be made by an EDI submitter. The EDI submitter information authorized in the application for authorization will be recorded by the Department in an EDI submitter profile. The Department may reject EDI transactions from an EDI submitter acting without authorization from a trading partner.

(4) EDI Submitter Certification Conditions. Each authorized EDI submitter acting as an agent of a trading partner must execute and comply with

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the EDI submitter certification conditions that are incorporated into the application for authorization. Failure to include the signed EDI submitter certification conditions with the application shall result in a denial of EDI submitter authorization by the Department. Failure of an EDI submitter to comply with the EDI submitter certification conditions may result in termination of EDI submitter registration for EDI transactions with the Department.

(5) EDI Submitters Responsibilities. In addition to the requirements of section (1) of this rule, a trading partner is responsible for ensuring that an EDI submitter makes no unauthorized changes in the data content of all data transmissions or the contents of an envelope, and that an EDI submitter will take all appropriate measures to maintain the timeliness, accuracy, truthfulness, confidentiality, security, and completeness of each data transmission. A trading partner is responsible for ensuring that its EDI submitters are specifically advised of, and will comply with, the terms of these rules and any TPA.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0150

Testing — EDI Transactions

(1) When a trading partner or authorized EDI submitter registers an EDI transaction with the Department, the Department may require testing before authorizing the transaction. Testing may include business-to-business testing. An EDI submitter must be able to demonstrate its capacity to send and receive each transaction type for which it has registered. The Department will reject any EDI transaction if an EDI submitter either refuses or fails to comply with the Department testing requirements.

(2) The Department may require EDI submitters to complete compliance testing, at an EDI submitter's expense, for each transaction type if either the Department or an EDI submitter has experienced a change to hardware or software applications by entering into business-to-business testing.

(3) When business-to-business testing is completed to the Department's satisfaction, the Department will notify an EDI submitter that it will register and accept the transactions in the production environment. This notification authorizes an EDI submitter to submit the registered EDI transactions to the Department for processing and response, as applicable. If there are any changes in the trading partner or EDI submitter authorization, profile data or EDI registration information on file with the Department, updated information must be submitted to the Department as required in OAR 410-001-0190.

(4) Testing will be conducted using secure electronic media communications methods.

(5) An EDI submitter may be required to re-test with the Department if the Department format changes or if the EDI submitter format changes

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0160

Conduct of Transactions — EDI Transactions

(1) EDI Submitter Obligations. An EDI submitter is responsible for the conduct of the EDI transactions registered on behalf of a trading partner, including the following:

(a) EDI Transmission Accuracy. An EDI submitter shall take reasonable care to ensure that data and data transmissions are timely, complete, accurate, and secure; and shall take reasonable precautions to prevent unauthorized access to the information system, the data transmission, or the contents of an envelope which is transmitted either to or from the Department. The Department will not correct or modify an incorrect transaction prior to processing. The transaction may be rejected and an EDI submitter notified of the rejection.

(b) Re-transmission of Indecipherable Transmissions. Where there is evidence that a data transmission is lost or indecipherable, the sending party must make best efforts to trace and re-transmit the original data transmission in a manner which allows it to be processed by the receiving party as soon as practicable.

(c) Cost of Equipment. An EDI submitter and the Department will pay for their own information system costs. An EDI submitter shall, at its own expense, obtain and maintain its own information system. An EDI submitter shall pay its own costs for all charges related to data transmission including, without limitation, charges for information system equipment, software and services, electronic mailbox maintenance, connect time, terminals, connections, telephones, modems, any applicable minimum use charges, and for translating, formatting, sending, and receiving communications over the electronic network to the electronic mailbox, if any, of the

Department. The Department is not responsible for providing technical assistance in the processing of an EDI transaction.

(d) Back-up Files. EDI submitters must maintain adequate data archives and back-up files or other means sufficient to re-create a data transmission in the event that re-creation becomes necessary for any purpose, within timeframes required by state and federal law, or by contractual agreement. Data archives or back-up files shall be subject to these rules to the same extent as the original data transmission.

(e) Transmissions Format. Except as otherwise provided herein, EDI submitters must send and receive all data transmissions in the federally mandated format, or (if no federal standard has been promulgated) other formats as the Department designates.

(f) Testing. EDI submitters must, prior to the initial data transmission and throughout the term of a TPA, test and cooperate with the Department in the testing of information systems as the Department considers reasonably necessary to ensure the accuracy, timeliness, completeness, and confidentiality of each data transmission.

(2) Security and Confidentiality. To protect security and confidentiality of transmitted data, EDI submitters must comply with the following:

(a) Refrain from copying, reverse engineering, disclosing, publishing, distributing, or altering any data, data transmissions, or the contents of an envelope, except as necessary to comply with the terms of these rules or the TPA, or use the same for any purpose other than that which an EDI submitter was specifically given access and authorization by the Department or a trading partner;

(b) Refrain from obtaining access by any means to any data, data transmission, envelope, mailbox, or the Department's information system for any purpose other than that which an EDI submitter has received express authorization. If an EDI submitter receives data or data transmissions from the Department which are clearly not intended for an EDI submitter, an EDI submitter shall immediately notify the Department and make arrangements to return or re-transmit the data or data transmission to the Department. After re-transmission, an EDI submitter shall immediately delete the data contained in the data transmission from its information system;

(c) Install necessary security precautions to ensure the security of the information systems or records relating to the information systems of either the Department or an EDI submitter when the information system is not in active use by an EDI submitter;

(d) Protect and maintain the confidentiality of security access codes issued by the Department to an EDI submitter; and

(e) Provide special protection for security and other purposes, where appropriate, by means of authentication, encryption, and the use of passwords or other means. Unless otherwise provided in these rules, the recipient of a protected data transmission must use at least the same level of protection for any subsequent transmission of the original data transmission.

(3) Department Obligations. The Department shall:

(a) Make available to an EDI submitter, by electronic media, those types of data and data transmissions which an EDI submitter is authorized to receive.

(b) Inform an EDI submitter of acceptable formats in which data transmissions may be made and provide notification to an EDI submitter within reasonable time periods consistent with HIPAA transaction standards, if applicable, or at least 30 days prior by electronic notice of other changes in formats.

(c) Provide an EDI submitter with security access codes that will allow an EDI submitter access to the Department's information system. Security access codes are strictly confidential and EDI submitters must comply with all of the requirements of OAR 410-001-0170. The Department may change the designated security access codes at any time and manner as the Department, in its sole discretion, deems necessary. The release of security access codes shall be limited to authorized electronic data personnel of an EDI submitter and the Department with a need to know.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0170

Confidentiality and Security

(1) Individually Identifiable Health Information. All providers, PHP's, and allied agencies are responsible for ensuring the confidentiality of individually identifiable health information, consistent with the requirements of the privacy statutes and regulations, and shall take reasonable action to prevent any unauthorized disclosure of confidential information by a provider, plan, allied agency, or other agent. A provider, web portal submitter, trading partner, EDI submitter, or other agent must comply with

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any and all applicable privacy statutes and regulations relating to confidential information.

(2) General Requirements for Electronic Submitters. A provider (web portal submitter), trading partner (EDI submitter), or other agent must maintain adequate security procedures to prevent unauthorized access to data, data transmissions, security access codes, or the Department's information system, and must immediately notify the Department of all unauthorized attempts by any individual or entity to obtain access to or otherwise tamper with the data, data transmissions, security access codes, or the Department's information system.

(3) Notice of Unauthorized Disclosures. All providers, plans, and allied agencies must promptly notify the Department of all unlawful or unauthorized disclosures of confidential information that comes to its agent's attention, and shall cooperate with the Department if corrective action is required by the Department. The Department will promptly notify a provider, plan, or allied agency of all unlawful or unauthorized disclosures of confidential information in relation to a provider, plan or allied agency that comes to the Department's or its agent's attention, and will cooperate with a provider, plan, or allied agency if corrective action is required.

(3) Wrongful use of the web portal, EDI systems, or the Department's network and information system, or wrongful use or disclosure of confidential information by a provider, allied agency, electronic submitters, or their agents may result in the immediate suspension or revocation of any access granted under these rules or other Department rules, in the sole discretion of the Department.

(4) A provider, allied agency, plan or electronic submitter must report to the Department's Information Security Office at dhsinfo.security@state.or.us, and to the Department program contact individual, any privacy or security incidents that compromise, damage, or cause a loss of protection to confidential information, information assets, or the Department's network and security system. Reports must be made in the following manner:

(a) Not later than five business days from the date on which a provider, allied agency, plan, or electronic submitter becomes aware of the incident; and

(b) A provide the results of the incident assessment findings and resolution strategies not later than 30 business days after the report is due under subsection (a).

(5) A provider, allied agency, plan, or electronic submitter must comply with the Department's requests for corrective action concerning a privacy or security incident, and with applicable laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0180 Record Retention and Audit

(1) Records Retention. A provider, web portal submitter, trading partner, and EDI submitter, shall maintain, for a period of not less than seven years from the date of service, complete, accurate, and unaltered copies of all source documents associated with all data transmissions.

(2) EDI Trade Data Log. An EDI submitter must establish and maintain a trade data log that must record all data transmissions taking place between an EDI submitter and the Department during the term of a TPA. A trading partner and EDI submitter must take necessary and reasonable steps to ensure that the trade data log constitutes a current, truthful, accurate, complete, and unaltered record of all data transmissions between the parties and must be retained by each party for not less than 24 months following the date of the data transmission. The trade data log may be maintained on electronic media or other suitable means provided that, if necessary, the information may be timely retrieved and presented in readable form.

(3) Right to Audit. A provider must allow and must require any web portal submitter to allow, and a trading partner must allow and must require an EDI submitter or other agent to allow access to the Department, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, or its designees, and DHHS or its designees to audit relevant business records, source documents, data, data transmissions, trade data log, or information systems of a provider and its web portal submitter, and a trading partner, and its agents, as necessary, to ensure compliance with these rules. A provider must allow and must require its web portal submitter to allow, and a trading partner must allow and must require an EDI submitter or other agent to allow the Department, or its designee, access to ensure that adequate security precautions have been made and are implemented to prevent unauthorized disclosure of any data, data transmissions, or other information.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0190 Material Changes

(1) Changes in Any Material Information — EDT Process. A trading partner must submit an updated TPA, application for authorization, or EDI registration form to the Department within ten business days of any material change in information. A material change includes, but is not limited to, mailing or email address change, contract number or contract status (termination, expiration, extension), identification of authorized individuals of a trading partner or EDI submitter, the addition or deletion of authorized transactions, or any other change that may affect the accuracy of or authority for an EDI transaction. The Department may act on data transmissions submitted by a trading partner and its EDI submitter based on information on file in the application for authorization and EDI registration forms until an updated form has been received and approved by the Department. A trading partner's signature or the signature of an authorized EDI submitter is required to ensure that an updated TPA, authorization, or EDI registration form is valid and authorized.

(2) Changes in Any Material Information — Web Portal Access. Providers must submit an updated web portal registration form to the Department within ten business days of any material changes in information. A material change includes, but is not limited to, mailing or email address change, contract number or contract status (termination, suspension, expiration), identification of web portal submitter contact information, or any other change that may affect the accuracy of or authority for a DDE transaction. The Department is authorized to act on data transmissions submitted by a provider and its web portal submitter based on information on file in the web portal registration form until an updated form has been received and approved by the Department. A provider's signature or the signature of an authorized business representative is required to ensure that an updated web portal registration form is valid and authorized.

(3) Failure to submit a timely updated form may impact the ability of a data transaction to be processed without errors. Failure to submit a signed, updated form may result in the rejection of a data transmission.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert. ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

410-001-0200 Department System Administration

(1) No individual or entity shall be registered to conduct a web portal or an EDI transaction with the Department except as authorized under these rules. Eligibility and continued participation as a provider or web portal submitter in the conduct of DDE transactions, or as a trading partner or EDI submitter in the conduct of registered transactions, is conditioned on the execution and delivery of the documents required in these rules, the continued accuracy of that information consistent with OAR 410-001-0190, and compliance with a requirements of these rules. Data, including confidential information, governed by these rules may be used for purposes related to treatment, payment, and health care operations and for the administration of programs or services by the Department.

(2) In addition to the requirements of section (1) of this rule, in order to qualify as a trading partner:

(a) An individual or entity must be a Department provider, PHP, clinic, or allied agency pursuant to a current valid contract; and

(b) A provider, PHP, clinic, or allied agency must have submitted an executed TPA and all related documentation, including the application for authorization, that identifies and authorizes an EDI submitter.

(3) In addition to the requirements of section (1) of this rule, in order to qualify as an EDI submitter:

(a) A trading partner must have identified the individual or entity as an authorized EDI submitter in the application for authorization;

(b) If a trading partner identifies itself as an EDI submitter, the application for authorization must include the information required in the "Trading Partner Authorization of EDI Submitter" and the "EDI submitter information"; and

(c) If a trading partner uses an agent as an EDI submitter, the application for authorization must include the information described in subsection (b) of this section and the signed EDI submitter certification.

(4) The EDI registration process described in these rules provides the Department with essential profile information that the Department may use to confirm that a trading partner or EDI submitter is not otherwise excluded or disqualified from submitting EDI transactions to the Department.

(5) Nothing in these rules or a TPA prevents the Department from requesting additional information from a trading partner or an EDI submit-

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ter to determine their qualifications or eligibility for registration as a trading partner or EDI submitter.

(6) The Department shall deny a request for registration as a trading partner or for authorization of an EDI submitter or an EDI registration if it finds any of the following:

(a) A trading partner or EDI submitter has substantially failed to comply with the applicable administrative rules or laws;

(b) A trading partner or EDI submitter has been convicted of (or entered a plea of *nolo contendere*) a felony or misdemeanor related to a crime or violation of federal or state public assistance laws or privacy statutes or regulations;

(c) A trading partner or EDI submitter is excluded from participation in the Medicare program, as determined by the DHHS secretary; or

(d) A trading partner or EDI submitter fails to meet the qualifications as a trading partner or EDI submitter.

(7) Failure to comply with these rules, trading partner agreement, or EDI submitter certification or failure to provide accurate information on an application or certification may also result in sanctions and payment recovery pursuant to applicable Department program contracts or rules.

(8) For providers using the DDE submission system by the Department web portal, failure to comply with the terms of these rules, a web portal registration form, or failure to provide accurate information on the registration form may result in sanctions or payment recovery pursuant to the applicable Department program contracts or rules.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2003(Temp), f. & cert. ef. 3-21-03 thru 9-8-03; OMAP 55-2003, f. & cert.

ef. 8-22-03; DMAP 30-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-28-08

Department of Human Services, Public Health Division Chapter 333

Rule Caption: In-Home Care Agencies.

Adm. Order No.: PH 14-2007

Filed with Sec. of State: 12-19-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 333-536-0105, 333-536-0115

Rules Amended: 333-536-0005, 333-536-0010, 333-536-0015, 333-536-0020, 333-536-0030, 333-536-0040, 333-536-0050, 333-536-0070, 333-536-0075, 333-536-0080, 333-536-0085, 333-536-0090, 333-536-0095

Rules Repealed: 333-536-0100

Subject: The Oregon Department of Human Services, Public Health Division is adopting rules 333-536-0105 and 333-536-0115 to implement Senate Bill 958 (Chapter 897, 2007 Oregon Law, ef. January 1, 2008). Amendments to rules in Division 536 include fee changes and authorize DHS to issue civil penalties. Other amendments will clarify requirements regarding in-home care agencies and make housekeeping changes.

Rules Coordinator: Judy Murdza—(971) 673-0561

333-536-0005

Definitions

As used in 333-536-0000 through 333-536-0095, the following definitions apply:

(1) Abuse.

(A) As it applies to an adult, includes but is not limited to:

(i) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(ii) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(iii) Abandonment, including desertion or willful forsaking of a person or the withdrawal or neglect of duties and obligations owed a person.

(iv) Willful infliction of physical pain or injury.

(v) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to a person.

(vi) Wrongfully taking or appropriating money or property, of knowingly subjecting a person to harm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the person to believe that the threat will be carried out.

(vii) Sexual contact with a non-consenting person or with a person considered incapable of consenting to a sexual act as described in ORS

163.315. As used in this paragraph, “sexual contact” has the meaning given that term in ORS 163.305.

(B) As it applies to a child, has the same meaning as “abuse” as that term is defined in ORS 419B.005.

(2) “Activities of Daily Living” means self-care activities that must be accomplished by an individual to meet his or her daily needs.

(3) “Agency” means In-Home Care Agency.

(4) “Authentication” means verification by the author that an entry in the client record is genuine.

(5) “Branch office” means a location or site from which an in-home care agency provides services within a portion of the total geographic area served by the parent agency. The site of the branch office generally does not exceed one hour of travel time from the parent agency. The branch office is part of the in-home care agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the requirements of an in-home care agency.

(6) “Caregiver” means a person providing assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by these rules.

(7) “Client Representative” means:

(a) A parent, stepparent, foster parent, or other adult with primary caregiving responsibility for the client when the client is a child; or

(b) An individual, paid or unpaid, related or unrelated, who acts on behalf of, or cares for the client when the client is an adult.

(8) “Department” means the Department of Human Services.

(9) “Governing Body” means the owner or designee legally responsible for the direction and control of the operation of the in-home care agency.

(10) “Home health agency” means a public or private agency that provides coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services and at least one of the following therapeutic services:

(a) Physical therapy;

(b) Occupational therapy;

(c) Speech therapy;

(d) Home health aide services.

(11) “In-home care agency” means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual’s place of residence. “In-home care agency” does not include a home health agency or portion of an agency providing home health services as defined in ORS 443.005.

(12) “In-home care services” means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual’s daily needs, but do not include curative or rehabilitative services.

(13) “Licensed” means that the person or agency for which the term applies is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(14) “Medication assistance” means self-administration of non-injectable medication which the client is not physically able to administer to him or herself, but fully self directs its administration.

(15) “Medication administration” means agency staff administering medications to a client or directly supervising the client who is not able or not willing to self-direct, but may be physically able to perform the tasks.

(16) “Medication set up” means taking the client’s medications from original containers and putting the medications into closed secondary containers designed and manufactured for this purpose.

(17) “Parent agency” means the in-home care agency that develops and maintains administrative controls of subunits or branch offices.

(18) “Personal care services” means the provision of or assistance with tasks intended to supplement a client’s own personal abilities which are necessary to accomplish the client’s activities of daily living and other activities as described in OAR 333-536-0045(1), and are preventive and maintaining in nature.

(19) “Registered Nurse” (RN) means a person licensed under ORS Chapter 678.

(20) “Schedule caregivers” means to plan appointments for caregivers to deliver specific in-home care services to clients; the times and dates of these appointments are set by the in-home care agency.

(21) “Skilled nursing services” means the patient care services pertaining to the curative, rehabilitative, and/or preventive aspects of nursing performed by, or under the supervision of, registered nurse pursuant to the plan of treatment established by a physician or nurse practitioner.

(22) “Stable and predictable condition” means a situation where the client’s clinical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

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(23) "Subunit" means an in-home care agency that provides for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency.

(24) "Written pro re nata (prn) parameters" means directions that are so specific that the unlicensed caregivers uses no discretion when administering prn (as needed) medications or treatments.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0010

Licensure

(1) An agency that establishes, conducts, or represents itself to the public as providing in-home care services must be licensed by the Department and must comply with ORS 443.305 through 443.350 and these rules. The provisions of ORS 443.305 through 443.350 do not apply to organizations licensed, registered or certified under ORS 101.030, 410.495, 443.410, 443.485, 443.725, 443.860, or 443.886. The provisions of ORS 443.305 through 443.350 do not apply to independent individuals, volunteers, family, neighbors, or to agencies offering only housekeeping or on-call staffing for facilities, or to support services provided and funded by the Department. Entities that provide referral or matching services that link in-home care services with clients are not required to be licensed under these rules, unless they do one or more of the following:

- (a) Schedule caregivers (as defined in OAR 333-536-0005(17));
- (b) Assign work;
- (c) Assign compensation rates;
- (d) Define working conditions;
- (e) Negotiate for a caregiver or client for the provision of services; or
- (f) Place a caregiver with a client.

(2) Application for a license to operate an in-home care agency shall be in writing on a form provided by the Department and shall include demographic, ownership and administrative information about the agency.

(3) If any of the information delineated in the agency's most recent application changes at a time other than the annual renewal date, the agency shall notify the Department in writing within 30 days of the change.

(4) No entity shall provide in-home care services or use the term "in-home care agency" in its advertising, publicity, or any other form of communication unless it holds a current valid license as an in-home care agency in accordance with the provisions within.

(5) An agency that submits a completed application for licensure must demonstrate to the Department substantial compliance with these administrative rules through the survey process.

(6) The Department may reissue an agency license that has been suspended or revoked after the Department determines that compliance with these rules has been achieved.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0015

Initial Licensure

(1) Upon receipt of a completed initial application and the required fee, the Department may conduct a survey of the agency or any subunit(s) to determine if the agency or subunit is in compliance with these rules, and has the intent to provide in-home care services. If an agency or subunit is in compliance and intends to provide in-home care services to individuals, a license may be issued for the operation of the agency or subunit.

(2) Each license shall be issued only for the agency or subunit named in the application and shall not be transferable or assignable. If the ownership of the agency or subunit changes, the new owner shall apply for a license.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0020

Licensure Fees

(1) The fee for an initial in-home care agency license shall be \$1500. If the agency has subunits, the fee for an initial license shall be \$1500 for the parent agency, plus an additional \$750 for each subunit.

(2) The fee for a renewed in-home care agency license shall be \$750. If the agency has subunits, the fee for a renewed license shall be \$750 for the parent agency, plus an additional \$750 for each subunit.

(3) If the ownership of an agency changes other than at the time of the annual renewal, the new owner's agency licensure fee shall be \$350. If the new owner's agency has one or more subunits, this fee shall be \$350 for the

parent agency, plus an additional \$350 for each subunit. Licenses are not transferable.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0030

Civil Penalties; Denial, Suspension, or Revocation of License

(1) The Department may impose civil penalties in the manner provided in ORS 183.745 for a violation of any provision of ORS 443.305 to 443.350 or with rules adopted thereunder, not to exceed \$2500 per violation. Failure to comply with ORS 443.305 to 443.350 includes but is not limited to:

(a) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;

(b) Failure to provide the contracted in-home care services; or

(c) Failure to correct deficiencies identified during a Department inspection or complaint investigation.

(2) A notice of civil penalty shall include a statement of appeal rights as provided in ORS 183.745.

(3) The Department shall maintain for public inspection, records of any civil penalties imposed on in-home care agencies under this rule.

(4) A license for an in-home care agency may be denied, suspended or revoked by the Department when the an in-home care agency has failed to comply with ORS 443.305 through 443.350 or with OAR 333-536-0000 through 333-536-0095, including but not limited to an owner or manager of the in-home care agency permitting, aiding or abetting any illegal act affecting the welfare of the client. Actions taken under this section shall comply with ORS 183.413 to 183.470.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0040

Department Procedures

Complaint Investigations and Inspections:

(1) Complaint Investigations:

(a) Any person may make a complaint to the Department regarding violations of in-home care agency laws or regulations. An unannounced complaint investigation will be carried out within 45 calendar days of the receipt of the complaint and may include, but is not limited to: Interview of the complainant, client(s), witnesses, and agency management and staff; observations of the client(s), staff performance, client environment; and review of documents and records. Should the complaint allegations represent an immediate threat to the health or safety of a client, the Department will notify appropriate authorities to ensure a client's safety, and an investigation will be commenced within two working days.

(b) Copies of all complaint investigation reports and statements of deficiencies, which are not exempt from disclosure, will be available from the Department provided that the identity of any complainant or client referred to in an investigation will not be disclosed without legal authorization.

(2) Abuse and Protective Services Investigations:

(a) The in-home care agency shall cooperate with investigations of allegations of client abuse and protective service activities conducted by, or according to procedures established by, the Department.

(3) Inspections:

(a) The Department shall, in addition to any inspections conducted pursuant to complaint investigations, conduct an on-site inspection of each in-home care agency prior to services being rendered and once every three years thereafter as a requirement of licensing.

(b) Inspections may include but not be limited to those procedures stated in subsection (1)(a) of this rule.

(c) When documents and records are requested under section (1) or (2) of this rule, the agency shall make the requested materials available to the investigator for review and copying.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0050

Organization, Administration, and Personnel

(1) An agency shall clearly set forth in writing the organization, services provided, administrative control, and lines of authority and responsibility from the owner to the client-care level.

(a) An agency shall not assign administrative and supervisory functions to another agency or organization.

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(b) The agency shall control and be responsible for all services provided, including those provided through contractual agreements between the agency and caregivers or licensed nurses.

(c) An in-home care agency shall be required to maintain administrative and professional oversight to ensure the quality of services provided.

(2) Geographic service area:

(a) The agency shall identify in writing the geographic area in which it generally intends to provide services.

(b) The geographic service area shall be within a distance from the parent agency which ensures appropriate and timely delivery and supervision of services.

(3) If the agency operates a branch office:

(a) The branch office shall be located within the parent agency's geographic service area at a distance from the parent agency that generally does not exceed one hour's travel time.

(b) The branch office shall be operated under the management and supervision of the parent agency. Administrative and personnel functions must be retained at the parent agency. The branch office must not function as an independent agency.

(c) Services must not be provided from the branch office until the branch office has been added to the license of the parent agency in accordance with Department procedures.

(4) If the agency provides services from an office located outside of the parent agency's geographic service area, that office will constitute a subunit of the agency. If the agency has subunits:

(a) The subunit shall have its own staff, separate from parent agency staff, and shall operate independently of the parent agency.

(b) The subunit shall independently meet all licensing requirements, be separately licensed from the parent agency, and pay a separate licensure fee.

(5) An agency's owner or designee shall:

(a) Assume full legal, financial, and overall responsibility for the agency's operation; and

(b) Serve as, or employ, a qualified manager.

(6) The manager hired on or after the effective date of these rules shall meet the following qualifications:

(a) Possess a high school diploma or equivalent; and

(b) Have at least two years of professional or management experience in a health-related field or program.

(7) The manager or designee shall be accessible and available during all hours in which services are being provided to clients. The manager shall designate, in writing, a qualified individual to act as manager in his or her absence.

(8) The manager or designee shall be responsible for:

(a) Organizing and directing the agency's ongoing functions;

(b) Developing and implementing written and current policies and procedures necessary to direct the administrative, personnel, and client care operations of the agency, including but not limited to the requirements in these rules;

(c) Ensuring the completeness and accuracy of all information provided to the public regarding the agency and its services;

(d) Ensuring the provision of safe and appropriate services in accordance with written service plans;

(e) Ensuring that all individuals providing services for the agency meet the qualification, orientation, competency, training, and education requirements in the rules;

(f) Ensuring that personnel and client care practices are consistent with the agency's written policies and procedures.

(g) Ensuring that client care assignments are based on the caregiver's abilities, skills, and competence;

(h) Ensuring that agency does not accept or retain clients for whom it does not have the capabilities or resources to provide services;

(i) Ensuring the timely internal investigation of complaints, grievances, accidents, incidents, medication or treatment errors, and allegations of abuse or neglect involving individuals providing services for the agency. The agency shall maintain in its records documentation of the complaint or event, the investigation, the results, and actions taken;

(j) Ensuring the timely reporting of allegations of abuse or neglect to the appropriate authority that includes but is not limited to Department or local law enforcement agency.

(9) Personnel records for all caregiver and nursing staff, both employees and contracted staff, shall include at a minimum the following:

(a) Evidence of pre-employment screening;

(b) Evidence that the in-home care agency ensures that a criminal background check has been conducted on all individuals employed by or contracting with the agency as in-home caregivers.

(A) The in-home care agency must insure that a criminal background check has been conducted on all new employees hired after the effective date of these rules.

(B) The in-home care agency must insure that a criminal background check has been conducted on all current employees within six months of the effective date of these rules. If the screening indicates that the employee has been convicted for crimes against an individual or property, the agency shall make a determination of the employee's fitness to provide care to clients.

(c) Evidence that all position qualifications have been met, including required licensure;

(d) Current position job description(s) signed by the individual(s);

(e) Evidence of orientation, training, competency, and ongoing education;

(f) Evidence of annual performance evaluations;

(g) Evidence of compliance with agency employee health policies.

(h) Evidence of a current Driver's License with current auto insurance for each individual whose duties include transporting clients in motor vehicles; and

(i) Current signed contract(s), if applicable, as specified in paragraph (10) of these rules.

(10) An agency contracting with individuals, or with another agency or organization, to provide personal care services to its clients shall enter into a written contract with each party under which services to the agency clients are provided. The written contract shall clearly stipulate:

(a) The services to be provided by the contractor;

(b) That the clients are the clients of the agency and not the contractor;

(c) The requirement that the contractor conform to all of the agency's client care and personnel policies; and

(d) The terms of the agreement and basis for renewal or termination.

(11) The agency shall comply with all applicable state and local laws, statutes, rules, and ordinances.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHB 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0070

Caregiver Qualifications and Requirements

The personal care provided by the agency shall be rendered by qualified and trained employees or contracted caregivers under the supervision of the manager or designee. The services shall be provided as requested by the client or client's representatives in accordance with these rules and the service plan.

(1) The manager shall ensure that the agency has qualified and trained employees or contracted caregivers sufficient in number to meet the needs of the clients receiving services.

(2) Caregivers must be at least 18 years of age and shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other agency staff.

(3) Caregivers shall complete an agency-specific orientation, conducted by the agency manager or designee, before independently providing services to clients.

(a) The orientation shall include, but not be limited to, the following subject areas:

(A) Caregivers' duties and responsibilities;

(B) Clients' rights;

(C) Ethics, including confidentiality of client information;

(D) The agency's infection control policies;

(E) A description of the services provided by the agency;

(F) Assignment and supervision of services;

(G) Documentation of client needs and services provided;

(H) The agency's policies related to medical and non-medical emergency response;

(I) The roles of, and coordination with, other community service providers; and

(J) Other appropriate subject matter based on the needs of the special populations served by the agency.

(b) The content of the orientation, the date(s) and length, and the name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(4) Caregivers shall complete appropriate training before independently providing services to clients.

(a) Caregiver training shall be based on the services provided by the in-home care agency, including, as applicable, the following topics:

(A) Caregivers' duties and responsibilities;

(B) Recognizing and responding to medical emergencies;

(C) Dealing with adverse behaviors;

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(D) Nutrition and hydration, including special diets and meal preparation and service;

(E) Appropriate and safe techniques in personal care tasks;

(F) Methods and techniques to prevent skin breakdown, contractures, and falls;

(G) Handwashing and infection control;

(H) Body mechanics;

(I) Maintenance of a clean and safe environment;

(J) Fire safety and non-medical emergency procedures; and

(K) Assisting clients with self-directed or client's representative-directed non-injectable medication administration.

(b) The content of the training, the date(s) and length, and name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(c) Caregivers with proof of current or previous Oregon health-care related licensure or certification are exempt from in-home caregiver training.

(d) Caregivers moving from one office to another in the same in-home care agency are not subject to additional training requirements, provided previous training is documented.

(e) Caregivers who have completed training previously, and have documentation of that training, shall have their competency evaluated by an agency representative, and any potential training may be limited to areas requiring improvement after the evaluation.

(f) Documentation of training and competency evaluations shall be included in the caregiver's personnel record.

(5) Caregiver Selection and Review of Service Plan.

(a) The skills of the caregiver must be matched with the care needs of the client. The manager or designee must assign caregivers to specific clients based on the care needs of the clients and the skills of the caregivers. The caregivers must receive additional training as appropriate to meet the individual needs of assigned clients.

(b) The client's service plan must be reviewed with each caregiver before the initial delivery of client care. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.

(c) The updated client's service plan must be reviewed with each caregiver when changes to the plan are made. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.

(d) Caregivers must provide services to clients in accordance with the service plans.

(6) Caregiver supervision.

(a) The manager or designee must conduct supervisory visits to the client's residence:

(A) Within two weeks of the initiation of the services while a caregiver is providing services, and

(B) Quarterly monitoring thereafter. The first quarterly visit must be in person. Subsequent visits may occur by phone or by other electronic means at the discretion of the manager or designee under the following circumstances: impending discharge from services; relocation to a facility; when minimal services — such as one shift a month — would cause the client to incur undue financial burden; or, due to other circumstances that are justified in chart note(s) by the manager. In no case shall the time between supervisory in-person monitoring visits exceed a six-month period.

(b) Each supervisory visit to observe and report on the client's status must be documented, dated, and signed by the supervisor. The caregiver may be present during the supervisory visit.

(c) The manager or designee must, during a supervisory visit, document:

(A) Whether appropriate and safe techniques have been used in the provision of care;

(B) Whether the service plan has been followed as written or needs to be updated;

(C) Whether the service plan is meeting the client's needs;

(D) Whether the caregiver has received sufficient training for this client; and

(E) Whether appropriate follow-up of any service or service plan issues or problems identified as a result of the supervisory visit will be necessary.

(d) If services are provided in a non-residential setting in accordance with the service plan, supervisory visits which conform to the requirements in paragraphs (a) and (b) of this section must also be conducted at the non-residential location.

(e) When the caregiver is not present, the supervisor shall contact the caregiver, observe the client and the environment, document the assessment

of the client/caregiver relationship and determine whether the goals of the service plan are being met.

(7) Caregivers shall receive a minimum of six (6) hours of education related to caregiver duties annually.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0075

Medication Services

If the agency provides non-injectable medication services as described in OAR 333-536-0045(2)(a), the services shall be rendered to persons who meet the requirements of (8) of this rule. The services shall be provided as requested by the client or client's representatives in accordance with these rules, accepted standards of medication practice, and the service plan.

(1) If the agency provides medication administration or medication set-up, the services shall be rendered by qualified and trained employees or contracted caregivers. The services shall be provided as requested by the client or client's representative in accordance with these rules, accepted standards of medication practice and the service plan.

(2) If medication set up is done by a client representative or family member and not the agency caregiver, then the client representative or family member shall:

(a) Sign a medication set up consent form that spells out the representative's or family member's obligations which includes;

(A) Providing a list of the client's medication and a physical description of each with any special instructions, updating as appropriate;

(B) Keeping the original labeled medication containers in the home for verification should the caregiver have questions about medication set up; and

(C) Providing instructions for setting up medications in closed secondary containers designed and manufactured for this purpose.

(3) The agency record shall include either physician orders, or a copy of the client's prescription and medication administration record.

(4) The agency manager shall be responsible for developing and implementing safe and appropriate medication administration delivery systems that ensure each client receives the right medication, in the right amount, by the right route, and at the right time.

(a) The agency's medication practices must be consistent with the agency's current written policies and procedures that include, but are not limited to:

(A) Provisions to ensure that prescribed changes in each client's medication regimen are documented and implemented;

(B) Provisions to ensure that the caregivers are informed about the potential adverse reactions, side effects, drug-to-drug interactions and food-to-drug interactions, and contraindications associated with each client's medication regimen;

(C) Provisions to ensure that the caregivers promptly report problems or discrepancies related to each client's medication regimen to the caregivers' supervisor.

(5) The client's service plan must specify the medication tasks to be performed. All agency record(s) shall have complete medication instructions that include the name of each medication, the dosage to be administered, the route of administration, the frequency of administration, the name of the agency staff who filled the container, and any special instructions necessary for safe and appropriate administration.

(6) Packaging and labeling:

(a) Prescription medications shall be in the original pharmacy containers and clearly labeled with the pharmacists' labels.

(b) Samples of medications received from the physician or practitioner shall be in the original containers and have the original manufacturers' labels.

(c) Over-the-counter medications shall be in the original containers and have the original manufacturers' labels.

(d) Secondary containers and all removable compartments must be labeled with the client's name, the date and time of the set-up, and the specific time the medications in that compartment are to be administered.

(e) Liquid and non-pill medications that cannot be put in secondary containers shall be appropriately labeled.

(7) The provision of medication tasks as described in this section shall be documented by the individuals performing the tasks. The documentation shall include the tasks completed, the date and signature of the individual(s) performing the task(s), and shall be maintained in the client's agency record.

(8) Visits by a registered nurse to provide periodic observation and inspection shall be conducted at least every 90 days.

ADMINISTRATIVE RULES

(9) Agency caregivers assigned to provide medication services must be given basic non-injectable medication training before providing the services. The medication training must include successful return demonstrations of non-injectable medications tasks by the caregivers.

(a) The medication training shall include at least the following areas:

- (A) Medication abbreviations;
- (B) Reading medication orders and directions;
- (C) Reading medication labels and packages;
- (D) Setting up medication labels and packages;
- (E) Administering non-injectable medications:

- (i) Pill forms, including identification of pills that cannot be crushed;
- (ii) Non-injectable liquid forms, including those administered by syringe or dropper and eye and ear drops;
- (iii) Suppository forms; and
- (iv) Topical forms.

(F) Identifying and reporting adverse medication reactions, interactions, contraindications and side effects; and

(G) Infection control and safety related to medication administration.

(b) Prior to providing medication services, the caregivers shall demonstrate appropriate and safe techniques in the provision of medication tasks described in this section.

(c) The content of the medication training, the dates and length of training, the identity of the instructor, evidence of successful return demonstrations, and the instructor's statement that the caregiver has been evaluated to be competent to provide the medication services described in this section shall be clearly documented for each caregiver and maintained in the agency's personnel records.

(d) An individual with a current Oregon State Board of Nursing medication assistant (CMA) certification who has worked as a CMA continuously for a one-year period within the two years before employment by the agency is exempt from the training requirements in this rule.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0080

Nursing Services

If the agency provides nursing services as described in OAR 333-536-0045(2)(b), the services must be provided by an Oregon-licensed registered nurse employed by or contracted with the agency and provided only to a client whose medical condition and health status is stable and predictable. The services shall be provided as requested by the client or the client's representative and shall be in accordance with the administrative rules of the Oregon State Board of Nursing (OAR chapter 851), accepted standards of nursing practice, and the service plan:

(1) Nursing services shall consist of: assessment, monitoring, provision of intermittent nursing care, and delegation of special tasks of nursing care to unlicensed persons, for clients with stable, predictable, or chronic health conditions.

(2) Delegation to the agency caregivers of special tasks of nursing care, including the administration of subcutaneous injectable medications, for clients whose conditions are stable and predictable shall be in accordance with the Oregon State Board of Nursing Administrative Rules for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Person (OAR 851-047-0000 through 851-047-0040).

(3) The registered nurse must conduct and document a nursing assessment of the client to identify the client's nursing needs before provision of nursing services as described in this section. The assessment must be dated and signed and maintained in the client's in-home care record.

(4) The registered nurse shall participate in the development and updates of the service plan when nursing services, as described in this section, have been requested.

(a) The service plan shall include the aspects of assessment and monitoring, the specific tasks of nursing care, and the delegation of special tasks of nursing care to be conducted by the registered nurse. The service plan shall also include measurable client goals or desired outcomes specific to the nursing services being provided.

(b) When special tasks of nursing care have been delegated, the service plan shall clearly identify all delegated special tasks of nursing, the name of each caregiver to whom these tasks have been delegated, and the name of the registered nurse responsible for the delegation. The service plan shall include the date of delegation, the date the special task of nursing is to begin, and the frequency of supervision by the registered nurse.

(5) The registered nurse shall obtain written or telephone orders from the physician or other legally recognized practitioner for all medications and medical treatments managed or administered by the agency under this section. Written orders shall be signed and dated by the physician or practitioner. Agencies may send a cover sheet to accompany the medication

orders and service plans. A single physician's or practitioner's signature will be sufficient on the coversheet if it contains a written list of accompanying documents.

(a) Telephone orders shall be immediately recorded, dated, and signed by the registered nurse, and transmitted to the physician or practitioner for countersignature within 72 hours. The orders that have been signed by the physician or practitioner shall be incorporated into the client's record within 30 days.

(b) Changes in medications and medical treatments managed or administered by the agency shall not be made without written or telephone orders from the physician or practitioner as described in this rule.

(c) Medications and medical treatments shall be managed or administered as ordered by the physician or practitioner.

(d) Adjustment to a drug regimen within the written parameters shall not be considered new orders that require a physician's or nurse practitioner's signature.

(6) Signed and dated documentation of nursing assessments, ongoing monitoring, problem identification, appropriate follow-up, progress towards goals or outcomes, the provision of nursing care, and the delegation of special tasks of nursing care by the registered nurse must be maintained in the client's agency record.

(7) The registered nurse shall conduct and document supervisory visits to the client's residence when special tasks of nursing care have been delegated in accordance with the Oregon State Board of Nursing Administrative Rules (OAR 851-047-0000 through 851-047-0040).

(8) A licensed practical nurse may perform certain tasks of nursing as allowed by the Oregon State Board of Nursing Administrative Rules (OAR 851-045-0000 through 851-045-0025).

(9) An agency must not accept or retain a client for service who requires special tasks of nursing care unless the agency employs or contracts with nursing staff or unless appropriate delegation of the task by a registered nurse can occur.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0085

Client Records

(1) A client record shall be maintained for every client served by the agency.

(2) A legible, reproducible client record shall include at least the following:

- (a) Identification data;
- (b) Referral and intake information;
- (c) Start-of-service date;
- (d) Screening and disclosure documents and documentation required by these rules;

(e) Clients' rights documentation required by these rules;

(f) All client evaluation and assessment documentation;

(g) Client service plan and updates;

(h) All personal care, medication, and nursing services documentation required by these rules;

(i) Documentation of all services rendered, coordinated with the service plan.

(j) Service and financial agreement signed by the client or the client's representative before the initiation of services that specifies the services to be provided in accordance with the service plan, and the costs for those services.

(k) End-of-services date;

(l) End-of-service summary, including the dates of service and the disposition of the client.

(3) All entries and documents in the record must be recorded in ink, typescript, or computer-generated.

(4) All entries in a client's record must be dated and signed, or otherwise authenticated by the person making the entry.

(5) The client records shall be filed in a manner that renders them easily retrievable.

(6) Precautions must be taken to protect the records from unauthorized access, fire, water, and theft.

(7) Precautions must be taken to protect client information and record confidentiality.

(8) Authorized employees of the Department shall be permitted to review client records upon request. Photocopies of the records shall be made upon request.

(9) All clients' records shall be kept for a period of at least seven (7) years after the date of last end-of-service.

(10) Clients' records are the property of the agency.

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(11) If an agency changes ownership, all clients' records shall remain in the agency, and it shall be the responsibility of the new owner to protect and maintain these records.

(12) Before an agency terminates its business, the agency shall notify the Department where the clients' records will be stored.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0090

Quality Improvement

In accordance with accepted quality improvement principles, the agency shall develop and implement written policies and procedures for an ongoing quality improvement program that monitors and evaluates the quality and appropriateness of the personal care, medication, and nursing services provided by the agency, including those services provided by contracted individuals.

(1) Quality improvement activities shall be conducted and documented at least quarterly.

(2) The quality improvement activities shall be conducted by a committee comprised of, at a minimum, an agency owner representative, agency administrative staff, and agency direct care staff.

(3) Corrective actions that address problems identified as a result of quality improvement activities shall be planned, implemented, and evaluated.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0095

Exceptions to Rules

(1) While all agencies are required to maintain continuous compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. Requests for exceptions to the rules must:

- (a) Be submitted to the Department in writing;
- (b) Identify the specific rule for which an exception is requested;
- (c) Indicate the special circumstances relied upon to justify the exception;

(d) Identify what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed exception is desirable to maintain or improve the health and safety of the clients, and will not jeopardize client health and safety; and

(f) Identify the proposed duration of the exception.

(2) Upon finding that the agency has satisfied the condition of this rule, the Department may grant an exception.

(3) The agency may implement the exception only after receipt of written approval from the Department.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04; PH 22-2004, f. & cert. ef. 6-25-04; PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0105

Operating Without a License

If an in-home care agency is found to be operating without a valid license, the agency must, within fourteen (14) days of the receipt of an injunction obtained by the Department pursuant to Oregon Laws 2007, chapter 897, § 4:

(1) Informing its clients that the in-home care agency can no longer provide services;

(2) Refund all fees collected from the clients for services not rendered; and

(3) Cease providing services to clients.

Stat. Auth.: ORS 443.340
Stat. Implemented: OR Laws 2007, Ch 897, §4
Hist.: PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

333-536-0115

Dispute Resolution and Formal Hearings

(1) Informal Dispute Resolution. Upon receipt of a Statement of Deficiencies, an in-home care agency shall be provided an opportunity to dispute the Department's survey findings.

(a) If an agency wishes an informal conference to dispute the Department's survey findings, the facility shall advise the Department in writing within ten calendar days after receipt of the Statement of Deficiencies.

(b) The agency may not seek a delay of any enforcement action against it on the grounds the informal dispute resolution has not been completed.

(c) If an agency is successful in demonstrating the deficiencies should not have been cited, the Division shall reissue the Statement of Deficiencies, removing such deficiencies and rescinding or modifying any remedies issued for such deficiencies. The reissued Statement of Deficiencies shall state that it supersedes the previous Statement of Deficiencies, and shall clearly identify the date of the superseded Statement of Deficiencies.

(2) Formal Hearing.

(a) An agency subjected to a remedy pursuant to OAR 333-536-0115 shall be entitled to a contested case hearing in accordance with ORS Chapter 183 and OAR Chapter 137.

(b) If an agency wishes a formal hearing, a written request must be received by the Department within 10 calendar days of the informal dispute resolution decision (if applicable) or within 60 days of the notice of remedy or notice of intent to impose a civil money penalty, whichever is later.

Stat. Auth.: ORS 443.425
Stats. Implemented: ORS 443.305 - 433.350
Hist.: PH 14-2007, f. 12-19-07, cert. ef. 1-1-08

Rule Caption: Medical Marijuana.

Adm. Order No.: PH 15-2007

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Rules Amended: 333-008-0000, 333-008-0010, 333-008-0020, 333-008-0025, 333-008-0030, 333-008-0040, 333-008-0050, 333-008-0060, 333-008-0070, 333-008-0080, 333-008-0090, 333-008-0110, 333-008-0120

Subject: The Oregon Department of Human Services Public Health Division is permanently amending rules in OAR 333-008 to implement Senate Bill 161 (Chapter 573, 2007 Oregon Law), make Housekeeping amendments and make changes to the application fee schedule.

Rules Coordinator: Judy Murdza—(971) 673-0561

333-008-0000

Description of the Oregon Medical Marijuana Act

The Oregon Medical Marijuana Act (Act) was adopted by voters in the November 3, 1998 general election (Ballot Measure 67). The Act was amended during the 1999 legislative session (Oregon Laws 1999, chapter 825), during the 2005 legislative session (Oregon Laws 2005, chapter 822), and amended again during the 2007 legislative session (Oregon Laws 2007, Chapter 573). The statutes governing the Oregon Medical Marijuana Program (OMMP) are ORS 475.300 through 475.346. The Department of Human Services was assigned rulemaking authority necessary for the implementation and administration of the Oregon Medical Marijuana Act. The Act intends:

(1) To allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to receive the benefit of their doctor's professional advice regarding the possible risks and benefits of medical marijuana;

(2) To allow Oregonians suffering from debilitating medical conditions to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them; and

(3) To make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for non-medical purposes.

Stat. Auth.: ORS 475.300
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0010

Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

(1) "Act" means the Oregon Medical Marijuana Act.

(2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Department.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS Chapter 677, who has

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primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(i) Cachexia;

(ii) Severe pain;

(iii) Severe nausea;

(iv) Seizures, including but not limited to seizures caused by epilepsy; or

(v) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition submitted under OAR 333-008-0090.

(5) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.

(6) "Department" means the Department of Human Services.

(7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Department. "Designated primary caregiver" does not include the person's attending physician.

(8) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

(9) "Grower" has the same meaning as "person responsible for a grow site."

(10) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(11) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(12) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(13) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Department under ORS Chapter 414.

(14) "OMMP identity card" means a wallet-sized card issued by the Department in addition to the registry identification card that designates a person as a patient, primary caregiver, or grower.

(15) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(16) "Patient" has the same meaning as "registry identification cardholder."

(17) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Department for this purpose.

(18) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS Chapter 677, the patient's Physician Assistant licensed under ORS Chapter 677, or the patient's Nurse Practitioner licensed under ORS Chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(19) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(20) "Registry identification card" means a document issued by the Department that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(21) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a patient registry identification card by the Department.

(22) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all 3 criterion will be considered a mature plant.

(23) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(24) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(25) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0020

New Registration Application and Verification

(1) A person may apply for a registry identification card on a form prescribed by the Department. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible photographic identification from the applicant, the designated primary caregiver, and grower, as applicable. The following are acceptable forms of identification:

(A) Oregon Driver's License;

(B) Oregon Identification Card with photo;

(C) Voter Registration Card with photo; or

(D) If a caregiver, a military photo identification card;

(c) Documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Department, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) A completed "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor; and

(e) An application fee in the form of cash, bank check, or personal check. The Department will place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. An applicant will be given 14 days from Department receipt of non-sufficient funds (NSF) or stop payment notification to submit payment in the form of a bank check or cash.

(2) An applicant may only name, and the Department will only register, one designated primary caregiver and one grower.

(3) For applications received on or after December 1, 2005, the fee for a new application is \$100.00, unless an applicant can demonstrate current eligibility in the OHP, receipt of current food stamp benefits, or receipt of current SSI benefits, in which case the application fee is \$20.00.

(a) To qualify for a reduced fee on the basis of current eligibility in the OHP, an applicant must provide a copy of the applicant's current eligibility statement.

(b) To qualify for a reduced fee on the basis of receipt of current SSI benefits, an applicant must provide a copy of a current monthly SSI benefit card, showing dates of coverage.

(c) To qualify for a reduced fee on the basis of receipt of current food stamp benefits, an applicant must be current in the Food Stamp Management Information System database system or provide a current copy of food stamp benefit identification card.

(4) The Department may verify information on each application and accompanying documentation, including:

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(a) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Department may require a face-to-face meeting and may require the production of additional identification materials;

(b) Contacting a minor's parent or legal guardian;

(c) Contacting the Oregon Board of Medical Examiners to verify that an attending physician is licensed to practice in the state and is in good standing;

(d) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Department will notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application;

(e) Contacting the OHP, DHS-Self Sufficiency, or Social Security Administration (SSA) to verify eligibility for benefits; and

(f) Conducting criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(5) The Department will notify an applicant who submits a reduced fee for which the applicant is not eligible and will give the applicant 14 days from the date of notice to pay the correct fee, submit a current, valid eligibility determination statement for the OHP, current copy of food stamp benefit identification card, or to submit a copy of a receipt for current SSI monthly benefit, as applicable. The Department will continue to process the application pending receipt of an eligibility statement. The Department will not grant an application fee refund for any eligibility determination made on or after the date of issuance of the applicant's registry identification card.

(6) If an applicant does not provide all the information required and the application is considered incomplete, the Department shall notify the applicant of the information that is missing, and shall give the applicant 14 days to submit the missing information.

(7) If the Department is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030.

(8) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (6) and (7) of this rule, the application will be returned to the applicant as incomplete, along with the application fee. An applicant whose application is returned as incomplete may reapply at any time.

(9) The application forms referenced in this rule may be obtained by contacting the: Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or calling 971-673-1226.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0025

Marijuana Grow Site Registration

(1) A patient must register a marijuana grow site with the Department. The Department will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Department an application, prescribed by the Department, that includes:

(a) The name of the grower;

(b) The date of birth of the grower;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the grower; and

(e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(3) The Department shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a con-

trolled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Department will notify a patient by certified mail that the grower is ineligible and the patient will be given the opportunity to identify another grower.

(4) The Department will issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section (3) of this rule.

(5) A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient upon request.

(7) All marijuana produced for a patient must be provided to the patient or primary designated caregiver when the grower ceases producing marijuana for the patient.

(8) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0030

Registration Approval and Denial

(1) The Department will approve or deny an application within 30 days of receiving a complete application, including payment of the designated fee.

(2) If the Department approves the application, the Department shall issue a serially numbered registry identification card to the patient within five business days. The registry identification card shall include, but is not limited to:

(a) The patient's name, address and date of birth;

(b) The effective date, date of issuance and expiration date of the registry identification card;

(c) The designated primary caregiver's name, address, and date of birth, if applicable;

(d) The name, address, and date of birth of the grower, if applicable; and

(e) The location where the marijuana is produced.

(3) When a patient has specified a designated primary caregiver, or a grower, the Department shall issue an OMMP registry identification card for the designated primary caregiver and the grower. The Department shall also issue a grow site registration card to the patient. All cards shall contain the information specified in section (2) of this rule, as appropriate.

(4) The Department may deny an application if:

(a) The applicant did not provide the information required as provided in ORS 475.309 to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition;

(b) The Department determines that the information provided was falsified;

(c) The applicant has been prohibited by a court order from obtaining a registry identification card; or

(d) An applicant has willfully violated the provisions of ORS 475.300 to 475.346 or these rules.

(5) If the Department denies an application, the Department shall send the applicant a denial letter within 30 days of receipt of the complete application. The time period set forth in OAR 333-008-0020 that provides an applicant an opportunity to supplement an incomplete application does not count towards the 30-day deadline for processing an application. The denial letter will be sent by certified mail to the address listed on the application form. The letter will state the reasons for denial and when the applicant may reapply.

(6) Denial of a registry identification card shall be considered a final Department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 whose application has been denied, the person's parent or legal guardian shall have standing to contest the Department's action.

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(7) Any person whose application has been denied may not reapply for at least six months from the date of the denial, unless so authorized by the Department or a court of competent jurisdiction.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; OHD 21-2001(Temp), f. & cert. ef. 10-12-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 12-2004(Temp), f. & cert. ef. 4-1-04 thru 8-2-04; Administrative correction 8-19-04; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0040

Annual Renewal and Interim Changes

(1) A patient shall register on an annual basis to maintain active registration status by submitting a renewal application prescribed by the Department.

(2) Between 60 to 90 calendar days prior to expiration, the Department shall mail to the patient's address of record, a letter notifying the patient of the upcoming expiration date, along with a renewal application.

(3) In addition to completing the renewal application, the patient must submit, prior to the expiration of the registry identification card:

(a) Written documentation, signed by the patient's attending physician reconfirming the patient's debilitating medical condition and that the medical use of marijuana mitigates the symptoms of the patient's debilitating medical condition;

(b) A copy of the patient's current OHP eligibility determination statement, a copy of the patient's current food stamp benefit identification card, or a copy of the patient's current monthly SSI benefit card;

(c) The name of the patient's designated primary caregiver, if a primary caregiver has been designated for the upcoming year;

(d) The name of the grower; and

(e) Confirmation that existing application information has not changed, if applicable.

(4) If the renewal information is not received by the expiration date on the registry identification card, the patient's registry identification card and all other associated OMMP cards, if any, will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Department. If a person fails to apply for renewal within the time period specified in this rule, that person must submit a new application.

(5) A patient shall notify the Department within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(6) A patient shall notify the designated primary caregiver and the grower of any changes in status including, but not limited to:

(a) The assignment of another individual as the designated primary caregiver for the patient;

(b) The assignment of another individual as a grower for the patient;

(c) The end of eligibility of the patient to hold a registry identification card.

(7) If the Department is notified by the patient that a primary caregiver or a grower has changed, the Department shall notify the primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Department within 7 calendar days.

(8) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Department within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Department may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.

(9) The renewal fee is \$100.00, unless an applicant can demonstrate current eligibility in the OHP, receipt of current food stamp benefits, or receipt of current SSI benefits, in which case the fee is \$20.00 as set forth in OAR 333-008-0020(3).

(10) The Department will verify the renewal application information in the same manner as specified in OAR 333-008-0020(4).

Stat. Auth.: ORS 475.309 & 475.312

Stats. Implemented: ORS 475.309 & 475.312

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0050

Confidentiality

(1) The Department shall create and maintain both paper and computer data files of patients, designated caregivers, growers, and grow site addresses. The data files will include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, and a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under section (1) of this rule may be released to:

(a) Authorized employees of the Department as necessary to perform official duties of the Department, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;

(b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:

(A) That a person is or was a lawful possessor of a registry identification card; or

(B) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site; or

(C) How many people a person was or is authorized to grow for; or

(D) As provided in OAR 333-008-0060(2);

(c) Other persons (such as, but not limited to, employers, lawyers, family members, other government officials) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Department is authorized to release and to whom.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0060

Monitoring and Investigations

(1) The Department may, at any time, contact a patient, designated primary caregiver, grower, or a patient's attending physician by telephone, mail or in person to verify the current accuracy of information included in the registration system. This authority does not extend to allowing Department staff to routinely search the person or property of a person who possesses a registry identification card, a grow site, or to search the property of an attending physician.

(2) Notwithstanding section (1) above, the Department may, when it has reason to believe a violation of ORS 475.300 to 475.346 has occurred, either conduct an investigation to collect evidence of a violation of the Oregon Medical Marijuana Act, or arrange for this responsibility to be assumed by the proper state or local authorities. Such violations include, but are not limited to:

(a) Failure by a patient to notify the Department of any change in the patient's name, address, attending physician, designated primary caregiver, grower, or grow site location.

(b) Failure by a patient, designated primary caregiver, or grower to return the OMMP identity and registry identification cards to the Department within 7 calendar days of the patient's notification of the diagnosis that the patient no longer has a debilitating medical condition.

(c) Failure by a designated primary caregiver or grower to return the OMMP identity and registry identification cards to the Department within 7 calendar days of notification by the patient that the person's designation as primary caregiver or grower has been terminated.

(d) Submission of false information by a patient, designated primary caregiver, grower, or attending physician during the registration or registration renewal process.

(e) Conviction of a patient, designated primary caregiver, or grower of a marijuana-related offense that occurred after the date of issuance of a registry identification card.

(3) If the Department has reason to believe that an individual, signing an application as the attending physician, does not meet the definition of attending physician under these rules, the Department may examine the original patient medical record in the physician's possession or a copy provided by the physician. The sole purpose of this examination is to determine whether the physician meets the definition of attending physician in OAR 333-008-0010, including whether the physician has primary responsibility for a patient as that is defined in OAR 333-008-0010, and will not

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include review of any clinical judgments such as adequacy of diagnosis or propriety of treatment.

(a) The Department will notify the patient of the intent to review the medical records pursuant to this section and request the patient's authorization to conduct the review. An applicant's or patient's failure to authorize a review of his or her medical records may result in denial of an application.

(b) The Department will send written notification allowing the physician 10-days to provide additional information requested by the Department.

(4) In determining whether to examine a patient's medical record pursuant to section (3) of this rule, the Department may consider, but is not limited to, factors such as complaints from patients or family members, complaints from health care providers, total number of applicants for whom the physician provided documentation, or number of applicants for whom the physician provided documentation during a specific time period.

(5) The Department shall refer criminal complaints against a patient, designated primary caregiver, or grower; or medical practice complaints against an attending physician to the appropriate state or local authorities.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0070

Suspension and Revocation

(1) The Department may suspend a registry identification card, and preclude a person from using a registry identification card for a period of up to six months if the Department obtains evidence that establishes a registry identification cardholder has:

(a) Committed egregious violations of the Act, including obtaining a registry identification card by fraud;

(b) Committed multiple or continuing violations of the Act; or

(c) Been convicted of a marijuana-related offense.

(2) The Department shall send written notice of a suspension by certified mail. The notice shall comply with ORS 183.415, and shall include the right to request a contested case hearing. The request for hearing must be received within 21-days from the date the notice was mailed.

(3) The Department shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the OMMP under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the department within 7 calendar days.

(4) The cardholder shall return the registry identification card to the department within 7 calendar days of the final order of suspension being issued. If the cardholder is a patient, the patient shall return his or her card and all other associated OMMP cards.

(5) If, during the period of suspension, a patient's annual renewal date comes due, the patient must apply for renewal at the end of the period of suspension.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0080

Permissible Amounts of Medical Marijuana

(1) A patient or the patient's designated primary caregiver may possess up to six mature marijuana plants, 24 ounces of usable marijuana, and a patient and the patient's designated primary caregiver may possess a combined total of up to 18 marijuana seedlings or starts.

(2) Notwithstanding section (1) of this rule, if a patient has been convicted, on or after January 1, 2006, of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, and the offense occurred on or after January 1, 2006, the patient or the patient's designated primary caregiver may possess only one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(3) A grower:

(a) May produce marijuana for and provide marijuana to a patient or that person's designated primary caregiver as authorized under ORS 475.300 to 475.346 and these rules;

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each patient or caregiver for whom marijuana is being produced;

(c) May possess up to 18 marijuana seedlings or starts for each patient for whom marijuana is being produced;

(4) On or after July 1, 2008, a grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(5) A patient, the designated primary caregiver for a patient and the grower must have, in his or her possession, his or her OMMP identity card when transporting marijuana. A patient must have, in his or her possession, his or her OMMP identity card when using marijuana in a location other than the residence of the cardholder.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0090

Addition of Qualifying Diseases or Medical Conditions

(1) The Department shall accept a written petition from any person requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under section 333-008-0010 of these rules and be added to the list.

(2) The Department shall, within 14 days of receipt of the petition, send a letter by certified mail requesting the petitioner to provide, if possible:

(a) An explanation for why the condition should be included;

(b) Any literature supporting the addition of the condition to the list;

(c) Letters of support from physicians or other licensed health care professionals knowledgeable about the condition; and,

(d) Suggestions for potential expert panel members.

(3) The State Public Health Officer or designee may make a final determination that a petition is frivolous and deny the petition without further review.

(4) If the petition is not denied under section (3) of this rule, the Department shall appoint an expert panel of five to seven individuals to review a petition. The members of the panel shall include the State Public Health Officer or designee, other physicians licensed under ORS 677, at least one patient, at least one patient advocate, and other professionals knowledgeable about the condition being considered.

(a) If the petitioner so desires, she or he shall be given the opportunity to address the panel in person or by telephone.

(b) If the petitioner so desires, his or her confidentiality shall be strictly maintained.

(5) The Department shall submit the written petition to the expert panel, which shall make recommendations to the Department regarding approval or denial.

(a) The members of the panel may examine medical research pertaining to the petitioned condition, and may gather information (in person or in writing) from other parties knowledgeable about the condition being considered.

(b) The panel members will submit individual recommendations to the State Public Health Officer, and the meetings of the panel will not be considered to be public hearings.

(6) The Department will make a final determination on a petition within 180 days of receipt of the petition.

(7) Denial of a petition shall be considered a final Department action subject to judicial review.

(8) In cases where the condition in a person's petition is the same as, or is, as determined by the Department's State Public Health Officer, substantially equivalent to a condition that has already been denied in a previous determination, the Department may similarly deny the new petition unless new scientific research supporting the request is brought forward.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

333-008-0110

Advisory Committee on Medical Marijuana

(1) The Advisory Committee on Medical Marijuana (ACMM) shall advise the Director of the Department on the administrative aspects of the OMMP, review current and proposed administrative rules of the program, and provide annual input on the fee structure of the program.

(2) The Department will provide staff support to the ACMM by assisting with the scheduling of meetings, recording of minutes, and dissemination of meeting-related materials.

(3) The ACMM will adopt a Charter and By-Laws that detail:

(a) How meetings will be conducted;

(b) The election of presiding officers; and

(c) The scheduling of at least four public meetings per year.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

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333-008-0120

System to Allow Verification of Data at All Times

(1) The OMMP will establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, grower, or grow site location is registered with OMMP.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The OMMP may allow the release of reports related to verification if it is without identifying data.

(4) The OMMP will have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the OMMP will ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 – 475.346

Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08

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Rule Caption: Temporary suspension of Hib immunization requirements for children in childcare, preschool and Head Start.

Adm. Order No.: PH 1-2008(Temp)

Filed with Sec. of State: 1-8-2008

Certified to be Effective: 1-8-08 thru 6-30-08

Notice Publication Date:

Rules Amended: 333-050-0020, 333-050-0050, 333-050-0120

Subject: The Department of Human Services is amending these rules to temporarily suspend the Haemophilus influenzae type B (Hib) immunization requirement for children in childcare, preschool and Head Start facilities. Exclusion orders for Hib will not be issued during February 2008. The rule changes are needed because of a Hib vaccine recall and shortage.

Rules Coordinator: Judy Murdza—(971) 673-0561

333-050-0020

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433.235 through 433.284, which requires evidence of immunization or a medical or a religious exemption for each child as a condition of attendance in any school or facility and which requires exclusion from school or facility attendance until such requirements are met.

(2) The intent of the school and facility immunization statutes and these rules is to require that:

(a) A new enterer provide a signed and dated Certificate of Immunization Status form documenting either: evidence of immunization or a religious, and/or medical or immunity exemption. If age appropriate, required for the child's grade level, and the child has not claimed an exemption, a minimum of one dose each of the following vaccines must be received prior to attendance: Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, Varicella, and Diphtheria/Tetanus/Pertussis containing vaccine. (See Primary Review Table);

(b) A transferring child provide evidence of immunization or an exemption, within 30 days of initial attendance; and

(c) A child currently attending not be allowed to continue in attendance without complete or up-to-date evidence of immunization, or an exemption.

(3) The only exception is for family child care homes, either registered or exempt from registration, providing child care, six weeks of age to kindergarten entry, in a residential or nonresidential setting. These programs are exempt from all requirements except an up-to-date Certificate of Immunization Status form on each child in attendance.

(4) All schools are required to comply with these rules, including public schools, private schools, charter schools, and alternative education programs. Any program that provides educational instruction designed to lead to a high school diploma or transfer into a regular high school program must also comply with these rules.

(5) Nothing prohibits a school, children's facility, or post-secondary educational institution from adopting additional or more stringent requirements than the statutes or rules as long as medical and religious exemptions are included and the requirements are in compliance with the recommendations of the Advisory Committee on Immunization Practices, Department of Health and Human Services, Centers for Disease Control and Prevention.

(6) Public schools are required to allow transferring students at least 30 days to provide an immunization record.

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

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0025; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08

333-050-0050

Immunization Requirements

(1) For purposes of this section, immunization against the following diseases means receipt of any vaccine licensed by the United States Food and Drug Administration (or their foreign equivalent) for the prevention of that disease.

(2) For purposes of ORS 433.267(1), immunizations are required as follows:

(a) Diphtheria/Tetanus/Pertussis containing vaccine (DTaP) —Five doses unless:

(A) The fourth dose was given at or after the fourth birthday, in which case the child is complete with four doses; or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses.

(b) Polio — Four doses unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles — Two doses, must be received at or after 12 months of age, or in the same month and year as the child's first birthday. Second dose, must be received at least 28 days after first dose (see Primary Review Table).

(d) Rubella — One dose, must be received at or after 12 months of age, or in the same month and year as the child's first birthday.

(e) Mumps — One dose, must be received at or after 12 months of age, or in the same month and year as the child's first birthday.

(f) Hepatitis B — Up to three doses (See Primary Review Table). If the first dose was received at or after 11 years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

(g) Varicella — Up to two doses, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age or in the same month and year as the child's first birthday, and after March 1995, the date the vaccine was licensed in the United States. Second dose, if required, must be received at least 28 days after first dose. (See Primary Review Table to determine the number of required doses.)

(h) Hepatitis A — Two doses, must be received at or after 12 months of age, or in the same month and year as the child's first birthday. Beginning SY 2008-2009, the requirement for Hepatitis A vaccine will be phased in by grade. (See Primary Review Table.)

(i) Tetanus/Diphtheria/Pertussis booster (Tdap) — One dose, must be received at or after 10 years of age, unless the last Diphtheria/Tetanus containing vaccine was given less than five years ago. Beginning SY 2008-2009, the requirement for Tdap will be phased in by grade. (See Primary Review Table.)

(3) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(4) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in this rule is not known, this procedure does not satisfy the requirements of these rules.

(5) The Public Health Director or designee shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. The Division shall give notice in writing to all local health departments when the suspension takes effect. Additional written notice shall be given to all local health departments when the suspension is lifted. Local health departments will notify schools and facilities of any temporary suspensions that affect their procedures under these rules. Any waived vaccine doses will be required at the next review cycle following the lifting of the suspension.

(6) The local public health officer, after consultation with the Division, may allow a child to attend a school or facility without meeting

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the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The local health department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an Exclusion Order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the local health department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the local health department, with the agreement of the Division, will not issue Exclusion Orders for the unavailable vaccine.

(7) Medical or immunity exemptions from immunization requirements are allowed as follows:

(a) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(A) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the local health department for a child who has immunity based on a health care practitioner's diagnosis;

(B) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the local health department;

(C) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the local health department;

(D) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the local health department; and

(E) Exemption for Hepatitis A vaccination based on laboratory confirmation of immunity may be certified by a physician or authorized representative of the local health department.

(b) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(A) Exemption for measles, mumps, rubella or varicella vaccination may be certified by a physician or an authorized representative of the local health department for a post-pubertal female when it is believed that there is a significant risk of her being or becoming pregnant within one month; and

(B) Exemption for one or more immunizations shall be established by a diagnosis based on a specific medical contraindication certified in a letter from the physician or an authorized representative of the local health department. The vaccines, medical diagnosis, practitioner's name, address and phone number must be documented and attached to the record.

(c) Exemptions submitted to the school or facility must be in English.

(8) A child may attend a school or facility under ORS 433.267(1) if the child is incomplete but up-to-date and remains up-to-date and in compliance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(9) If evidence is presented to the local health department that an Exclusion Order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the local health department shall rescind the Exclusion Order. The local health department shall notify the child's school or facility when an Exclusion Order is rescinded.

(10) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the local health department may use its judgment to make a final determination of the child's immunization status.

(11) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Parents must select which vaccines a child is being exempted from by checking the appropriate boxes on the Certificate of Immunization Status.

(12) A child may not be excluded from school until kindergarten for not having the fifth dose of Diphtheria/Tetanus/Pertussis containing vaccine, fourth dose of Polio vaccine or second dose of Measles vaccine.

(13) A child may not be excluded from school until seventh grade for not having Tdap vaccine.

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

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH

1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08

333-050-0120

Immunizations Schedules for Spacing of Doses

See Primary Review Table for the judgment of compliance or non-compliance with the required immunizations.

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

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 4-1990(Temp), f. & cert. ef. 1-11-90; HD 10-1991, f. & cert. ef. 7-23-91; HD 12-1991(Temp), f. & cert. ef. 8-26-91, cert. ef. 9-3-91; HD 16-1997, f. & cert. ef. 12-3-97; OHD 8-1998, f. & cert. ef. 9-10-98; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0070; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08

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

Rule Caption: Comprehensive In Home Support for Adults with Developmental Disabilities.

Adm. Order No.: SPD 20-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 12-28-07

Notice Publication Date: 12-1-2007

Rules Amended: 411-330-0020, 411-330-0030

Rules Repealed: 411-330-0020(T), 411-330-0030(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently amending the rules relating to Comprehensive In Home Support Services for Adults with Developmental Disabilities to reflect the Cost of Living Adjustments awarded by the 2007-2009 Oregon Legislature.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-330-0020

Definitions

(1) "Abuse" means

(a) Abuse of an Adult. Except for those additional circumstances listed in sections (1)(b)(A-F) of this rule abuse of an adult means one or more of the following:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult; or

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(b) Abuse in contracted or purchased services. When the Community Developmental Disability Program or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour Residential Program, an Adult Foster Home, an Employment or Community Inclusion Program, or a Supported Living Program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment or maltreatment. This includes but is not limited to the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services.

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the Individual Service Plan Team and included in an approved Behavior Support Plan.

(D) An inappropriate, unauthorized restraint resulting in injury;

(i) A restraint is inappropriate if:

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(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a Behavior Support Plan; or

(III) It uses procedures outside the parameters described in a Behavior Support Plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a health related protection; or

(II) It is applied without Individual Service Plan Team approval, identified on the Individual Service Plan and is not described in the formal written Behavior Support Plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation which may include, but is not limited to:

(i) An unauthorized rate increase;

(ii) Staff borrowing from or loaning money to an individual;

(iii) Witnessing a will in which the program or a staff is a beneficiary;

or

(iv) Adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or the individual's legal representative and notification of the Individual Service Plan Team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with the program or another individual's funds, or the program becoming guardian or conservator.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(3) "Adult" means an individual 18 years or older with developmental disabilities.

(4) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services especially when rights are at risk or have been violated.

(5) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(6) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and services.

(7) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language or other communication methods.

(8) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(9) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(11) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Seniors and People with Disabilities Division:

(a) A 24-hour program, a foster home or a supported living program;

or

(b) In-Home Supports costing more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments provided to an individual in the individual's family home in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services or Children's Intensive In-Home Services.

(12) "Department" or "DHS" means the Department of Human Services.

(13) "Developmental Disability for Adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(14) "Employer-Related Supports" means activities that assist individuals and, when applicable, their legal representatives or family members, with directing and supervising provision of services described in the In-Home Support Plan. Supports to the employer include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(15) "Entry" means admission to a Department-funded developmental disability service provider.

(16) "Exit" means termination from a Department-funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(17) "Family" for determining individual eligibility for In-Home Support Services as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(18) "Fiscal Intermediary" means a person or agency that receives and distributes In-Home Support funds on behalf of an individual according to an In-Home Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or their legal guardians, who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(19) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with In-Home Support Services funds that:

(a) Is primarily in business to provide the service to the general public and is chosen by the individual; and

(b) Provides services for the individual through employees, contractors or volunteers.

(20) "Grievance" means a formal complaint by an individual or individual's legal representative about services or employees of a Community Developmental Disability Program.

(21) "Immediate Family," for the purposes of determining whether In-Home Support Services funds may be used to pay a family member to provide services, means the spouse of an adult.

(22) "Incident Report" means a written report of any injury, accident, act of physical aggression or unusual incident involving an individual.

(23) "Independence" means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

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(24) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with In-Home Support Service funds who personally provides services to the individual.

(25) "Individual" means an adult with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator.

(26) "In-Home Support" or "IHS" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an In-Home Support Plan.

(27) "In-Home Support Plan" or "IHS Plan" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The In-Home Support Plan is developed by the Community Developmental Disability Program and individual, the individual's legal representative, (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The In-Home Support Plan is the individual's Plan of Care for Medicaid purposes.

(28) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(29) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person, or agency that is authorized by the court to make decisions about services for the individual.

(30) "Local Mental Health Authority" or "LMHA" means the County Court or Board of County Commissioners of one or more counties that operate a Community Mental Health and Developmental Disability Program, or in the case of a Native American Reservation, the Tribal Council, or if the county declines to operate or contract for all or part of a Community Mental Health and Developmental Disability Program, the Board of Directors of a public or private corporation.

(31) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(32) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(33) "Nursing Care Plan" means a plan of care developed by a Registered Nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(34) "Oregon Intervention System" or "OIS" means an approach, which emphasizes a philosophy of individualized, non-aversive behavior support while constantly emphasizing dignity and respect for each individual.

(35) "Person-Centered Planning" means a process of gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle at home and in the community using individual strengths, relationships and resources. Person-centered planning is designed to build on and strengthen naturally occurring opportunities and relationships. A Community Developmental Disability Program representative will gather information consistent with individual needs and preferences through conducting interviews with the individual, observation of the individual in various settings, and/or communication through a simple interview or formal group network process with persons selected by, or clearly significant to, the individual.

(36) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data. Behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(37) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement, or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or other community.

(38) "Provider" means a person, organization or business that is selected by an individual or the individual's legal representative and paid with In-Home Support funds to provide support according to the individual's In-Home Support Plan.

(39) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with In-Home Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors or volunteers; and

(c) Receives compensation to recruit, supervise and pay the persons who actually provide support for the individual.

(40) "Seniors and People with Disabilities Division" or "SPD" means the Division within the Department of Human Services that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(41) "Services Coordinator" means an employee of the Community Developmental Disability Program or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan Services and to act as a proponent for persons with developmental disabilities. For purposes of these rules the term Case Manager is synonymous with Services Coordinator.

(42) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an individual's current In-Home Support Plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability (e.g. public or parochial education for school-aged individuals, training for a specific job skill or trade that is not part of a vocational rehabilitation plan);

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to individuals with or without disabilities;

(c) Replace other governmental or community services available to an individual or family; or (d) Exceed the actual costs of supports that must be provided for the individual to be supported at home or in the family home.

(43) "Support" means assistance individuals require--solely because of the effects of disability -- to maintain or increase independence, achieve community presence and participation, and improve productivity. Support includes assistance families require to care for individuals residing in the family home or in the process of returning from out-of-home placement.

(44) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(45) "Variance" means a temporary exception from a regulation or provision of these rules, which may be granted by the Seniors and People with Disabilities Division, upon written application by the Community Developmental Disability Program.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 417.340 - 417.348, 427.005, 427.007, 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07

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411-330-0030

Eligibility for In-Home Support Services

(1) NON-DISCRIMINATION. Eligible individuals must not be denied In-Home Support Services or otherwise discriminated against on the basis of age or of diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, age, income or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence must find the individual eligible for the CDDP's In-Home Support Services when the individual has been determined eligible for developmental disability services by the CDDP and the individual is an adult living at home or in the family home whose In-Home Support Services, or whose combined In-Home Support Services and services regulated by the OAR's in chapter 411, division 345 (Employment and Alternative to Employment Services), cost more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments and when part or all of the funds for these services have been designated by contract with the CDDP to support the individual because:

(a) SPD has determined the individual to be at imminent risk of civil commitment under ORS 427 and is providing diversion services according to the provisions of OAR 411-320-0160; or

(b) Funds previously used to purchase the individual's SPD-regulated residential, work, or day habilitation services have been made available within the guidelines published by SPD to purchase In-Home Services that cost more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments; or

(c) SPD has found the individual eligible for Comprehensive 300 services as defined through the settlement agreement *Staley v. Kitzhaber* (USDC CV00-0078-ST) and has made funds available to purchase In-Home Services that cost more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments.

(3) CONCURRENT ELIGIBILITY. Individuals must not be found eligible for In-Home Support Service by more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 417.340-417.348, 427.005, 427.007, 430.610 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07

Rule Caption: Support Services for Adults with Developmental Disabilities.

Adm. Order No.: SPD 21-2007(Temp)

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Notice Publication Date:

Rules Amended: 411-340-0020, 411-340-0060, 411-340-0070, 411-340-0130, 411-340-0150, 411-340-0170

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending the Support Services for Adults with Developmental Disabilities rules in chapter 411, division 340 to modify how complaints from recipients of Support Services are handled by Support Service Brokerages.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-340-0020

Definitions

As used in the rules in OAR chapter 411, division 340:

(1) "Abuse" means:

(a) Except for services provided at sites owned or leased by Provider Organizations listed in section (1)(b) of this rule, one or more of the following:

(A) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program and an adult; or

(E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being.

(b) Activities described in OAR 411-320-0020(2)(b) through (2)(c)(F) for Provider Organizations qualifying to be paid with Support Services funds as:

(A) 24-Hour Residential Programs licensed under OAR chapter 411, division 325;

(B) Adult Foster Homes licensed under OAR chapter 411, division 360.

(C) Employment and Alternative to Employment Programs certified under OAR chapter 411, division 345; or

(D) Supported Living Services certified under OAR 309-041-0550 through 309-041-0830.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(3) "Activities of Daily Living (ADL)" means those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(4) "Administration of Medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a Provider Organization, of placing a medication in, or on, an individual's body.

(5) "Administrative Review" means the process that occurs when a grievant is not satisfied with the decision made by the Brokerage about a complaint involving the provision of services or a service provider. The Administrative Review will result in a decision by the Seniors and People with Disabilities Division Assistant Director to either uphold the local decision, or recommend another course of action.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(8) "Basic Benefit" means the type and amount of Support Services available to each eligible individual, specifically:

(a) Access to Support Service Brokerage Services listed in OAR 411-340-0120(1)(a) through (1)(g) and, if required;

(b) Assistance with purchase of supports listed in OAR 411-340-0130(6)(a) through (6)(p) with no more than:

(A) \$9,600 per Plan Year from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Seniors and People with Disabilities Division, when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services waiver; and

(B) An amount equal to the state's General Fund contribution to the maximum amount available per Plan Year to a Medicaid Recipient per section (8)(b)(A) of this rule from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Seniors and People with Disabilities Division, when an individual is either not eligible for Medicaid or Medicaid Waiver Services or does not otherwise receive Medicaid benefits.

(9) "Basic Supplement" means the amount of Support Services funds in excess of the Basic Benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203. A Basic Supplement is subject to limitations outlined in OAR 411-340-0130(4)(a)(A) and (4)(a)(B).

(10) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the Brokerage to determine whether the individual is eligible for annual Support Services funds in excess of the Basic Benefit due to extraordinary long-term need.

(11) "Certificate" means a document issued by the Seniors and People with Disabilities Division to a Support Services Brokerage or to a Provider Organization that certifies the Brokerage or Provider Organization is eligible to receive State funds for Support Services.

(12) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language or by other communication methods.

(13) "Chore Services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. Chore Services includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress. Chore services are provided when no one in the household is capable of either performing, or paying for, the services

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and when no other relative, caregiver, landlord, community or volunteer agency, or third-party payer is capable of or responsible for their provision.

(14) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(15) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution; and

(b) At any time in community settings of the individual's choice.

(16) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the Individual's Support Plan. The type, frequency, and duration of direct support and other community living support is defined in the Plan of Care based on the individual's selected housing arrangement and assessed needs. Community Living Supports are available to individuals who live alone, with roommates or with family. The services include support designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Seniors and People with Disabilities Division or a local mental health authority.

(18) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(19) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated Employment or Community Inclusion Program regulated by the Seniors and People with Disabilities Division:

(a) 24-Hour Residential Services including, but not limited to, care provided in a group home, in a foster home, or through a supported living program; or

(b) In-Home Supports costing more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments provided to an individual in the individual or family home. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services or Children's Intensive In-Home Services.

(20) "Department (DHS)" means the Department of Human Services.

(21) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(22) "Emergent Status" means a temporary, unpredictable situation when an individual enrolled in a Support Services Brokerage may be allowed to receive Department-paid support exceeding \$20,000 per year to remain in his or her home or family home or to enter a short-term out-of-home residential placement without exiting Support Services.

(a) An individual will only be considered in emergent status if he or she is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the Community Developmental Disability Program of the individual's county of residence has determined that the individual meets criteria for Crisis or Diversion Services according to OAR 411-320-0160.

(b) Services are provided while an individual is in emergent status to prevent the individual's civil court commitment under ORS chapter 427 and there is imminent risk of loss of the individual's community support system. Services to maintain the individual in the community and stabilize the situation are Crisis or Diversion Services according to OAR 411-320-0160 that may include short-term residential placement services indicated in the individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan.

(c) Length of emergent status may be authorized only by the Community Development Disability Program of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis or diversion funds. In no case will emergent status for an individual exceed 270 consecutive days in 12 consecutive months.

(23) "Employer-Related Supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(24) "Entry" means admission to a Department-funded developmental disability service provider.

(25) "Environmental Accessibility Adaptations" means physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Examples of these services include, but are not limited to:

(A) Environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke detectors, light fixtures and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Examples of what these services do not include:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(26) "Environmental Modification Consultant" means either an Independent Provider or a Provider Organization paid with Support Services funds to provide advice to an individual, the individual's legal

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representative or the individual's Personal Agent about the environmental accessibility adaptation required to meet the individual's needs.

(27) "Exit" means either termination from a Department-funded program or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program.

(28) "Family" for determining individual eligibility for Support Services Brokerage Services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is (are):

(a) Related to the individual with developmental disabilities by blood, marriage or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage or legal adoption.

(29) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home.

(a) Family training includes:

(A) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(B) Information, education and training about the individual's disability, medical, and behavioral conditions; and

(C) Counseling for the family to relieve the stress associated with caring for an individual with disabilities.

(b) Family training is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or rehabilitative support needs. Family training is not provided to paid caregivers.

(30) "Fiscal Intermediary" means a person or agency that receives and distributes Support Services funds on behalf of an individual according to an Individual Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(31) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with Support Services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors or volunteers; and

(c) Receives compensation to recruit, supervise and pay the persons who actually provide support for the individual.

(32) "Habitat Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports and community inclusion supports.

(33) "Home" means an individual's primary residence that is not licensed, certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(34) "Homemaker Services" means support consisting of general household activities such as meal preparation and routine household care provided by a trained homemaker. Homemaker services are provided when the person regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

(35) "Incident Report" means a written report of any injury, accident, act of physical aggression or unusual incident involving an individual.

(36) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(37) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with Support Services funds who personally provides services to the individual.

(38) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(39) "Individual Support Plan (ISP)" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals. The ISP is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The ISP articulates decisions and agreements made through a person-centered process of planning and information-gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(40) "Integration" means use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(41) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(42) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties that operate a Community Developmental Disability Program, or in the case of a Native American Reservation, the Tribal Council, or if the county declines to operate or contract for all or part of a Community Developmental Disability Program, the Board of Directors of a public or private corporation.

(43) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(44) "Medicaid Fair Hearing" means the formal process following an action that would terminate, suspend, reduce or deny a Medicaid service. This is a formal process required by federal law (42 CFR 431.200-250).

(45) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(46) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(47) "Nursing Care Plan" means a plan of care developed by a Registered Nurse that describes the medical, nursing, psychosocial and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(48) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(49) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 411-340-0120(1), who meets the requirements of OAR 411-340-0150(4) and who is:

(a) A trained employee of a Support Services Brokerage; or

(b) A person who has been engaged under contract to the Brokerage to allow the Brokerage to meet responsibilities in geographic areas where Personal Agent resources are severely limited.

(50) "Personal Emergency Response Systems" means electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(51) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources.

(c) Person-Centered Planning helps the individual and those significant to the individual to identify, use, and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(52) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State

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Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(53) "Plan Year" means 12 consecutive months used to calculate an individual's annual Basic Benefit. Unless otherwise set according to conditions of OAR 411-340-0120(4)(h) or 411-340-0130(4)(b)(G), the initial Plan Year begins on the start date specified on the individual's first Individual Support Plan after enrollment in a Brokerage after the initial Individual Support Plan is approved and signed by the Community Developmental Disability Program authorizing implementation. Subsequent Plan Years begin on the anniversary of the start date of the initial Individual Support Plan.

(54) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(55) "Prescription Medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(56) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of care and support for an individual in the individual's home.

(57) "Productivity" means

(a) Engagement in income-producing work by a person with mental retardation or developmental disabilities that is measured through improvements in income level, employment status or job advancement; or

(b) Engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(58) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with Support Services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors or volunteers; and

(c) Receives compensation to recruit, supervise and pay the persons who actually provide support for the individual.

(59) "Provider Organization Director" means the employee of a Provider Organization responsible for administration and provision of services according to these rules, or that person's designee.

(60) "Psychotropic Medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood or behavior. Psychotropic medication includes, but is not limited to, anti-psychotic, anti-depressant, anxiolytic (anti-anxiety) and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(61) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency and appropriateness of services.

(62) "Respite Care" means short-term care and supervision provided because of the absence, or need for relief of, persons normally providing the care to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as eight-hours-a-day, five-days-a-week services or are provided to allow caregivers to attend school or work:

(a) Temporary Respite Care that is provided on less than a 24-hour basis; and

(b) 24-Hour Overnight Care that is provided in segments of 24-hour units that may be sequential.

(63) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(64) "Self-Administration of Medication" means the individual manages and takes his or her own medication. Self-administration of medication includes identifying his or her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(65) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of Support Services that meet their needs. The basic principles of self-determination are:

(a) Freedom — The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary Support Services rather than purchasing a predefined program;

(b) Authority — The ability for an individual with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase Support Services;

(c) Autonomy — The arranging of resources and personnel, both formal and informal, that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility — The acceptance of a valued role in an individual's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals with developmental disabilities.

(66) "Seniors and People with Disabilities Division (SPD)" means the Division within the Department of Human Services that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(67) "Social Benefit" or "Social Service" means a service solely intended to assist an adult with disabilities to function in society on a level comparable to that of an adult who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to persons with or without disabilities; or

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social services does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved Individual Support Plan.

(68) "Special Diet" means specially prepared food or particular types of food needed to sustain the individual in the family home.

(a) Special diets can include:

(A) High caloric supplements;

(B) Gluten-free supplements; and

(C) Diabetic, ketogenic or other metabolic supplements.

(b) Special diets are ordered by a physician and periodically monitored by a dietician.

(c) Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements.

(d) Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(69) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. It does not include items not of direct medical or remedial benefit to the individual. All items must meet applicable standards of manufacture, design and installation.

(70) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan Services or other Support Services listed in OAR 411-340-0130(6)(a) through (6)(p). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the support plan;

(d) Monitor implementation of plan; and

(e) Revise the plan as needed.

(71) "Speech and Language Therapy Services" means the services of a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(72) "Support" means assistance that individuals require — solely because of the effects of disability — to maintain or increase independence, achieve community presence and participation, and improve productivity. This assistance is flexible and subject to change with time and circumstances.

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(73) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(74) "Support Services" means the services of a Support Services Brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the Brokerage. Support Services:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(75) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (1)(g) associated with planning and implementation of Support Services for adults with developmental disabilities, using the principles of self-determination described in section (66) of this rule.

(76) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated Support Services Brokerage who is responsible for administration and provision of services according to these rules, or that person's designee.

(77) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Seniors and People with Disabilities Division to be added to an Individual Support Plan to describe crisis or diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the Community Developmental Disability Program of the individual's county of residence.

(78) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each Support Services Brokerage regarding issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 411-340-0150(1) for such groups.

(79) "Support Services Funds" means public funds designated by the Support Services Brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(80) "Support Specialist" means an employee of a Community Developmental Disability Program that performs the essential functions necessary to ensure the proper use of Support Services resources for individuals served by a Brokerage and described in OAR chapter 411, division 320.

(81) "These Rules" means OAR chapter 411, division 340.

(82) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(83) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 – 417.355, 427.005, 427.007 & 430.610 – 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08

411-340-0060

Complaints and Grievances in Support Services Brokerages

(1) COMPLAINTS. Support Services Brokerages must develop and implement written policies and procedures regarding individual complaints and a formal grievance process. These policies and procedures must at minimum address:

(a) Informal resolution. An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that a Brokerage, Provider Organization or Independent Provider has taken action that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) Receipt of complaints. If a complaint is associated in any way with abuse, the recipient of the complaint must immediately report the issue

to the CDDP and notify the Brokerage Director and, if applicable, the Provider Organization Director. The Brokerage must maintain a log of all complaints received regarding the Brokerage, Provider Organization or Independent Provider from individual(s) and others acting on the behalf of individuals and from Provider Organizations acting in accordance with OAR 411-340-0170(2)(a)(C)(v).

(A) The complaint log must, at a minimum, include the following:

(i) The date the complaint was received;

(ii) The person taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Brokerage personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(c) Investigation of the facts supporting or disproving the complaint.

(d) Taking appropriate actions on the complaint within five working days following receipt of the complaint.

(e) Agreement to resolve the complaint. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the grievant. The grievant must be provided with a copy of such agreement.

(f) Review by the Brokerage Director if the complaint involves Brokerage staff or services or if the complaint is not or cannot be resolved with Brokerage staff. Such review must be completed and a written response to the grievant provided within 30 days following receipt of the complaint.

(g) Third-party review when complaints are not resolved by the Brokerage Director.

(A) Administrative Review. Unless the grievant is a Medicaid recipient who has elected to initiate the Medicaid Fair Hearing process according to section (3) of this rule, a complaint involving the provision of service or a service provider may be submitted to SPD for administrative review.

(i) Following a decision by the Brokerage Director regarding a complaint, the grievant may request an administrative review by the Assistant Director of SPD.

(ii) The grievant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the Brokerage Director.

(iii) Upon receipt of a request for an administrative review, the Assistant Director will appoint an Administrative Review Committee and name the Chairperson. The Administrative Review Committee will be comprised of a representative of SPD, a CDDP representative and a Brokerage representative. Committee representatives must not have any direct involvement in the provision of services to the grievant or have a conflict of interest in the specific case being grieved.

(iv) The Administrative Review Committee will review the complaint and the decision by the Brokerage Director and make a recommendation to the Assistant Director within 45 days of receipt of the complaint unless the grievant and the Committee mutually agree to an extension.

(v) The Assistant Director will consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision will be made in writing and issued within ten days of receipt of the recommendation by the Administrative Review Committee. The written decision will contain the rationale for the decision.

(vi) The decision of the Assistant Director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review in the Marion County Circuit Court.

(h) Documentation of complaint. Documentation of each complaint and its resolution must be filed or noted in the grievant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, the Brokerage must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate to the individual's needs and abilities, of the following:

(a) Brokerage grievance policy and procedures, including the right to an Administrative Review and the method to obtain an Administrative Review; and

(b) The right of a Medicaid recipient to a Medicaid Fair Hearing as per section (3) of this rule and of the method to obtain a Medicaid Fair Hearing.

(3) DENIAL, TERMINATION, SUSPENSION OR REDUCTION OF SERVICES FOR INDIVIDUAL MEDICAID RECIPIENTS.

(a) Each time the Brokerage takes an action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid, the Brokerage must notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The Brokerage must mail the notice, or personally serve it to the individual or

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the individual's legal representative(s) ten days or more prior to the effective date of an action.

(A) The Brokerage must use SDS 0947, Notice of Hearing Rights, or a comparable SPD-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the ISP and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) A notice required by section (3)(a) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the Brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to request a Medicaid Fair Hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the Brokerage's files on the subject of the Medicaid Fair Hearing automatically become part of the Medicaid Fair Hearing record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the SPD representative does not receive a request for a Medicaid Fair Hearing from the party within 45 days from the date that the Brokerage mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a Medicaid Fair Hearing will be granted; and

(H) An explanation of the circumstances under which Brokerage services will be continued if a Medicaid Fair Hearing is requested.

(c) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the Brokerage to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid, the party may request a Medicaid Fair Hearing. The SPD representative must receive the signed form within 45 days after the Brokerage mailed the notice of action.

(d) The individual or the individual's legal representative(s) may request an expedited Medicaid Fair Hearing if the individual feels that there is immediate, serious threat to the individual's life or health should the individual follow the normal timing of the Medicaid Fair Hearing process.

(e) If the individual or individual's legal representative(s) requests a Medicaid Fair Hearing before the effective date of the proposed actions and requests that the existing services be continued, SPD must continue the services.

(A) SPD will continue the services until whichever of the following occurs first, but in no event must services be continued in excess of 90 days from the date of the individual's (or individual's legal representative's) request for a Medicaid Fair Hearing:

(i) The current authorization expires;

(ii) The hearings officer issues a proposed order and SPD renders a final order about the complaint; or

(iii) The individual is no longer eligible for Medicaid benefits.

(B) SPD must notify the individual or individual's legal representative(s) that it is continuing the service. The notice must inform the individual or individual's legal representative that, if the hearing is resolved against the individual, SPD may recover the cost of any services continued after the effective date of the continuation notice.

(f) SPD must reinstate services if:

(A) SPD takes an action without providing the required notice and the individual or individual's legal representative requests a Medicaid Fair Hearing;

(B) SPD does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a Medicaid Fair Hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(g) SPD must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the Medicaid Fair Hearing decision is favorable to the individual, or SPD decides in the individual's favor before the Medicaid Fair Hearing.

(h) The SPD representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for SPD and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the Medicaid Fair Hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and SPD the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give SPD an opportunity to review its action or the action of the Brokerage.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the SPD representative. At his or her discretion, the SPD representative may grant such a conference if it will facilitate the Medicaid Fair Hearing process.

(j) SPD may provide the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) An individual or the individual's legal representative may withdraw a Medicaid Fair Hearing request at any time. The withdrawal will be effective on the date SPD or the hearings officer receives it. SPD must send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer must serve a proposed order on the individual and SPD.

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by SPD. The exceptions must be in writing and must reach SPD not later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless SPD prior-approves.

(C) After receiving the exceptions, if any, SPD may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, SPD may issue an amended proposed order.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08

411-340-0070

Support Services Brokerage and Provider Organization Personnel Policies and Practices

(1) PERSONNEL FILES AND QUALIFICATIONS RECORDS. Brokerages and Provider Organizations must maintain up-to-date written position descriptions for all staff as well as a file available to SPD or CDDP for inspection that includes written documentation of the following for each staff person:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Written documentation of a criminal history check by the Department;

(c) Satisfactory completion of basic orientation, including instructions for mandatory abuse reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;

(d) Written documentation of employee notification of mandatory abuse reporter status;

(e) Written documentation of any substantiated abuse allegations;

(f) Written documentation of any complaints filed against the staff person and the results of the complaint process, including, if any, disciplinary action; and

(g) Legal U.S. worker status.

(2) GENERAL STAFF QUALIFICATIONS. Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) DRUG-FREE WORKPLACE. Each Brokerage and Provider Organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08

ADMINISTRATIVE RULES

411-340-0130

Using Support Services Funds to Purchase Supports

(1) APPROVED WRITTEN PLAN REQUIRED. A Support Services Brokerage may use Support Services funds to assist individuals to purchase supports in accordance with an ISP that:

(a) Identifies supports that are necessary for an individual to live in the individual's own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Projects the amount of Support Services funds, if any, that may be required to purchase the remainder of necessary supports and that are within the Basic Benefit limits, unless authorized for supplement to the Basic Benefit according to section (4)(a) through (4)(e) of this rule; and

(d) Has been approved for implementation by the CDDP Support Specialist.

(2) ASSISTANCE IS A SOCIAL BENEFIT. Goods and services purchased with Support Services funds on behalf of individuals are provided only as social benefits.

(3) LIMITS OF FINANCIAL ASSISTANCE. Assistance with purchase of individual supports in any Plan Year is limited to the Basic Benefit unless individual circumstances meet the conditions of the exceptions indicated in sections(4)(a) through (4)(i) of this rule.

(a) Basic Benefit distribution for full Plan Year. Individuals must have access throughout the Plan Year to the total annual amount of Support Services funds determined necessary to implement an approved ISP, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Basic Benefit distribution adjustments. SPD may require that annual Basic Benefit amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a Plan Year or when, for any reason, an individual's ISP is developed and written to be in effect for less than 12 months.

(A) In the case of an individual whose Medicaid eligibility changes, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the change in Medicaid status remain in effect for 12 calendar months. The monthly Basic Benefit limit will be applied each month for the remainder of the Plan Year in which the individual's change in Medicaid eligibility occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial Plan Year, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the individual's ISP be in effect for twelve months. The monthly Basic Benefit limit will be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Individual plan costs. Estimates of individual plan costs will be based on written guidelines for costs of frequently used services published and updated periodically by SPD.

(A) SPD guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the Brokerage's own documented survey.

(B) The Support Services Brokerage must establish a process for review and approval of all budgets based on estimates exceeding published guidelines and must monitor the approved individual plans involved for continued cost effectiveness.

(4) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS. Exceptions to the Basic Benefit annual Support Services fund limit may be only as follows:

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory, Form DHS 0203 may have access to more than the Basic Benefit Support Services fund limit in order to purchase necessary supports. The Basic Supplement Criteria Inventory, Form DHS 0203, specifies scoring levels and applicable maximum available funding.

(A) For Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost that is less than the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium.

(B) For individuals who are not Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost that is less than the state's General Fund contribution to the minimum allowable Plan Year cost for In-Home Comprehensive Services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the Plan Year and adjusted annually to correspond to changes in the Medicaid match rates.

(C) The Brokerage Director, or a designee from Brokerage management and administration, must administer the Basic Supplement Criteria

only after receiving SPD-approved training. The Brokerage Director or designee must score Basic Supplement Criteria according to written and verbal instruction received from SPD.

(D) The trained Brokerage Director must administer the Basic Supplement Criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The Brokerage Director or designee must send written notice of findings regarding eligibility for a supplement to the Basic Benefit to the individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice must include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the Director and with the individual's Personal Agent in attendance if desired; and

(ii) A notice of grievance processes under OAR 411-340-0060.

(F) Annual ISP reviews for recipients of the supplement must include a review of circumstances and resources to confirm continued need.

(b) Transfers from Employment and Alternative to Employment, and Self-Directed Support Services according to SPD-designated schedule of group enrollments under OAR 411-340-0110(2). Support Service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in Support Services Brokerages may, for a limited amount of time, exceed the Basic Benefit financial limits. To qualify, individuals must be enrolled in Employment and Alternative to Employment Services regulated by OAR chapter 411, division 345, or receive Self-Directed Support Services during the month prior to enrollment in a Support Services Brokerage and SPD's annual cost of this previous service must exceed the financial assistance available through the Basic Benefit.

(A) Each qualified individual transferring from Employment and Alternative to Employment Services beginning November 1, 2001, through June 30, 2002, may have access to Support Services funds in an amount equal to SPD's previous cost for the individual in these services, as negotiated according to SPD guidelines, for no more than 365 calendar days from date of enrollment in the Support Services Brokerage.

(B) Each qualified individual transferring from Employment and Alternative to Employment Services beginning July 1, 2003, and who does not have any other SPD-paid residential Support Services prior to that date, may have access to Support Services funds in an amount each month equal to SPD's previous Employment and Alternative to Employment monthly costs for the individual, as negotiated according to SPD guidelines:

(i) For 365 days, if the individual is a Medicaid recipient eligible for waiver services; or

(ii) For 180 days, if the individual is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from Self-Directed Support Services beginning November 1, 2001, through June 30, 2002, may have access to Support Services funds in an amount equal to financial assistance authorized by the individual's current Self-Directed Support Plan for no more than 365 calendar days from date of enrollment in the Brokerage when the individual is a Medicaid recipient choosing to receive waiver services and for no more than 90 calendar days from date of enrollment in the Brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(D) Upon individual enrollment in the Brokerage, the Brokerage must fully inform the individual and the individual's legal representative of the time limit for the supplement to the Basic Benefit.

(E) The Support Services Brokerage must complete an assessment, identify resources and develop a new individualized plan and budget during this period with a goal of reducing Support Services fund annual costs to less than or equal to financial assistance available in the Basic Benefit.

(F) At any point during the individual's first year of enrollment in the Brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the Basic Benefit, the individual's new Plan Year will begin on the date the revised ISP is authorized for implementation by the individual's CDDP Support Specialist.

(c) Prior-authorized Crisis or Diversion Services. Individuals who have been assessed as in need of, and meeting criteria for, Crisis or Diversion Services by the CDDP of the individual's county of residence according to OAR 411-320-0160 may receive short-term assistance with purchase of support in excess of the Basic Benefit. Use of Crisis or Diversion Services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with Crisis or Diversion Services may be used to pay the difference in cost between the authorized ISP and budget in place at the time the individual is determined eligible for Crisis or Diversion Services, and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for

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Crisis or Diversion Services in the individual's county of residence, depending on the source of Crisis or Diversion Services funds, to meet the short-term need.

(B) Although costs for Crisis or Diversion Services may bring the individual's total Plan Year cost temporarily at or above the minimum allowable Plan Year cost of In-Home Comprehensive Services in the same biennium, in no case may the individual's costs exceed the state's current ICF/MR daily cost per individual nor may Plan Year expenses at or above the minimum for Comprehensive Services make the individual eligible for Comprehensive Services.

(i) Individuals placed in emergent status due to receiving Crisis or Diversion Services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive Support Services from, the Support Services Brokerage while both Crisis or Diversion Services and Support Services are required to stabilize and maintain the individual at home or in the family home. In no case, however, may the individual remain enrolled in the Support Services Brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's Personal Agent must participate with CDDP or regional crisis or diversion staff in efforts to stabilize supports and return costs to the Basic Benefit or approved supplement levels, documenting reviews of effectiveness at least every 90 days while the individual is receiving Crisis or Diversion services.

(d) Conversions from other SPD-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through SPD contract from a SPD-regulated residential, work, or day habilitation service to Support Services funds, or to Comprehensive In-Home Support funds regulated by OAR chapter 411, division 330 prior to enrollment in a Support Services Brokerage, may have access to the amount specified in the SPD contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions described in section (4)(b) of this rule.

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for In-Home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS chapter 427. Individuals whose support funds were specifically assigned through SPD contract to Self-Directed Support Services prior to the date designated by SPD for transfer of the individual from Self-Directed Support Services to a Support Services Brokerage may have access to the amount specified in the SPD contract as available for the individual's use.

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for In-Home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(f) Individuals transferring from SPD waiver services for the Aged and Adults with Physical Disabilities. Individuals transferring from SPD's Home and Community-Based Waiver Services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds, in accordance with OAR 411-015-0015(4)(c) will have limited access to Support Services funds, as described in these rules. The amount of Support Services funds available will be equal to SPD's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving Support Services exclusively through a Support Services Brokerage.

(g) Supplemental needs for Activities of Daily Living (ADL). For Medicaid recipients eligible for and choosing services under the Support Services waiver, individuals with additional assistance needs in ADLs may have access to an additional \$2,467 per year, prorated as needed, to purchase needed Support Services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their Individual Support Plan within the Basic Benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include:

- (i) Basic personal hygiene;
- (ii) Toileting, bowel and bladder care;
- (iii) Mobility, transfers and comfort;

(iv) Planning and preparing nutritious meals and assuring adequate fluid intake;

(v) Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions and reminding appropriate persons when prescriptions need to be filled;

(vi) Maintaining clean oxygen equipment and supply; and

(vii) Delegated nursing tasks.

(B) Incidental activities. ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving Support Services:

(i) Light housekeeping tasks necessary to maintain a healthy and safe environment;

(ii) Arranging for necessary medical appointments;

(iii) Observation of an individual's status and reporting of significant changes to appropriate people;

(iv) First aid and handling emergencies; and

(v) Extra support due to mental retardation or developmental disability.

(C) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate care, and must only be to the extent necessary to meet the documented ADL needs.

(E) Supplemental needs for ADLs cannot cause the cost per any Plan Year to exceed the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium, except individuals receiving both Support Services under these rules as of June 30, 2005 and State Plan Personal Care Services under OAR chapter 411, division 034 whose total combined annual costs exceed the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium may continue to develop future annual ISPs based on the budgeted annual cost amount until the individual terminates their receipt of Support Services.

(F) The Supplemental ADL Services are not intended to replace the resources available to an individual receiving Support Services under these rules from their natural support system of relatives, friends, neighbors or other available sources of support.

(G) For Medicaid recipients receiving State Plan Personal Care Services under OAR chapter 411, division 034 entering Support Services after June 30, 2005, the Medicaid Personal Care Resource Assessment Plan and Authorization, Form MSC 0531, will serve as the individual's approved Plan of Care for a period not to exceed 90 days.

(5) AMOUNT, METHOD AND SCHEDULE OF PAYMENT.

(a) The Brokerage must disburse, or arrange for disbursement of, Support Services funds to qualified providers on behalf of individuals up to the amount agreed upon in an ISP that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP Support Specialist. The Brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the Brokerage and the individual or individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with Support Services funds are:

- (a) Chore Services;
- (b) Community Inclusion Supports;
- (c) Community Living Supports;
- (d) Environmental Accessibility Adaptation;
- (e) Family Training;
- (f) Homemaker Services;
- (g) Occupational Therapy Services;
- (h) Personal Emergency Response Systems;
- (i) Physical Therapy Services;
- (j) Respite Care;
- (k) Special Diets;
- (l) Specialized Medical Equipment and Supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, or repair with Support Services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080.

(B) Support Services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by Medicaid State Plan or private insurance, and

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the denial has been upheld in applicable Medicaid Contested Case Hearing or Private Insurance Benefit Appeals Process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase his or her abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with Support Services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);

(ii) Adaptive beds;

(iii) Positioning devices;

(iv) Specially designed clothes to meet the unique needs of the individual with the disability, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(v) Assistive technology items;

(vi) Computer software used by the individual to express needs, control supports, plan and budget supports;

(vii) Augmentative communication devices;

(viii) Environmental adaptations to control lights, heat, stove, etc.; or

(ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(m) Specialized Supports;

(n) Speech and Language Therapy Services;

(o) Supported Employment; and

(p) Transportation.

(7) **CONDITIONS OF PURCHASE.** The Brokerage must arrange for supports purchased with Support Services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect Support Services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine Support Services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;

(B) Combined Support Services funds cannot be used to purchase existing, or create new, Comprehensive Services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;

(D) Combined arrangements for community inclusion or Supported Employment Services that result in creation of a Provider Organization must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing Administrative Rules in chapter 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) **INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES.** When Support Services funds are used to purchase care, training, supervision or other personal assistance for individuals, the Brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support Services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using Support Services funds unless another arrangement is agreed upon by the Brokerage and described in the ISP;

(d) The provisions of section (9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) **SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS AND GENERAL BUSINESS PROVIDERS.**

(a) Sanction(s) may be imposed on a provider when the Brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with Support Services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing or dispensing a controlled substance;

(C) Surrendered their professional license or had his or her professional license suspended, revoked or otherwise limited;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any SPD or Brokerage investigation, or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of section (8) of this rule or 411-340-0140; or

(K) Been suspended or terminated as a provider by another agency within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with Support Services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the Brokerage or SPD, as applicable; or

(C) The Brokerage may withhold payments to the provider.

(c) If the Brokerage makes a decision to sanction a provider, the Brokerage must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Assistant Director of SPD.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of SPD, providers who have previously been terminated or suspended by any Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08

411-340-0150

Standards for Support Services Brokerage Administration and Operations

(1) **INDIVIDUAL AND FAMILY LEADERSHIP.** The Brokerage must develop and implement procedures for incorporating the direction, guidance and advice of individuals and family members of individuals in the administration of the organization.

(a) The Support Services Brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program plan-

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ning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint or grievance resolution.

(c) If the Policy Oversight Group is not also the governing body of the Support Services Brokerage, then the Brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the Brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) **FULL-TIME BROKERAGE DIRECTOR REQUIRED.** The Support Services Brokerage must employ a full-time Director who is responsible for daily Brokerage operations in compliance with these rules and has authority to make budget, staffing, policy and procedural decisions for the Brokerage.

(3) **DIRECTOR QUALIFICATIONS.** In addition to general staff qualifications of OAR 411-340-0070(1) through (2), the Brokerage Director must have:

(a) A minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or

(b) Six years of experience, including supervision, in the field of developmental disabilities or a social service or mental health field.

(4) **FISCAL INTERMEDIARY REQUIREMENTS.**

(a) Individuals or entities providing fiscal intermediary services must:

(A) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the Brokerage Director and Policy Oversight Group to effectively manage the Brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in ISPs;

(b) Contractor and employee qualifications. The Support Brokerage must obtain and maintain written evidence that:

(A) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(B) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the Brokerage has provided requisite education, training and experience.

(5) **PERSONAL AGENT QUALIFICATIONS.** Each Personal Agent must have:

(a) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(b) Five years of equivalent training and work experience related to developmental disabilities; and

(c) Knowledge of the public service system for developmental disability services in Oregon.

(A) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in section (5)(a) through (5)(c) may perform those functions only with prior approval of a variance by SPD. Prior to employment of an individual not meeting minimum qualifications for Personal Agent, the Brokerage must submit a written variance request to SPD. The request must include:

(i) An acceptable rationale for the need to employ an individual who does not meet the qualifications; and

(ii) A proposed alternative plan for education and training to correct the deficiencies. The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.

(B) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) **SEPERATION OF DUTIES.** When a CDDP operates a Brokerage:

(a) Support Specialist and Personal Agent activities, responsibilities, and costs must be clearly separated and delineated in individual files, staff job descriptions, and CDDP financial and service reports; and

(b) The individual's Personal Agent must not also be the individual's Support Specialist.

(7) **PERSONAL AGENT TRAINING.** The Brokerage must provide or arrange for Personal Agents to receive training needed to provide or arrange for Brokerage Services, including, but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary functions;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(8) **INDIVIDUAL RECORD REQUIREMENTS.** The Brokerage must maintain current, up-to-date records for each individual served and must make these records available on request for SPD review. These records must include, at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal guardian or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and Plan Year anniversary date;

(c) Documents related to determining eligibility for Brokerage Services and the amount of Support Services funds available to the individual, including Basic Supplement Criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual or individual's legal representative, that the individual or individual's legal representative has been informed of responsibilities associated with the use of Support Services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences and resources;

(h) Individual Support Plan and reviews;

(i) Personal Agent correspondence and notes related to resource development and plan outcomes; and

(j) Information about individual satisfaction with personal supports and the Brokerage Services.

(9) **SPECIAL RECORDS REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.** The Brokerage must develop and implement written policies and procedures concerning use of Support Services funds. These policies and procedures must include, but may not be limited to:

(a) Minimum acceptable records of expenditures;

(A) Itemized invoices and receipts to record purchase of any single item that costs \$25.00 or more;

(B) A trip log indicating purpose, date and total miles to verify vehicle mileage reimbursement;

(C) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(D) Pay records, including timesheets signed by both employee and employer, to record employee services.

(b) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations.

(A) When equipment is obtained for the exclusive use of an individual, the Support Services Brokerage must record the purpose, final cost, and date of receipt.

(B) The Brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the Brokerage and the individual or individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged or sold within that time period.

(C) The Brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5,000 or more per single instance or cumulatively over several modifications:

(i) Are approved by SPD before work begins and before final payment is made;

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(ii) Are completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(iii) That steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(D) The Brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(c) Return of purchased goods. Any goods purchased with Support Services funds that are not used according to an ISP or according to an agreement securing the State's use may be immediately recovered. Failure to furnish written documentation upon written request from SPD, the Oregon Department of Justice, Medicaid Fraud Centers for Medicare and Medicaid Services, or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(10) QUALITY ASSURANCE.

(a) The Brokerage Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The plan must include a written statement of values, organizational outcomes, activities and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the Brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the Brokerage to changing needs and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The Brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by SPD.

(11) BROKERAGE REFERRAL TO AFFILIATED ENTITIES.

(a) When a Brokerage is part of, or otherwise directly affiliated with, an entity that also provides services an individual may purchase with private or Support Services funds, Brokerage staff must not refer, recommend or otherwise support the individual to utilize this entity to provide services unless:

(A) The Brokerage conducts a review of provider options that demonstrates that the entity's services will be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The Brokerage must develop and implement a policy that addresses individual selection of an entity of which the Brokerage is a part or otherwise directly affiliated to provide services purchased with private or Support Services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the Brokerage and the potential service provider;

(B) Provision of information about all other potential service providers to the individual without bias;

(C) A process for arriving at the option for selecting the service provider;

(D) Verification of the fact that the service providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the Brokerage, by an entity of which the Brokerage is a part or otherwise directly affiliated; and

(F) Training of Personal Agents and individuals in issues related to selection of service providers.

(12) GENERAL OPERATING POLICIES AND PRACTICES. The Support Services Brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the Support Services Brokerage to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08

411-340-0170

Standards for Provider Organizations Paid with Support Services Funds

(1) PROVIDER ORGANIZATION WITH CURRENT LICENSE OR CERTIFICATION. A Provider Organization's license under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR chapter 411, division 360 for Adult Foster Homes or certified under OAR chapter 411, division 345, Employment and Alternative to Employment Services, or OAR 309-041-0550 through 309-041-0830, Supported Living Services, may not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, or emergent services.

(a) Current license or certification may be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise and train qualified staff;

(B) Provide services according to Individual Support Plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider Organizations must assure that all individuals directed by the Provider Organization as employees, contractors, or volunteers to provide services paid for with Support Services funds meet standards for qualification of independent providers outlined in OAR 411-340-0160.

(c) Provider Organizations developing new sites, owned or leased by the Provider Organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with Support Services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) PROVIDER ORGANIZATIONS REQUIRING CERTIFICATION. A Provider Organization without current license under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR chapter 411, division 360 for Adult Foster Homes or current certification under OAR chapter 411, division 345, Employment and Alternative to Employment, or OAR 309-041-0550 through 309-041-0830, Support Living Services, must be certified as a Provider Organization according to these rules prior to selection for providing services listed in OAR 411-340-0130(6)(a) through (6)(p) and paid for with Support Services funds.

(a) Basic policies and procedures required. The Provider Organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including, but not limited to:

(A) Except for OAR 411-340-0060, policies and procedures required in 411-340-0040 through 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The Provider Organization must have and implement written policies and procedures that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation that may include, but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or Provider Organization is beneficiary; or

(III) Adding the staff member or Provider Organization name to the individual's bank account(s) or other personal property without approval of the individual or individual's legal representative.

(C) Complaints. The Provider Organization must implement written policies and procedures for individuals' complaints. These policies and procedures must, at a minimum, provide for:

(i) Receipt of complaints from an individual or others acting on the individual's behalf. If the complaint is associated in any way with abuse or the violation of the individual's rights, the recipient of the complaint must immediately report the issue to the Provider Organization Director and the CDDP;

(ii) Investigation of the facts support or disproving the complaint;

(iii) Taking appropriate actions on complaints within five working days following receipt of the complaints;

(iv) Submission to the Provider Organization Director. If the complaint is not resolved it must be submitted to the Provider Organization Director for review. Such review must be completed and a written response provided within 15 days;

(v) Submission to the Brokerage. All complaints received from an individual or others acting on the individual's behalf must be reported to the appropriate broker; and

(vi) Notification. Upon entry into the program and annually thereafter, the Provider Organization must inform each individual, or the individual's legal representative, orally and in writing, using language, format,

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and methods of communication appropriate for the individual's needs and abilities, of the Provider Organization complaint policy and procedures.

(D) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in sections (2)(f) through (2)(k) of this rule and consistent with written service agreements for individuals currently receiving services.

(b) Written service agreement. The Provider Organization must develop a written service agreement with the individual or individual's legal representative and must deliver services according to that agreement. The written service agreement must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services and expected outcomes of services; and

(C) Any specific individual health, safety and emergency procedures that may be required, including action to be taken if an individual is unable to provide for his or her own safety and is missing while in the community under the care of the provider agency.

(c) Individual records. The Provider Organization must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address and home phone number;

(B) Current written service agreement, signed and dated by the individual or individual's legal representative;

(C) Contact information for the legal representative and any other persons designated by the individual or individual's representative to be contacted in case of incident or emergency;

(D) Contact information for the Support Services Brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors or volunteers must have:

(A) Current CPR and first aid certification, obtained from a recognized training agency prior to working alone with an individual; and

(B) Written documentation of a TB test within two weeks of being engaged by the Provider Organization to provide services.

(e) General training requirements. The Provider Organization must ensure that employees, contractors and volunteers receive training appropriate to scope of the Provider Organization's Services.

(f) Additional standards for services provided in Provider Organization owned or leased site. Provider Organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites must meet the following minimum requirements:

(A) Written Plan. A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephone(s); and

(ii) The telephone numbers of the Provider Organization Director, and other persons to be contacted in case of emergency must be posted by designated telephone(s).

(C) Quarterly safety review. A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. These reports must be kept in a central location by the Provider Organization for three years.

(D) Emergency evacuations. The Provider Organization must train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each Provider Organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the Provider Organization for at least two years following the drill. It must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or individual's legal representative and the Provider Organization Director; and

(II) Be presented as a variance request per OAR 411-340-0090.

(E) Adaptations required for sensory or physically impaired. The Provider Organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) Health and safety inspections. The Provider Organization must assure that at least once every three years health and safety inspection(s) are conducted.

(i) The inspection(s) must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(ii) The inspection(s) must be performed by:

(I) The Oregon Occupational Safety and Health Department;

(II) The Provider Organization's worker's compensation insurance carrier; or

(III) An appropriate expert such as a licensed safety engineer or consultant as approved by the SPD; and

(IV) The Oregon Public Health Division, when necessary.

(iii) The inspection(s) must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(G) Fire and life safety inspections for owned, leased, or rented buildings and property. The Provider Organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Staffing requirements.

(i) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present.

(ii) When individuals are present, staff must have the following minimum skills and training:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical need(s) identified in the individual service agreement; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention need(s) as identified in individual service agreements.

(g) Additional standards for assisting individuals with health and medical needs. Provider Organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

(i) Emergency medical intervention;

(ii) Treatment and documentation of illness and health care concerns;

(iii) Administering, storing and disposing of prescription and non-prescription drugs including self administration;

(iv) Emergency medical procedures including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

(i) Health status;

(ii) Changes in health status observed during hours of service;

(iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and

(iv) A description of any restrictions on activities due to medical limitations.

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(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who can lawfully direct administration of medications, the Provider Organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders; and

(vi) Not administer unused, discontinued, outdated or recalled drugs.

(D) If required to maintain a Medication Administration Record, the MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the Provider Organization Director.

(E) Safeguards to prevent adverse medications reactions must be utilized that include:

(i) Maintaining information about the effects and side-effects of medications the Provider Organization has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness or effects to the individual, individual's designee, or individual's legal representative; and

(iii) Prohibiting the use of one individual's medications by another.

(F) A record of visits to medical professionals, consultants or therapists if facilitated or provided by the Provider Organization.

(h) Additional standards for providing transportation. Provider Organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers;

(D) Carry in vehicles a fire extinguisher and first aid kit; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) Additional standards for assisting an individual to manage personal funds. If assisting with management of funds, the Provider Organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the Provider Organization or another individual's funds, or the Provider Organization becoming an individual's guardian or conservator; and

(B) The Provider Organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the Provider Organization, or of any funds within the custody of the Provider Organization that are missing. Such reimbursement must be made within ten working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) Written policy. The Provider Organization must have and implement a written policy concerning behavior intervention procedures. The Provider Organization must inform the individual and individual's legal representative of the Behavior Intervention Policy and Procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal representative; and

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve restraints.

(A) The Provider Organization must only employ physical restraint:

(i) As part of an ISP;

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Staff training. Provider Organization staff members who need to apply restraint under an individual's service agreement must be trained by a SPD-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Physical restraints in emergency situations. Physical restraints in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the Provider Organization Director, or individual's physician;

(iii) Be authorized within one hour of application of restraint;

(iv) Result in the immediate notification of the individual's designee or legal representative; and

(v) Prompt a review of the written service agreement, initiated by the Provider Organization, if used more than three times in a six month period.

(D) Physical restraint must be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(E) Incident report. All use of physical restraint must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the restraint is applied;

(ii) The date, type and length of time, of restraint application;

(iii) The name and position of the person authorizing the use of the restraint;

(iv) The name of the staff member(s) applying the restraint; and

(v) Description of the incident.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 - 430.670

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08

Department of Justice Chapter 137

Rule Caption: Misleading use of "Free" Offers and Rebates.

Adm. Order No.: DOJ 14-2007

Filed with Sec. of State: 12-20-2007

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Rules Amended: 137-020-0015

Subject: The amendments modify the present Misleading Use of "free" Offers rule. The amended rule also addresses the use of misleading rebates. Those amendments make it unlawful to make free offers in any negotiated price transactions, including, but not limited to certain in-home solicitations, construction related sales, motor vehicle and manufactured housing sales. New language to the rule also identifies unfair and deceptive use of rebate offers and requires clear and conspicuous disclosure of terms, conditions and limitations of rebates and free offers.

Rules Coordinator: Carol Riches—(503) 947-4700

137-020-0015

Misleading Use of "Free" Offers and Rebates

(1) Definitions: As used in this rule:

(a) The definitions of terms set forth in ORS 646.605 and OAR 137-020-0020 are applicable;

(b) "Free" means without charge or cost, monetary or otherwise, to the recipient and includes terms of essentially identical import, such as "at

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no additional cost," "1¢ sale," "2 for the price of 1" and "give away" and, in the case of real estate, goods or services described in subsection (2)(a), an offer of any combination of real estate, goods or services at a single price. A free offer in conjunction with the sale or lease of real estate, goods or services is one that conveys to consumers the message that real estate, goods, services, gift certificates, gift cards, cash cards, or any other things of value, are offered at no cost in conjunction with the purchase of other real estate, goods or services for no more than their regular price;

OFFICIAL COMMENTARY: Offers may be subject to this rule even if they do not specifically use the word "free." Any time an advertisement or solicitation is made that gives anything of value away in conjunction with the sale or lease of real estate, goods or services, the person making the offer should carefully analyze the offer to ensure compliance with this rule.

Use of the term "included in the price" may be considered a "free" offer depending upon the terms and conditions of the offer, including, but not limited to, if the real estate, goods or services that are "included in the price" are usually and customarily included with the sale of similar real estate, goods or services. A merchant may not force a consumer to unknowingly purchase other goods and services simply by listing them as "included in the price." Conversely, it is not unlawful to sell a product with an accessory included in the price, particularly if the price of the accessory is individually disclosed and a consumer knows (s)he is paying an additional amount for the accessory. There is no bright line on this issue and each offer will be evaluated in its entirety to determine if the combination of real estate, goods or services is a legitimate "free" offer. All factors will be taken into consideration, including, but not limited to, whether the consumer could purchase a similar product without the additional purchase of other goods and services or if the free item is of de minimis value, such as batteries in a toy or flashlight.

(c) "Real estate, goods or services" has the meaning given that term in ORS 646.605(6). For the purpose of this rule, it does not include loans made by a financial institution or the opening of an account that is subject to the federal Truth in Savings Act of 1991, 12 U.S.C. 4301 et seq., and implementing regulations issued by the Federal Reserve Board or the National Credit Union Administration, including, but not limited to, a savings or checking account, money market account, share certificate or certificate of deposit;

(d) "Rebate" means the return of any part of a payment made by a consumer in conjunction with the sale or lease of real estate, goods or services and includes, but is not limited to, an offer of a future cash refund, a direct or indirect payment of money to a consumer or a voucher for a future payment;

(e) "Regular Price" means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold or leased the product or service in Oregon in the most recent and regular course of business, for a reasonably substantial period of time, i.e. a 30-day period, prior to the offer. For consumer products or services which fluctuate in price, if the price change was due to changes in the cost of the goods or services by the supplier or the price change is due to price reductions inherent in the pricing of seasonal or perishable goods, the "regular price" shall be the lowest price at which substantial sales were made during a reasonably substantial period of time. Except in the case of introductory offers, if no substantial sales were made, in fact, at the "regular price," the price will be presumed to be arrived at through bargaining with potential purchasers; and

(f) "Verifiable retail value" means:

(A) A price at which an offeror can demonstrate that a substantial number of free items have been sold at retail in Oregon by a person other than the offeror; or

(B) If substantiation described in this section is not available to an offeror, no more than one and one-half times the amount an offeror paid for a free item.

OFFICIAL COMMENTARY: If substantiation of verifiable retail value, as required by paragraph (2)(b)(C), is not available, and the offeror pays \$10 for a free item, the verifiable retail value of that free item would be \$15.

(2) Unfair or Deceptive Use of "Free" Offers: A person engages in conduct which is unfair or deceptive in trade or commerce:

(a) When the person makes a free offer in conjunction with the purchase or lease of real estate, goods or services:

(A) The price, size, quantity, or quality of which is normally arrived at through bargaining with potential purchasers, unless the "free" item is offered by a manufacturer or another party that is not the seller and there is no direct cost to the seller;

(B) When the item to be purchased or leased can be purchased or leased for a lesser price without the "free" item;

(C) At a price that is higher than the "regular price;"

(D) That is deceptive or misleading; or

(E) During a home solicitation as defined by ORS 83.710(1), unless:

(i) Exempted by ORS 83.710(2);

(ii) The goods or services are sold or leased by a person or entity that has a franchise to operate and sell or lease its goods or services by a unit of local government and pays franchise fees;

(iii) The rates or prices of the goods or services are regulated by local, state or federal government; or

(iv) The merchant making the home solicitation maintains a regular place of business where goods or services are sold or leased at a regular price and the goods or services for sale or lease during the home solicitation are being sold at their regular price or less.

OFFICIAL COMMENTARY: No advertisement or promotion for real estate, goods or services shall offer any free item in conjunction with the purchase or lease of real estate, goods or services, the price, size, quantity, or quality of which is normally determined by that seller or offeror by bargaining with potential consumers. It is the express intent of this section to prohibit the practice of advertising or offering something as "free," when in fact, the cost of the "free" item can be passed on to the consumer, in whole or in part, by raising the price of the real estate, goods or services that must be purchased in conjunction with the "free" offer or by decreasing the quality or quantity of merchandise that must be purchased in conjunction with the "free" offer. Such "free" offers are illusory.

Examples of violations of this section include, but are not limited to:

(I) A vinyl siding company offering "free" installation with the purchase of any home siding project;

(II) A construction company offering one "free" window with every other two windows purchased;

(III) A manufactured home dealer offering a "free" vacation with the purchase of a manufactured home;

(IV) A motor vehicle dealer offering a "free" car with the purchase of another car;

(V) An offer of a "free" television with the purchase of a vacuum cleaner sold during a home solicitation;

(VI) A men's clothing store offering a "free" tie with the purchase of a shirt priced at \$50.00 that has a regular price of \$35.00; or

(VII) A bridal dress store, selling its dresses at a convention center wedding show, marks up all of its dresses at the show by 10% over the regular price at which they are sold at the store and offers "free" flowers for the wedding of anyone who purchases a dress at the show.

(b) When the person makes a free offer and in order to qualify for the offer, the recipient will be given a presentation intended to result in the promotion of a business or sale or lease of real estate, goods or services unless the offer contains a clear and conspicuous disclosure:

(A) Identifying the business promoted and the goods or services offered for sale or lease;

(B) That the recipient must listen to a sales or promotional presentation in order to receive the free offer or that the recipient is entitled to receive the free offer after refusing to listen to the presentation, whichever is the case. If the free item described is not immediately available for delivery to the recipient after the recipient has listened to a sales or promotional presentation, the recipient shall be given the verifiable retail value of the free item in cash or by a valid check;

(C) Describing each potentially free item and its verifiable retail value;

(D) That includes, if the free item is one or more of a larger group and is received on a random basis, (in addition to compliance with subsection (2)(d)) a description of the actual odds of receiving each item based on the initial odds and revised to reflect actual current odds at the beginning of each month of use of the free promotion; if not on a random basis, a description of the method of selection used. The description of the initial odds and the current odds shall include a statement of the total number of each free item to be given away by the offeror and the total number of chances to obtain the free item being distributed by the offeror. If the promotion utilizing the free item involves distribution by more than one offeror or sponsor, the description of the initial odds and the actual current odds must also include a statement of the total number of each free item to be given away by all offerors or sponsors and the total number of chances to obtain the free item being distributed by all offerors or sponsors. The odds and verifiable retail value shall be printed in the same size type as the principal description of each free item and shall appear immediately adjacent to said description; and

(E) In a telephone or door-to-door solicitation, that includes the information required by ORS 646.608(1)(n) within 30 seconds after beginning the conversation.

(c) When the person makes a free offer in conjunction with the purchase or lease of real estate, goods or services and, in order to receive the "free" offer, the recipient is required to pay money, in addition to the cost of the real estate, goods or services purchased or leased, to the offeror, promoter or any other person in order to accept or use the "free" offer, including, but not limited to, postage, shipping, storage, handling, processing, registration or verification;

OFFICIAL COMMENTARY: An offer is not "free" if the recipient must pay a fee, over and above the actual cost of the real estate, goods or services, in order to receive the "free" offer. Examples of violations of this section include, but are not limited to:

(A) Offering "free" computer software on the internet that requires the recipient to pay a postage and handling fee in order to receive the "free" software; or

(B) Offering a "free" vacation with the sale of a living room furniture set that requires the recipient to pay a registration fee with the vacation company in order to reserve the future use of the "free" vacation.

(d) In the case of all free goods or services offered on a random basis as described in paragraph (2)(b)(D), unless it retains for at least one year a list of the names and addresses of all persons receiving free goods or services with a verifiable retail value of \$10 or more; and

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(e) When a person makes a free offer in conjunction with the purchase or lease of real estate, goods or services, which is subject to any terms, conditions or limitations in order to accept or use the "free" offer, and the person fails:

(A) To clearly and conspicuously display in an advertisement of the "free" offer all material terms, conditions, and limitations of accepting the "free" offer;

(B) To clearly and conspicuously disclose to the consumer all terms, conditions, and limitations of accepting the "free" offer prior to consummating any transaction; and

(C) To afford the consumer a meaningful opportunity to reject the offer.

OFFICIAL COMMENTARY: All material terms, conditions and limitations of a "free" offer must be set forth clearly and conspicuously in any advertisement in close proximity to the "free" offer. Disclosure of the terms of the offer, referenced by an asterisk and placed in a footnote at the bottom of the offer is not clear and conspicuous. Likewise, if the offer is on the internet, reference to the material terms, conditions and limitations of the offer by use of a hyperlink or only disclosing them during the checkout process is not clear and conspicuous. The definition of "clear and conspicuous" set forth in OAR 137-020-0020 has been incorporated by this rule and should be reviewed before advertising any "free" offer to ensure compliance. The complete offer, including all terms, conditions and limitations, must be fully explained to the consumer before the transaction is consummated and the consumer must be given a meaningful opportunity to reject the offer before committing to the transaction. Examples of violations of this section include, but are not limited to:

(i) A consumer shopping for an engagement ring is told he would receive a fully paid "free" vacation for two to Mexico with the purchase of a diamond ring that costs over \$10,000.00. No other information is given the consumer. The consumer and his new bride are, in fact, flown to the destination for free. However, the new bride and groom are booked into a dirty, unsafe and uncomfortable hotel with poor food. Once there, the new couple is told that if they check out they will not be able to use their return tickets. The consumer is given the choice of staying in the miserable accommodations or paying an exorbitant "upgrade" fee to get into a reasonable hotel;

(ii) An electronics store advertises a "free" 3-day Caribbean Cruise for two with the purchase of a complete home entertainment center package. The advertisement fails to clearly and conspicuously disclose that the consumer must purchase his/her own airfare through the cruise company, that there are many blackout dates when the cruise is not available and that the price of a cruise with additional days is at a cost that is 50% more than the price of a comparable cruise.

(iii) A computer software company, through television advertisements, offers two "free" compact discs of educational software. The advertisements do not disclose that the consumer must actually accept delivery of three CDs in order to get the "free" offer. If, within 15 days, the consumer does not mail back the third CD that is not "free," the consumer is billed \$79.95, the total regular cost of three CDs. All three examples may be violations of paragraph (2)(a)(D) because they are deceptive and misleading.

(3) Unfair or Deceptive Use of "Rebate" Offers: A person engages in conduct which is unfair or deceptive in trade or commerce when the person makes a rebate offer in conjunction with the purchase or lease of real estate, goods or services:

(a) By offering rebates that are deceptive or misleading;

(b) The price, size, quantity, or quality of which is normally arrived at through bargaining with potential purchasers, unless the rebate is offered by a manufacturer or another party that is not also the seller, independent of the seller and without the seller's participation; or

(c) When the advertisement or solicitation of the rebate fails to clearly and conspicuously display in close proximity to the rebate offer all material terms, conditions, limitations and costs of receiving the rebate.

OFFICIAL COMMENTARY: Examples of misleading or deceptive rebate offers include, but are not limited to:

(A) A motor vehicle dealer or construction company purchases cash vouchers from a third party and advertises that the voucher reduces the cost of real estate, goods or services. Strict criteria of the marketer for filing and later claiming the rebate are so onerous that it is almost impossible for the average consumer to receive anything. In addition, the amount of money retained in trust by the marketer for claims is only a small fraction of the total amount of the vouchers issued.

(B) Advertising these vouchers as rebates is misleading and deceptive because:

(i) Consumers are led to believe they are actually going to get a rebate on the cost of their purchase; and

(ii) The promotion is intentionally designed to make the consumers fail in either the initial submission of the voucher application or the claim process, which in some cases may not occur for four to five years from the initial transaction. Further, it is very possible that there will be insufficient funds to pay the entire amount of the "rebate" claims years later when the vouchers mature. In this particular example, offering such a voucher would also be an unlawful "free" offer pursuant to paragraph (2)(a)(A) because both motor vehicle sales and construction contracts are negotiable price transactions.

(C) A retail store advertises rebates for home computer systems and fails to clearly and conspicuously disclose the material terms, conditions and limitations of the rebate in close proximity to the rebate offer. Examples of such material terms, conditions and limitations include, but are not limited to:

(i) Rebates must be submitted within 7 days of purchase;

(ii) To qualify for a rebate, the consumer must subscribe for a two year internet subscription with XYZ Corp;

(iii) The rebate will not be for cash, but only merchandise from the manufacturer;

(iv) In order to qualify for the rebate, the consumer must purchase a printer at the same time (s)he buys the computer;

(v) The consumer must finance the computer system with ABC Finance Company to be eligible for the rebate;

(vi) To receive the entire rebate, the consumer must submit four different rebate forms to four different companies (in this example, the advertisement must clearly and con-

spicuously contain the terms for all four rebates to not be misleading or deceptive);

(vii) The rebate is limited to only one per address or household; or

(viii) The disclosure of material terms of the rebate are not in close proximity to the advertised rebate offer in the newspaper, but placed at the bottom of the page and referenced by an asterisk.

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: IAG 16, f. 7-21-76, ef. 9-1-76; IAG 2-1979, f. 6-22-79, ef. 8-1-79; JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 5-1990, f. 7-5-90, cert. ef. 9-1-90; DOJ 14-2007, f. 12-20-07, cert. ef. 1-2-08

Rule Caption: Motor Vehicle Price and Sales Disclosure.

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Subject: The proposed amendments define specific practice and clarify specific instances of unfair or deceptive conduct in the price disclosure and the sale and leasing of motor vehicles. The standards for permissible pricing practices and sales of used and new vehicles will be made more definite and certain by the amendments. Disclosures by brokers and dealers of motor vehicles will be enlarged in scope. The amendments clarify existing law concerning pricing disclosures, sales and leasing practices and financing of used and new motor vehicles.

Rules Coordinator: Carol Riches—(503) 947-4700

137-020-0020

Motor Vehicle Price and Sales Disclosure

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce certain motor vehicle pricing and sales practices. Nothing in this rule, or the administrative rules to which it applies, modifies or diminishes the applicability of exemptions or limitations on enforcement of the Oregon Unlawful Trade Practices Act, including, but not limited to, those specified in ORS 646.605 and 646.612.

(2) Definitions: For purposes of this rule, the following definitions shall apply:

(a) "Advertisement," including the terms "advertise" and "advertising," means any oral, written, pictorial or graphic notice given in a manner designed to attract public attention and includes, but is not limited to, public broadcasts, mailings, publications, internet sites, other internet applications, email, facsimiles and published notices. It includes, but is not limited to, any statement or representation made in a newspaper, magazine, or other publication; or made on radio, television or internet; or appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material; or contained in any window sticker or price tag;

(b) "Advertiser" means the person on whose behalf any advertising material is published and includes the advertising agent (if any) used by the advertiser;

(c) "Advertising agent" means any person who produces, promotes or assists in the sale, production, or placement of any advertisement or participates in a sales event directly or through its employees or agents, on behalf of any person;

(d) An "average" person, viewer or listener means a person other than one allied with or employed by the motor vehicle industry;

(e) "Broker" means a motor vehicle broker as defined by ORS 822.047;

(f) "Buy-down rate" means a financing rate which, due to a dealer's payment of finance charges to a third party, is below the prevailing market financing rate;

(g) "Buy-rate" means the lowest interest rate quoted to a dealer or broker by a financial organization for which a consumer qualifies, based upon the consumer's credit history;

(h) "Capitalized cost" means the amount the offeror places on a vehicle as the vehicle's value for the purpose of offering the vehicle for lease to the public, not including any capitalized cost reductions or taxes, title, license fees, lease acquisition, Department of Environmental Quality fees, Dealer Title and Registration Document Preparation Service Fee, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. The capitalized cost for the purpose of this definition is the equivalent of the "offering price" for the purchase of a motor vehicle in a sales transaction;

(i) "Capitalized cost reduction" means the total amount of any rebate, cash payment, net trade-in allowance or non-cash credit that reduces the capitalized cost;

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(j) "Clear and conspicuous," including the terms "clearly" and "conspicuously," means that a message, statement, information, representation or term is conveyed in a manner that is readily noticeable, will be easily understood by the audience to whom it is directed, and is in a meaningful sequence. In order for a message to be considered "clear and conspicuous," it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, to explain or to which it otherwise relates;

(B) Be in close proximity to the message, statement, information, representation or term it clarifies, modifies or explains, or to which it otherwise relates;

(C) Use abbreviations or terms only if they are commonly understood by the average person or approved by federal or state law;

OFFICIAL COMMENTARY: Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisements which place material disclosures in small print, inconspicuously buried at the bottom of the advertisement, are not clear and conspicuous. If, on the other hand, the information does not materially change, limit or alter the offer being made, it can be placed at the bottom of an advertisement.

(D) In the case of radio advertising:

(i) Include the information required to be disclosed by law and all disclaimers, conditions and limitations shall be spoken with sufficient deliberateness, clarity, speed and volume so as to be audible and understandable by the average radio listener;

(ii) Not be obscured by sounds which interfere with or distract from the disclosure; and

(iii) Provide all necessary information regarding leases. Any information required in radio advertising by the Federal Consumer Leasing Act and Oregon law and administrative rules shall be deemed to be clear and conspicuous if the advertisement complies with 15 USC § 1667c(c) and also discloses the capitalized cost of the lease.

OFFICIAL COMMENTARY: 15 USC § 1667c(c) allows certain required lease disclosures to be given to a consumer in a radio advertisement by referring the audience to either a toll free telephone number or a written advertisement that appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast. All lease advertisements on radio must include the following disclosures to comply with Oregon and Federal law:

(I) That the transaction advertised is a lease;

(II) The total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;

(III) The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; and

(IV) The capitalized cost (Oregon requirement).

Before advertising a motor vehicle lease on the radio, an advertiser should review 15 USC § 1667c in its entirety to ensure compliance with Oregon and Federal law. The toll free telephone number or written advertisement must include all other disclosures required by both OAR 137-020-0050 and 15 USC § 1667c.

(E) In the case of television advertising:

(i) Include the information required to be disclosed by law and shall be completely disclosed audibly, visually, or using a combination thereof;

(ii) If a visual message, be presented unobscured by other images and in a size and time sufficient to allow an average viewer to read with reasonable ease;

(iii) If an audible message, be presented with sufficient deliberateness, clarity, and volume so as to be understood by the average television listener unobscured by other sounds which interfere with or distract from the disclosure;

(iv) Have as a minimum height for required superimposed written copy ("super") in a television advertisement or advertisements in any other audio-visual medium:

(I) For Standard Definition Television - no less than 22 video scanlines for capital and lower case letters together, or no less than 18 video scanlines for use of capital letters only;

(II) For High Definition Television - no less than double the scanlines required for Standard Definition Television; and

(III) The supers must appear on the screen for a duration sufficient to allow a viewer to have a reasonable opportunity to read and understand the statement, representation or term.

(v) Be sufficient if the super on-screen display time is no less than three seconds for the first line of text and one second for each additional line. This is a rebuttable presumption.

(F) In the case of printed advertising:

(i) Include the information required to be disclosed by law and shall be in close proximity to the terms it purports to clarify, to explain or to which it otherwise relates; and

(ii) Be of sufficient prominence in terms of print style, size and contrast as compared with the remainder of the advertisement so as to be readily noticeable to an average person in the audience to whom it is directed. Print size which is 8 point type or larger in display advertisements which are less than 200 square inches in size or print size which is 10 point type or larger in display advertisements which are larger than 200 square inches

in size shall be rebuttably presumed to be of sufficient size to be readily noticeable.

(G) In the case of internet advertising:

(i) Include the information required to be disclosed by law near, and when technologically possible, on the same screen as the triggering claim;

(ii) Use text or visual cues to direct consumers to scroll down a Web page when it is necessary to view information;

(iii) When using hyperlinks to lead to information required to be disclosed by law:

(I) Ensure that hyperlinks are obvious;

(II) Ensure that hyperlinks appropriately convey the importance, nature and relevance of the information they lead to;

(III) Include consistent hyperlink styles and format;

(IV) Ensure that all hyperlinks are placed in close proximity to relevant information; and

(V) Ensure that hyperlinks take consumers directly to the information on the click-through page.

(iv) Be displayed prominently prior to purchase;

(v) Be prominently displayed so the information is noticeable to consumers in relation to the size, color and graphic treatment of other parts of the Web page;

(vi) Repeat information on lengthy Web sites when there are multiple or repeated claims;

(vii) Include audio disclosures when audio claims are made on the Web site and the audio disclosures must be presented in a volume and speed so that consumers can hear and understand them;

(viii) Include visual disclosures that are displayed for a duration sufficient for consumers to notice, read and understand them; and

(ix) Use clear language and syntax in such a manner that an ordinary consumer can understand the information required to be disclosed by law.

OFFICIAL COMMENTARY: For more clarification and explanation regarding internet advertising go to the Federal Trade Commission website titled "Dot Com Disclosures" at <http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/>.

(k) "Dealer" means a person who buys, sells, trades or exchanges, leases, displays or offers to buy, sell, trade or exchange motor vehicles either outright or by means of any conditional sale, bailment, lease, security interest, consignment or otherwise or who is a broker. "Dealer" does not include any person excluded by ORS 822.015;

(L) "Dealer Title and Registration Document Preparation Service Fee" means any monies or other thing of value, in an amount which is authorized by the Oregon Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV), which a dealer charges for preparing or processing title and registration documents and collecting DMV fees on behalf of a consumer;

OFFICIAL COMMENTARY: Oregon law and administrative rules permit dealers to act as DMV agents and dealers may elect to prepare, submit, or prepare and submit documents necessary to issue or transfer a certificate of title for a vehicle, register a vehicle or transfer registration of a vehicle, or issue a registration plate. For providing this service, dealers may charge a purchaser of a vehicle a fee for the preparation of those documents, not to exceed the amount established by DMV. See OAR 735-150-0050. Further, this fee is always negotiable; otherwise it could be classified as a tax. While a dealer has a right to prepare the DMV documents and charge the fee, the consumer may choose not to do business with a dealer who refuses to sell a vehicle without charging a Dealer Title and Registration Document Preparation Service Fee. Of course, the dealer can process the documents without charging a fee. In addition to the Dealer Title and Registration Document Preparation Service Fee, dealers may offer consumers the option of electronically filing their title and registration documents using an integrator. Dealers may charge consumers an additional fee for this service, subject to any limitations established by DMV. Consumers must knowingly agree to pay the additional fee for this electronic filing service. If a consumer does not agree to pay the additional fee for the electronic filing service, a dealer may still electronically submit title and registration documents at no additional cost to the consumer.

(m) "Extension sticker" means a label (other than a Monroney sticker or other label bearing the manufacturer's suggested retail price), affixed to a new motor vehicle, displaying the offering price of the motor vehicle;

(n) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is false, misleading or deceptive, not only representations made or suggested by statement, word, design, device, sound or any combination thereof will be taken into account, but also the extent to which the advertisement fails to reveal facts material in light of representations made;

(o) "Financial Organization" means any person who finances a sale or lease of a motor vehicle;

(p) "Manufacturer" means any entity which:

(i) Manufactures or assembles new motor vehicles for sale or distribution;

(ii) Distributes new motor vehicles through franchised dealerships;

(iii) Is engaged in the business of importing new motor vehicles for sale or distribution to dealers, through distributors, or to factory branches; or

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(iv) Is a subsidiary of a manufacturer including one that offers motor vehicle financing.

(q) "Manufacturer's Suggested Retail Price" or "MSRP" means the Monroney price, or if there is no Monroney sticker, then the total price of the vehicle after all factory installed options and factory costs have been added together, less any option package savings offered by the manufacturer;

(r) "Monroney sticker" means the label required by the Automobile Information Disclosure Act, 15 USC § 1232;

(s) "Motor Vehicle" means any self-propelled vehicle normally obtained for personal, family, or household purposes, including all terrain vehicles, snowmobiles, self-propelled motor homes, personal watercraft, boats and, for the purposes of this definition, any motor home, recreational vehicle or trailer pulled by a self-propelled vehicle. Motor vehicle does not include aircraft;

(t) "Negative equity" means the amount by which an existing lien on a trade-in vehicle exceeds the true market value of the trade-in vehicle;

OFFICIAL COMMENTARY: In layman's terms, if a consumer has negative equity on his/her vehicle, it means the consumer owes more on the vehicle than it is actually worth. While the "true market value" of a vehicle may vary, it can be determined by using Kelly Blue Book or NADA Book values and the average sale price of the vehicle at regional vehicle auctions. While these publications are relevant, they are not determinative. Depending upon the supply and demand for a given vehicle, it could be worth more or less than its "book" value.

(u) "Negative equity adjustment" means an equal amount which is added to both the purchase or lease price of a vehicle and the trade-in allowance for the trade-in vehicle in a transaction;

OFFICIAL COMMENTARY: Negative equity adjustments have become a common business practice in motor vehicle transactions. The practice is used when a consumer has negative equity in a trade-in and often is unable to qualify for financing without making a down payment. There are a number of possible reasons a dealer or broker may want to inflate the trade-in value on a vehicle with negative equity:

(A) to make the consumer think (s)he is receiving more for his/her trade-in than it is actually worth;

(B) to make it appear to a financial organization that the consumer is more credit-worthy than is true; or

(C) to create a down payment from trade-in equity when none exists. While a dealer is free to determine the actual cash value (ACV) on a vehicle taken as a trade-in, if the ACV exceeds the true market value, it could be an indication that the dealer has engaged in a negative equity adjustment and be a reason for further scrutiny of the transaction.

(v) "Offering price" means the full cash price for which a dealer will sell or lease a motor vehicle to every consumer or member of the general public without exception, excluding only taxes, license and registration costs, Department of Environmental Quality (DEQ) fees and a Dealer Title and Registration Document Preparation Service fee;

OFFICIAL COMMENTARY: Examples of correctly calculated offering prices are as follows:

(A) A car's MSRP is \$10,000, license and registration are \$100, undercoat is \$100, dealer-added options are \$2,000 and the Dealer Title and Registration Document Preparation Service fee is \$50. A financial organization offers a \$1,000 rebate to qualified consumers. The offering price of the vehicle is \$12,100. The offering price cannot include the \$50 service fee or the \$1,000 rebate that is not available to all consumers without exception.

(B) A motorcycle's MSRP is \$5,000, license and registration are \$50, delivery, assembly and setup costs the dealer \$250, custom accessories are \$500 and the Dealer Title and Registration Document Preparation Service fee is \$50. The offering price of the vehicle is \$5,750. The costs of delivery, assembly, setup and all accessories must be included in the offering price in any advertisement or quoted offering price given during the sales negotiation of the motorcycle and cannot be added in as fees or extras after the selling price of the motorcycle is agreed upon between the dealer and consumer. The advertised offering price does not need to include the license and registration or Dealer Title and Registration Document Preparation Service fee. While the dealer may now choose to prepare title and registration documents and may charge a fee for this service, nothing in this or any other rule requires a dealer to charge any Title and Registration Preparation Service fee. Whether the consumer will pay any fee for this service and, if so, its amount, up to the maximum allowed by law, is always negotiable between the consumer and the dealer.

(w) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or the United States and includes, but is not limited to, dealers, brokers, manufacturers, publishers, advertisers or advertising agents;

(x) "Personal Watercraft" means a jet ski or other aquatic device of similar design;

(y) "Publish" means to disseminate, mail, or otherwise make available to the public at large, or any section of the public, in whatever form and by whatever means any information;

(z) "Publisher" means any person who publishes any advertisement;

(aa) "Rebate" means:

(i) The payment of money to a consumer or payment to a person on behalf of a consumer on the condition that the consumer purchase or lease a motor vehicle; or

(ii) The return of any part of a payment made by a consumer in conjunction with the sale or lease of real estate, goods or services and includes,

but is not limited to, an offer of a future cash refund, a direct or indirect payment of money to a consumer or a voucher for future payments.

(bb) "Recreational vehicle" has the meaning given that term in ORS 650.300;

(cc) "Sale," "Sell" or "Buy" means any transaction for the sale, purchase, trade, exchange or lease of a motor vehicle;

(dd) "Spot Delivery" or "Spot Delivered" means that a consumer has taken possession of a motor vehicle from a dealer or broker and the consumer has committed to buy or lease the vehicle, whether or not there is a finalized transaction or final approval of financing;

OFFICIAL COMMENTARY: Spot delivery occurs when a consumer signs a purchase order, installment sales contract or lease agreement for a motor vehicle and the consumer takes possession of the vehicle "on the spot," prior to the consumer being approved by a financial organization to pay for the transaction.

(ee) "Taxes, license and registration costs" means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle;

(ff) "Used vehicle" means any vehicle which has been previously:

(i) Delivered to any person for his/her discretionary use for personal or business purposes and for more than a test drive before a contemplated purchase or preparation for sale;

(ii) Titled or registered to any person, whether or not it was used for the person's own discretionary personal or business purposes; or

(iii) Spot delivered.

OFFICIAL COMMENTARY: Vehicles that would be considered "used" include, but are not limited to:

(a) New vehicles that are delivered to a consumer on a purchase order, lease agreement or retail installment contract or spot delivered, then subsequently returned to the dealer for any reason, including, but not limited to, the inability to obtain financing;

(b) Demonstrators and company cars that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving, including use by the dealer, the dealer's employees, the dealer's corporate officers or anyone else; and

(c) All vehicles that have been driven more than the limited use necessary in moving or test driving a new vehicle prior to purchase or delivery to a consumer. The intent of this definition is to conform the applicability of the rule to the maximum extent permitted by ORS 646.608 and Weigel v. Ron Tonkin Chevrolet Co., 298 Or 127, 690 P2d 488 (1984).

(gg) "Vehicle identification number" or "VIN" means a number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or a Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle. For the purpose of this definition, any time a motor vehicle advertisement requires the publication of a "vehicle identification number," use of the last six numbers, letters or other characters will constitute compliance with the rule;

OFFICIAL COMMENTARY: Requiring the use of only the actual vehicle identification number or its last six numbers or characters in all advertising ensures positive identification of all advertised vehicles. Some deceptive advertisements have used fictitious stock numbers to advertise vehicles that did not exist. The implementation of this change will allow any consumer to identify a specific advertised vehicle at a dealership simply by looking in the vehicle's front window.

(hh) "Wholesale" means the sale of motor vehicles, goods or services for resale by a dealer, broker or other person, as opposed to the sale of motor vehicles, goods or services to the ultimate consumer;

(ii) "Yield Spread Premium" means the difference between a higher interest rate quoted to a consumer by a dealer or broker and the buy rate offered to the dealer or broker by a financial organization.

(3) Violations: Failure by a person, in the course of the person's business, vocation or occupation, to comply with this rule constitutes unfair or deceptive conduct in trade or commerce.

(a) Mandatory Posting of Offering Price - Any motor vehicle offered for sale or lease in an advertisement that states an offering price or capitalized cost for the motor vehicle shall have affixed to it a clear and conspicuous label or extension sticker that states the advertised offering price of the motor vehicle listed in the advertisement. If a motor vehicle bears a label which states a MSRP and the MSRP is the offering price or capitalized cost for the vehicle, no additional label or extension sticker is required;

OFFICIAL COMMENTARY: This rule requires every dealer who advertises an offering price for a motor vehicle in any media to post the advertised offering price on the vehicle in a clear and conspicuous manner.

(b) Extension Sticker — Any motor vehicle offered for sale bearing a Monroney sticker or a label stating a MSRP shall have an extension sticker affixed stating the offering price of the vehicle if the offering price is greater than the Monroney sticker price or the stated MSRP;

(c) Offering Price — Any price stated in an advertisement or in a written or oral price quotation given to a consumer shall be the offering price, excluding only taxes, license, registration costs, DEQ fees and a Dealer Title and Registration Document Preparation Service fee;

OFFICIAL COMMENTARY: The purpose of this rule is to ensure that dealers do not add in hidden or undisclosed costs after the price for a vehicle has been advertised or negotiated with a consumer. Examples of potential violations are as follows:

(A) A vehicle is advertised or offered for sale at the dealership for \$10,000. After the consumer accepts the dealer's offer and agrees to purchase the vehicle, the dealer learns that the consumer has a poor credit history. The lending company charges the dealer a premium of \$500 to accept the retail installment contract. The dealer then

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tries to add this \$500 to the contract with the consumer as a "loan fee." This practice is unlawful;

(B) A person advertises a vehicle for \$20,000 in the local newspaper. The vehicle has \$1,500 worth of after-market accessories on the vehicle. When the consumer arrives at the dealership and wants to purchase the vehicle, the salesperson tells the consumer that the price is \$21,500 with the added accessories. This practice is unlawful. If the dealer wants reimbursement for these options, the dealer should ensure that amount is included in any advertised price; and

(C) A motorcycle dealer charges \$350 to set up and assemble a motorcycle. This amount must be included in any offering price advertised and cannot be noted only by disclosure at the bottom of the advertisement with the use of an asterisk. Further, any price displayed on the motorcycle or price quoted to a consumer during negotiations must include this amount.

(d) **Limitations on Offering Price** — An extension sticker shall accurately itemize and describe the charge(s) added to or subtracted from the MSRP to reach the offering price. No charge may be added for goods or services not actually provided. No charge may be added for services required by the manufacturer or distributor which are performed by a dealer prior to delivery of a motor vehicle to a retail consumer. No charge may be added for any overhead expense such as warehousing, flooring, advertising, and clerical costs. No charge may be added for transportation costs charged by the manufacturer or distributor to the dealer and included in the MSRP. In the case of inland freight, setup and dealer preparation, the charge listed must be the dealer's actual cost for freight from the port of entry to the dealership, and the actual cost of setup and dealer preparation and not included in the MSRP;

(e) **Additional Dealer Mark-up** - If the offering price is greater than the MSRP, the portion of the difference shown on the extension sticker between the offering price and the MSRP not representing additional goods or services shall be described as "additional dealer profit," "additional mark-up" or by a term of similar import;

(f) **Unconscionable Add-on Pricing** - A person may not make false or misleading representations concerning the nature or amounts of charges for additional goods, accessories, services, products or insurance sold in conjunction with the sale or lease of a motor vehicle by selling them at a price which is unconscionably higher than the price used by the person for the sale of the same or substantially similar goods, accessories, services, products or insurance to other consumers;

OFFICIAL COMMENTARY: While the average consumer knows that a motor vehicle is a negotiated price item, many expect that the cost of extended service contracts, protective coating products, credit life insurance or other additional products are sold at fixed non-negotiable prices. Some unscrupulous dealers and brokers, however, have charged as much for these products as they can, based upon the susceptibility of the customer. Unfortunately, sometimes the most vulnerable consumers, such as those with problems such as illiteracy, a physical infirmity, a mental handicap, an inability to understand the English language or other limitations, are charged well in excess of the fair market value. This rule does not limit a dealer's ability to mark up or down the selling price of a product or service in the normal course of business. This includes offering special discounts to repeat customers or volume discounts to purchasers of large quantities of products or services.

(g) **Disclosing Document Fee** — The Dealer Title and Registration Document Preparation Service fee may be separately stated in all advertisements and sales documents. If separately stated, the disclosure shall be clear and conspicuous;

(h) **Document Fee Not Government Required** — A person shall not represent a Dealer Title and Registration Document Preparation Service fee as a governmental fee or one required by government;

(i) **Vehicle Availability** — A dealer or broker may not advise prospective customers that an advertised vehicle is available when the vehicle is not available for sale, or that an advertised vehicle is not available for sale when the vehicle is available for sale;

(j) **Undisclosed Price Packing** — A dealer or broker may not sell or lease a motor vehicle to a consumer with the cost of any additional goods, accessories, services, products or insurance added to the sale or lease, without the consumer's actual knowledge, written consent and individual itemization of all such additional costs listed on any purchase or lease agreement;

(k) **Undisclosed Fee Payments** — A dealer who sells or leases a motor vehicle to a consumer and makes any payment to any non-employee third-party in conjunction with the sale or lease, other than a referral fee of \$100 or less (also known as a "bird-dog" payment), must specifically itemize such payment on the consumer's lease or purchase agreement;

(L) **False Representations Regarding Financing or Goods** — A person may not falsely represent to a consumer that the person:

(A) Will not sell or lease a motor vehicle to the consumer; or

(B) Cannot provide financing for the consumer unless the consumer purchases additional goods, accessories, services, products or insurance or that such additional goods, accessories, services, products or insurance are free or included in the price of a motor vehicle or the financing;

OFFICIAL COMMENTARY: Due to many changes in the motor vehicle industry, including lower profit margins on the actual motor vehicle transaction, dealers and brokers have had to focus more on higher profits in the sale of additional goods, accessories, services, products or insurance. This rule ensures a consumer is not misled into purchasing anything other than the motor vehicle, without the consumer's

informed knowledge and consent. Nothing in this rule prohibits a dealer from ensuring that a consumer has motor vehicle insurance required by law or according to the terms of financing in order to protect the collateral financed. No person, however, can make false statements regarding any requirement to purchase products or services. This rule does not prohibit dealers from adding accessories, which enhance the value and marketability of a vehicle to some of their inventory, and including them in the offering price of the vehicle. If a dealer adds high profit aftermarket products, including, but not limited to, paint protector, door edge guards and glass etching, to its vehicles which do not correspondingly increase the actual cash value of the vehicles, such practice would be carefully scrutinized as a possible violation of this rule.

(m) **Payment Price Packing** — During negotiations for the sale or lease of a motor vehicle, a dealer or broker may not quote to a consumer a monthly payment or total price for the sale or lease of a motor vehicle that includes the cost of any additional goods, accessories, services, products or insurance, including, but not limited to, extended warranties, security products, protectants, credit life or gap insurance, that are sold in conjunction with the sale or lease of a motor vehicle, unless the dealer or broker also clearly and conspicuously separately discloses in writing, during negotiations and prior to any purchase or lease agreement being executed by a customer:

(A) The individual price of each additional good, accessory, service, product or insurance; and

(B) The total cost of the lease or sale of the vehicle and the monthly payment, without such additional items included.

OFFICIAL COMMENTARY: This rule addresses the practice that is commonly referred to as "packing," or the "presumptive sale." "Packing" is the deceptive practice of misrepresenting monthly payments or total cost of a vehicle to consumers during motor vehicle sales and lease negotiations in order to surreptitiously facilitate the sale of additional motor vehicle related goods, accessories, services, products or insurance. Consumers are entitled to be dealt with in a fair and non-deceptive manner during negotiations to buy or lease a motor vehicle, including the right to receive timely, accurate and non-misleading information about the cost of the vehicle and all related goods, accessories, services, products or insurance they are buying or leasing. Some dealers have used "packed" payment schemes and poor disclosures to trick consumers into believing that services such as credit insurance, vehicle service contracts, chemical protection, and security devices are included at no additional cost or provided "free" in the purchase or lease agreement; or that they are discounted when they are not. Others have quoted monthly payments calculated upon interest rates far in excess of what they believe will be the final interest rate or simply add an extra \$40 or more to the monthly payment than what is needed to cover the price of the vehicle. They use this inflated quote in order to build in some "legroom" to later add other optional products and services to the transaction with the extra cost hidden or appearing lower to the consumer. Because the monthly payment does not increase and because the consumer believes the products are "free" or discounted, most consumers do not object when the products are included in the final contract.

(n) **Disclosure of Service Contract Coverage** — A dealer may not misrepresent or fail to clearly and conspicuously disclose the following terms or conditions of an extended service contract sold in conjunction with the sale or lease of a motor vehicle: the length of the coverage, what parts or systems of the vehicle are covered by the contract, any exclusions in the coverage, and that there may be an existing manufacturer's warranty which provides the same or similar coverage. If the dealer advertises that a vehicle has an existing manufacturer's warranty or the dealer knows a vehicle has an existing manufacturer's warranty, the dealer must disclose the terms of the remaining warranty coverage;

(o) **Disclosure of Material Nonconformities and Defects** — A dealer or broker shall disclose existing material nonconformities and defects about which the dealer or broker knows or negligently disregarded when the dealer or broker should have known, prior to sale or lease of a motor vehicle;

OFFICIAL COMMENTARY: Unless explicitly disclosed prior to a sale or lease, a motor vehicle that is offered for sale or lease to the public is represented, either directly or by implication, to be roadworthy when it is sold, to have an unbranded title and to have no undisclosed material defects. The dealer is in a superior position to inspect and determine the condition of a vehicle prior to marketing the vehicle. It is an easy matter, through a number of industry and internet sources, for a dealer or broker to review a vehicle's title, damage and ownership history. The intent of this rule is to conform its applicability to the maximum extent permitted by ORS 646.608 and the holding in *State ex rel. Redden v. Discount Fabrics, Inc.*, 289 Or 375, 615 P2d 1034 (1980): "Under the terms [of the Unlawful Trade Practices Act] a defendant is liable for misrepresentations made negligently, without evidence that it was attended by either conscious ignorance or reckless indifference to its truth or falsity, whereas evidence that a misrepresentation was made negligently is insufficient in an action for common law fraud. In other words, the term 'wilful,' as defined by § 646.60, requires no more than proof of ordinary negligence by a defendant in not knowing, when it should have known, that a representation made by him was not true." ORS 646.608 (2) states: "A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact."

This rule does not change the existing laws regarding warranties on used vehicles nor does it place any new requirements on dealers or brokers. Dealers and brokers should understand, however, that simply because they comply with the FTC "As-Is" rule it does not relieve them of their obligation to disclose material defects they knew or should have known about. A dealer is not required to guarantee, warrant or represent that a used vehicle will not have any mechanical problems or undetected material defects once the vehicle is sold. Further, a dealer need not create an exhaustive list of every ding, paint scratch, fabric tear or discoloration clearly visible upon inspection by an average consumer. Examples of negligent disregard of some things that should put a dealer on notice and trigger its duty to disclose might include, but is not limited to, a large pool of oil or antifreeze under the vehicle, dark colored smoke coming from an exhaust pipe, water stains on carpet or doors, a different color paint than the body under the hood or in the trunk or tires that are worn very unevenly.

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(p) False or Unsubstantiated Representations — A dealer or broker may not make a misrepresentation or a false or incomplete statement of fact in conjunction with the sale or lease of a motor vehicle, or any other representation or statement which the dealer or broker does not have sufficient information upon which a reasonable belief in the truth of the representation could be based;

(q) False Statement of Broker Fees — A broker may not misrepresent the source or nature of any profit, compensation or fee which the broker will receive for its services or cause a consumer to believe the services are free or at no cost to the consumer, when they are not;

OFFICIAL COMMENTARY: Brokers are a fiduciary of a consumer on whose behalf they have agreed to negotiate the purchase or lease of a vehicle. Unlike a dealer, a broker is not engaging in an "arm's length" transaction. Brokers market their services to act in the consumer's best interest. They are in an agency relationship. The consumer has a right to rely on that relationship. For example, a broker who tells a consumer that the broker may be receiving compensation from a dealer as part of the transaction, when the funds for that payment were part of the total amount paid by the consumer as part of the purchase or lease, is misrepresenting the nature of the transaction and making a false statement as to the source of the funds the broker will be receiving. The correct disclosure would be that the broker has added its fee to the price which it negotiated with the seller on behalf of the consumer. While ORS 822.047 does not require the broker to disclose the amount of its profit, once the broker undertakes to act on behalf of a consumer, or do anything that could cause a consumer to believe the broker is acting on the consumer's behalf, the dealer or broker may no longer engage in self-dealing, but must act in the consumer's best interest. Further, if a consumer asks what the fee is for the service, the broker may not misrepresent the amount of the fee being charged. In no case may the broker misrepresent the nature of the charge, the amount of the fee or in what way the fee for the broker's service is paid.

(r) Disclosure of Dealer/Broker Status - A dealer or broker may not misrepresent or fail to disclose whether it is acting as a dealer or broker when it has done anything to cause a consumer to believe it is acting as a broker for the consumer in the purchase or lease of a motor vehicle;

OFFICIAL COMMENTARY: It is well established in law that a broker is in a fiduciary relationship with its client. Fiduciary duties can be grouped into three categories:

(A) Duty of Loyalty. A fiduciary must act in accordance with the interests of the beneficiary, and not his own interests;

(B) Duty of Candor. A fiduciary must not withhold information from the beneficiary, particularly with respect to the fiduciary's dealings with the beneficiary; and

(C) Duty of Care. A fiduciary must act with some degree of care with respect to the beneficiary. This is usually formulated as a duty to exercise the care that an ordinarily prudent person would in similar circumstances. When representing a consumer, a broker acts as an agent for the consumer and is in a fiduciary relationship with the consumer. As such, a broker occupies a position of such power and confidence with regard to the property of another that the law requires brokers to act solely in the interest of the person whom they represent and in good faith. In Oregon, only one type of dealer license is required, whether the licensee acts as a dealer or broker. This can lead to confusion by a consumer. If the consumer believes the person the consumer contacted was a broker, the consumer expects that person to act in the consumer's best interest. Brokers have an obligation to ensure the consumer knows what the broker's business status is in relation to the transaction and whether the consumer is dealing with it as a broker or a dealer. Some non-franchised dealers have added to the confusion by simultaneously advertising that they are new and used vehicle dealers and brokers. Such advertising places the burden upon such a business to ensure it clearly discloses in what capacity it is dealing with the consumer. If a consumer first contacts a dealer who does not have a vehicle in its own inventory that the consumer wishes to buy or lease, and the dealer agrees to find, negotiate or arrange the purchase or lease of a specific vehicle for the consumer from a third party, a broker relationship may be created. If the dealer, without placing any obligations on the consumer, finds the desired vehicle, purchases it and places it into the dealer's own inventory, the dealer may thereafter negotiate and sell or lease the vehicle to the consumer and still remain a dealer. However, a dealer may become a broker under several circumstances, including, but not limited to, the following: the dealer places a contractual or monetary obligation on the consumer in order to arrange or negotiate the purchase or lease of the vehicle; the dealer makes any statement which could cause an average consumer to believe the dealer was acting as an agent of the consumer (such as saying the dealer would negotiate the best price for the transaction); or the dealer arranges the transaction for the consumer through another dealer and receives any compensation from the consumer or other dealer.

(s) False Credit Applications — No person shall for any motor vehicle transaction:

(A) Knowingly prepare, participate or assist in the preparation or submission of a false, misleading or deceptive credit application;

(B) Direct any person to prepare or submit a false, misleading or deceptive credit application;

(C) Request or allow a consumer to sign a blank or incomplete credit application; or

(D) Knowingly accept or submit a false, misleading or deceptive credit application.

(t) Illusory or Deferred Down-Payments — Hold Check Agreements — In any transaction for a motor vehicle:

(A) No person shall request or accept from a consumer as payment for any part of a purchase or lease, or list the same as a down payment on any purchase order, lease agreement, retail installment contract, or credit application, any of the following:

(i) A promissory note for future payment, without clearly disclosing on the purchase order, lease agreement, retail installment contract, or credit application: the amount of the promissory note given by the consumer,

the terms of repayment, any interest rate and that such amount is in the form of a promissory note;

(ii) A check that the person knows or should have known is drawn upon an account with insufficient funds, without clearly disclosing on the purchase order, lease agreement, retail installment contract, or credit application: the amount of such check, the terms of repayment, that there were insufficient funds in the checking account at the time the check was drawn and the date the check is expected to have sufficient funds available for its payment; or

(iii) A post-dated check that the consumer has given the person for payment at a future date, without clearly disclosing on the purchase order, lease agreement, retail installment contract, or credit application: the amount of such check, that the check is post-dated, and the date the check is due and payable.

(B) No person shall accept any check listed in (t)(A)(ii) or (iii) above without having a written hold check agreement, clearly disclosing on the purchase order, lease agreement or retail installment contract all terms and conditions of the hold check agreement, and disclosing the fact that there is a hold check agreement to any financial organization to which credit is requested;

(C) No person shall accept any payment listed in (t)(A)(i), (ii) or (iii) above without properly listing and identifying such payment in any retail installment contract or lease agreement; and

(D) No deferred portion of a down payment may be treated as part of the down payment if it is payable later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

OFFICIAL COMMENTARY: This rule addresses appropriate disclosure in accordance with the single document rule (ORS 83.020), Regulation Z, specifically 12 CFR §226.2(a)(18), and Regulation M. It also ensures that the actual nature and terms of any deferred payment made on a purchase or lease of a motor vehicle are clearly disclosed on not only the purchase or lease agreement and retail installment contract, but also on any credit application. Sometimes when a consumer does not have sufficient funds, which may be required as a down payment from a financial organization, a dealer will request a promissory note or a post-dated check from a consumer. It is not uncommon for the check to be drawn on an account with insufficient funds at the time it is written. The promissory note or check is then listed as a down payment on a purchase or lease agreement and/or the credit application without disclosing the actual form of the payment to the potential lender. This makes it falsely appear that the consumer has paid a sum certain at the time of the transaction when the dealer or broker has not yet received those funds. Often the consumer also gives the dealer or broker explicit instructions not to deposit the check until some date in the future. This may be done in order to make the consumer appear more creditworthy than his/her actual financial status would substantiate. Then, not only is the consumer required to make future monthly payments on the motor vehicle, the consumer is also under the burden of paying additional future payments for a check or promissory note that the consumer may or may not be able to afford. A dealer or broker might also cash the check earlier than agreed upon, or as directed by the consumer, causing the consumer's account to be overdrawn and damaging the consumer's credit. Listing a deferred payment on a credit application as a down payment, without disclosing its actual terms and conditions, is fraud upon the financial organization, which bases its decisions on the information supplied by the dealer or broker. It is not uncommon to later find the consumer in default on the loan, which may not have been approved had honest information been disclosed on the credit application.

(u) Yield Spread Premium Disclosure - Any dealer or broker that charges a consumer a yield spread premium for arranging financing for the consumer:

(A) Shall clearly and conspicuously disclose in writing, prior to the consumer applying for credit or executing a purchase or lease agreement:

(i) That the dealer or broker may receive additional compensation from the consumer for arranging the financing which may be in the form of a fee or additional loan points; and

(ii) That interest rates quoted by the dealer or broker may be negotiable; and

(B) Shall not, during the negotiation for the sale or lease of a motor vehicle, quote a monthly payment calculated using an interest rate that is more than three points higher than the buy rate, unless the dealer or broker discloses in writing the yield spread premium to the consumer, if the dealer or broker quoting the rate knows the consumer's credit score or has the ability to obtain the consumer's credit score at the time the monthly payment is quoted.

OFFICIAL COMMENTARY: This rule is only applicable when a dealer or broker arranges financing for a consumer buying or leasing a motor vehicle and charges a fee or yield spread premium. When a dealer or broker arranges vehicle financing for a consumer it often charges a fee or adds points to the buy-rate charged by the financial organization. This mark-up to the cost of financing may cost consumers thousands of dollars over the term of a loan or lease. Without disclosure, many consumers are unaware that the dealer or broker is making a profit for arranging the consumer's financing. Many consumers believe that the dealer or broker is getting them the best rates for which they qualify. This rule gives the consumer the most basic information regarding costs incurred when the consumer finances his/her transaction through a dealer or broker. Subsection (u)(B) of this paragraph addresses an unlawful practice known as "rate packing." The dealer runs the credit of a prospective buyer and, knowing the buyer's credit score, calculates the monthly payment using an interest rate that is excessively more than what the consumer's credit score would qualify for and often much higher than what the financial organization would be willing to allow on a point yield premium. Once the deal is closed, the dealer has effectively left plenty of "legroom" in the deal for finance personnel. Finance personnel will then drop the rate

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down to the maximum rate the financial organization allows for a point yield premium, usually two or three points, and include additional products or insurance in the deal with the consumer not aware the cost was added to the price of the vehicle. The consumer is then presented with expensive options or service contracts "for only a few extra dollars per month" or "for no extra charge."

(v) **Misleading or Deceptive Tying Requirements** - No person shall represent or imply that the person requires a consumer to purchase anything additional, in conjunction with the sale or lease of a motor vehicle, including, but not limited to, any goods, accessories, services, products, insurance, extended service or maintenance contracts, in order to:

(A) Purchase or lease a motor vehicle, unless the person requires all consumers to purchase the same additional items in order to purchase or lease any vehicles from that person; or

(B) Obtain financing for a motor vehicle unless the person requires all consumers to purchase the same additional items in order to obtain financing for that person's motor vehicles; and

(C) The person will not sell, lease or obtain financing for any motor vehicles without the sale of such additional items to any other consumer, whatsoever.

OFFICIAL COMMENTARY: A tying arrangement is one in which a person conditions the sale or financing of one product to the purchase of another product. This rule makes it clear that a person may not falsely represent that the person will not or cannot sell or finance a motor vehicle without the consumer purchasing additional items when in fact the person does sell or finance vehicles in the course of its business without such requirements in each and every transaction. This rule does not prohibit a dealer from requiring or ensuring that a consumer has purchased motor vehicle insurance as may be required by law or the terms of a lease or purchase agreement.

(w) **Deceptive Financing Representations** - No dealer or broker shall falsely represent that a transaction is conditioned upon the consumer financing the transaction with or through the dealer or broker when in fact the consumer is able to finance through other means or sources;

(x) **Unlawful Spot Delivery** - No dealer or broker shall spot deliver a vehicle to any consumer unless the dealer or broker has a reasonable basis to believe the consumer could qualify for the terms of financing quoted to the consumer at the time of delivery;

(y) **Misrepresentation Regarding Failure to Finance** - No dealer or broker, who has spot delivered a vehicle to a consumer and thereafter fails to complete the transaction in accordance with the terms offered in the purchase order, lease agreement or retail installment contract, shall misrepresent to a consumer the reason that the consumer does not qualify for financing or misrepresent why the transaction cannot be completed according to the terms offered;

OFFICIAL COMMENTARY: This rule addresses the unlawful business practice commonly known as "yo-yo financing" or "bushing." In a yo-yo transaction, a dealer quotes the consumer finance terms that are not yet accepted by a financial organization in order to get the consumer to take delivery of the vehicle "on the spot." Later, when the dealer either cannot get the quoted terms funded or cannot make the expected profit from added points, the dealer tells the consumer that the deal did not go through and that the dealer needs to rewrite the transaction on terms usually less favorable to the consumer. It is a common practice of dealers and brokers to quote financing terms that include an undisclosed yield spread premium when they spot deliver a vehicle. When a dealer engages in the practice of unwinding a transaction even though the consumer is qualified for the original quoted terms, simply so the dealer can add interest points or make more profit, it is one of the most egregious forms of the yo-yo scam. If there is a financial organization that will fund the quoted rate, the dealer or broker will never be justified in unwinding the transaction because the rate is not low enough to allow the dealer or broker to add a yield spread premium. A dealer or broker either knows, or has the ability to find out, prior to the time it spot delivers a motor vehicle and quotes finance terms: the available buy-rates, the consumer's credit history, and the consumer's credit score. Dealers who "spot deliver" motor vehicles are in fact the originating creditors extending the finance terms to the consumer. In today's credit market, a dealer can almost always find a financial organization that will accept the transaction. The only question is whether the dealer will take a loss, break even or make a profit on the financing. The primary targets of this rule are dealers and brokers who offer terms and availability of financing without having a good faith basis based upon the consumer's credit worthiness, simply to have the consumer accept spot delivery. This rule should deter brokers or dealers from knowingly quoting rates to consumers which they know the consumer will not be approved for simply to get the consumer to take delivery of the vehicle. Not all transactions in which a credit application is not approved are scams. Sometimes a consumer does not have strong enough credit to qualify for the most attractive financing offers, has a change in financial circumstances or has provided incomplete or false information on the credit application.

(z) **Anti-Bushing Rule** - In any transaction in which the dealer or broker has spot delivered a vehicle to a consumer and the consumer does not qualify for the terms offered, the dealer or broker shall, prior to offering, negotiating or entering into new terms for the purchase or lease of a vehicle:

(A) Inform the consumer that the consumer is entitled to have all items of value received from the consumer as part of the transaction, including any trade-in and down payment, returned to the consumer;

(B) If the consumer is physically present when the dealer or broker informs the consumer that the consumer does not qualify for the terms offered, return all items of value received from the consumer as part of the transaction; and

(C) If the dealer or broker informs a consumer by telephone or other means, without the consumer present, that the consumer did not qualify for

the terms offered, clearly disclose the consumer's right to receive the immediate return of all items of value given by the consumer as part of the transaction when the consumer returns the spot delivered vehicle. Simply informing a consumer of the consumer's right to get back his/her down payment and trade-in and having the consumer sign a waiver or rescission form, without the actual ability for the consumer to have his/her down payment back and take possession of his/her trade-in, does not comply with ORS 646.877. The consumer's down payment and trade-in must be actually available to the consumer should the consumer wish to rescind the transaction and not enter into a new transaction. If a consumer has paid a down payment with a check, the dealer is not required to refund the down payment until the consumer's check has cleared.

OFFICIAL COMMENTARY: This rule clarifies the Oregon "Anti-bushing" statute, ORS 646.877, so that dealers and brokers clearly understand its requirements. This statute gives both dealers and consumers specific rights when it is necessary to unwind a spot delivery transaction. While the statute clearly states "the seller shall return to the buyer all items of value received from the buyer as part of the transaction," many dealers and brokers do not actually give or even offer the consumer the down payment and trade-in back before the dealer or broker tries to get the consumer to sign a new contract. Many dealers and brokers do not even have the down payment or trade-in readily available when they inform the consumer that the consumer needs to enter into a new contract. Simply offering to return the items of value and having a consumer agree to rescind the prior deal is not in compliance with the statute. The consumer has an absolute right to walk away from the deal if the original offer is not going to be honored. Without having actual ability to take possession of the trade-in and down payment, the seller has the ability to pressure a consumer into entering into a less favorable contract and has an uneven bargaining position. Having a refund check presently available and giving the consumer his/her keys with the trade-in vehicle immediately available is necessary for compliance.

(aa) **Unlawful Negative Equity Adjustment** — No person shall make a negative equity adjustment in the sale or lease of a motor vehicle;

OFFICIAL COMMENTARY: Both federal and Oregon law prohibit the practice of negative equity adjustments. On April 6, 1998, the Board of Governors of the Federal Reserve System (the Federal Reserve) published, as a final rule, revisions to the Official Staff Commentary to Regulation Z, 12 CFR Part 226, Supplement I-Official Staff Commentary. See 63 Fed. Reg. 16669. The revisions to the Federal Reserve's Official Staff Commentary to Regulation Z became effective March 31, 1998. Compliance with the Official Staff Commentary became mandatory on October 1, 1998.

The final rule states, in part: Under Regulation Z, the term "down payment" refers to an amount paid to a seller to reduce the "cash price" in a credit sale transaction. Comment 2(a)(18)-3 gives guidance on how a creditor discloses the down payment if a trade-in is involved in the sale and if the amount of an existing lien exceeds the value of the trade-in. The comment clarifies that creditors should disclose the down payment as zero and not a negative amount. The comment addresses a credit sale and financed down payment treated as a single transaction; it does not affect creditor's ability to disclose them as two transactions. 63 Fed. Reg. 16669. Section 2(a)(18)-3 of the Official Staff Commentary provides: "3. Effect of existing liens. In a credit sale, the 'down payment' may only be used to reduce the cash price. For example, when the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the down payment line rather than a negative number. To illustrate, assume a consumer owes \$10,000 on an existing automobile loan and that the trade-in value of the automobile is only \$8,000, leaving a \$2,000 deficit. The creditor should disclose a down payment of \$0, not -\$2,000." Several states, including Oregon, specifically permit negative equity to be included in the amount financed or principal balance of a retail installment contract and mandate that negative equity appear as an other amount financed, not as a component of the cash price or down payment. Chapter 83 of the Oregon Revised Statutes sets forth the requirements and limitations for every retail installment contract and mandates where negative equity must be disclosed on the contract and does not allow negative equity adjustments to be made to the cash sale price. First, Oregon law defines the applicable terms:

ORS 83.010(1): "'Cash sale price' means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration and license fees and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements."

ORS 83.010(4): "'Principal balance' means the cash sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees."

Finally, Oregon law specifies the contents, sequence and location of the required disclosures in the contract:

ORS 83.030: "Contents of contract. The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below; however, additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer:

(A) The cash sale price of each item of goods or services;

(B) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in;

(C) The difference between subsections (1) and (2) of this section;

(D) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(E) The aggregate amount of official fees;

(F) The principal balance, which is the sum of subsections (3), (4) and (5) of this section;" There is no question but that the state and federal laws clearly contemplate the disclosure of negative equity. The use of a "negative equity adjustment" is sometimes referred to as "creative financing." The reality is that the practice consists of com-

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mitting fraud in reporting to a financial organization regarding the true value of the trade-in and misrepresenting the actual amount of the down payment made in order to get financing on the new transaction. The California case of *Reta Thompson v. 10,000 RV Sales, Inc.*, 130 Cal.App.4th 950, 979, 31 Cal. Rptr. 3d 18, (Ct. App. 2005) succinctly explained why this practice is unlawful: "Although financing properly disclosed negative equity is permissible under the (California Automobile Sales Finance Act (ASFA)) and Regulation Z, it is not permissible to include the over-allowance in the cash price of a vehicle. This interpretation of the ASFA is consistent with its remedial purpose of protecting consumers from inaccurate and unfair credit practices through full and honest disclosures. Allowing a dealer to include over-allowances on trade-in vehicles in the cash price of vehicles being purchased adversely affects consumers who are funded long-term loans for which they otherwise may not qualify and which they may not be able to afford. Additionally, this practice negatively impacts lenders who extend credit for sales misrepresented to them based on fictitious values of vehicles being financed. As the evidence at trial showed, lenders cannot determine fraud from the face of a contract when the numbers have been manipulated. Finally, and of no less import, enforcing the ASFA's disclosure requirements protects dealership competitors who are at a disadvantage if they quote a true trade-in value rather than an inflated one. Requiring a meaningful disclosure of credit terms both protects consumers and enhances fair business competition. (15 U.S.C. § 1601(a))."

Oregon law, as well as Regulation Z, permit the financing of prior credit balances on trade-in vehicles as long as the amount financed is clearly and separately disclosed and properly identified. (See Official staff interpretation, 12 CFR § 226.18(c) (Supp. I 2005).) To engage in any negative equity adjustment not only violates Oregon Revised Statutes Chapter 83 disclosures and Regulation Z, but is a violation of the Oregon Unlawful Trade Practices Act in several sections which make it unlawful when a dealer or broker:

(A) "Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred," ORS 646.608(1)(k); or

(B) "Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services," ORS 646.608(1)(s).

This rule requires that a consumer be clearly informed that the negative equity in his/her trade-in has been added to his/her purchase or lease. Compliance with this rule will eliminate those situations where a consumer believes (s)he has purchased a vehicle at one price, only to discover after closer examination of the deal documents that the negative equity has been added to the cost of the new transaction. The consequences are enormous. The added cost of financing can add up to thousands of extra dollars for a consumer, plus makes it even harder to trade-in the new vehicle at a later date because the negative equity on the new vehicle is even more than the original trade-in.

This rule creates no new law. It simply states that dealers and brokers must obey the laws that have been in effect for years. All of the published purchase agreements and retail installment contracts printed and distributed by the different Oregon dealer associations added a disclosure line for negative equity after the changes to Regulation Z became effective. The time has come that they be used honestly in every transaction.

(bb) Negative Equity Disclosure — Any negative equity of a vehicle taken in trade as part of any motor vehicle transaction shall be clearly and conspicuously disclosed in any purchase order, lease agreement or retail installment contract.

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: IAG 6-1979, f. & ef. 12-19-79; JD 4-1993, f. 8-6-93, cert. ef. 8-16-93; JD 3-1996, f. 10-18-96, cert. ef. 10-23-96; DOJ 10-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DOJ 3-2002, f. & cert. ef. 4-22-02; DOJ 15-2007, f. 12-20-07, cert. ef. 1-2-08

Rule Caption: Adoption of FTC Used Car Rule, Federal Truth-In-Lending Act and Federal Consumer Leasing Law.

Adm. Order No.: DOJ 16-2007

Filed with Sec. of State: 12-20-2007

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Rules Amended: 137-020-0040

Subject: This amendment clarifies existing law concerning the federal Truth-In-Lending Act. It also adds the Federal Trade Commission Used Motor Vehicle Trade Regulation Rule, 16 CFR Sec. 455 et seq. to this rule. This addition requires that all used cars, offered for sale by a motor vehicle dealer, have a Buyers Guide posted in the vehicle before it is offered for sale. The rule clarifies specific federal consumer protection laws that are enforced as violations under the provisions of the Oregon Unlawful Trade Practices Act.

Rules Coordinator: Carol Riches—(503) 947-4700

137-020-0040

Adoption of FTC Used Car Rule, Federal Truth-in-Lending Act, and Federal Consumer Leasing Law

(1) For purposes of this rule, the following definitions shall apply:

(a) "Truth-in-Lending Act" means the Federal Truth-in-Lending Act, as amended and in effect as of January 2, 2008, including 15 U.S.C. 1601-1665(a), and any regulations which have been adopted thereto and in effect as of January 2, 2008, including but not limited to Regulation Z (12 CFR 226);

(b) "Federal Consumer Leasing Law" means the consumer leasing portions of the Truth-in-Lending Act, 15 USC §1667 et seq., as amended

and in effect as of January 2, 2008 and all regulations which implement this section including but not limited to Regulation M (12 CFR 213);

(c) "FTC Used Car Rule" means the Federal Trade Commission Used Motor Vehicle Trade Regulation Rule, 16 CFR § 455 et seq., as amended and in effect as of January 2, 2008;

(d) "Person" refers to those individuals and entities as defined in ORS 646.605(4);

(e) "Real Estate, Goods or Services" refers to those items defined in ORS 646.605(7);

(f) "Consummation" means the time at which a consumer becomes contractually obligated on a credit transaction. The time the obligation arises is a matter determined under state law; and

(g) The definitions set forth in OAR 137-020-0020.

(2) It is unfair or deceptive conduct in trade or commerce for a person to advertise, offer credit or extend credit related to the purchase of real estate, goods or services in violation of the Truth-in-Lending Act or the Federal Consumer Leasing Law.

(3) It is unfair or deceptive conduct in trade or commerce for a person to advertise, display for sale or lease, or sell or lease a motor vehicle in violation of the FTC Used Car Rule.

OFFICIAL COMMENTARY: Many advertisements for sales and leases, in particular those for motor vehicles, use one or more of the Regulation Z or Regulation M triggering terms and then fail to make the required disclosures. All three acts also have very specific disclosure requirements which must be given to the consumer prior to the execution of a sales, credit or lease agreement. This rule makes it clear that failure to comply with these federal regulations is a violation of the Oregon Unlawful Trade Practices Act. Each of these three acts is discussed below:

(a) "Regulation Z" Advertising. The Truth-in-Lending Act and accompanying regulations govern credit advertising. An advertisement for closed-end credit which contains a "triggering term" must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an advertisement.

(b) The following triggering terms require certain disclosures to be made in an advertisement for closed-end credit (12 CFR 226.24):

(A) The amount of the down payment (expressed as either a percentage or dollar amount), in a "credit sale" transaction; Examples: "10% down" "\$1000 down" "90% financing" "trade-in with \$1000 appraised value required"

(B) The amount of any payment (expressed as either a percentage or dollar amount); Examples: "Monthly payments less than \$250 on all our loan plans" "Pay \$23.44 per \$1000 amount borrowed" "\$210.95 per month"

(C) The number of payments or the period of repayment; or "Up to four years to pay" "48 months to pay" "30-year mortgages available"

(D) The amount of any finance charge. Examples: "Financing costs less than \$300 per year" "Less than \$1200 interest" "\$2.00 monthly carrying charge"

(c) If any one of the triggering terms appears, it would be an unfair or deceptive trade practice to fail to clearly and conspicuously disclose in the advertisement:

(A) The amount or percentage of the down payment;

(B) The terms of repayment; and

(C) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated. The amount or percentage of the "down payment" need not be shown directly, as long as it can be determined from the advertisement. For example, "10% cash required from buyer" or "credit terms require minimum \$1000 trade-in" would satisfy the disclosure requirement. The "terms of repayment" may be expressed in a variety of ways, as long as they convey the required information. For example, an automobile finance company might use unit cost to disclose repayment terms: "48 monthly payments of \$23.44 for each \$1000 borrowed." Similarly, the length of the loan can be expressed as the number of payments or the time period of the loan. Disclosures provided on credit contracts. Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. See § 226.17(a)(1) and (b). Sometimes the disclosures are placed on the same document with the credit contract, as permitted under comment 17(a)(1)-3. In such cases, the timing requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and the disclosures to the consumer to read and sign, and the consumer is free to take possession of and review the document in its entirety before signing. It is not sufficient, however, if the document containing the disclosures is merely shown to the consumer before the consumer signs and becomes obligated; the creditor must give the document to the consumer. If after receiving the document, the consumer signs it and becomes obligated, the consumer may return it to the creditor to execute or process, provided the consumer is also given a copy at that time to keep. <http://www.ftic.gov/regulations/laws/rules/6500-1700.html#6500226.17>.

"Regulation M" Advertising. If an advertisement promoting a "consumer lease" contains any of the following triggering terms, then five specific disclosures must also be clearly and conspicuously included in the advertisement. It is an unfair or deceptive trade practice to fail to clearly and conspicuously make all five disclosures.

(d) The triggering terms are:

(A) A statement of any capitalized cost reduction or other payment required before or at lease consummation, or by delivery if delivery takes place after consummation, or that no payment is required; or

(B) The amount of any payment.

(e) If any triggering term is used in a consumer lease advertisement then all five of the following disclosures must be in the advertisement:

(A) A statement that the transaction advertised is a lease;

(B) The total amount of any payment (such as security deposit or capitalized cost reduction) required before or at the consummation of the lease, or by delivery if delivery takes place after consummation, or a statement that no such payment is required;

(C) The number, amounts and due dates or periods of scheduled payments under the lease;

(D) Whether or not a security deposit is required; and

(E) In leases where the consumer's liability is based on the difference between the property's residual value and its realized value at the end of the lease term, that an

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extra charge may be imposed at the end of the lease term. For further information on advertising consumer credit or consumer leases, see the Federal Trade Commission website titled: "How to Advertise Consumer Credit & Lease Terms" at <http://www.ftc.gov/bcp/conline/pubs/buspubs/credita.htm>.

Disclosure. Regulation M mandates that all required disclosures be given prior to the consummation of a consumer lease. "FTC Used Car Rule" - Motor vehicle dealers must post a Buyers Guide, also known as an "As-Is" disclosure, in every used vehicle which they display for sale or lease as required under the FTC guidelines. If a used car transaction is conducted in Spanish, the seller must post a Spanish language Buyers Guide on the vehicle before it is displayed or offered for sale. Dealers must post a Buyers Guide before they "offer" a used vehicle for sale. A vehicle is offered for sale when it is displayed for sale or a dealer lets a customer inspect it for the purpose of buying it, even if the car is not fully prepared for delivery. This requirement also applies to used vehicles for sale on a dealer's lot through consignment, power of attorney, or other agreement. At public auctions, dealers and the auction company must comply. The Rule does not apply at auctions that are closed to consumers.

(f) Previously titled or not, any used vehicle that meets the following specifications must post a Buyers Guide. (See OAR 137-020-0020 for the Oregon definition of a used vehicle.) Previously titled or not, any vehicle driven for purposes other than moving or test driving is considered a used vehicle, including light-duty vans, light-duty trucks, demonstrators, and used cars that meet the following specifications:

- (A) A gross vehicle weight rating (GVWR) of less than 8,500 pounds;
- (B) A curb weight of less than 6,000 pounds; and
- (C) A frontal area of less than 46 square feet.

(g) Exceptions to the Rule are:

- (A) Motorcycles;
- (B) Any vehicle sold for scrap or parts if the dealer submits title documents to the appropriate state authority and obtains a salvage certification; and
- (C) Agricultural equipment. FTC "Dealer's Guide to the Used Car Rule" <http://www.ftc.gov/bcp/conline/pubs/buspubs/usedcar.htm> FTC consumer guide to "Buying a Used Car" <http://www.ftc.gov/bcp/edu/pubs/consumer/autos/aut03.shtm> [Publications: Publications referenced are available from the agency.] Stat. Auth.: ORS 646.608(4) Stats. Implemented: ORS 646.608(1)(u) Hist.: JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 9-1994(Temp), f. & cert. ef. 11-23-94; JD 5-1995, f. & cert. ef. 4-7-95; DOJ 16-2007, f. 12-20-07, cert. ef. 1-2-08

Rule Caption: Motor Vehicle Advertising.

Adm. Order No.: DOJ 17-2007

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Subject: The proposed amendments define specific instances of unfair or deceptive conduct in the advertising of motor vehicles. The standards for permissible advertising of used and new cars will be made more definite and certain by the amendments. Disclosures by advertisers, advertising agents, brokers and dealers of motor vehicles will be enlarged in scope. The amendments clarify existing law concerning the advertisement of used and new motor vehicles.

Rules Coordinator: Carol Riches—(503) 947-4700

137-020-0050

Motor Vehicle Advertising

(1) For purposes of this rule, the definitions specified in OAR 137-020-0020 shall apply.

(2) Violations: It is unfair or deceptive in trade or commerce for any person to advertise motor vehicles if:

(a) Trade-in Value — The advertisement represents that motor vehicles or other property to be received in trade in conjunction with the purchase of a motor vehicle:

(A) Will be valued at a specific amount, range of amounts or guaranteed minimum amount; or

(B) Uses a multiple, such as "double," or other type of increased trade-in allowance;

OFFICIAL COMMENTARY: It is a violation of this rule to guarantee any monetary amount or other value on any vehicle or property used as a trade-in on a motor vehicle transaction. This includes any reference to any trade publication valuation, for example, it would be unlawful to state that a trade-in would be valued at "Kelley Blue Book" or like publication.

(b) Dealer Rebates — The advertisement represents that purchasers of vehicles will receive a cash rebate, discount certificate, coupon, cash card for products or services or other similar promotion unless it is offered by a manufacturer or another party, independent of the dealer and without dealer participation.

OFFICIAL COMMENTARY: Rebates controlled by the dealer may be illusory because the dealer may simply increase the offering price or limit the dealer's negotiated price by the same amount as the ostensible value of the rebate. The rule eliminates this possibility by prohibiting such rebates. Therefore, no monetary or similar form of remuneration to a consumer is allowed in the offering of a motor vehicle, unless it is a promotion paid for by a party wholly independent of the dealer and that third party is not paid by the dealer for offering the promotion.

(c) Clarification of sale or lease — The advertisement includes lease and sale offers in the same advertisement without making a clear and con-

spicuous distinction as to which terms apply to the sale and which apply to the lease;

(d) Invoice advertising — The advertisement represents that motor vehicles are offered for sale at a price that is compared in any manner to the dealer's "cost" or terms of essentially identical import unless the advertisement:

(A) Exclusively uses the term "invoice" or "invoice price"; and

(B) Complies with the following:

(i) The invoice price shall be the final price listed on the manufacturer's invoice after subtracting any amount identified on the invoice as being held back for the dealer's account, and after subtracting any advertising fees or manufacturer to dealer rebates or incentives;

(ii) Purchasers shall be able to purchase any vehicle described by the advertisement at the offering price;

(iii) The invoice shall be readily available for inspection by prospective customers;

(iv) The advertisement clearly and conspicuously states that the invoice price for the sale of the vehicle is the dealer's actual cost after subtracting all holdbacks, incentives, manufacturer to dealer rebates, advertising incentives, promotional fees or any other consideration which will be paid by the manufacturer to the dealer;

(v) A manufacturer to consumer rebate is not included in the formula to arrive at the "invoice price." Consumers are entitled to any such rebate in addition to any savings advertised with the "invoice price" offer; and

(vi) The vehicles being so advertised have not had aftermarket items, including, but not limited to, additional goods, accessories, services, products or insurance added to them at a price higher than the dealer's actual cost.

OFFICIAL COMMENTARY: This rule mandates the use of the word "invoice" or "invoice price" when any advertisement is compared to a dealer's cost. The rule makes it clear that all holdbacks and other funds the dealer will get from the manufacturer must be subtracted from the offering price. The rule does not require the vehicle be sold for the invoice price, but only that the invoice price be the reference price used as a starting point. For example, it is lawful to state a certain model of car is for sale at \$500 over invoice price, as long as the referenced adjusted invoice price is after all of the appropriate subtractions. Also, manufacturer to consumer rebates belong to the consumer and the consumer is entitled to those rebates in addition to the advertised "invoice price." This rule does not require the dealer to subtract promotional and sales incentives that are not known to the dealer at the time of the advertisement or listed on the invoice, such as volume sales incentives or special promotional manufacturer to dealer incentives and incentives that are calculated based upon special criteria. A dealer or broker may not, however, offer a vehicle for sale referenced to the invoice price and simply pack the price of the vehicle by adding aftermarket items not sold at true invoice price. This practice would simply add back profit on the vehicle and the consumer's cost would not be the invoice price. A vehicle advertised at invoice must be sold at invoice.

(e) Buy-Down Rates — The advertisement represents that financing is available for the purchase of motor vehicles at a buy-down rate unless the advertisement includes a clear and conspicuous disclosure that the interest rate is not sponsored by the manufacturer, if such is the case, the amount of the buy-down is reflected in the Federal Truth in Lending Statement, and the advertisement clearly and conspicuously states that "the cost of the buy-down may increase the price of the vehicle." If the buy-down will increase the cost of the vehicle, the dealer shall offer the consumer the option of purchasing the vehicle without the buy-down rate at the offering price less the cost of the buy-down. If any specific terms must be met in order to qualify for the advertised buy-down rate, they shall be clearly and conspicuously disclosed. Examples are large down payments, only available to the highest credit ratings, hidden finance charges, unusual terms of the loan or higher selling prices;

(f) Clear and Conspicuous/Complete Offer — The advertisement:

(A) Fails to incorporate a material statement or fails to use any disclosure or disclaimer which is required by law or by these rules, or without which the advertisement would be false, incomplete, inaccurate, deceptive or misleading;

(B) Fails to incorporate a material statement or uses any disclosure or disclaimer which is not presented in a clear and conspicuous manner;

(C) Uses one or more footnotes or asterisks which, alone or in combination, confuse, contradict, materially modify or unreasonably limit the material terms or availability of any advertised statement; or

(D) Uses images, words, phrases, initials, abbreviations or any other items which are not clear and conspicuous.

OFFICIAL COMMENTARY: An advertiser must review any advertisement before publication to ensure it is truthful and "clear and conspicuous." Advertisers are not allowed to fabricate information or use false, misleading or unsubstantiated representations in advertisements. It is important that advertisers understand that in order for material information to be "clear and conspicuous," it must be in close proximity to the information it defines or clarifies and not in an obscure location of the advertisement.

When an advertisement is presented in a visual format, disclosures must be large enough to be read by the average person viewing the advertisement. The size and type of media used will dictate the required size of a disclosure. The definition of clear and conspicuous, in OAR 137-020-0020, details the requirements for television, radio, print and internet disclosures. Other visual media, including, but not limited to, bill-

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boards, hand-held posters or handbills, must also comply with the same standards as other visual media. Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisers shall not advertise by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement, or speaking so fast or softly that an average person cannot understand what is being said.

An advertisement shall not contain material that is not commonly understood by an average person who is not involved in the motor vehicle industry. An asterisk may be used to give additional or qualifying information about a word or term. Asterisks or other reference symbols, however, may not be used as a means of contradicting, disclaiming or substantially changing the meaning of any advertised statements. Multiple asterisks must be clearly explained and the information for each must be separated from other referenced disclosures. Use of multiple reference symbols which combine all information together in one paragraph at the bottom of an advertisement in small print is not clear and conspicuous.

(g) **Bait and Switch Rules** — An advertisement offers vehicles for sale or lease, vehicles at a specific or discounted price, or specific interest rates or finance terms when such assertions are deceptive, false, misleading or not sincere good faith offers, including, but not limited to, the following:

(A) Statements or illustrations used in any advertisement which create a false impression of the grade, quality, year of model, size, usability, origin, price, interest rate, down payment, monthly payment, make, value or model of the product offered, or which misrepresent the product, interest rate or terms of sale or lease in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised vehicle to another vehicle or to a higher interest rate or different finance offer (See 16 CFR § 238, FTC Guides Against Bait Advertising);

(B) Except as otherwise allowed by subsection (2)(j) of this rule, advertising a motor vehicle for sale or lease when it is not in the possession of the dealer, willingly shown to the consumer or sold at the advertised price and terms. If already sold or leased, the advertiser shall, upon request of a consumer, show proof of the sale or lease of the motor vehicle which was advertised;

(C) Using a headline or major theme in an advertisement to make an offer of a low or special interest rate, down payment or monthly payment which makes it appear that the special offer applies to all or a majority of vehicles offered in the advertisement when it only applies to a limited number of vehicles;

(D) Using discount or loss leader price advertising, unless the advertisement lists, in close proximity in print type no less than half as large as the offering price, the number of vehicles available at the offering price. The listed number of vehicles must be available on the day the offer is advertised at the offered price;

(E) Using a deceptive, false or misleading offer to secure the first contact or interview, even if the true facts are subsequently made known to the consumer;

(F) Using any act or practice to discourage the purchase of the advertised vehicle as part of a scheme to sell another vehicle;

(G) Using any act or practice as part of a scheme to raise the interest rate, the down payment or the monthly payment to one higher than advertised;

(H) Advertising limited availability of vehicles, such as “only 1 at this price,” in order to induce consumers into a dealership when the dealership has other similar vehicles available for sale at the same price or for the same terms;

(I) Offering finance terms, including, but not limited to, low down payments, low monthly payments or low interest rates or finance terms, which the advertiser cannot provide, does not intend to provide, does not want to provide, or which the advertiser knows or should know are not available or cannot be provided as advertised. The purpose of the offer is to switch borrowers from the advertised finance offer to other finance terms, usually at a higher interest rate or on a basis more advantageous to the person making the offer;

(J) Offering a low monthly lease payment based upon a capitalized cost reduction that is so large the advertiser knows or should have known:

(i) It is not a bona fide offer; or

(ii) It is so much more than an average capitalized cost reduction that most consumers would not be expected to make such a large payment for the advertised vehicle.

OFFICIAL COMMENTARY: Bait advertising is an alluring but insincere offer to sell a product or service that the advertiser in truth does not intend or want to sell. It can also be in the form a finance offer, such as low monthly payments, low down payments or low interest rates when the advertiser knows most consumers will not qualify for the finance terms offered. A bait advertisement may also be an offer that does not apply to the majority of vehicles advertised. The purpose is to switch consumers from buying the advertised vehicle, in order to sell another vehicle, usually at a higher price. It may also be designed to have the consumer agree to finance terms different from the terms advertised on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a vehicle of the type so advertised or in securing financing at terms that are not available to the market group to which the advertisement is directed.

(h) **Limited Offers of Vehicles, Discounts or Financing** — The offering price or an offer to lease, a rebate, a discount offer or a special finance offer applies to a specific vehicle, or to a specific or limited number of vehicles of a specific model or type, unless:

(A) The exact number of vehicles available for which the offer is being made and the specific models to which the offer applies are clearly and conspicuously disclosed in type no less than half the size of the type used for the offer;

(B) Each vehicle is clearly and conspicuously identified in the advertisement by its vehicle identification number if there are less than six such vehicles advertised; and

(C) Any advertised vehicle is available for sale on the day it is advertised.

OFFICIAL COMMENTARY: This rule is triggered only when there are a “limited” number of vehicles to which the offer applies. If the offer applies to an unlimited number of vehicles advertised, all the additional identifying information outlined in the rule is not required. If there are a limited number of vehicles to which the offer applies, the advertisement must clearly state any limitations. “Up to” savings claims which fail to disclose the specific number and identification of the vehicles to which the discount applies would violate this rule. This rule should be read in conjunction with the Bait and Switch Rule.

(i) **Offer Limited to Only Eligible Consumers** — An offer, including, but not limited to, one for special finance or payment terms, rebates or any other special offer made in an advertisement, applies to a specific or limited number of consumers, unless the following information is clearly and conspicuously disclosed:

(A) The exact model vehicles for which the offer is being made; and

(B) All limitations and conditions of eligibility for the offer, including, but not limited to, the minimum credit score upon which the offer is based, are clearly and conspicuously disclosed.

OFFICIAL COMMENTARY: This rule is triggered when there are a “limited” number of consumers to whom an offer applies. If there are a limited number of consumers to whom the offer applies, the advertisement must clearly disclose any limitations. If the offer is only available to consumers with a particular credit score, then the advertisement must clearly and conspicuously disclose the required minimum credit score. It is important to remember that to be clear and conspicuous requires the disclosure be in close proximity to the offer.

(j) **Vehicles Not Immediately Available** — The advertisement uses terms which state or imply that motor vehicles are in stock or otherwise available for immediate delivery when they are not. If a motor vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the vehicle’s availability such as it is in transit, on order, or obtainable only by special order or dealer trade, and that it is not in stock;

(k) **Used Vehicle Offers** — The advertisement is for a used vehicle, which was manufactured less than four years prior to the date of the advertisement, without designating the vehicle as “used.” Other descriptive terms may be substituted for the term used, but not so as to create ambiguity as to whether the vehicle is new or used. Used vehicles, such as “dealer demos” or late model vehicles, cannot be displayed in an advertisement with new vehicles in such a manner that it is difficult to determine if they are used or new;

OFFICIAL COMMENTARY: Examples of alternative terms include “lease return,” “pre-owned,” “dealer demonstrator” or “rental return.”

(L) **Program and Certified Vehicles** — The advertisement uses the word “program,” “certified” or terms of essentially similar import, unless the advertisement clearly and conspicuously discloses the nature and benefits of the “program” or “certification” that is offered with the motor vehicle and the origin and prior use of the vehicle. If there is an additional cost to the consumer to obtain the program or certification, that cost must be clearly and conspicuously disclosed in the advertisement and it must be listed on any purchase or lease agreement;

OFFICIAL COMMENTARY: Dealers and advertisers have used the words “program” and “certified” to designate a wide variety of late model used vehicles. This rule prohibits use of the terms unless there is a verifiable benefit which attaches with the program or certification. The only time these words may be used are if the manufacturer or dealer actually has a special program that attaches to the sale of the used vehicle, such as a complete inspection for defects, repair of the defects that are discovered, and/or an additional warranty that is more extensive than the vehicle would otherwise have without the program. If any program or certification is used in an advertisement, the advertisement must clearly and conspicuously disclose the terms and cost, if any, of the program or certification, if that amount is not already included in the advertised offering price.

(m) **Non-negotiable Offers** — The advertisement offers or the dealer posts on any vehicle or uses any words which imply that the offering price of the vehicle is non-negotiable or that no negotiations are necessary unless in fact the dealer:

(A) Does not negotiate the offering price of the advertised vehicles;

(B) Maintains the same price for all consumers for equivalent vehicles;

(C) Maintains such price unless a general price adjustment is made which is applicable to all consumers;

(D) Posts the non-negotiable price on all such vehicles; and

(E) Does not falsely inflate the value of any trade-in vehicle by such an amount that the claim that it is a non-negotiable transaction is a sham.

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OFFICIAL COMMENTARY: Dealers who engage in any advertisement that claims that the offering price is not negotiable, that the advertised price is so low that it is unnecessary to negotiate, or terms of similar import may not negotiate the offering price of the vehicle once the car has been offered at a price with such a claim. The non-negotiable price must be clearly posted on all such vehicles. The dealer may not alter the vehicle price offered in a particular transaction. Altering a vehicle price includes "reappraising" a trade-in vehicle, changing the terms of sale, or changing vehicle features or options where the effect is to alter the net offered price. The majority of trade-ins today have negative equity. If a dealer does not truthfully list the negative equity on the transaction documents, falsely inflates the trade-in value or adds the negative equity to the purchase price, the dealer will violate not only this rule, but Regulation Z and OAR 137-020-0040.

(n) Limited Offers — The advertisement offers any vehicle without disclosing material limitations of the terms listed in the offer, including, but not limited to, the length of time that the offering price is in effect. Advertisements which do not list any effective dates will be presumed to offer advertised vehicles at the "advertised price" until such time as the vehicles are subsequently advertised at different terms or for a period of 30 days, whichever comes sooner;

(o) Identification as a dealer — The advertisement, including, but not limited to, those on the internet, offers any vehicle for sale and does not prominently identify the dealer or broker by the complete business name that the dealer or broker uses in the normal course of its business. When the advertisement is a classified line advertisement, the dealer or broker may use the word "dealer" or abbreviation "DLR." The dealer or broker must also display its business name prominently at any off-site sale location. In the case of an internet advertisement, the advertisement must state the full name of the dealer, the dealer's address, telephone number and Oregon dealer license number. If the internet advertisement is an online auction or small classified line advertisement with limited space, a hyperlink or web address which leads to all dealer information may be used. This rule does not apply to dealers providing vehicles for display purposes only under ORS 822.040(4), but only if the dealer complies with ORS 822.040(4) and all rules promulgated pursuant to that statute;

OFFICIAL COMMENTARY: In any advertisement, the complete business name of the dealer or broker must be clearly and conspicuously displayed. It should be noted that this rule applies even in the case of special event or off-site sales, such as mall sales or sales conducted using the name of another prominent business at that business' location. The dealer or broker must always display its commonly used business name prominently in any advertisement or at any off-site sale. Creation and use of an assumed business name that is not used in the normal course of business is misleading as to what entity is actually offering the vehicles. Some dealers have used their corporate business name or the name of a mall or large retail store in order to make consumers believe that some different company is conducting the sale. Other dealers have published advertisements that list the name of their advertising agent so that it appears the agent and not the dealer is conducting the sales event; for example: "For 3 days only XYZ Event Promotions will be in Salem to sell these 200 vehicles." Purchasers have an absolute right to know the dealership with which they are doing business and who is actually conducting the sale. If more than one dealership is involved, all dealerships participating in the event must be named. If an advertisement is by a new vehicle regional dealer group, only the name of the regional group need be identified, not the individual names of all the dealers in the group.

(p) Reference Pricing — The advertisement claims, implies or could cause a reasonable consumer to believe that:

(A) A vehicle is reduced in price from the dealer's former price, or that the price is a percentage or dollar amount of savings from the dealer's former price, or words to that effect, unless the dealer actually advertised or has records to substantiate that the vehicle has been offered for sale at the former price, for no less than 10 days in the prior 30 days; and

(i) For new vehicles, the advertisement lists the MSRP; or

(ii) For used vehicles, the advertisement lists the Kelley Blue Book or NADA Used Car Guide based upon the year, mileage, condition and accessories of the vehicle advertised. The advertisement must specify if it is referencing a retail or wholesale guide; or

(B) A dealer is conducting a sales promotion or marketing event at which prices have been reduced, when in fact prices have not been reduced.

OFFICIAL COMMENTARY: Unlawful reference price advertising is a variation on "bait" advertising, using a multitude of supposed reductions or special offers for a unique sales event or implying special price reductions, when in fact the vehicles are offered at prices that are not reduced from normal sale prices.

(q) Used Car Reference to New MSRP — A used vehicle advertisement references the original MSRP of the vehicle when it was new in comparison to its present sales price;

OFFICIAL COMMENTARY: An average motor vehicle depreciates in value from the day it is purchased. Its fair market value is based upon many factors: wear and tear, mileage, availability of like vehicles and other market conditions. The MSRP is a term of art specifically authorized for use in the sale of new cars. There are too many variables in used vehicles that make any comparison to its original MSRP meaningless and deceptive. A reference may be made to any of the professional used car pricing guides, but then only if the advertisement clearly and conspicuously discloses if the guide is a "retail" or "wholesale" guide. If an offering price is advertised using a guide, it must be calculated based upon all applicable additions and subtractions listed in the guide. This rule does not make it unlawful to give a consumer access to original MSRP information about a vehicle, such as using a hyperlink on an internet advertisement. It is meant to stop reference pricing the sale price to the MSRP as a comparison to show savings.

(r) Comparison Price Advertising — The advertisement explicitly or implicitly claims that the dealer's offering price is lower than another dealer or dealers', unless the dealer can clearly show, through verifiable statistical analysis of other prices in the target market and records of the dealership, that such is the case;

(s) Adjustable Interest — The advertisement offers an interest rate that is adjustable without clearly and conspicuously disclosing that the interest rate is adjustable;

(t) Price Reduction Advertising — The advertisement states the offering price of a new vehicle as discounted or in any way reduced by a specified amount below the MSRP or the dealer's sale price unless the MSRP, the amount of any discount, rebate, or other price reduction and the final offering price are clearly and conspicuously displayed in figures. Each figure shall be labeled with a clear and conspicuous description;

OFFICIAL COMMENTARY: The clearest way to comply with this rule is to post this information in the form of a mathematical type equation.

(u) Range of Prices Advertising — The advertisement states that any vehicles are available for sale at a range of prices, a range of percentage or fractional discounts, a specific down payment or a specific monthly payment using the words "as low as" or "starting at" or words to that effect, unless:

(A) The advertisement clearly and conspicuously states the number of vehicles available at the lowest offered term in type no less than half the size of the type used for the offer;

(B) Each vehicle, to which the offer is applicable, is clearly and conspicuously identified in the advertisement by make, model, year of manufacture and its vehicle identification number, if less than 25% of the vehicles advertised are eligible for the lowest offer. This subsection is not applicable to advertisements published by a motor vehicle manufacturer;

(C) The highest price or lowest discount in the range is clearly and conspicuously disclosed in the advertisement in the same type size;

(D) The offer is not a major theme or headline in the advertisement, except for when a majority of the vehicles advertised are eligible for the offer; and

(E) The financing criteria are clearly and conspicuously disclosed, if a consumer must meet certain minimum credit criteria to qualify for the offer.

(v) Limited Rebate Offers — An advertised offering price includes any rebates or reductions, unless such rebates and reductions are available to every purchaser or member of the general public without exception. Rebates or reductions which are not available to every purchaser or member of the general public, such as "commercial rebate," "college graduate rebate," "loyalty rebate," "financing company rebate," or "first time buyer's rebate," may be listed in the advertisement, but may not be subtracted from the price so as to reduce the offering price. The offering price, which is available to every purchaser or member of the general public, must be prominently displayed in type which is greater than any other reduced offering price listed in the advertisement that is not available to the general public;

OFFICIAL COMMENTARY: Manufacturers and financial organizations offer discounts or rebates to limited groups of purchasers for a variety of reasons. The rule prohibits the subtraction of those amounts from the offering price of the vehicle, unless every person in the public is eligible for the discount or rebate. The advertisement can list an offering price with these special reductions, but only in addition to and in smaller print type than the offering price that is available to everyone.

(w) Factory Sales — The advertisement uses the terms "factory or manufacturer authorized sale," "factory discount outlet," or similar terms indicating that the dealer has been granted special pricing or distribution privileges by a motor vehicle manufacturer, unless the dealer is specifically authorized to do so by the motor vehicle manufacturer. The dealer using such an offer must have written substantiation before publishing such an advertisement;

(x) Misleading Reasons for Sale — An advertised sale is one being conducted in a dealer or broker's normal course of business and a person uses terms or illustrations in the advertisement which are false or have the capacity or tendency to deceive or mislead consumers as to the nature of or reason for the sale, including, but not limited to, using:

(A) The terms "liquidator," "auction sale," "liquidation sale," "urgent," "disposal sale," "total inventory reduction sale," "close out," "final clearance," "bank asset sale," "repossession sale," "disposal sale," "reprocessed vehicle sale," "authorized distribution center," "factory authorized sale" or any similar terms;

(B) The term "public notice" or similar terms when used in such a manner that it appears to be a publication of any type of legal notice, court notice or government notice; or

(C) Any terms which imply the sale is an event of urgent status or the vehicles have unique qualities or benefits or were specially obtained inventory.

OFFICIAL COMMENTARY: Emergency or distress sales, including, but not limited to, bankruptcy, inventory reduction, liquidation and going out of business sales,

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or any other specific reason for a sale shall not be advertised unless the stated or implied reason is true. "Selling out," "closing out sale," and similar terms shall not be used unless the business publishing the advertisement is actually going out of business. The term "liquidation sale" means that the advertiser's business or inventory is in the process of being liquidated prior to actual closing. Using a business name or advertising agent that incorporates the term "liquidator," or term of similar import, in its business name in conjunction with the sale of motor vehicles has the tendency to mislead consumers as to the nature of the sale and is deceptive, unless the dealer is actually going out of business. When a dealer purchases a vehicle for its inventory, the source of its purchase does not superimpose any special benefit or pricing status upon the vehicle. The fact that the vehicle was previously a lease or rental return, sold at auction or repossessed by a lender does not allow the dealer to falsely imply that the consumer will get a better price on the vehicle because of its prior stature. It is simply a vehicle being sold in the dealer's normal course of business. A new motor vehicle dealer may use the terms such as "close-out" or "final clearance" for the sale of inventory that is no longer being manufactured or for year-end vehicles that are not going to be restocked by the manufacturer. Words may not be used that have the tendency to deceive or confuse a consumer as to the exact nature of the sale of the vehicles. This rule does not prohibit offers of special sales events held in conjunction with a specific financial organization, such as a local credit union.

(y) **Misrepresenting Down Payment** — Any down payment required for the vehicle transaction is referred to in an advertisement as a "transfer fee," "reassignment fee," "assumption fee" or any other words of similar import that do not clearly specify that the amount referenced is in fact a down payment; or the monthly payment is referred to by any other term that is not commonly used to describe a monthly payment;

OFFICIAL COMMENTARY: The terms "down payment" and "monthly payment" are normal terms understood by the average consumer. Advertisements which refer to these terms by use of a term that is not commonly understood to mean the same can confuse and deceive the average consumer as to the actual nature of the payment and the type of offer. It is deceptive to use alternate terms which imply the consumer is assuming a pre-existing loan or "taking over payments" from some other obligee.

(z) **Deceptive Format or Layout** — The advertisement uses any format, layout, headline, assertion, illustration or type size which has a tendency to mislead or deceive its intended audience regarding the prices, finance terms, availability or applicability of any offer made in the advertisement;

OFFICIAL COMMENTARY: Some advertisements incorporate large amounts of information that, if taken individually, might communicate valid information regarding the offering of a vehicle. When combined, however, the combination of inconsistent information makes it difficult to determine what information is applicable to any other information or vehicles. Some advertisements create a false sense of urgency or simply confuse the viewer. Other advertisements contain multiple offers that are not available in combination or are inconsistent with each other. The composition and layout of advertisements should minimize the possibility of misunderstanding by the reader. Prices, illustrations, or descriptions should be displayed in an advertisement in such a manner that it is clear to which vehicles they apply. It is misleading to use a prominent theme or headline in an advertisement when that offer applies to only one or a limited number of vehicles and the offer is not applicable to the majority of the vehicles included in the sale.

This rule follows the Federal Trade Commission's policy statement on deception which was succinctly stated by the Third Circuit. "The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context." *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir 1976), cert denied, 430 US 983 (1977). "Depending on the circumstances, accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation. Other practices of the company may direct consumers' attention away from the qualifying disclosures. Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser. Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices." FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 FTC 110, 174 (1984).

(aa) **False or Misleading Statements** — The advertiser or advertising agent makes any representation or statement of fact in an advertisement if the advertiser or advertising agent knows or should know that the representation or statement is false, confusing or misleading or the advertiser or advertising agent does not have sufficient information upon which to base a reasonable belief in the truth of the representation;

OFFICIAL COMMENTARY: Statements made in an advertisement must be true and specifically applicable to the sale or offer being made in the advertisement. An example of a violation of this rule is an advertisement that stated, "National Rental Car Company Files Bankruptcy — Liquidation Companies Across the County Move to Eliminate Inventory." While some rental car company may once have filed bankruptcy, the dealerships and advertising agent which published this advertisement had no vehicles from the rental car company to sell. Further, no liquidation companies were liquidating vehicles from a rental car company and none were in any dealers' inventories. An advertisement may not be false, manipulate the truth or use language that does not correctly describe the nature of the sale, or the source of ownership of the vehicles for sale. Superlative advertising claims are objective (factual) or subjective (puffery):

Objective claims relate to tangible qualities and performance values of a product or service which can be measured against accepted standards or tests. As statements of fact, such claims can be proved or disproved and the advertiser should possess substantiation; and

Subjective claims are expressions of opinion or personal evaluation of the intangible qualities of a product or service. Individual opinions, statements of corporate pride and promises may sometimes be considered puffery and not subject to a test of their truth and accuracy. Subjective superlatives which tend to mislead should be avoided and can be violations of this rule.

Particular care is needed with superlative claims. Measurable criteria, e.g., "the

cheapest," must be confirmed. As particular factual claims, superlatives must be placed directly alongside the area where supremacy is claimed and proven. General superiority claims like "the best" may only be used in clear puffery, and not on the basis of selective comparisons. The repeated insistence of superlatives within a script might in itself amount to a claim of supremacy which would need to be verified. Qualitative claims of superiority (e.g., "we simply sell for less") which are open to challenge and/or which are impossible to measure conclusively should be avoided, except for appropriate mentions in a way which allows that rival brands may also make the same claim (e.g., "we simply try to sell for less").

(bb) **Zero Down Advertisements** — The advertisement uses the phrase "zero down (\$0 down)," "no money down," "a penny down" or words of similar meaning, when a down payment of any kind is, in fact, required, including, but not limited to:

(A) The consumer must use the vehicle's rebate as the down payment;

(B) The consumer must use the equity from the consumer's trade-in as a down payment; or

(C) The consumer must pay a security deposit, first month's payment, acquisition fee or any other amount, other than taxes, license and registration costs or a Dealer Title and Registration Document Preparation Service Fee which are clearly and conspicuously disclosed in the advertisement, at the inception of the transaction.

OFFICIAL COMMENTARY: If a down payment or fee of any amount is required at the time of the transaction it is not a "no money down" offer. This is especially a problem in lease advertising where it is common to require the first month's payment, a security deposit, and an acquisition fee at lease inception. If any government fees are required to be paid at the time of sale or lease, including, but not limited to, title or registration fees, this information must be clearly and conspicuously disclosed in the advertisement.

(cc) **Rebate Offers** — The advertisement offers the availability of a manufacturer's, lender's or other third party's rebate unless such advertisement clearly and conspicuously discloses:

(A) The amount of any applicable rebate;

(B) Any conditions, restrictions or limitations placed on the rebate; and

(C) To which model the rebate applies. If multiple rebates are applicable in the same advertisement, the models that each respective rebate applies to must be identified;

(dd) **Withdrawal of Advertisement** — An advertisement for the sale or lease of a specific motor vehicle is not withdrawn or the words "sold" superimposed over the advertisement as fast as technologically and reasonably possible, based upon the media used for the advertisement and the frequency of publication, after the motor vehicle is sold or is no longer available for sale or lease to the general public;

OFFICIAL COMMENTARY: Dealers, advertisers and advertising agents have the responsibility to monitor their advertisements and ensure that after a vehicle is sold or leased, or otherwise no longer available to the public, any advertisement for the vehicle is removed from the media in which it is published, including, but not limited to, television, radio, newspapers or the internet. This has become a particularly egregious problem on the internet because of the transmission of advertisements to different websites through a central internet advertising distributor. This rule makes it clear that the obligation to ensure timely removal of advertisements for vehicles which are sold or no longer available is upon all parties involved with its publication. If an internet vehicle advertising company, an advertising agent or any other publisher has received notice from a dealer that a vehicle is sold or no longer available, it must remove the advertisement or superimpose the words "sold" over the advertisement as fast as possible based upon the type of media in which the advertisement is placed and the frequency of its publication.

(ee) **Sale Offer May Not be Reduced by Down Payment** — The advertised offering price or monthly payment for the sale of a motor vehicle is calculated by reducing the offering price by the amount of a down payment, minimum trade-in amount, deposit or other payment to be made by the purchaser;

OFFICIAL COMMENTARY: A monthly payment or offering price displayed in an advertisement for the sale of a motor vehicle cannot be calculated using a formula that includes any reduction that the purchaser must pay towards the offering price of the vehicle in order to arrive at some lower monthly payment or offering price. This deceptive practice is used in sales advertisements to make it appear that a vehicle has an extremely low monthly payment or an offering price that is less than the true price of the vehicle. The actual terms of the offer are usually in fine print, which disclose that a down payment or minimum trade-in value is required. For example, a headline of "\$79 a month" as an enticement in an advertisement for a \$10,000 car, which was calculated by using a required down payment of \$5,000 is deceptive and a classic unlawful "bait" technique. Any amount of manufacturer's rebates that are deducted to arrive at the offering price shall not be considered as "made by the purchaser" for the purpose of this rule. This rule does not prohibit the listing of a minimum down payment that may be required by a financial organization to accept a finance offer or for any other valid purpose; however, it is unlawful to prominently display a monthly payment that was calculated using a down payment reduction so as to make the monthly payment appear lower than if calculated based upon the full offering price. It is also unlawful to display an offering price based upon the subtraction of a down payment. This rule should be read in conjunction with OAR 137-020-0020(2)(v) and (3)(c) regarding what fees are allowed to be excluded from any offering price.

(ff) **Price Matching Offers** — The advertisement uses terms "we will meet your best offer" or "we won't be undersold," or terms of similar import which suggest that a dealer will beat or match a competitor's price unless:

(A) The advertisement clearly and conspicuously discloses the price matching policy and any limitations; and

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(B) Such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer.

OFFICIAL COMMENTARY: Dealers may not encourage consumers to make and break contracts in an attempt to offer them a price lower than the price which they already negotiated with another dealer. A dealer may always offer to beat another advertised price, but to require a written quote from another dealer puts a consumer in the position of entering and breaking a valid contract in order to get a lower price. Requiring a consumer to present a purchase order, sales documents or other written proof of an offer from another dealer is an unreasonable burden on the consumer.

(gg) False Credit Advertisements — The advertisement makes a false or misleading offer of credit or makes any false or misleading statement in connection with an offer of credit, including, but not limited to:

(A) Failing to clearly and conspicuously disclose all material limitations or conditions of the offer of credit;

(B) Stating that “no credit application is refused,” “no credit application rejected,” “all credit applications are accepted,” “we finance anyone,” or words of similar import, unless the offeror can substantiate that all credit applications received by the offeror have been approved for credit; or

(C) Stating that a consumer is “approved” or “pre-approved” for an offer of credit, or words of similar import, if:

(i) The offer of credit is qualified by conditions other than the specific criteria used in making a firm offer of credit pursuant to the Fair Credit Reporting Act or otherwise allowed by FCRA;

(ii) The offer is not a “firm offer of credit” made pursuant to FCRA;

or

(iii) The offer made is false.

OFFICIAL COMMENTARY: An advertisement for an offer of credit must be truthful and state all facts accurately. This rule is not intended to limit, reduce, modify or effect the FCRA, but to identify unfair or deceptive acts or practices under the Oregon Unlawful Trade Practices Act. FCRA permits a financial organization to obtain a consumer’s confidential credit information from a credit reporting agency for the purpose of making a firm offer of credit. The offer may be qualified by the consumer’s present credit status after the offer is made to a consumer and several other exemptions listed in FCRA (See 15 USC § 1681a). Some examples of violations of this rule include, but are not limited to, the following:

(a) A false offer which appears bona fide, but in fact is a subterfuge to get consumers into a dealership. This would be the case if financing was not actually offered or available by the stated lender listed in the advertisement or the dealership or advertising agent never intended to use the stated lender to finance any of the vehicle transactions during the advertised promotion. It is not only a clear violation of FCRA to obtain consumer information from a credit reporting company to get names for a mailing list without making a valid “firm offer of credit,” but could also be a violation of this rule if it was a false offer of credit by a dealer or advertising agent;

(b) A false offer that states consumers are qualified for a loan of \$30,000 when in fact the offeror knew the credit scores used to obtain the names of consumers would only qualify for loans of a lesser amount. When a valid “firm offer of credit” is made to a varied group of consumers with different credit scores, the offeror should separate its mailers and only list the amount available to the consumer receiving the offer;

(c) An offer of credit is made, but a large list of conditions which allow the withdrawal of the offer are buried at the bottom or back of the advertisement in small or illegible print;

(d) An offer of credit is made claiming that consumers are approved or pre-approved for credit when the offeror did not obtain credit scores or the offeror has no basis upon which to claim a consumer will be approved for credit; and

(e) A false advertisement that uses language implying all consumers are able to receive credit when not all will be approved.

(hh) Alternative Offer Limitations — An advertisement offers the sale or lease of a motor vehicle with either a special finance rate or a manufacturer’s rebate and fails to clearly and conspicuously disclose that the consumer is only entitled to receive one or the other and not both;

OFFICIAL COMMENTARY: It is common for a manufacturer to offer a special low finance rate or a rebate on a vehicle at the same time; however, the consumer must make a choice of one or the other. Advertisements must clearly and conspicuously state, when such a situation exists, that the consumer may only receive one or the other.

(ii) Misleading Use of Illustrations — An advertisement uses inaccurate photographs, descriptions or illustrations when describing specific automobiles. However, an advertiser may use stock illustrations or photos which are substantially similar when an exact match is not available;

OFFICIAL COMMENTARY: Examples of improper advertisements include advertising a fully-loaded motor vehicle when the advertisement actually refers to a minimally-equipped motor vehicle in the text and a photograph of a four door pickup truck when the advertisement refers to an extended cab truck. Use of a deceptive illustration is not legitimized by stating in the advertisement “photo for illustration purposes only” or similar language.

(jj) False Advertising — The advertisement is a false advertisement;

(kk) Misleading Initial Term Offers - The advertisement offers adjustable terms of payment with no payments or low payments in the beginning of a loan or lease, which then increase after a term of months unless:

(A) The offer is by a manufacturer or financial organization as part of a specific loan or lease offer and no rebates, incentives or other funds that the consumer is entitled to receive are used to fund the reduction; or

(B) The offer is made by any person using rebates, incentives or other funds that the consumer is entitled to receive to fund the reduction and the advertisement clearly and conspicuously discloses that the offer is available only by using rebates, incentives or other funds that the consumer is enti-

led to receive and the use of the rebates, incentives or other funds as a down payment may be more financially beneficial to the consumer over the term of the loan or lease.

OFFICIAL COMMENTARY: It is deceptive and misleading for an advertisement to make it appear that a consumer is getting special low payments or no payments for the beginning term of a loan or lease without disclosing to the consumer how that reduction is accomplished, when in fact the person simply applied a manufacturer’s rebate or incentive, which the consumer is entitled to receive, to achieve the lower payments. The consumer is actually making or reducing the payments for the initial period with his/her own funds, which could have been used to reduce the balance owed, thereby reducing the total cost of the loan to the consumer over its term, or simply taken by the consumer as cash. If the rebate was used to reduce the principal balance, the total amount paid for the vehicle over the course of the loan could be thousands of dollars less.

(LL) Broker Fiduciary Obligation — Any person advertises as, holds themselves out as, or engages in the conduct of a broker and fails to act in a fiduciary capacity for the consumer;

OFFICIAL COMMENTARY: Some consumers do not want to personally be involved in negotiating and arranging the purchase or lease of their own of motor vehicle and employ the services of a motor vehicle broker to perform this function for them. In other instances, a dealer, who does not have a particular vehicle sought by a consumer, becomes a broker by negotiating the purchase or lease of a vehicle for a consumer from another dealer. Oregon law allows a fee to the broker for its services and requires that a broker act only as an agent for the consumer; ORS 822.047. The Oregon Unlawful Trade Practices Act makes it unlawful for a person to make false or misleading representations of fact concerning: the offering price of, or the consumer’s cost for the person’s services, ORS 646.608(1)(s); the nature of the transaction, ORS 646.608(1)(k); or the status of their relationship, ORS 646.608(1)(e). A dealer or other person cannot act as or cause a consumer to believe it is a broker, directly or by failing to clarify the relationship, and then act in its own self interest. (See also Official Commentary, OAR 137-020-0020, “Broker.”)

(mm) Use of Abbreviations — An advertisement uses any abbreviation which is deceptive, misleading or not commonly understood by the general public or approved by federal law or state law;

OFFICIAL COMMENTARY: Examples of abbreviations commonly understood: AC, AM/FM, AUTO, AIR, 2DR, CYL, MSRP, DOC, DOC. PREP. FEE, or TITLE/REG. PROCESS FEE; abbreviations not commonly understood: WAC, OAC, PEG.

(nn) Misleading Business Names - Any words are used in a company name or advertisement which would mislead the public either directly or by implication regarding the nature or affiliation of a dealer or broker’s business. Use of the term “wholesale” or “wholesaler” shall not be used in a company name affiliated with motor vehicle sales or leases after the effective date of this rule unless the person actually owns and operates a motor vehicle business that only sells vehicles wholesale. Any Oregon dealer or broker that used the term “wholesale” or “wholesaler” in its business name prior to the effective date of this rule may continue to use that word, except it must clearly and conspicuously state in any advertisement or display of its name at its business location words that convey to the public that it is a retail, not wholesale, motor vehicle business. Use of the term “liquidator” shall not be used in a company name to sell or advertise motor vehicles, unless the company is solely in the business of liquidating assets of persons going out of business and in fact the sale is a going out of business sale;

OFFICIAL COMMENTARY: This rule ensures that words are not incorporated into a business name that would tend to mislead a consumer as to the affiliation or nature of a business, the source of its goods or the type of business being conducted. Examples, other than wholesale, include: “factory” or “manufacturer,” which should not be used in a company name, unless the advertiser actually owns and operates or directly and absolutely controls the manufacturing facility that produces the advertised products.

Incorporating in the dealer’s name any term or designation which has a tendency to mislead others as to the true nature of the business, such as the use of “wholesale,” when a dealer’s business is substantially retail, or “discount” when the price and policy of a dealer does not provide substantial discounts.

(mm) Negative Equity Trade-in Disclosure — The advertisement offers to “pay off” any motor vehicle taken in trade, or words of similar import, unless the advertiser will actually pay off the outstanding debt, without including the cost as negative equity as part of the new transaction. If the advertisement makes any statements regarding accepting any vehicle in trade for the purchase or lease of another vehicle, the following disclaimer must be used:

“NOTICE: Trading in a vehicle will not eliminate your debt. Negative equity will be added to any purchase or lease.”

OFFICIAL COMMENTARY: If a consumer owes \$2,000 on his/her car, but its actual cash trade-in value is only \$1,500, that person has \$500 of negative equity that will be added to the purchase price or capitalized cost of a lease agreement. An advertisement that offers to “pay off” the balance on a trade-in can easily mislead a consumer to believe that the dealer is going to “pay off” the negative equity as well.

(3) Lease Advertisements: It is unfair or deceptive in trade or commerce for a person to advertise the lease of any motor vehicle unless the following information is clearly and conspicuously disclosed:

(a) Except for the name and model of the vehicle advertised, the following information shall be displayed most prominently and in the largest type in the advertisement for the lease:

(A) The monthly lease payment and the amount due at inception by the consumer (not including any rebate used to reduce the capitalized cost) in the same size font; and

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(B) The term of the lease and that the offer is for a "lease," displayed, with the amounts listed in paragraph (3)(a)(A) above, in a font no less than half the size of those amounts or the minimum size described to be clear and conspicuous based on the media, as outlined in OAR 137-020-0020(j), whichever is larger.

(b) The MSRP and the capitalized cost if different than the MSRP;

(c) The capitalized cost reduction (either by cash down payment or trade equity), acquisition fee, initial payment, security deposit, Dealer Title and Registration Document Preparation Service Fee, any rebates which reduce the capitalized cost and any other additional costs due at the time of delivery, and the total of those amounts (also known as "amount due at inception");

(d) The total lease charge, which includes:

(A) The total of the monthly payments;

(B) Any lease acquisition fees;

(C) The total of the amounts listed in (3)(c); and

(D) Any required lease disposition or termination fee.

(e) The residual value of the vehicle at the end of the lease term;

(f) Any lease return fee which a consumer must pay if the consumer chooses not to purchase the vehicle at the end of the lease; and

(g) If the advertised monthly lease payment requires the consumer to pay a cash amount or have a trade equity at the inception of the lease of more than 10% (ten percent) of the MSRP, the monthly payment without the deduction of the cash or trade equity and it shall be included in the information which is disclosed under paragraph (3)(a)(A) above.

OFFICIAL COMMENTARY: This rule gives the consumer the basic information (s)he needs to accurately compare the benefits of an offered lease, or to evaluate the benefits between a lease and sale of the same vehicle. It also addresses misleading monthly payment advertisements, which have been calculated using higher than normal consumer down payments or required equity on trade-ins in order to make the monthly payments appear lower.

(4) Used Vehicle Rule: It is unfair or deceptive in trade or commerce to advertise or otherwise represent, sell or lease a vehicle as new if:

(a) The vehicle has been previously spot delivered to a buyer or lessee;

(b) The vehicle has been previously titled or registered;

(c) The vehicle was previously used by any person for its discretionary use; or

(d) The vehicle is a used vehicle.

OFFICIAL COMMENTARY: This section makes it clear that a used vehicle may not be advertised as new. It does not prohibit a dealer or broker from titling a vehicle as a new vehicle that has been previously spot delivered, but not previously titled or registered; or providing new vehicle financing or warranty coverage for a used vehicle, such as a dealer demo, if the vehicle is otherwise still eligible for new vehicle financing or warranty coverage. The consumer must be informed, however, that (s)he is buying or leasing a used vehicle. Also, if a vehicle was erroneously titled or registered by an honest clerical error, the vehicle is still considered a new vehicle.

(5) The Advertised Price Must be the Sales Price: It is unfair or deceptive in trade or commerce for a dealer to sell a vehicle to a consumer for more than an advertised price or fail to disclose the sale price of a vehicle as advertised in any media or advertisement.

OFFICIAL COMMENTARY: In addition to this rule, OAR 137-020-0020(3)(a) requires the use of an extension sticker on any vehicle offered for sale or lease in an advertisement stating the offering price of the motor vehicle listed in the advertisement. A dealer must post any advertised sale price on the window or use a "hang tag" stating the advertised price.

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 3-1996, f. 10-18-96, cert. ef. 10-23-96; DOJ 17-2007, f. 12-20-07, cert. ef. 1-2-08

Rule Caption: Amends the administrative rules relating to legal sufficiency review of state contracts.

Adm. Order No.: DOJ 18-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Amended: 137-045-0010, 137-045-0015, 137-045-0020, 137-045-0030, 137-045-0035, 137-045-0050, 137-045-0055, 137-045-0060, 137-045-0070, 137-045-0090

Subject: Rules concerning the Attorney General's review of state contracts for legal sufficiency are being amended to align them with 2007 revisions to the Oregon Public Contracting Code, and to clarify certain approval requirements, exemptions and exceptions. Definitions of terms, including "agency," "agency contract administration," "grant" and "procurement document" are being amended. The amendments add authority to approve multiple similar contracts as a group. They clarify that legal sufficiency approval does not include a determination that there are court-enforceable remedies under a contract with another sovereign. They clarify what multi-party contracts,

loan agreements and amendments require approval. They exempt confirmation statements from approval requirements and clarify other exemptions. They expand the prohibition on fragmenting transactions to circumvent approval requirements.

Rules Coordinator: Carol Riches—(503) 947-4700

137-045-0010

Definitions

The following definitions apply to all Oregon Administrative Rules contained in OAR chapter 137, division 045:

(1) "Agency" means "State agency" as defined in ORS 291.045.

(2) "Agency Contract Administration" means an action undertaken by an Agency in accordance with the terms of a Public Contract that has been approved for legal sufficiency if required, or is exempt from legal sufficiency approval, and does not change the Public Contract. Agency Contract Administration does not include an assignment of rights or delegation of duties under a Public Contract to a third party. Examples of Agency Contract Administration include, but are not limited to, actions that result in:

(a) A notice to proceed, the exercise of an option, or any other exercise of a contractual right, whereby the Agency causes a Public Contract to be implemented in accordance with its terms; and

(b) A purchase order or a similar ordering instrument issued under a Requirements Contract or under a Variable Delivery Contract.

(3) "Architectural and Engineering Services Contract" means a Public Contract for architectural, engineering and land surveying services as defined in ORS 279C.100(2) or related services as defined in ORS 279C.100(6).

(4) "Assistant Attorney General" means a person appointed by the Attorney General under ORS Chapter 180 as an Assistant Attorney General or as a Special Assistant Attorney General and who is authorized in writing by the Chief Counsel, General Counsel Division, to review and approve Public Contracts for legal sufficiency. Such authorization may be limited by the Public Contract type and amount.

(5) "Attorney in Charge, Business Transactions Section" means the Assistant Attorney General the Attorney General appoints as Attorney in Charge of the Business Transactions Section, General Counsel Division, Department of Justice or an alternate designated by the Chief Counsel, General Counsel Division.

(6) "Attorney General" means the Attorney General of the State of Oregon.

(7) "Chief Counsel, General Counsel Division" means the Assistant Attorney General the Attorney General appoints as Chief Counsel of the General Counsel Division, Department of Justice or an alternate designated by the Attorney General.

(8) "Emergency" means circumstances that create a substantial risk of loss, damage to property, interruption of services or threat to public health or safety that require prompt execution of a Public Contract to deal with the risk.

(9) "Federal Cooperative Agreement" means a Public Contract under which an Agency receives money or property from a federal agency for the purpose of supporting or stimulating an Agency program or activity and substantial involvement is expected between the federal agency and the Agency when carrying out the program or activity contemplated in the agreement. A Federal Cooperative Agreement does not include a procurement contract under 31 U.S.C. section 6303.

(10) "Grant" means:

(a) A Public Contract under which an Agency receives money, property or other value from a grantor for the purpose of supporting or stimulating an Agency program or activity, and in which no substantial involvement by grantor is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions; or

(b) A Public Contract under which an Agency provides money, property or other value to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by Agency is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions.

(11) "Information Technology Contract" means a Public Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software, or services for data processing, office automation, or Telecommunications.

(12) "Interagency Agreement" means any agreement solely between state officers, boards, commissions, departments, institutions, branches or agencies of this state.

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(13) "Intergovernmental Agreement" means any agreement between an Agency and a unit of local government of this state, the United States, a United States governmental agency, an American Indian tribe or an agency of an American Indian tribe and includes Interstate Agreements and International Agreements.

(14) "International Agreement" means any agreement between an Agency and a nation or a public agency in any nation other than the United States.

(15) "Interstate Agreement" means any agreement between an Agency and a unit of local government or state agency of another state.

(16) "Last Reviewed Contract" means a Public Contract that has been approved for legal sufficiency, and includes all amendments that were effective prior to an amendment that has been approved for legal sufficiency.

(17) "Non-Negotiable Public Contract" means a Public Contract that is a preprinted form of contract comprised of terms and conditions offered to an Agency for acceptance without a commercially reasonable opportunity to negotiate and that is attached to or included with products that are available to the public for purchase at retail, through the mail or direct sales. Examples of a Non-Negotiable Public Contract may include a shrink-wrapped or click-wrapped license agreement attached to or included with a packaged or electronic copy of computer software.

(18) "Personal Services Contract" means a contract 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 (including a provider under an Architectural and Engineering Services Contract), broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(19) "Price Agreement" means an agreement for the procurement of goods or services at a set price or prices, or at a price or prices established using a method prescribed by the agreement, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing obligation to provide goods or services with no guarantee of a minimum or maximum additional purchase. Price Agreements are sometimes referred to as flexible services agreements, agreements to agree, master agreements or retainer agreements.

(20) "Procurement Document" means an invitation to bid, request for proposals, request for quotations, or similar solicitation document, including, when available, the anticipated Public Contract, and including addenda that modify the anticipated Public Contract. The following are not Procurement Documents: a request for statements of qualification, a pre-qualification of bidders, a request for product prequalification, a project-specific selection document under a Price Agreement that has resulted from a previous Procurement Document, or an addendum that modifies only Technical Specifications.

(21) "Public Contract" means any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing actions is a Public Contract. An Interagency Agreement is not a Public Contract. Agency Contract Administration is not a Public Contract.

(22) "Public Improvement Contract" means any Public Contract for construction, reconstruction, or major renovation on real property by or for an Agency.

(23) "Requirements Contract" means a Public Contract that requires that all of the purchaser's requirements for the goods or services specified in the Public Contract for the period of time, or for the project(s) specified in the Public Contract, shall be purchased exclusively from the seller.

(24) "Statement of Work" means 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 Agency, as applicable, including any related Technical Specifications, deadlines, or deliverables.

(25) "Technical Specifications" with respect to equipment, materials and goods, means descriptions of dimensions, composition and manufacturer and quantities and units of measurement that describe quality, performance, and acceptance requirements. With respect to services, "Technical Specifications" means quantities and units of measurement that describe quality, performance and acceptance requirements.

(26) "Telecommunications" means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both.

(27) "Variable Delivery Contract" means a Public Contract that, during its term, uses purchase orders or similar ordering instruments to provide

for incremental delivery of the amount of goods or services, or both, that is specified in the Public Contract. A Variable Delivery Contract identifies goods or services by any method that is both commercially reasonable and in accordance with industry standards, including but not limited to, Technical Specifications, time of delivery, place of delivery, manufacturer, form of delivery, or any combination of the foregoing.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.045, 291.047 & 291.049

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0015

Legal Sufficiency Approval

(1) Legal sufficiency approval pursuant to this rule does not affect any other applicable review or approval requirement, including without limitation, review of Interstate Agreements under ORS 190.430 or International Agreements under ORS 190.490.

(2) The Attorney General, through Assistant Attorneys General, provides legal sufficiency approval of a Public Contract solely for the benefit of Agencies, to determine compliance with this rule. Approval of a Public Contract for legal sufficiency is based upon the individual determination by the Assistant Attorney General reviewing the Public Contract and does not preclude the State of Oregon from later asserting any legally available claim or defense arising from or relating to the Public Contract.

(3) Approval of a Public Contract for legal sufficiency must be noted in written form by the Assistant Attorney General reviewing the Public Contract and must be either affixed directly to the Public Contract or set forth in a separate correspondence that identifies the Public Contract with particularity. An Assistant Attorney General may approve public contracts as a group if they are substantially in the same form, are substantially for the same purpose and have the same expiration date if the Assistant Attorney General identifies the manner in which individual contracts within the group may vary.

(4) Sections (4) and (5) are adopted to provide guidance to Agencies regarding criteria used for, and factors excluded from, the Attorney General's legal sufficiency approval of Public Contracts. Except as provided in section (5) of this rule, approval for legal sufficiency means that the reviewing Assistant Attorney General finds that:

(a) The Public Contract has been reduced to written form;

(b) The subject matter, promised performance and consideration of the Public Contract are within the Agency's statutory authority;

(c) The Public Contract, on its face, contains all the essential elements of a legally binding contract, such as a description of consideration (money, performance, or forbearance) when consideration is required;

(d) The Public Contract, on its face, complies with federal and State of Oregon statutes and administrative rules regulating the Public Contract, and that all provisions required by Oregon law to be incorporated have been included;

(e) The Public Contract includes or requires, as required by Oregon law, execution of any certification;

(f) The Public Contract, on its face, does not violate any State of Oregon constitutional limitation or prohibition, such as by creating unlawful "debt" under section 7, Article XI, of the Oregon Constitution, or impermissibly binding a future Legislative Assembly to fund the Public Contract, or any federal constitutional provision;

(g) The Statement of Work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances to be enforceable; and

(h) The Public Contract allows the Agency, if appropriate, to terminate the Public Contract, declare defaults, and pursue its rights and remedies.

(5) Approval for legal sufficiency does not include:

(a) Consideration of facts or circumstances that are not apparent on the face of the Public Contract, unless the Assistant Attorney General reviewing the Public Contract has actual knowledge of those facts or circumstances;

(b) A determination that the individual signing the Public Contract on behalf of the Agency possesses lawful authority to do so;

(c) A determination that the technical provisions used in the Public Contract that are particular to a profession, trade or industry reflect the Agency's intentions, are appropriate to further the Agency's stated objectives or are sufficiently clear and definite to be enforceable;

(d) A determination that the Public Contract is a good business deal for the Agency, weighing relative risks and benefits, although the Assistant Attorney General reviewing the Public Contract may provide advice regarding significant risks and issues in any particular transaction. The

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Agency is responsible for risk assessment and the decision whether to proceed with a Public Contract despite exposure to risks;

(e) A determination that any particular remedy, whether or not expressly set forth in the Public Contract, will be available to the Agency. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the availability of specific remedies;

(f) A determination that the Public Contract complies with grant conditions or federal funding requirements or contains terms or assurances required under a grant or federal funding program. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the compliance with grant conditions, federal funding requirements, or required assurances; or

(g) A stylistic or grammatical review, including spelling, punctuation and the like, unless such errors create ambiguity or otherwise are substantive. The Assistant Attorney General reviewing the Public Contract may address matters of this nature as time allows; however, these matters are primarily the responsibility of the Agency submitting a Public Contract for review.

(h) A determination that, except for setting off amounts owed under the Public Contract, the Agency will have court-enforceable damages, specific performance, or setoff remedies under a Public Contract with another sovereign in the event the sovereign fails to comply with the contract's terms unless the Assistant Attorney General determines in a separate writing that any such remedies are available to the Agency.

Stat. Auth.: ORS 291.045(7)

Stats. Implemented: ORS 291.045 & 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 5-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 3-13-00; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0020

Mixed Contracts

A mixed Public Contract requires the Contractor to render certain services and also to provide the Agency with other kinds of services, goods or products. Classification of a mixed Public Contract as a Personal Services Contract, Architectural and Engineering Services Contract, Information Technology Contract, or other kind of Public Contract is determined by the mixed Public Contract's predominant purpose. A mixed Public Contract's predominant purpose is determined by whether the majority of the amounts paid or received under the mixed Public Contract will be for a particular kind of service (personal, architectural, engineering, land surveying or related services, information technology, or other kinds of service) or for the acquisition of goods or products. An Assistant Attorney General shall defer to the reasonable classification of Public Contract type by the Department of Administrative Services for Public Contracts subject to Department of Administrative Services statutes and rules.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.045, 291.047 & OL 1997, Ch. 869

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0020(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0030

Review of Public Contracts

(1) Except as described in section (2), before a Public Contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the Public Contract, the Attorney General must approve for legal sufficiency in accordance with these rules:

(a) Any Public Contract calling for or providing for payment in excess of \$100,000.

(b) An amendment to a Public Contract described in subsection (1)(a).

(c) An amendment that makes the amended Public Contract subject to legal sufficiency approval under subsection (1)(a).

(2) The legal sufficiency approval requirement described in section (1) does not apply to Public Contracts that are exempt from legal sufficiency approval under these Division 045 rules.

(3) For purposes of determining whether a Public Contract exceeds the amounts set forth in section (1), a Public Contract calls for or provides for payments in excess of the applicable amount if one of the following applies:

(a) The Public Contract expressly provides that the Agency will make or receive payments in money, services or goods over the term of the Public Contract with a value that will, in aggregate, exceed the applicable threshold, whether or not the total amount or value of the payments is expressly stated. For purposes of this subsection, when an agency is lending money, and the only payment to the Agency is in money, "payments" receivable by the Agency mean principal, only.

(b) The Public Contract expressly provides for a guaranteed maximum price or a maximum not to exceed amount payable or receivable by the Agency with a value that exceeds the applicable threshold.

(c) Based on historical or other data available to the contracting Agency at the time of entering into the Public Contract, the contracting Agency determines that the value of payments in money, services or goods to be made or received by the Agency under the Public Contract will likely exceed the applicable threshold.

(4) An Agency shall not fragment or segregate transactions for purposes of circumventing the legal sufficiency approval requirement.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0030(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0035

Review of Anticipated Public Contract

(1) Except as provided in this rule, if an Agency expects the resulting Public Contract to require legal sufficiency approval, an Agency must also submit to the Attorney General any associated Agency Procurement Documents for review of the anticipated Public Contract prior to release of the Procurement Documents. This requirement for submission of Procurement Documents may be waived in writing by the Attorney in Charge of the Business Transactions Section if the reviewing Assistant Attorney General determines that the resulting Public Contract is legally sufficient and resolicitation of the Public Contract would not materially reduce the risk to the State.

(2) The requirement for submission of Procurement Documents in section (1) of this rule does not apply to competitive price quotes or competitive proposals for intermediate procurements that are informally solicited pursuant to ORS 279B.070(3); Oregon Laws 2003, chapter 794, sections 132 and 133 (for Public Improvement Contracts); or applicable administrative rules.

(3) Review of the anticipated Public Contract includes determining what law applies to the procurement and applying that law to the procurement documents to determine whether the procurement process complies with applicable law and Agencies' reasonable interpretations of their own rules. The reviewing attorney is not required to inquire into facts concerning the procurement process that are not apparent on the face of the documents. The reviewing attorney may require changes to the Procurement Documents that are necessary for compliance with applicable law. If the reviewing attorney determines that nothing in the Procurement Documents, or otherwise apparent to the attorney, would prevent approval of the anticipated Public Contract for legal sufficiency, the attorney shall authorize release of the Procurement Documents. The attorney may condition an authorization to release Procurement Documents as necessary for compliance with these rules. Authorization to release the Procurement Documents does not ensure subsequent legal sufficiency approval of the Public Contract contemplated by the procurement and any accepted response. Authorization to release includes a determination that the solicitation process on the face of the Procurement Documents complies with applicable statutes or rules.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.047

Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0050

Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under the Act the Public Contracts falling within the types of Public Contracts listed below:

(1) Adoption Assistance Agreements. A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) Amendments to Contracts Other than Public Improvement and Loan Contracts. A written amendment to a Public Contract that is not a Public Improvement or loan Contract, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only one or both of the following and related payment obligations as necessary:

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(A) The Statement of Work to require the contractor to provide additional or fewer goods, services or other work within the general scope of the Last Reviewed Contract.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery, or price.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this section subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) \$100,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(3) Amendments to Public Improvement Contracts.

(a) A written change order to a Public Improvement Contract, other than as provided in subsections (b) and (c) of this section, if all of the following apply:

(A) The original Public Improvement Contract was approved for legal sufficiency.

(B) The change order is within the general scope of the Public Improvement Contract.

(C) The change order is implemented in accordance with the change order provisions of the Public Improvement Contract.

(D) Any increase in Agency payments under the change order does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order and all prior change orders subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) The amendment (whether in the form of a change order or amendment) is modifying the guaranteed maximum price (GMP) in a Construction Manager/General Contractor (CM/GC) contract (as defined in OAR 137-040-0510) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than \$500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%).

(c) The amendment (whether in the form of a change order or amendment) is modifying the GMP in a Design-Build contract (as defined in OAR 137-040-0510) or in the construction phase of an energy savings performance contract (as defined in ORS 279A.010(1)(g)) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than \$500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%) or \$500,000 (whichever is less).

(4) Bonds and Confirmation Statements.

(a) A Public Contract entered into, issued or established in connection with the issuance of a bond or other borrowing of the State of Oregon, including an interest rate exchange agreement and any associated confirmation statement, if the Oregon State Treasurer has issued or authorized the bond or other borrowing obligation to which the Public contract relates and if bond counsel appointed in accordance with applicable law has issued an approving opinion for the benefit or use of purchasers of the bond or other borrowing with respect to the enforceability of the bond or other borrowing upon closing of the transaction.

(b) A confirmation statement associated with an Agency's investment-related interest rate or currency swap agreement or other investment transaction, if the agreement under which the confirmation statement arises has been approved for legal sufficiency or is exempt from legal sufficiency approval.

(5) Employment Agreements. Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS

410.612; or notices of appointment provided in accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) Federal Contracts. A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) Federal Cooperative Agreements. A Federal Cooperative Agreement.

(8) Federal Grants. A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) Federal Pass-Through Grants. A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) Foster Care Agreements. An agreement between the Department of Human Services or the Oregon Youth Authority and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services or Oregon Youth Authority pursuant to ORS 419C.478.

(11) Home Care Services Agreements. An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) Membership Agreements. A Public Contract that calls for the payment of dues or fees in consideration of membership of individual officers, employees or agents of the State of Oregon in a club, institution, or association in which the State of Oregon acquires no ownership interest.

(13) Non-Negotiable Public Contracts. A Non-Negotiable Public Contract.

(14) Prescribed Contracts. A Public Contract that is in the form prescribed in Procurement Documents and any conditions on authorization for release under OAR 137-045-0035. Prescribed Contracts do not vary from the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) Purchase Order Contracts. A Public Contract formed by a purchase order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the purchase order or similar instrument complies with any conditions of the approval.

(16) Reinstated Public Contracts. A Public Contract entered into solely for the purpose of reinstating an expired Public Contract in accordance with OAR 125-256-0570 or 125-248-0310 if, when required under the Act, the expired Public Contract and all amendments to the expired Public Contract were approved for legal sufficiency.

(17) Settlement Agreements. Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement.

(18) Amendments to Loan Contracts. A written amendment to a Public Contract solely for an Agency loan of money to another party that requires repayment to the Agency, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only:

(A) The description of the project being financed, but only to the extent that the modified project remains eligible for financing by the same source of funds as the project before modification; or

(B) Business terms in the Public Contract which:

(1) Except as provided in subsection (18)(c), do not increase or decrease the total principal repayment obligations under the Public Contract;

(2) Change the interest rate or payment due dates, except for the final maturity date; or

(3) Describe the non-financial terms and conditions of performance, such as performance start or completion dates for the project being financed or job creation or retention requirements.

(c) The aggregate increase in the loan amount under the amendment or the aggregate decrease in principal payments scheduled to be received by the Agency, and all prior amendments exempted from the legal sufficiency

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approval requirement subsequent to the Last Reviewed contract, does not exceed the greater of:

(A) \$100,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(19) Personal Services Contracts, Information Technology Contracts and Architectural and Engineering Services Contracts not calling for or providing for payment in excess of \$100,000.

Stat. Auth.: ORS 291.047(4)

Stats. Implemented: ORS 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0055

Special Public Contract Exemption Program for Exemptions from Legal Sufficiency Approval Based on Risk Assessment

(1) In addition to the Public Contracts described in OAR 137-045-0050, the Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts that satisfy the requirements of the Special Public Contract Exemption Program and fall within the types of contract described in this rule. The Attorney General exempts from the legal sufficiency approval requirement the Public Contracts that satisfy the requirements of the Special Public Contract Exemption Program and fall within the types of contract described in this rule.

(2) The requirements of the Special Public Contract Exemption Program are:

(a) The Agency's representative responsible for the Public Contract must satisfactorily complete the Attorney General's initial and any continuing, as it is scheduled, legal sufficiency review training for that type of contract, which may be specifically tailored for that Agency, and hold a current legal sufficiency review exemption certificate for that type of contract issued by the Attorney in Charge, Business Transactions Section.

(b) The Public Contract must be substantially composed of provisions that have been preapproved by an Assistant Attorney General for use in the Special Public Contract Exemption Program and any modifications to such provisions as may be communicated to the Agency by an Assistant Attorney General.

(c) The Agency must agree that the Attorney in Charge, Business Transactions Section may:

(A) Periodically, select any Public Contract that is exempted from legal sufficiency review under the Special Public Contract Exemption Program for a quality control review; and

(B) Depending upon the results of any such review, provide comments to the Agency about the review, require changes to preapproved provisions, or suspend the Agency's or an Agency's representative's eligibility to participate in the Special Public Contract Exemption Program until further training or other reasonable conditions are met by the Agency or Agency representative.

(d) Costs for the activities specified in subsection (2)(c) of this rule shall be at the expense of the Agency unless otherwise agreed.

(e) An Agency must delete, modify with the specific advice of an Assistant Attorney General, or include only with the specific advice of an Assistant Attorney General, any provision in a proposed Public Contract that is substantially in any of the following forms:

(A) Governing law or choice of law: The laws of a state other than Oregon govern this contract.

(B) Jurisdiction or venue: A lawsuit to enforce, or arising out of, this contract must be brought in a state court located outside Oregon or any federal court.

(C) Arbitration: This contract is subject to binding arbitration.

(D) Indemnity, Hold Harmless: The State of Oregon or the Agency shall indemnify or hold harmless the other party.

(E) Responsibility: The State of Oregon or the Agency assumes or becomes responsible for unfunded liabilities or obligations, such as under uncapped, contingent, or open-ended responsibility clauses, unless such liabilities or obligations are expressly made subject to the limits of Oregon law in the contract, including Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act.

(F) Attorney fees or collection costs: The State of Oregon or the Agency shall pay the other party's attorney fees or the prevailing party in any lawsuit recovers its attorney fees from the losing party.

(G) Punitive or exemplary damages: The State of Oregon or the Agency shall pay punitive, exemplary, or treble damages for the breach of contract or for any claims arising out of the contract.

(H) Interest: The State of Oregon or the Agency is obligated to pay interest on an overdue account if the payment is less than forty-five days overdue or the interest is higher than eight per cent per annum.

(I) Third party beneficiary: A person not a party to the contract is stated to be a beneficiary of the contract or has the right to bring a legal action under the contract or to enforce the contract.

(J) Commitment to pay for performance beyond the end of the current biennium or with funds not currently available: The State of Oregon or the Agency has an unconditional (i.e., not limited by the potential non-appropriation or non-allotment of funds) obligation to pay funds that are not currently available for expenditure for that obligation by the Agency.

(K) Taxes: The State of Oregon or the Agency must pay taxes incident to the contract that are not directly imposed upon the State of Oregon or the Agency.

(L) Confidentiality: The State of Oregon or the Agency is obligated to keep information confidential unless the obligation is made subject to the provisions of the Oregon Public Records Law.

(M) Statute of Limitations: The State of Oregon or the Agency must file a legal action arising out of the contract within a specified time period.

(N) Contractor as agent or employee: The contractor is deemed to be an agent of the State of Oregon or the Agency for liability or other purposes or is the equivalent of an employee of the State of Oregon or the Agency.

(O) Financing agreements: Agreements as defined in ORS 283.095, including installment sales and lease purchase agreements.

(P) Representation, legal advice or legal opinions by counsel not authorized by the Attorney General.

(f) Unless otherwise requested by the Agency, the Assistant Attorney General will not provide advice regarding provisions in the proposed Public Contract that are not affected by modifying or including the provisions in subsection (2)(e).

(3) Classes of Public Contracts identified by the Attorney in Charge, Business Transactions Section, based on risk assessments developed in collaboration with an executive officer of an Agency who is responsible for oversight of Public Contracts, are eligible for exemption from legal sufficiency review under the Special Public Contract Exemption Program.

Stat. Auth.: ORS 291.047(4)

Stats. Implemented: ORS 291.047

Hist.: DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0060

Class Exemptions Based on Attorney General's Pre-Approval

The Attorney General may exempt Public Contracts falling within a class from the legal sufficiency approval requirement. The Attorney General delegates to the Attorney in Charge, Business Transactions Section, the authority to exempt Public Contracts falling within a class, and to otherwise act on behalf of the Attorney General, in accordance with this rule.

(1) An Agency requesting an exemption for Public Contracts falling within a class must submit a written exemption request to the Attorney in Charge, Business Transactions Section, for approval. The exemption request must be signed by an executive officer of the Agency who is responsible for oversight of Public Contracts and must be accompanied by:

(a) A statement that the exemption request is made pursuant to this rule;

(b) Citation to the requesting Agency's statutory authority for procuring and entering into the Public Contracts within the class;

(c) A description of the nature of the business transacted with the Public Contracts within the class;

(d) A description of the circumstances in which the Public Contracts within the class will be used;

(e) Samples of form Public Contracts used for the Public Contracts within the class and any form of amendment to be used in connection with the Public Contracts within the class;

(f) A description of the Agency's internal contract approval process and signatures required for the Public Contracts within the class; and

(g) A statement by the Agency that:

(A) The nature of the business transacted under Public Contracts within the class is substantially the same from transaction to transaction; and

(B) The form of Public Contract and any form of amendment submitted in accordance with OAR 137-045-0060(1)(e) do not vary from transaction to transaction, other than one or more of the following: the expiration date or project completion date of the Public Contract; Technical Specifications; time, place, or form of delivery; quantity of services or goods; or any payment modifications related to modifying the foregoing; and

(C) The Agency will not modify the form of Public Contract and any form of amendment, other than as specifically provided for in OAR 137-045-0060(1)(g)(B) above, without review and approval for legal sufficiency.

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cy by the Attorney General, nor will the Agency use such Public Contract other than in transactions described in the exemption request; and

(h) Any other information that the Attorney General or the Attorney in Charge, Business Transactions Section, requests in connection with the exemption request.

(2) If the Attorney General has determined that the degree of risk assumed by an Agency is not materially reduced by legal review and approval of individual Public Contracts falling within a class reviewed by the Attorney General in accordance with section (1) of this rule, the Attorney General will provide the Agency a written exemption, subject to any terms, conditions or limitations the Attorney General deems appropriate, including but not limited to, the duration of the exemption, restrictions on the use of the submitted forms of Public Contract, form of purchase order or similar instrument or any form of amendment.

(3) The Attorney General may at any time review an exemption granted under section (2) of this rule. The Attorney General may revoke or modify such exemption at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that the exemption be revoked or modified. Revocation or modification of an exemption granted under this rule shall not affect the validity of Public Contracts entered into under the exemption prior to the revocation or modification.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(a)
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0060(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0070

Emergency Public Contract Exemption

(1) Upon the Agency's compliance with the procedures set forth in this rule, a Public Contract entered into in an Emergency shall be exempt from the legal sufficiency approval requirement.

(2) Within 10 business days after execution of the Public Contract, an executive officer of the Agency who is responsible for oversight of the Public Contract must prepare and sign a written report that contains:

(a) A concise summary of the circumstances that constitute the Emergency and the character of the risk of loss, damage, interruption of services or threat to public health or safety created or anticipated to be created by the Emergency circumstances;

(b) A statement of the reason or reasons why the prompt execution of the proposed Public Contract was required to deal with the risk created or anticipated to be created by the Emergency circumstances;

(c) A brief description of the services or goods to be provided under the Public Contract, together with its anticipated cost; and

(d) A brief explanation of how the Public Contract, in terms of duration, services or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances.

(3) The Agency shall maintain a copy of the report in the Agency's Emergency Public Contract file. The Agency shall provide a copy of the report to the Attorney in Charge, Business Transactions Section within thirty (30) days after preparing the report.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(b)
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

137-045-0090

Ratification of Public Contracts

(1) Before ratifying a Public Contract under ORS 291.049, an Agency shall do all of the following:

(a) Submit to the Attorney in Charge, Business Transactions Section, a copy of the Public Contract and the proposed ratification document. The ratification document is to be executed, after approval for legal sufficiency, by an executive officer of an Agency who is responsible for oversight of the Public Contract. The ratification document must contain:

(A) An explanation of why performance began or payment was made before the Public Contract was approved by the Attorney General for legal sufficiency;

(B) A description of the steps being taken to prevent similar occurrences in the future; and

(C) A proposed ratification of the Public Contract.

(b) Obtain approval of the Public Contract for legal sufficiency from the Attorney General, through the Attorney in Charge, Business Transactions Section;

(c) Obtain all other approvals required for the Public Contract.

(2) Except as provided in section (3) of this rule, the Agency shall provide a copy of the ratified Public Contract and the Agency's ratification document to the Director of the Secretary of State Audits Division within

30 days after the Public Contract is ratified or fully executed, whichever is later.

(3) The requirements of section (2) of this rule do not apply to a Public Contract when the Agency concludes that it failed to obtain legal sufficiency review before performance began under the Public Contract due to excusable neglect or reasonable belief that legal sufficiency review was not required and provides reasons for its conclusion in the ratification document. For purposes of this section, "excusable neglect" means that the person responsible for obtaining legal sufficiency review of the Public Contract took reasonable action to submit the Public Contract to the Attorney General for legal sufficiency approval or reasonably relied upon a subordinate to do so. The mere fact that a person responsible for obtaining legal sufficiency review believed that someone else had done so or the fact that it was the person's usual practice to do so is not sufficient to establish excusable neglect.

Stat. Auth.: ORS 291.049(3)
Stats. Implemented: ORS 291.049
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08

Rule Caption: Amends Attorney General's Model Public Contract Rules, Division 46-49, to implement 2007 legislation.

Adm. Order No.: DOJ 19-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Amended: 137-046-0100, 137-046-0110, 137-046-0130, 137-047-0000, 137-047-0100, 137-047-0257, 137-047-0262, 137-047-0263, 137-047-0275, 137-047-0280, 137-047-0285, 137-047-0310, 137-047-0330, 137-047-0400, 137-047-0410, 137-047-0430, 137-047-0575, 137-047-0610, 137-047-0730, 137-048-0100, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0240, 137-048-0250, 137-048-0300, 137-048-0320, 137-049-0100, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210, 137-049-0280, 137-049-0290, 137-049-0310, 137-049-0390, 137-049-0395, 137-049-0630, 137-049-0645, 137-049-0860

Subject: The rule changes amend the Attorney General's model public contract rules applicable to state and local contracting agencies.

Division 46 has been revised to address any 2007 legislative changes to public procurements in general. Several unnecessary definitions have been deleted from Division 46. Division 46 has also been revised to simplify and clarify several provisions.

Division 47 has been revised to address 2007 legislative changes affecting public procurements of goods and services. Clarifications have been added to rules dealing with Emergency Procurements, Bids or Proposals are Offers, and Offer Submission. Division 47 has also been revised to simplify and clarify other provisions.

Division 48 has been revised to address 2007 legislative changes affecting public procurements of Architectural, Engineering and Land Surveying Services, and Related Services. Clarifications have been added to rules dealing with Disclosure of Proposals, Solicitation Delay or Suspension and Rejection of All Solicitation Proposals or Responses. Division 48 has also been revised to clarify and simplify several provisions.

Division 49 has been revised to address 2007 legislative changes affecting public improvement and public works contracting. Revisions have been made to provide clarity regarding Emergency Contracts, Offer Submissions, multiple contract awards, Cost Savings, and Public Works Contracts. Division 49 has also been revised to provide other clarification to existing rules.

Rules Coordinator: Carol Riches—(503) 947-4700

137-046-0100

Content and General Application; Federal Law Supremacy

(1) These Model Rules are rules of procedure for Public Contracting as required under ORS 279A.065 and consist of the following four divisions:

(a) This division 46, which applies to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods, Services and Personal Services other than Architectural, Engineering and Land Surveying Services and Related Services;

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(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) If a conflict arises between these division 46 rules and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over these division 46 rules.

(3) Except as otherwise expressly provided in ORS 279C.800 through 279C.870, and notwithstanding ORS Chapters 279A, 279B, and 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670 or these Model Rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and 279C.005 through 279C.670 or these Model Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-046-0110

Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) **"Addendum"** or **"Addenda"** means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) **"Administering Contracting Agency"** has the meaning set forth in ORS 279A.200(1) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) **"Award"** means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) **"Bid"** means a Written response to an Invitation to Bid.

(5) **"Closing"** means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) **"Code"** means the Public Contracting Code.

(7) **"Competitive Range"** means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0262 or 137-049-0650.

(8) **"Contract"** means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) **"Contract Price"** means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) **"Contract Review Authority"** means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) **"Contractor"** means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) **"DBE Disqualification"** means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(13) **"Descriptive Literature"** means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) **"Electronic Advertisement"** means a Contracting Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency's Procurements made available over the Internet via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(15) **"Electronic Offer"** means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(16) **"Electronic Procurement System"** means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) **"Invitation to Bid"** or **"ITB"** means the document issued to invite offers from prospective Contractors pursuant to either ORS 279B.055, or 279C.335.

(18) **"Model Rules"** means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065.

(19) **"Offer"** means a Written response to a Solicitation Document.

(20) **"Offeror"** means a Person who submits an Offer.

(21) **"Opening"** means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(22) **"Person"** means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) **"Personal Services"** as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. "Personal Services" as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(24) **"Personal Services Contract"** means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), 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).

(25) **"Product Sample"** means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(26) **"Proposal"** means a Written response to a Request for Proposals.

(27) **"Recycled Materials"** means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(28) **"Request for Qualifications"** or **"RFQ"** means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(29) **"Request for Quotes"** means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(30) **"Responsible"** means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(31) **"Responsible Offeror"** means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) **"Responsive"** means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(33) **"Responsive Offer"** means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(34) **"Signature"** means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached

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to or logically associated with a Written document to which the Person intends to be bound.

(35) “**Signed**” means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(36) “**Solicitation Document**” means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C.

(37) “**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 meanings. “Writing,” when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(38) “**Written**” means existing in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-046-0130

Application of the Code and Model Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all procurement authority related to Public Contracting in accordance with the Code and the Model Rules.

(2) A Contracting Agency that has specifically opted out of the Model Rules and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority is not subject to these Model Rules, except for those portions of the Model Rules that the Contracting Agency has prescribed for its own use for Public Contracting.

(3) Contracts or classes of Contracts for Personal Services of a Local Contracting Agency designated as such by the Local Contracting Agency’s Local Contract Review Board pursuant to ORS 279A.055, are not subject to these Model Rules, unless the Local Contracting Agency adopts OAR 137-047-0250 through 137-047-0290 as the procedures the Local Contracting Agency will use to screen and select persons to perform Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.

(4) These Model Rules do not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2).

(5) These Model Rules do not apply to the contracting activities of the public bodies listed in ORS 279A.025(3).

(6) Contracting Agencies otherwise subject to the Code and these Model Rules may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either 279A.200 through 279A.225, or 279B.050 through 279B.085. However, Contracting Agencies must enter into such Contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.050, 279A.055, 279A.065 & 279A.180

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0000

Application

This division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods and Services. State Contracting Agencies shall also procure Personal Services, except for Architectural, Engineering, Land Surveying and Related Services, in the same manner other Services are procured under these division 47 rules. Local Contracting Agencies, pursuant to ORS 279B.050(4), may also adopt these division 47 rules to govern the Procurement of Personal Services Contracts or elect to award Personal Services Contracts under procedures set forth in ORS 279B.055 through 279B.085.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0100

Definitions

(1) “**Advantageous**” means in the Contracting Agency’s best interests, as assessed according to the judgment of the Contracting Agency.

(2) “**Affected Person**” or “**Affected Offeror**” means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0257

Multistep Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep sealed bidding pursuant to ORS 279B.055(12).

(2) Phased Process. Multistep sealed bidding is a phased Procurement process that seeks necessary information or unpriced technical Bids in the first phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the first phase to submit competitive sealed price Bids on the technical Bids in the second phase. The Contract shall be Awarded to the lowest Responsible Bidder.

(3) Public Notice. Whenever a Contracting Agency uses multistep sealed bidding, the Contract Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to OAR 137-047-0430 and inform Bidders excluded from the second phase of the right, if any, to protest exclusion pursuant to OAR 137-047-0720.

(4) Procedures Generally. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the following procedures set forth in this rule for multistep sealed bidding:

(a) Solicitation Protest. Prior to the Closing of phase one, a Contracting Agency shall provide an opportunity to protest the solicitation under ORS 279B.405 and OAR 137-047-0730.

(b) Addenda Protest. A Contracting Agency may provide an opportunity to protest any Addenda issued after Closing of phase one pursuant to OAR 137-047-0430(3)(b).

(c) Exclusion Protest. A Contracting Agency may, but is not required to provide an opportunity for a Bidder to protest exclusion from phase two of multistep sealed bidding as set forth in OAR 137-047-0720.

(d) Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the Contracting Agency that has the effect of excluding the Bidder from the second phase of multistep sealed bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidder’s failure to pursue an administrative remedy made available to the Bidder by the Contracting Agency.

(e) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Bidder may protest, for any of the bases set forth in OAR 137-047-0720(2), its exclusion from the second phase of a multistep sealed bidding or an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. A Contracting Agency shall initiate multistep sealed bidding by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth OAR 137-047-0255(1), the multistep Invitation to Bid shall state:

(A) That unpriced technical Bids are requested;

(B) Whether price Bids are to be submitted at the same time as unpriced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose unpriced technical Bids are found eligible in the first phase;

(D) The criteria to be used in the evaluation of unpriced technical Bids;

(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical Bids;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder’s technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid; and,

(G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.

(b) Addenda to the Invitation to Bid. After receipt of unpriced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted unpriced technical Bids.

(c) Receipt and Handling of Unpriced Technical Bids. Unpriced technical Bids need not be opened publicly.

(d) Evaluation of Unpriced Technical Bids. Unpriced technical Bids submitted by Bidders shall be evaluated solely in accordance with the

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criteria set forth in the Invitation to Bid. Unpriced technical Bids shall be categorized as:

(A) Eligible;
(B) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(C) Ineligible. The Contracting Agency shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient eligible unpriced technical Bids to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (4)(e) of this rule.

(e) Discussion of Unpriced Technical Bids. The Contracting Agency may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the second phase. Such submission may be made at the request of the Contracting Agency or upon the Bidder's own initiative.

(f) Notice of Ineligible Unpriced Technical Bid. When the Contracting Agency determines a Bidder's unpriced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.

(g) Mistakes During Multistep Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during phase one:

- (A) Before unpriced technical Bids are considered;
- (B) After any discussions have commenced under OAR 137-047-0257(4)(e); or
- (C) When responding to any Addenda of the Invitation to Bid and,
- (D) In accord with OAR 137-047-0470.

(6) Revisions to Solicitation Specifications. After Closing of phase one, the Contracting Agency may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The Contracting Agency shall provide such Addenda to all Bidders who initially submitted unpriced technical Bids. The Contracting Agency may then require Bidders to submit revised unpriced technical Bids.

(7) Procedure for Phase Two of Multistep Sealed Bidding.

(a) Initiation. Upon the completion of phase one, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) Conduct. A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

- (A) As specifically set forth in this rule;
- (B) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0262

Competitive Range, Discussions and Negotiations

(1) Competitive Range. When a Contracting Agency's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency shall determine and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Contracting Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(b) Contesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for

Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-047-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with section (1)(b) expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency 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.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-047-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with OAR 137-047-0740 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence negotiations in accordance with section (3) of this rule with Proposers in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

(2) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive best and final Offers (See OAR 137-047-0262(4)), the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Contracting Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (2), but need not conduct the same amount of discussions with each eligible Proposer. The Contracting Agency may terminate discussions with any eligible Proposer at any time. However, the Contracting Agency shall offer all eligible Proposers the same opportunity to discuss their Proposals with the Contracting Agency before the Contracting Agency notifies eligible Proposers of the date and time pursuant to section (4) that best and final Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(ii) Shall disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060(6)(a)(B) or (C);

(iii) May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular eligible Proposer;

(ii) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section (4) of this rule to the eligible Proposers requesting best and final Offers.

(3) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers as follows:

(A) After initial determination of which Proposals are Responsive; or

(B) After initial determination of the Competitive Range in accordance with section (1) of this rule; or

(C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).

(b) Conducting Negotiations.

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(A) Scope. The Contracting Agency may negotiate:

(i) The statement of work;

(ii) The Contract Price as it is affected by negotiating the statement of work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.

(B) Terminating Negotiations. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with sections (2) or (3) of this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(i) The Proposer is not discussing or negotiating in good faith; or

(ii) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with a Proposer in accordance with section (3)(b)(B) of this rule, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in section (3) of this rule until the Contracting Agency 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 Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency has completed all rounds of discussions or negotiations.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing Proposers. The Contracting Agency:

(A) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(B) May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if the Contracting Agency notifies all of the Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any Proposer.

(e) Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing.

(4) Best and Final Offers. If Contracting Agency requires best and final Offers, a Contracting Agency shall establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best final Offer. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct evaluations conducted as described in OAR 137-047-0600. The Contracting Agency shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0263

Multistep Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279B.060(6)(b)(G).

(2) Phased Process. Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and invites Proposers who submitted technically qualified Proposals in the first phase to submit competitive sealed price Proposals on the technical Proposers in the second phase. The Contract shall be Awarded to the Responsible Proposer submitting the most

Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(3) Public Notice. Whenever a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion pursuant to OAR 137-047-0720.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) Form. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposal shall state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the second phase from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria to be used in the evaluation of unpriced technical Proposals;

(D) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the unpriced technical Proposals;

(E) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal; and

(F) Whether Proposers excluded from the second phase have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) Addenda to the Request for Proposal. After receipt of unpriced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted unpriced technical Proposals.

(c) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(d) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Unpriced technical Proposals shall be categorized as:

(A) Qualified;

(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(C) Unqualified. The Contracting Agency shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient qualified or potentially qualified unpriced technical Proposals to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in section (4)(e).

(e) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing of the second phase, established by the Contracting Agency. Such submission may be made at the request of the Contracting Agency or upon the Proposer's own initiative.

(f) Notice of Unqualified Unpriced Technical Proposal. When the Contracting Agency determines a Proposer's unpriced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

(g) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during phase one:

(A) Before unpriced technical Proposals are considered;

(B) After any discussions have commenced under section (4)(e) of this rule; or

(C) When responding to any Addenda to the Request for Proposal;

(D) In accordance with OAR 137-047-0470.

(5) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a

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Competitive Range or include discussions, negotiations, or best and final offers as set forth in OAR 137-047-0261 and 137-047-0262. If the Contracting Agency uses such methods of Contractor selection, it shall follow the procedures set forth in OAR 137-047-0261 and 137-047-0262.

(6) Procedure for Phase Two.

(a) Initiation. Upon the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals.

(b) Conduct. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except:

(A) As specifically set forth in this rule; and

(B) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0275

Sole-source Procurements

(1) Generally. A Contracting Agency may Award a Contract without competition as a sole-Source Procurement pursuant to the requirements of ORS 279B.075.

(2) Public Notice. If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source. The Contracting Agency shall publish such notice in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole source determination.

(3) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with OAR 137-047-0710.

Stat. Auth.: ORS 279A.065 & 279B.075

Stats. Implemented: ORS 279B.075

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0280

Emergency Procurements

A Contracting Agency may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances. However, for emergency procurement of construction services, see ORS 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0285

Special Procurements

(1) Generally. A Contracting Agency may Award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Public Notice. A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of approval of the Special Procurement to protest the Special Procurement.

(3) Protest. An Affected Person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0310

Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive proposal is a "Firm Offer" for the period specified in OAR 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under OAR 137-047-0262, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279B.055 & 279B.60

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0330

Electronic Procurement

(1) Electronic Procurement Authorized.

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a Request for Quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers.

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When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with section (5)(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with OAR 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & 279B.055

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0400

Offer Preparation

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required by the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0410

Offer Submission

(1) Product Samples and Descriptive Literature. A Contracting Agency may require Product Samples or Descriptive Literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers:

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document. The Contracting

Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0430

Addenda to Solicitation Document

(1) Issuance; Receipt. The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) Notice and Distribution. The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with OAR 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with 137-047-0261 through 137-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and OAR 137-047-0261 through 137-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

Stat. Auth.: ORS 279A.065 & 279B.060

Stats. Implemented: ORS 279B.060

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

137-047-0575

Debarment of Prospective Offerors

(1) Generally, A Contracting Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.130

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0610

Notice of Intent to Award

(1) Notice of Intent to Award. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances justify prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) Finality. The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to OAR 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

Stat. Auth.: ORS 279A.065 & 279B.135

Stats. Implemented: ORS 279B.135

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-047-0730

Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in 279B.405(2). Pursuant to 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Contracting Agency Response. The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 137-047-0430 or cancel the Procurement or solicitation under OAR 137-047-0660.

(5) Extension of Closing. If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarifi-

cation to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & 279B.405

Stats. Implemented: ORS 279B.405

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0100

Application

(1) The Attorney General is required to prepare and maintain model rules of procedure that govern Public Contracting under the Public Contracting Code and that are appropriate for use by all Contracting Agencies. These division 48 rules apply to the screening and selection of Architects, Engineers and Land Surveyors, and providers of Related Services, under Contracts and set forth the following procedures:

(a) Procedures through which Contracting Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services, or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) These division 48 rules apply to any Contracting Agency with independent contracting authority that is seeking the services of a Consultant to perform Architectural, Engineering and Land Surveying Services, or Related Services, if the Contracting Agency has not adopted its own rules of procedure for the screening and selection of Consultants to perform Architectural, Engineering and Land Surveying Services or Related Services, as provided in ORS 279A.065(a).

(3) The dollar threshold amounts that are applicable to the Direct Appointment Procedure, OAR 137-048-0200, the Informal Selection Procedure, 137-048-0210, and the Formal Selection Procedure, 137-048-0220, are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement for State Contracting Agencies under OAR 291.047.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals

(1) When selecting the most qualified Consultants to perform Architectural, Engineering and Land Surveying Services, State Contracting Agencies and Local Contracting Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies subject to this section (1) shall not solicit or use pricing policies and pricing proposals, or other pricing information, to determine a Consultant's compensation, until after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Contracting Agencies selecting Consultants to perform Related Services and Local Contracting Agencies selecting Consultants to perform Architectural, Engineering and Land Surveying Services for Contracts when the conditions under ORS 279C.110(2) do not exist, shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Bids, or OAR 137-048-0200 (Direct Appointment Procedure) if the requirements of OAR 137-048-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Proposals, or OAR 137-048-0200 (Direct Appointment Procedure) if the requirements of OAR 137-048-0200(1) apply. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing proposals, or other pricing information, submitted with a Proposal.

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(3) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(4) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(5) Consistent with the requirements of 2007 Oregon Laws, Chapter 764, Section 41 and ORS 279C.100 to 279C.125, the following requirements apply to proposals received by a Contracting Agency for Architectural, Engineering and Land Surveying Services or Related Services:

(a) The term "competitive proposal", for purposes of 2007 Oregon Laws, Chapter 764, Section 41 includes proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications).

(b) For purposes of proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, OAR 137-048-0200 proposals are not required to be open for public inspection until after the Contracting Agency has made the decision to begin contract negotiations with the selected consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of 2007 Oregon Laws, Chapter 764, Section 41. Otherwise, Contracting Agencies should open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency issues a notice of intent to award a contract.

(d) Disclosure of proposals and proposal information is otherwise governed by 2007 Oregon Laws, Chapter 764, Section 41.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279C.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0200

Direct Appointment Procedure

(1) Contracting Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Emergency. Contracting Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$25,000; or

(c) State Contracting Agencies — Continuation of Project With Intermediate Estimated Fee. For State Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed \$150,000; and

(C) The State Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; or

(d) State Contracting Agencies -- Continuation of Project With Extensive Estimated Fee. For State Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an

earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The State Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; and

(C) The State Contracting Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency;

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(e) Local Contracting Agencies. For Local Contracting Agencies, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract:

(A) Consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Local Contracting Agency used a formal selection procedure described in rules applicable to Local Contracting Agency under either ORS 279.049 or 279A.065, whichever was in effect at the time Local Contracting Agency selected Consultant for the earlier Contract; or

(C) Consultant will be assisting Contracting Agency by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.

(2) Contracting Agencies may select Consultants for Contracts under this rule from the following sources:

(a) Contracting Agency's list of Consultants that is created under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services or Related Services that Contracting Agency reasonably can identify under the circumstances.

(3) Contracting Agency shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110 & 279C.115

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0210

Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$150,000.

(2) Contracting Agencies using the informal selection procedure shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering and Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering and Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

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(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Pricing policies and pricing proposals, or other pricing information, if the Contracting Agency is a Local Contracting Agency selecting a Consultant when the conditions under ORS 279C.110(2) do not exist.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that Contracting Agency reasonably can locate that offer the desired Architectural, Engineering and Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If Contracting Agency does not cancel the RFP after it reviews and ranks each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

(4) Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or pro-

ceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(5) Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$150,000. Notwithstanding the foregoing, Contracting Agency may continue Contract negotiations with the Proposer selected under the informal selection procedure if Contracting Agency makes written findings that contracting with that Proposer will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0220

Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either OAR 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering and Land Surveying Services or Related Services Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(13). Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom Contracting Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ.

(a) Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services or Related Services Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

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(E) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services or Related Services Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ including Consultants' available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services or Related Services and references concerning past performance, and a copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(D) The number of Consultants' experienced staff available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(E) Consultants' approaches to Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(F) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(G) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Consultants' pricing policies and pricing proposals, or other pricing information, if the Contracting Agency is a Local Contracting Agency and the conditions under ORS 279C.110(2) do not exist;

(I) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(J) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(K) Consultants' ability to assist a Contracting Agency in complying with the solar energy technology requirements of 2007 Oregon Laws, Chapter 310; and

(L) Any other information Contracting Agency deems reasonable necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in architecture, engineering, or land surveying, Related Services, construction or Public Contracting. If Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, Contracting Agency shall establish a short list of at

least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering and Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering and Land Surveying Services, or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering and Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(xiii) Pricing policies and pricing proposals, or other pricing information, if the Contracting Agency is a Local Contracting Agency selecting a Consultant when the conditions under ORS 279C.110(2) do not exist; and

(xiv) Any other criteria that the Contracting Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

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(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these Division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information Contracting Agency deems reasonably necessary to permit Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in architecture, engineering, land surveying, Related Services, construction or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to Contracting Agency the results of the scoring and ranking for each Proposer.

(c) If Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(C) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

(d) Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with

the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering and Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0240

Protest Procedures

(1) **RFP Protest and Request for Change.** Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. Contracting Agency will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) **Single Award.** In the event of an award to a single Proposer, Contracting Agency shall provide to all Proposers a copy of the selection notice that Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(b) **Multiple Award.** In the event of an award to more than one Proposer, Contracting Agency shall provide to all Proposers copies of the selection notices that Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked Proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(c) **Effect of Protest Submission Deadline.** Contracting Agency will not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of Contracting Agency shall resolve all timely submitted protests within a reasonable time following Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & 279C.110

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0250

Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary procurement document, whether related to a direct appointment, informal selection procedure or formal selection procedure, or reject all Proposals, responses to RFQs, responses to other preliminary procurement documents, or any combination of the foregoing, if Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting

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Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary procurement documents.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0300

Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering and Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering and Land Surveying Services or Related Services under a Contract with Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant pursuant to applicable law governing the award of such contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-048-0320

Contract Amendments

(1) Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering and Land Surveying Services or Related Services described in the final form of the original procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0100

Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements. Model Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Model Rules).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0140

Contracts for Construction Other Than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts may be procured and amended as general trade Services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these division 49 rules. Emergency Contracts for construction Services are not Public Improvement Contracts and are regulated under ORS 279B.080.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445, 450); Legal Actions (279C.460 and 465); Required Contract Conditions (279C.505, 515, 520, 530); Hours of Labor (ORS 279C.540, 545); Retainage (279C.550, 560 and 565); Subcontracts (279C.580); Action on Payment Bonds (279C.600, 605, 610, 615, 620, 625); Termination (ORS 279C.650, 660, 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.320
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.

(2) **Competition for Emergency Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever Solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See OAR 137-049-0815 and BOLI rules at 839-025-0015.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & 279C.380
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

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137-049-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency not to exceed \$100,000 may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Contracting Agencies shall utilize Written requests for quotes whenever reasonably practicable. Written Request for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a Written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a Written record of the effort made to obtain those quotes.

(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a Written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to OAR 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410.

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) **General Information.**

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required

information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See OAR 137-049-0300 regarding facsimile Bids or Proposals and OAR 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 137-049-0360. For timing issues relating to Addenda, see OAR 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148."

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 137-049-0360.

(b) **Evaluation Process:**

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the Contracting Agency's finding that it is in the public interest to do so;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of competitive Proposals is authorized under ORS 279C.335 and OAR 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of OAR 137-049-0650; and

(c) **Contract Provisions.** The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

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(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) Fee paid to BOLI (ORS 279C.830(2));

(P) BOLI Public Works bond (ORS 279C.830(3))

(Q) Retainage (ORS 279C.550 to 279C.570);

(R) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(S) Contractor's relations with subcontractors (ORS 279C.580);

(T) Notice of claim (ORS 279C.605);

(U) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(V) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005 & 701.055

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0210

Notice and Advertising Requirements; Posting

(1) **Notice and Distribution Fee.** A Contracting Agency shall furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Authority for that Contracting Agency has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) A Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

(3) **Minority, Women Emerging Small Business.** State Contracting Agencies shall provide timely notice of all Solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360 & 200.035

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0280

Offer Submissions

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-049-0410. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. See OAR 137-049-0650 on Requests for Proposals and 137-049-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) **Responsive Offer.** A Contracting Agency may Award a Contract only to a Responsive Offeror with a Responsive Offer.

(3) **Contingent Offers.** Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to OAR 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) **Offeror's Acknowledgment.** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under OAR 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and

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conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.

(5) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(7) **Documents.** An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required under the Solicitation Document.

(8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) **Product Samples and Descriptive Literature.** A Contracting Agency may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) **Receipt of Offers.** The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0290 Bid or Proposal Security

(1) **Security Amount.** If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(6). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).

(3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) **Return of Security.** A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.385 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0310 Electronic Procurement

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with OAR 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agencies from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0390 Offer Evaluation and Award; Determination of Responsibility

(1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (Oregon Laws 2005, Chapter 413). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB.

(2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has a satisfactory record of contract performance. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is qualified legally to contract with the Contracting Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply

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information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

(a) The Contracting Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids.** The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) **Evaluation of Proposals.** See OAR 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, 279C.365, 279C.375 & 279C.395

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0395

Notice of Intent to Award

(1) **Notice.** At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$5,000) or intermediate (informal competitive quotes) Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d).

(2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.

(3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Contracting Agency provides a Written response to all time-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0630

Findings, Notice and Hearing

(1) **Cost Savings Factors.** When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate".

(2) **Required Information.** Likewise, the statutory definition of "Findings" at ORS 279C.330 means the justification for a Contracting Agency conclusion that includes, "but is not limited to," information regarding eight identified areas.

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings" requirement where an Alternative Contracting Method has not been previously used, the Contracting Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) **Descriptions.** Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the Contracting Agency. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values or method of procurement or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(7) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

(8) **Prior Review of Draft Findings.** State Contracting Agencies shall submit draft Findings to their Contract Review Authority for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). State Contracting Agencies shall also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & 279A.065

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06;

DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

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137-049-0645

Requests for Qualifications (RFQ)

As provided by ORS 279C.405(1), Contracting Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Contracting Agencies shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. In such cases the Contracting Agencies shall also provide within the RFQ a protest provision substantially in the form of OAR 137-049-0450(5) regarding protests of the Competitive Range. Thereafter, contracting agencies may distribute RFPs to those qualified firms without further advertisement of the solicitation.

Stat. Auth.: ORS 279C.405, 279A.065

Stats. Implemented: ORS 279C.410

Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

137-049-0860

Public Works Contracts

(1) Generally, ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The prevailing state rate of wage, as required by ORS 279C.830(1)(a): (i) physically contained within or attached to hard copies of procurement Specifications; (ii) included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or, (iii) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If applicable, the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication. The same options for inclusion of wage rate information stated in subsection 3(a) of this rule apply. See BOLI rules at OAR 839-025-0020 and 0035.

(c) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 - 279C.870

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

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Rule Caption: Procedures for establishment and reopening of paternity.

Adm. Order No.: DOJ 1-2008(Temp)

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08 thru 3-31-08

Notice Publication Date:

Rules Amended: 137-055-3020, 137-055-3060, 137-055-3080, 137-055-3100, 137-055-3140

Subject: The changes to OAR 137-055-3020, 137-055-3060, 137-055-3080, 137-055-3100 and 137-055-3140 implement the changes

to state law from HB 2382 (Oregon Laws 2007, Ch. 454), which amend the paternity laws.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-055-3020

Paternity Establishment Procedures

For purposes of this rule, the following definition applies:

(1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.

(2)(a) In all cases in which a child was conceived in Oregon, the administrator will initiate legal proceedings to establish paternity under ORS chapter 109 or ORS Chapter 416.

(b) Except for proceedings filed under ORS Chapter 109, past support will be established as provided by ORS Chapter 416 and OAR 137-055-3220.

(3) When the administrator initiates legal action to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.

(4) The administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (5) and (6).

(5) If the husband and mother are still married and the husband is on the child's birth record:

(a) If only one party disputes paternity, the administrator will give notice to the parties that

(A) The parties have the right to challenge paternity under ORS 109.070 by filing a petition in the circuit court;

(B) The administrator will delay any initiated support action for 30 days;

(C) If a party provides proof within 30 days that he or she filed a petition, the administrator will suspend the support action pending the outcome of the court's decision.

(D) If no proof is received within 30 days that a party has filed a petition, the administrator will proceed with the legal action to establish support.

(b) If both the husband and mother dispute the child's paternity, the administrator will order the husband, mother and child to appear for parentage testing.

(6) If the husband and mother are still married, no father is listed on the birth record, and the mother names another man as the father of the child, the administrator will provide notice and an opportunity to object to the husband.

(a) If an written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the husband.

(b) If no written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the most likely alleged father named in the mother's paternity affidavit.

(7) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(8) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(9)(a) The Child Support Program may initially pay the costs of parentage tests, and will seek reimbursement of those costs, but may agree to waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the mother and child have appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

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(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity; or

(C) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 137-055-3080.

(10) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(11) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Department of Human Services; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(12) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.

(13) If a non-requesting party fails to appear for the additional parentage testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.

(14) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(15) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.070, 416.430, 416.443

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3020; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08

137-055-3060

Establishing Paternity in Multiple Alleged Father Cases

(1) In any action to establish paternity initiated under ORS 416.400 to 416.470, when the mother of the child for whom paternity is being established states that the father of the child could be more than one man, the administrator may initiate action against those men who are named by the mother as possible fathers as provided in this rule.

(2)(a) If mother is able to name one of the possible fathers as the most likely father based upon the date of conception, the physical characteristics the child shares with that man, or other factors, the administrator may initiate action against that man only.

(b) If the administrator is unable to locate the man identified by mother as the most likely father, the administrator will not proceed with establishment of paternity until the man is located.

(3) If mother cannot identify one of the men who may be the father as the most likely father, the administrator may gather additional information, including information from the mother and from any physician or other licensed health care provider of obstetrical care to mother, which may assist the mother in identifying the most likely father.

(4) If mother remains unable to identify one of the possible fathers as the most likely father, the administrator may initiate legal action against any one or more possible fathers, as named by the mother, upon whom the administrator can apparently effect personal service based on the information it has available.

(5) The administrator will provide notice to any possible father described in this rule and served in an action to establish paternity that the mother of the child for whom the administrator seeks to establish paternity has named another man or men as a possible father unless that other man (or men) has been excluded by parentage tests.

(6) The administrator will enter no order establishing paternity with respect to a man who has not been named by mother as the most likely father unless the provisions of either subsection (a) or (b) of this section apply.

(a) The man has been subjected to parentage tests which have not excluded him as a possible father of the child in question; or,

(b) All other men named by mother as possible fathers have been excluded as possible fathers by parentage tests.

(7) Notwithstanding any other provision of this rule, its requirements do not apply when one of the possible fathers is entitled to reasonable notice under ORS 109.096.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.400 – ORS 416.470

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3060; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08

137-055-3080

Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father

(1) For purposes of this rule, self-alleged father means a man who both:

(a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and

(b) Wishes to have paternity legally established for the child, establishing himself as the legal father.

(2) The administrator is responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:

(A) The self-alleged father must either:

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or

(B) Complete an application for services as provided under ORS 25.080.

(b) Unless otherwise prohibited under this rule, the administrator shall:

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.

(c) The administrator will not pursue action to establish paternity under this section in any case where adoption of the child is final or where paternity, as specified in ORS 109.070, has already been established for the child;

(d) The administrator will not pursue action to establish paternity under this rule if the Child Support Program Director has determined that such action would not be in the best interests of the child, in accordance with section (5) of this rule.

(3) For purposes of this rule, legal proceedings for adoption of the child are pending if either of the following provisions is true:

(a) The mother or legal guardian of the child has released or surrendered the child to the adoptive parent(s) for adoption, and such release or surrender has become irrevocable because the child has been placed in the physical custody of the adoptive parent(s) and the other conditions of ORS 109.312 have been met;

(b) The mother or legal guardian of the child has released or surrendered the child to the Department of Human Services or an incorporated child-caring agency for adoption, and such release or surrender has become irrevocable because the child has been placed by the agency in the physical custody of a person or persons for the purpose of adoption, in accordance with ORS 418.270(4).

(4)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator will send written notification by first class mail to the last-known address of the mother and (if a separate party) legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator will also send written notification to the licensed private agency handling the adoption, or if none exists, to the Department of Human Services;

(b) If the mother and (if a separate party) legal guardian cannot readily be found, the enforcing agency administrator shall make a diligent attempt to locate the party. A diligent attempt includes but is not limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate the mother and legal guardian within 30 days, the administrator shall proceed to process the case as described in section (8) of this rule without the notice described in this section;

(c) The written notification must state the following:

(A) That the self-alleged father has asked the administrator for establishment of paternity services;

(B) That if legal proceedings for adoption of the child are pending, or if the child's mother (or legal guardian if a separate party) alleges that the child was conceived due to rape or incest, the Child Support Program (CSP) Director will determine whether establishing paternity is in the best inter-

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ests of the child, on the basis of the responses the CSP Director receives to the written notification;

(C) That a copy of any response to the notification the CSP Director receives will be sent to the self-alleged father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator must ensure that the address of the mother and/or guardian is deleted from any written material it sends to the self-alleged father;

(D) The factors the CSP Director will consider, set out in section (5) of this rule, in determining whether establishing paternity would be in the best interest of the child;

(E) That the mother, legal guardian, and adoption agency or the Department of Human Service child welfare program if appropriate under this rule, has 15 days to respond in writing to the written notification;

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the CSP Director;

(G) That if any of the parties listed in paragraph (D) or (E) of this subsection does not respond to the written notice or allegation within 15 days, the CSP Director will make a determination based on the responses received;

(H) That if the CSP Director determines that establishing paternity would not be in the best interests of the child, this decision:

(i) Means only that the administrator will not pursue action to establish paternity; and

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.

(5) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the CSP Director is responsible for determining whether action to establish paternity would be in the best interests of the child.

(a) If the CSP Director determines that action to establish paternity would not be in the best interests of the child, the administrator will take no further action to establish paternity for the self-alleged father;

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest, is sufficient reason for the CSP Director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:

(A) If the self-alleged father does not respond to the copy of the allegation or response the CSP Director receives as provided in section (4) of this rule, the CSP Director will make a determination by default based on the mother's or legal guardian's statement;

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the CSP Director must determine that establishing paternity would not be in the best interests of the child;

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the CSP Director will decide whether to pursue action to establish paternity. The CSP Director will consider factors including, but not limited to:

(i) Whether a police report was filed;

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;

(iii) Whether other persons have information that the child was conceived due to rape or incest;

(iv) Any other factors known or provided to the CSP Director that would support or refute the veracity of the rape or incest allegation;

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;

(vi) The CSP Director's decision in this matter is limited to only whether the administrator will pursue action to establish paternity, and is in no way to be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;

(c) When the CSP Director finds that legal proceedings for adoption of the child are pending, the CSP Director will consider the following factors in determining whether establishing paternity would be in the best interests of the child:

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;

(B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;

(C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the

child. This determination may consider the nature and extent of such support, and if such support would continue or increase in the future;

(D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceedings;

(E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.

(6) Absent judicial review, the decision of the CSP Director is final with regard to any responsibility of the administrator to pursue establishment of paternity.

(7) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(8) If the CSP Director determines (when a determination by the CSP Director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the CSP Director under this rule, the administrator will proceed on the case as follows:

(a) The administrator will make diligent efforts to provide the mother of the child, unless she is deceased, with actual notice of the action to establish paternity. Notice must be by personal service upon the mother. Diligent efforts include mailing of the notice or petition and summons by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;

(b) Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section may be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children;

(c) If the mother of the child or children cannot be served with notice of the action or if the mother is deceased, the enforcing agency will not take an order establishing paternity unless parentage tests have been completed which fail to exclude the self-alleged father, and have a cumulative paternity index of at least 99;

(d) In any action to establish paternity in which the administrator cannot serve the child's mother, or when the mother is deceased, the administrator will request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose;

(e) When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator will mail a copy of the final order to the mother by first class mail to the most recent addresses of record in the case record, the Department of Human Service's TANF files and Motor Vehicles Division files marked please forward, address correction requested. In addition to such mailing, the administrator will, for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.

(9) All other provisions of this rule notwithstanding, the administrator cannot require the child's mother (or other custodial adult) to cooperate with efforts to establish paternity, and the administrator will not assess a penalty for not cooperating, in any case where a finding that the child's mother (or other custodial adult) is exempt from cooperating due to good cause, pursuant to federal law at 42 U.S.C. 654(a)(29) and 42 U.S.C. 666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 23-1993, f. & cert. ef. 10-19-93; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 12-1996, f. & cert. ef. 4-1-96; AFS 9-1998, f. 5-29-98, cert. ef. 6-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0068; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3080; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08

ADMINISTRATIVE RULES

137-055-3100

Order Establishing Paternity for Failure to Comply with an Order for Parentage Testing

(1) In an action to establish paternity initiated pursuant to ORS 416.415, the administrator may serve simultaneously the Notice and Finding of Financial Responsibility and an administrative order for parentage tests.

(2) An administrative order for parentage tests may require either the mother of the child(ren) in question or a person who is a possible father of the child(ren) to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a party filing a responsive answer to the allegation of paternity.

(3) The administrator will enter an order establishing paternity based upon a party's failure to appear for parentage testing, provided that all parties have been served with a Notice and Finding of Financial Responsibility and with an order requiring parentage tests if:

(a) The mother of the subject child(ren) has named the male party who failed to appear for parentage tests in a sworn statement as a possible father of the child(ren) in question; or

(b) A male party has claimed in a sworn statement to be the father of the child(ren) in question and the mother and her child(ren) have failed to appear for such tests.

(4) An order establishing paternity based on a failure to submit to parentage tests may be entered:

(a) Whether or not a responsive answer has been filed; and

(b) Whether or not corroboration exists to support a sworn statement of a party naming a male party as a father or possible father of the child(ren) in question, provided that the male party has either:

(A) Been named in a sworn statement by the mother as a possible father of the child; or

(B) Has named himself in a sworn statement as the father of the child.

(5) The provisions of this rule do not apply to the additional parentage tests described in OAR 137-055-3020(13) through 137-055-3020(15), unless the party requesting the tests fails to comply with the order for parentage testing.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.252 & 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1030; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3100; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08

137-055-3140

Reopening of Paternity Cases

(1) When a party claims that a man established as the father of a child in fact is not the biological father of the child, the administrator will open or reopen the issue of paternity when all of the provisions of subsections (a) through (e) apply:

(a) The administrator initiated the action administratively which established paternity or paternity was established by a signed voluntary acknowledgment in Oregon;

(b) Parentage tests have not been conducted;

(c) The order was entered with the circuit court one year ago or less, or the voluntary acknowledgment as described in ORS 432.287 was filed with the Center for Health Statistics one year ago or less;

(d) The party applying has completed and returned to the administrator a request for reopening and, if required, application for services, prior to expiration of the one year period;

(e) The administrator has jurisdiction over the parties.

(2) If at any point during the process, the administrator obtains information and verifies that the criteria in subsections (1)(a), (b), (d), or (e) are no longer met, the administrator will make a determination and will send the affected parties written notification within 10 days of verifying the information.

(3) The party who requested parentage tests must reimburse the administrator for the costs incurred by the Child Support Program for such tests, unless the male party in question is excluded.

(4) An order establishing paternity will not be vacated, dismissed or set aside under this rule unless parentage tests exclude the male party in question as the father of the child, or a party fails to comply and the issue of paternity is resolved against that party. The administrator will not submit for the court's approval, any order granting relief which requires repayment to the debtor of money paid by that debtor under the order.

(5) If a reopening initiated by the administrator results in an order of nonpaternity, the administrator will satisfy any state debt owing on the case and file credit arrears owed to any other party.

(6) Any judgment of nonpaternity under this rule will be by circuit court order.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.443, Or Laws 2007, ch 454

Hist.: AFS 29-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1000; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3140; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08

Rule Caption: Administrative requirements for medical child support.

Adm. Order No.: DOJ 2-2008

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08

Notice Publication Date: 11-1-2007

Rules Amended: 137-055-4620

Subject: OAR 137-055-4620 is amended to delete the requirement that the administrator make a determination of appropriateness before issuing a National Medical Support Notice.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-055-4620

Enforcing Health Care Coverage and Cash Medical Support

(1) If services are being provided pursuant to ORS 25.080 and private health care coverage is ordered the administrator will issue a medical support notice to enforce orders for health care coverage within two business days of receiving information that an employer has hired or rehired a providing party, as defined in OAR 137-050-0320, or at any time when the administrator determines it is necessary; and

(a) An obligor or obligee is ordered to provide appropriate health care coverage for a child as defined in ORS 25.321, OAR 137-050-0320 and 137-050-0410;

(b) The providing party has failed to provide appropriate health care coverage, either personally or through a spouse's or domestic partner's coverage; and

(c) The employer offers or may offer a health benefit plan to its employees.

(2) Notwithstanding the provisions of section (1), if the party ordered to provide appropriate health care coverage is an active duty or retired member of the military, the administrator will not issue a medical support notice to the military.

(3) If the conditions in section (2) apply:

(a) The administrator will inform the obligee, if the obligee is not the providing party as defined in OAR 137-050-0320, of the process to initiate military health care coverage enrollment for the dependent child; and

(b) If the medical child support rights for the dependent child are currently assigned to the state, the administrator will require either party to make all reasonable efforts to enroll the child in military health care coverage.

(4) When a medical support notice has been served and the providing party is not enrolled in a health benefit plan or is not enrolled in a plan that offers dependent coverage that is "appropriate" pursuant to OAR 137-050-0410, and if more than one plan with "appropriate" dependent coverage is offered, the administrator will select a plan in accordance with OAR 137-055-4640.

(5) A party can contest the medical support notice as set out in ORS 25.333.

(6) When the administrator is notified by the employer that the amount to be withheld for premiums is greater than is permissible under ORS 25.331 the administrator will review the circumstances and, if appropriate, modify the order to provide for cash medical support pursuant to OAR 137-050-0430.

(7) When an employer notifies the administrator that the amount to be withheld for the health care coverage premium is greater than permissible under ORS 25.331:

(a) An obligee who is a recipient of TANF cash assistance may not elect to receive health care coverage over monetary child support. In these cases, the administrator will select monetary child support over health care coverage unless health care coverage would be in the best interests of the child.

(b)(A) Except as provided in section (7)(b)(B), an obligee, who is not a recipient of TANF cash assistance and who selects health care coverage over monetary child support, may change the selection:

(i) No more than once per year;

(ii) In conjunction with a medical support notice being issued to a new employer; or

(iii) When a child becomes seriously ill and health care coverage is needed.

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(B) An obligee who is not a recipient of TANF cash assistance may not select health care coverage over monetary child support if such a selection conflicts with the requirements of any bankruptcy plan.

(8) A request to select health care coverage over monetary child support may be made verbally or in writing.

(9) When multiple cases for an obligor are being enforced and the employer receives notice that one or more cases have selected health care coverage over monetary child support, the employer must withhold in the following manner:

(a) First withhold the full amount listed on withholdings issued on the cases that have not selected health care coverage over monetary child support;

(b) Withhold the premium for health care coverage, up to the maximum allowed by law;

(c) If the maximum is not reached, withhold support for the case(s) requesting health care coverage, up to the full amount of the withholding order or the maximum allowed by law, whichever is less;

(d) Identify which payment goes with which case and submit the monetary support payments to the Division of Child Support as directed in the withholding orders.

(10) A providing party may select a different health benefit plan during any applicable open enrollment period, providing the health benefit plan provides appropriate health care coverage, or other coverage if the order so requires.

(11) If the providing party changes to a health benefit plan that does not meet the criteria in section (10) of this rule, the administrator will issue a medical support notice as provided in section (1) of this rule and may pursue modification of the support order for an amount towards cash medical support pursuant to OAR 137-050-0430.

Stat. Auth.: ORS 25.321, 25.325, 180.345

Stats. Implemented: ORS 25.325

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 25-1995, f. 10-12-95, cert. ef. 10-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4620; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4620; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 7-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 1-2-08; DOJ 2-2008, f. & cert. ef. 1-2-08

Department of Public Safety Standards and Training

Chapter 259

Rule Caption: Adopt Contested Case Hearing Notice and Process and Allow Exemption for reading and writing test.

Adm. Order No.: DPSST 1-2008(Temp)

Filed with Sec. of State: 1-15-2008

Certified to be Effective: 1-15-08 thru 4-18-08

Notice Publication Date:

Rules Amended: 259-008-0010

Rules Suspended: 259-008-0010(T)

Subject: Makes Housekeeping change to rule citation in contested case hearing process if the Board denies a request for a waiver of any physical requirement set forth in OAR 259-008-0010 and makes housekeeping change to include adopted permanent rule relating to exemption for the 12th grade reading/writing test to allow a waiver provision for individuals possessing at least a four-year academic degree.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or within 90 days prior to the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer, instructor, telecommunicator, or EMD who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a law enforcement officer lacks good moral fitness, a rebuttable presumption will be raised that the law enforcement officer does not possess the requisite moral fitness to be a law enforcement officer. The burden shall be upon the law enforcement officer to prove good moral fitness.

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to

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DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language.

(A) The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading/writing test prior to attending a course identified in this section.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA), Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(f) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(g) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(h) If amplification device(s) is (are) necessary to meet the criteria in (f) or (g) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a

licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(i) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(j) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (j), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (j), it will be at the expense of the applicant or hiring authority.

(k) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(l) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(m) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(n) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(o) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for denial of waiver.

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(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(f) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(g) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 181.640, 181.644, 183.341
Stats. Implemented: ORS 181.640, 181.644, 183.341
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08

Rule Caption: Eliminates duplicative credit for training hours which have been converted to educational credit.

Adm. Order No.: DPSST 2-2008

Filed with Sec. of State: 1-15-2008

Certified to be Effective: 1-15-08

Notice Publication Date: 12-1-2007

Rules Amended: 259-008-0060

Subject: Amends language relating to safety officer certification to provide for the exclusive use of training or education credits; whichever is to the advantage of the applicant, when an applicant receives educational credit from a college for "prior learning experience" based on previous training received and the training is also included as training hours completed on an applicant's official training record.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0060

Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and shall be acquired by all police officers, telecommunicators, and emergency medical dispatchers within 18

months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers shall be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers shall meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(7) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative shall sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision shall be specified in writing and shall accompany the Application for Certification (Form F7).

(8) When a department head is the applicant, the above recommendation shall be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education credit

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall equal one and one half (1-1/2) education credits.

(c) All college credits shall be supported by certified true copies of official transcripts.

(10) Training Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records shall include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented may be accepted, subject to staff evaluation and approval. These records shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) With proper documentation, instructors may claim course completion for law enforcement classes instructed. Training points for repeat instruction of the same class within a 12-month period shall not be awarded.

(e) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or its designated staff may award training points for correspondence courses.

(f) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(g) College credit awarded based on training completed may be applied toward either training points or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the total number of training hours for which college credit was awarded.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included

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in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(s).

(C) Notwithstanding subsection (f) and (g) above, no credit can be applied toward both an education credit and training point when originating from the same training event.

(11) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, casual, seasonal, or temporary employment shall not qualify as experience toward certification. Experience as a certified part-time parole and probation officer, as defined under OAR 259-008-0005(22) and (23) and 259-008-0066, shall count on a pro-rated basis.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants shall have completed a period of service of not less than nine (9) months with one or more law enforcement units, or public or private safety agencies in a certifiable position, in the field in which certification is being requested.

(b) Applicants shall have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), as attested to by the applicant's department head during the time such duties were performed, for a period of one (1) year. The required experience shall have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer shall meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A person who is certified in one discipline may apply for multi-discipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant shall demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification, and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For the EMD certificate; a minimum of four (4) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(B) For the Telecommunicator certification, a minimum of twelve (12) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(C) For all other disciplines, a minimum of twenty (20) hours of training, specific to each discipline in which certification is held, must be reported annually on a Form F-15M.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

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(e) Failure to comply with subsection (c) of this rule shall result in the recall of the multi-discipline certification by the Board.

(f) Upon documentation of compliance with subsection (c) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08

Rule Caption: Amends rules relating to Denial or Revocation for Fire Certification(s).

Adm. Order No.: DPSST 3-2008

Filed with Sec. of State: 1-15-2008

Certified to be Effective: 1-15-08

Notice Publication Date: 12-1-2007

Rules Amended: 259-009-0070

Subject: Amends rules relating to mandatory and discretionary criminal disqualifiers based on convictions of crimes for fire service professionals and includes provision for reapplication process when a fire service professional or instructor has had a certification denied or revoked for discretionary disqualifying misconduct.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0070

Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

(2) For purposes of this rule, the following definitions will apply:

(a) "Denial" or "Deny" means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(6).

(c) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-009-0070(4).

(d) "Revocation" or "Revoke" means to withdraw the certification of a fire service professional for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in subsection (9) of this rule.

(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state would constitute a crime listed in ORS 137.700.

(B) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(b) For purposes of this rule, "discharged for cause", means an employer initiated termination of employment for any of the following reasons:

(A) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Disregard for the Rights of Others: Includes constitutional violations, respect for the rights of others, protecting the vulnerable and the fundamental duty to protect and serve;

(C) Gross Misconduct means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reason-

able fire service professional or instructor would observe in a similar circumstance;

(D) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor.

(E) Misuse of Authority: Includes abuse of public trust, obtaining a benefit or avoidance of detriment, and actions under the color of office.

(4) Discretionary Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional or instructor has been convicted of a crime listed in subsection (6) of this rule.

(b) The Department will not initiate revocation proceedings for a discretionary conviction against any certification that a fire service professional or instructor has been granted prior to the effective date of this rule.

(c) The Department may initiate denial or revocation proceedings for a discretionary conviction that occurred prior to the effective date of this rule for any fire service professional or instructor who applies for a fire service certification not held prior to the effective date of this rule.

(5) The Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(a) Category I: Honesty. Honesty includes fairness and straightforwardness of conduct; integrity. Adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(b) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(c) Category III: Justice. Justice includes just treatment, the quality or characteristic of being just, impartial, or fair; integrity and honesty.

(6) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification: [Table not included. See ED. NOTE.]

(7) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

(a) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct, the Fire Policy Committee and the Board will take into consideration any aggravating and mitigating circumstances as identified in section (9)(d) of this rule.

(b) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (11) of this rule.

(8) Scope of Revocation. Whenever the Department revokes the certification of any fire service professional or instructor, the revocation shall embrace all fire service certificates the Department has issued to that person.

(9) Revocation and Denial Procedure.

(a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that the person's certification be revoked or denied, it must submit in writing to the Department the reason for the requested revocation or denial and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional's or instructor's certification be revoked or denied.

(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may not meet the established standards for Oregon fire service professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information,

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the Department will request further information or conduct its own investigation of the matter.

(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct described in subsection (4), the case may be presented to the Board, through the Fire Policy Committee.

(D) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct, the Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's review.

(d) Policy Committee and Board Review: The Fire Policy Committee and the Board may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying misconduct, including the following:

(A) When the conduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, for how long;

(C) Whether restitution was involved, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor was on parole or probation, and if so, when the parole or probation ended;

(E) Whether the fire service professional or instructor has been convicted of the same conduct more than once, and if so, over what period of time;

(F) Whether the conduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the conduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on a fire service professional's or instructor's fitness to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the fire service professional or instructor.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification.

(i) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(j) Proposed Order. The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(l) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a fire service professional or instructor fails to file exceptions and arguments in a timely manner.

(m) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking a fire service professional's or instructor's certification any time a fire service professional or instructor wishes to voluntarily terminate an administrative proceeding to revoke a certification, or voluntarily relinquish a certification under the terms and conditions outlined in the stipulated order.

(10) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final order of the department.

(11) Reapplication Process.

(a) Any fire service professional or instructor who has had a certification denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may subsequently become eligible to reapply for certification under the provisions of subsection (11) of this rule.

(b) Any fire service professional or instructor who has had a certification denied or revoked pursuant to section (4) of this rule may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(B) A written request for an eligibility determination has been submitted to the Department;

(C) The Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service or instructor certification be restored and the Board has upheld the recommendation;

(D) The fire service professional or instructor is employed or utilized by a fire service agency; and

(E) All requirements for certification have been met.

(c) A request for an eligibility determination should include documentation or information that supports the fire service professional's or instructor's request for eligibility to apply for certification.

(d) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances.

(e) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may:

(A) Determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or

(B) Determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(i) If the initial period of ineligibility for the individual was for a period less than the maximum period identified in (7) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (7) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

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

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

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

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08

Department of Revenue Chapter 150

Rule Caption: Corporation income apportionment; unitary business; inheritance tax.

Adm. Order No.: REV 10-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 150-314.308, 150-314.425-(B), 150-317.092

Rules Amended: 150-305.270(4)-(A), 150-305.270(10), 150-314.280-(E), 150-314.280-(G), 150-314.280-(H), 150-314.280-(I), 150-314.280-(J), 150-314.280-(K), 150-314.280-(L), 150-314.615-(D), 150-314.615-(E), 150-315.354(5), 150-317.705(3)(a), 150-317.705(3)(b)

Rules Repealed: 150-118.005

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Subject: 150-314.308 is adopted to describe the reporting requirements for taxpayers participating in listed transactions as defined by 2007 SB 39.

150-317.092 is adopted to define “Oregon sales” of corporations that do not apportion business income under ORS 314.650 to 314.665 for purposes of the 67 percent corporation tax credit provided in 2007 HB 2031.

150-314.425-(B) is adopted to provide that, in an audit, taxpayers must provide copies of books or records or make the documents available for copying by department staff. Department requests must be reasonable and relevant to the audit. If the requirement to provide copies creates a hardship for taxpayers, alternative solutions will be found.

150-305.270(4)-(A) and 150-305.270(10) are amended to remove references to the Small Claims Division of the Oregon Tax Court, which was eliminated with legislation adopted in 2005.

150-314.280-(E), 150-314.280-(G), 150-314.280-(H), 150-314.280-(I), 150-314.280-(J), 150-314.280-(K) and 150-314.280-(L) are updated to reflect the requirement to use single sales factor apportionment formula for tax years starting on or after July 1, 2005. A definition of “sales” for purposes of the sales factor is added to 150-314.280-(E). References to “revenue factor,” “revenues” or “receipts” in the rules are replaced with “sales factor” or “sales” to be consistent with policy established in OAR 150-317.710(5)(b) that all taxpayers, other than insurance companies, use the same apportionment factors.

150-314.615-(D), 150-314.615-(E), 150-317.705(3)(a) and 150-317.705(3)(b) are amended to reflect changes made by 2007 SB 178. The bill replaced the term ‘single trade or business’ with ‘unitary business’ and revised the language related to the criteria used to determine the existence of a unitary business or group of corporations.

150-315.354(5) is amended to reflect renumbering of ORS 315.354 and to clarify wording.

150-118.005 is obsolete and is repealed.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-305.270(4)-(A)

Written Objections to a Proposed Refund Adjustment

(1) Written Objection Procedures.

(a) If a taxpayer disagrees with a notice of proposed refund adjustment, and does not want a conference, the taxpayer may file written objections with the department.

(b) The taxpayer must write to the department within 30 days from the date on the notice of proposed refund adjustment and explain the reasons for any objections in the letter.

(c) When the department receives the written objections, a department representative will review the objections to try to resolve the disagreement. The department representative will then reach a decision regarding the written objections and either:

- (A) Send the refund originally requested;
- (B) Send an adjusted refund;
- (C) Issue a notice of refund denial; or
- (D) Issue a notice of deficiency.

(d) The department must send the taxpayer a letter explaining the decision. The letter must also explain the taxpayer’s appeal rights. If the taxpayer receives a notice of refund denial or notice of an adjusted refund, the taxpayer may appeal the department’s decision as described below. If the taxpayer receives a notice of deficiency, the taxpayer must follow the remedies as set forth in ORS 305.265 and the corresponding rules.

(2) Appeal to the Magistrate Division of the Oregon Tax Court. An appeal to the Magistrate Division must be in writing and filed with the Oregon Tax Court within 90 days of the date of the notice of refund denial or notice of an adjusted refund.

(3) Direct Appeals. If the taxpayer disagrees with a notice of proposed refund adjustment and submits a written request for a direct appeal to the Magistrate Division in lieu of a conference or written objection, OAR 150-305.270(10) applies.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.270

Hist.: RD 4-1985(Temp), f. & cert. ef. 9-20-85; RD 8-1985, f. 12-26-85, cert. ef. 12-31-85, Renumbered from 150-305.270(4); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-

31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2000, f. & cert. ef. 8-3-00; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-305.270(10)

Proposed Refund Adjustment

(1) A taxpayer may waive a conference or written objection and appeal a notice of proposed refund adjustment as provided in this rule.

(2) In general. Any request for a direct appeal from a notice of proposed refund adjustment must meet general requirements. The request must:

- (a) Be in writing;
- (b) Be filed with the department within 30 days of the date on the notice of proposed refund adjustment;
- (c) Contain language that requests a waiver of a conference or written objection; and
- (d) Contain language that requests the department to issue a refund denial.

(3) Direct Appeal to the Magistrate of the Oregon Tax Court. For the purpose of direct appeal under this rule, the taxpayer must first file a request as described in section (2) before an appeal can be taken to the Magistrate Division. If the requirements of this section are met, the department will send the taxpayer a notice of refund denial, which constitutes the department’s final administrative appeal action. The taxpayer then has 90 days from the date on the notice of refund denial to appeal to the Magistrate Division.

(4) A written appeal from a notice of proposed refund adjustment that does not satisfy the requirements of this rule is considered a request for a conference or a written objection, whichever is applicable, and the corresponding administrative remedies under ORS 305.270 apply.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.270

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2000, f. & cert. ef. 8-3-00; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(E)

Apportionment Factors Generally

(1) Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved or the formula provided in ORS 314.280(3)(b) for qualifying utilities. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(2) For purposes of the sales factor as used in OAR 150-314.280-(G) through (L), “sales” means all gross receipts and revenues included in the taxpayer’s apportionable income.

(3) For financial organizations, the three factors are modified as provided in OAR 150-314.280-(N).

(4) Title insurance companies and health care service contractors are not classed as “domestic insurers” under ORS 317.010(11) and so may not apportion their income under ORS 317.660. These companies must apportion their income under the provisions of ORS 314.610 to 314.665, except that “sales” includes “gross premium receipts.”

(5) For public utilities (other than carriers of freight or passengers), companies engaged in sea transportation services, and companies engaged in interstate river transportation, the three factors are property, payroll and sales.

(6) For companies engaged in sea transportation services and companies engaged in interstate river transportation, the three factors are modified property, payroll and sales factors.

(7) For carriers of freight or passengers, the three factors are modified property, payroll and sales. Modified factors for such carriers, sea transportation companies, and interstate river transportation companies are contained in OAR 150-314.280-(G) through 150-314.280-(L).

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

Hist.: 1-65; 11-69; 11-71; 1-1-77; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(G)

Modified Factors for Carriers of Freight or Passengers: General Rule

(1) Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(2) A substantial portion of the net income of taxpayers engaged in the transportation of freight or passengers within and without Oregon results from the movement of revenue-producing equipment, drivers and other personnel. It is therefore necessary in calculating the apportionment factor of such carriers to reflect the results of the movement of such equipment and personnel by using revenue miles traveled both within and without the

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state. Thus, the apportionment formula of such transportation companies is to be computed as follows in tax years beginning before July 1, 2005:

(a) **Tangible Property.** Fixed properties, such as buildings and land used in the business, shop equipment, cars and trucks used in gathering or delivering local freight, are assigned to the state in which such properties are located. The value of trucks or other equipment used in over-the-road hauling or other transportation is assigned to this state on a revenue miles basis. For example, if ten percent of a taxpayer's revenue miles are in Oregon, then ten percent of the value of the revenue-producing equipment is included as part of the Oregon property factor.

(b) **Payroll.** The wages and salaries of employees assigned to fixed locations within this state are included in the Oregon payroll factor. The wages of personnel of over-the-road or other transportation equipment are assigned to this state upon the basis of revenue miles. The wages of such personnel are apportioned to Oregon in the proportion that revenue miles traveled within this state bear to total revenue miles traveled everywhere.

(c) **Sales.** Sales are assigned to this state in the proportion that the revenue miles traveled within the state bear to the total revenue miles traveled everywhere.

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

Hist.: 1-65; 12-70; 12-19-75; 12-31-82; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1992, f. 12-30-92, cert. ef. 12-31-92; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(H)

Modified Factors for Carriers of Freight or Passengers: Special Rules — Railroads

(1) **In General.** Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under ORS 314.610 and OAR 150-314.610(1)-(A) and (B). Nonbusiness income is directly allocable to specific states under ORS 314.625 to 314.645. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) **Business and Nonbusiness Income.** For definitions, rules and examples for determining business and nonbusiness income, see OAR 150-314.610(1)-(A) and (B).

(3) **Apportionment of Business Income.** Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(a) **In General.** The property factor must be determined in accordance with ORS 314.655, the payroll factor in accordance with ORS 314.660, and the sales factor in accordance with ORS 314.665, except as modified in this rule.

(b) **The Property Factor.**

(A) **Property Valuation.** Owned property is valued at its original cost and property rented from others is be valued at eight (8) times the net annual rental rate in accordance with ORS 314.655 and OAR 150-314.655(2)-(B). Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(B) **General Definitions.** The following definitions are applicable to the numerator and denominator of the property factor:

(i) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (OAR 150-314.655(2)-(A))

(ii) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(iii) The "value" of owned real and tangible personal property means its original cost. (ORS 314.655 and OAR 150-314.655(2)-(A))

(iv) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the tax period, but the

Department may require the averaging of monthly values during the tax period or such averaging as necessary to reflect properly the average value of the railroad's property. (ORS 314.655 and OAR 150-314.655(3))

(v) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (ORS 314.655 and OAR 150-314.655(2)-(B))

(vi) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

(vii) "Property used during the tax period" includes property which is available for use in the taxpayer's trade or business during the tax period.

(viii) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

(ix) A "car-mile" is a movement of a loaded or unloaded unit of car equipment a distance of one mile.

(C) **The Denominator and Numerator of the Property Factor.** The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the tax period. The numerator of the property factor is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the tax period is included in the numerator of the property factor in accordance with ORS 314.655 and OAR 150-314.655(1)-(D). Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the tax period is included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

(c) **The Payroll Factor.** The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the tax period for the production of business income. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. With respect to all personnel except the engine crew and train crew performing services on interstate trains, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). With respect to the engine crew and train crew performing services on interstate trains, compensation paid to such employees is included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state is deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

(d) **The Sales Factor.**

(A) **In General.** All sales derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income are included in the denominator of the sales factor. (ORS 314.665 and OAR 150-314.665(1)-(A)) Per diem and mileage charges that are collected by the taxpayer are excluded from both the numerator and denominator of the sales factor. The numerator of the sales factor is the total sales of the taxpayer in this state during the tax period. The total sales of the taxpayer in this state during the tax period, other than sales from hauling freight, passengers, mail and express, are attributable to this state in accordance with ORS 314.665 and OAR 150-314.665(2)-(A).

(B) **Numerator of Sales Factor From Freight, Mail and Express.** The total sales of the taxpayer in this state during the tax period for the numerator of the sales factor from hauling freight, mail and express are attributable to this state as follows:

(i) All sales from shipments which both originate and terminate within this state; and

(ii) That portion of the sales from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.

(C) **Numerator of Sales Factor From Passengers.** The numerator of the sales factor includes:

(i) All sales from the transportation of passengers (including mail and express handled in passenger services) which both originate and terminate within this state; and

(ii) That portion of the sales from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

Stat. Auth.: ORS 305.100, 305.280

Stats. Implemented: ORS 305.280

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Hist.: 1-65; 12-70; 12-19-75; 12-31-82; 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(I)

Modified Factors for Carriers of Freight or Passengers: Special Rules — Airlines

(1) In General. Where an airline has income from sources both within and without this state, the amount of business income from sources within this state is determined pursuant to ORS 314.610 to 314.665 except as modified by this rule.

(2) Apportionment of Business Income. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor. (a) General Definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

(A) "Value" of owned real and tangible personal property means its original cost. (ORS 314.655 and OAR 150-314.655(2)-(A))

(B) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(C) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it is assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.

(D) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income year, but the department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (ORS 314.655 and OAR 150-314.655(3))

(E) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (ORS 314.655 and OAR 150-314.655(2)-(B))

(F) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(G) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(H) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(I) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(J) "Transportation sales" means sales from transporting passengers, freight and mail as well as liquor sales, pet crate rentals, etc.

(K) "Departures" means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(b) Property Factor:

(A) Property valuation. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with ORS 314.655 and OAR 150-314.655(2)-(B). The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier does not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft are accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, are valued at cost.

(B) The denominator and numerator of the property factor. The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor is the average value of the tangible personal property owned or rented and used in this state during the income year. In determining the numerator of the property factor, all property except aircraft ready for flight are included in the numerator of the property factor in accordance with ORS 314.655 and OAR 150-314.655(1)-(D). Aircraft ready for flight are included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(c) Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees is included in the ratio that departures of aircraft from locations

in this state, weighted as to the cost and value of aircraft by type, compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(d) Sales (Transportation Sales) Factor. The transportation sales derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the sales factor. (ORS 314.665 and OAR 150-314.665(1)-(A)) Passive income items such as interest, rental income, dividends, etc., are not included in either the numerator or the denominator nor are the proceeds or net gains or losses from the sale of aircraft included. The numerator of the sales factor is the total sales of the taxpayer in this state during the income year. The total sales of the taxpayer in this state during the income year is the result of the following calculation: The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departure similarly weighted, multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight sales directly attributable to this state.

(3) Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these rules. Such records are to be subject to review by the state of Oregon or their agents.

Example 1: [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100, 305.280

Stats. Implemented: ORS 314.280

Hist.: RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; Eff. 1/65, Amended 12/70, 12/19/75, 12/31/82, 12/31/83, Amended to renumber and to transfer material from OAR 150-314.280-(G) to OAR 150-314.280-(I), 12/31/87; Amended 12/31/97; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(J)

Modified Factors for Carriers of Freight or Passengers: Special Rules — Trucking Companies

(1) In General. As used in this rule, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. In such cases, the first step is to determine what portion of the trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under ORS 314.610 and the corresponding rules. Nonbusiness income is directly allocable to specific states pursuant to the provisions of ORS 314.625 through ORS 314.645. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales factors set forth in this rule. The sum of (a) the items of nonbusiness income directly allocated to this state plus (b) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

(2) Business and Nonbusiness Income. For definitions, rules, and examples for determining business and nonbusiness income, see OAR 150-314.610(1)-(A) through 150-314.610(1)-(C).

(3) Apportionment of Business Income. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(a) In General. The property factor is determined in accordance with ORS 314.655, the payroll factor in accordance with ORS 314.660, and the sales factor in accordance with ORS 314.665, except as modified in this rule.

(b) The Property Factor.

(A) Property Valuation. Owned property is valued at its original cost in accordance with ORS 314.655(2) and OAR 150-314.655(2)-(A). Property rented from others is valued at eight times the net annual rental rate in accordance with ORS 314.655(2) and OAR 150-314.655(2)-(B).

(B) General Definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

(i) "Average value" of property means the amount determined by averaging the values at the beginning and end of the tax period, but the department may require the averaging of monthly values during the tax period or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See OAR 150-314.655(3).)

(ii) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, other than support vehicles used predominantly in a local capacity.

(iii) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(iv) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments,

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except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property cannot be ascertained under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (OAR 150-314.655(2)-(A).)

(v) "Property used during the tax period" includes property which is available for use in the taxpayer's trade or business during the tax period.

(C) The Denominator and Numerator of the Property Factor. The denominator of the property factor is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. The numerator of the property factor is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. In the determination of the numerator of the property factor, all property, except mobile property as defined in this rule, is included in the numerator of the property factor in accordance with ORS 314.655 and the corresponding rules. Mobile property as defined in this rule, which is located within and without this state during the tax period is included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

(c) The Payroll Factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the tax period for the production of business income. (See ORS 314.660 and the corresponding rules.) The numerator of the payroll factor is the total compensation paid in this state during the tax period by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and the corresponding rules. With respect to personnel performing services within and without this state, compensation paid to such employees is included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

(d) The Sales Factor.

(A) In General. All sales derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income are included in the denominator of the sales factor. (See ORS 314.665(1) and OAR 150-314.665(1)-(A).) The numerator of the sales factor is the total sales of the taxpayer in this state during the tax period. The total state sales of the taxpayer, other than sales from hauling freight, mail, and express, are attributable to this state in accordance with ORS 314.665 and the corresponding rules.

(B) Numerator of the Sales Factor from Freight, Mail, and Express. The total sales of the taxpayer attributable to this state during the tax period from hauling freight, mail, and express is:

(i) Intrastate: All sales from any shipment which both originates and terminates within this state; and,

(ii) Interstate: That portion of the sales from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

(4) Records. The taxpayer must maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this rule. Such records are subject to review by the department or its agents.

(5) De Minimis Nexus Standards. Notwithstanding any provision contained herein, this rule does not apply to require the apportionment of income to this state if the trucking company during the course of the tax period neither:

(a) Owns nor rents any real or personal property in this state, except mobile property; nor

(b) Makes any pick-ups or deliveries within this state; nor

(c) Travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the tax period does not exceed 3 percent of the total mobile property miles traveled in all states by the trucking company during that tax period; nor

(d) Makes more than twelve trips into this state.

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(K)

Modified Factors for Companies Engaged in Sea Transportation Service

(1) Sea transportation services within this rule include the activities of steamship companies substantially engaged in interstate or international

commerce which derive income within and partly from sources without the state. They do not include the activities of water transportation carriers operating mainly on the Columbia and Willamette Rivers or water transportation carriers operating primarily within Oregon waters.

(2) The Oregon income of a taxpayer carrying on the business of sea transportation services must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(a) Property factor. The property factor is a fraction, the denominator of which includes the value of all real and tangible personal property, including ships, owned, rented or leased by the taxpayer and used in the business. The numerator of this factor includes all real and personal property owned, rented or leased by the taxpayer and used in the business, except ships, to the extent such assets are located in the state, and so much of the value of ships used in the business as is determined by applying the ratio that the voyage time which the ship was within this state during the tax period bears to the total voyage time of the ship during the tax period.

(A) The value of ships used in the business but not owned by the user, such as bareboat chartered vessels, is the same as their value for insurance purposes. There are generally three types of charters.

(i) "Bareboat" charters. The owner-charterer places the tanker at the complete use and control of the user. All operating costs are borne by the user, and the charter fee is purely for the use of the vessel. Bareboat charters are included in the property factor.

(ii) "Time and Demise" (long-term) charters. The owner-charterer provides, in addition to the vessel, all operational costs at the instruction of the user. Time and demise charter fees include a component for operating costs borne by the owner-charterer, such as insurance, port and docking fees, crew and master wages, fuel and repairs. Time and demise charters are considered the purchase of transportation and are not included in the property factor.

(iii) "Single Voyage" charters. These are actually purchased transportation services that take the form of a charter. The owner-charterer has complete use and control of the vessel and merely contracts to deliver product between one or more ports of loading and discharge. Single voyages may be arranged on a consecutive voyage basis. Single voyage charters are not included in the property factor.

(B) Other rented or leased property is valued in the manner set out in ORS 314.655 and OAR 150-314.655(2)-(B).

(C) The term "voyage time" means the time that a ship is in operation for the purpose of transporting cargo, freight, mail, passengers, etc. The time that a ship is in operation includes all sailing time, even though a ship is returning empty or is en route to a port of call to load passengers or cargo, all time in port while loading and unloading, all time awaiting cargo, and all time that the ship is laid up for ordinary repairs, refueling, or provisioning. A ship is not in operation when out of service or during the time that it is laid up for extensive repairs, overhaul, modification or is in dry dock.

(D) The voyage time spent traveling on the Columbia River below mile post 309 is divided equally between Oregon and Washington. For purposes of this rule a vessel is not considered traveling on the Columbia River while remaining at a port even though the vessel moves from one terminal or dock to another within that port.

Example: [Example not included. See ED. NOTE.]

(b) Payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the tax period for the production of business income. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. With respect to all personnel except ocean going personnel, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). The numerator contains so much of the compensation of ocean-going personnel as is determined by applying a fraction, the numerator being the voyage time the ship spent within this state during the tax period and the denominator being the total voyage time of the ship during the tax period.

(c) Sales factor. The sales factor is a fraction, the denominator of which includes all sales derived from carrying cargo, i.e., passengers, freight, mail, etc., and the sales incidental thereto. In calculating the numerator of the factor, such sales are assigned to this state in the proportion that the voyage time the ship spent within this state during the tax period bears to the total voyage time of the ship during the tax period. Sales from activities incidental to the transportation service, such as income from restaurants, locker rentals, etc., are assigned to the state or country in which the activity is carried on.

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

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

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Hist.: 1-65; 12-70; 12-31-84, Renumbered from 150-314.280(H); 12-31-87; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(L)

Modified Factors for Companies Involved in Interstate River Transportation Service

A taxpayer involved in interstate river transportation shall calculate its Oregon income under the provisions of ORS 314.610 to 314.665 except as modified by this rule. Business income is apportioned to this state by the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(2) Sales factor. The denominator of this factor include all sales. The numerator of this factor includes all sales not derived from interstate river transportation, assigned to this state in accordance with ORS 314.665. The numerator also includes all sales derived from vessels engaged in river transportation between Oregon and other states as is determined by applying the Oregon Interstate Mobile Allocation Formula (IMAF).

(3) Payroll factor. The payroll factor is a fraction. The denominator is the amount of all compensation paid to officers and employees, including personnel engaged in river transportation. The numerator of this factor includes all compensation paid to officers and employees not engaged in interstate river transportation, assigned to this state in accordance with ORS 314.660. The numerator also includes so much of the compensation to personnel engaged in river transportation between Oregon and other states as is determined by applying the Oregon IMAF.

(4) Property factor. The property factor is a fraction. The denominator includes the value of all real and tangible personal property, including vessels, owned, rented or leased by the taxpayer and used in the business. The numerator of this factor includes all real and personal property owned, rented or leased by the taxpayer and used in the business to the extent such assets are located in the state. The numerator also includes so much of the value of vessels engaged in river transportation between Oregon and other states and used in the business as is determined by applying the Oregon IMAF. The value of vessels used in the business but not owned by the user is the same as their value for insurance purposes. Property rented by the taxpayer is valued at eight times its net annual rental rate as set out in ORS 314.655 and OAR 150-314.655(2)-(B).

(5) For purposes of this rule, the Oregon IMAF is the average of two factors. The two factors are the originating and terminating tons factor and the ton-miles factor. For purposes of computing both factors, only mileage and tonnage from those vessels that operate on some portion of a river that constitutes the border between Oregon and other states is included in the computation. For example: The ton-miles generated by vessels operating on the Mississippi River or exclusively on the Willamette River would not be included in the computation.

(a) The originating and terminating tons factor is a fraction. The denominator is the total number of tons handled by the vessels engaged in river transportation between Oregon and other states. The numerator is the number of tons assigned to Oregon. The tons attributed to a voyage from one Oregon port to another Oregon port are credited wholly to Oregon. The tons attributed to a voyage between ports in different states are credited equally to the two states. For this purpose each trip between two ports of call is treated as a separate voyage even though the cargo may be scheduled for later movement to one or more ports.

(b) The ton-miles factor is a fraction. The denominator is the total number of ton-miles generated by the vessels engaged in river transportation between Oregon and other states. The numerator of the fraction consists of those ton-miles assignable to Oregon. Ton-miles generated on the Willamette are credited wholly to Oregon. Ton-miles generated on that part of the Columbia above mile 309 are credited wholly to Washington. One-half of those ton-miles generated on the portion of a river that forms the boundary between Oregon and another state are credited to Oregon. Ton-miles are figured by multiplying tons carried for each movement by miles traveled.

Example: [Example not included. See ED. NOTE.]
[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 314.280
Stats. Implemented: ORS 314.280
Hist.: 10-5-84, 12-31-84, Renumbered from 150-314.280-(J); 12-31-87; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.308

Listed Transaction Reporting Requirement

(1) For tax years beginning on or after January 1, 2007, taxpayers who engage in or receive a tax benefit from participation in reportable transactions as defined under section 2, chapter 568, Oregon Laws 2007 are required to report their participation on the Oregon tax return for the tax year in which the participation took place.

(2) In addition to any other applicable penalties, a taxpayer is subject to penalties as provided in section 9, chapter 568, Oregon Laws 2007 if the taxpayer fails to report the transaction as required on the Oregon return.

Stat. Auth.: ORS 305.100, 314.308
Stats. Implemented: ORS 314.308
Hist.: REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.425-(B)

Requirement to Provide Copies of Documents

(1) Definitions for purposes of this rule.

(a) "Photocopy" (photocopied) means a copy or reproduction of an original document including books and papers; to make a photographic reproduction of any document, printed, pictorial, or other medium of information or recordkeeping.

(b) "Books and papers" has the same meaning as given in OAR 150-305.190.

(2) Books and papers must be provided either as a photocopy, an electronic reproduction, or be made available for photocopying, scanning or other electronic reproduction at a specified time and place for the purposes of administering and verifying compliance with the tax laws. Photocopying is a benefit to both the department and the taxpayer as the photocopy provides objective evidence supporting a tax position and allows for expediting the audit.

(3) When books and papers are requested they will be relevant and reasonable documentation for the issues under examination. The request for information is relevant if it is germane to or applicable to an audit issue.

(4) All books and papers that are acquired during an audit or examination are confidential in accordance with ORS 314.835.

(5) If this requirement creates a hardship for a taxpayer, the auditor or agent will work with the taxpayer to come to a reasonable solution for both parties.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.425
Hist.: REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.615-(D)

Apportionment and Allocation for a Taxpayer Carrying on a Unitary Business

Where the taxpayer's Oregon business activities are a part of a unitary business carried on both within and without the state, use of the apportionment method is mandatory to determine the portion of the unitary business income attributable to Oregon. If the business activities within Oregon are integrated with, dependent upon or contribute to the business activities outside the state, the entire operation is unitary in character, and the income from Oregon business activities is determined by the apportionment method. Whether the Oregon activities engaged in for financial profit actually result in a financial profit or loss is not determinative. A unitary business may be carried on by a single corporation or by a group of affiliated corporations.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.615
Hist.: 1-65; 12-70; 8-73; 12-31-77; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.615-(E)

Two or More Businesses of a Single Taxpayer

A taxpayer may have more than one "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula that takes into consideration the factors, both in and out of state that relate to the trade or business, the income of which is being apportioned.

Example: The taxpayer is a conglomerate with three operating divisions. One division is engaged in manufacturing aerospace items for the federal government. Another division is engaged in growing tobacco products. The third division produces and distributes motion pictures for theaters and television. There is no strong central management as each division operates independently of one another. Each division operates in this state as well as in other jurisdictions. In this case, it could be concluded that the taxpayer is engaged in three separate "trades or businesses." Accordingly, the amount of business income attributable to the taxpayer's trade or business activities in this state is determined by applying an apportionment formula to the business income of each business.

The determination of whether the activities of the taxpayer constitute a unitary business will turn on the facts of each case. In general, the activities of the taxpayer will be considered unitary if there is evidence to indicate that the divisions under consideration are integrated with, dependent upon, or contribute to each other and to the operations of the taxpayer as a whole. (See OAR 150-314.615-(D).) The following factors are considered to be good indicia of a unitary business; and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a unitary business:

(1) Same type of business. A taxpayer is generally engaged in a unitary business when all of its activities are in the same general line. For

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example, a taxpayer operating a chain of retail grocery stores will most always be engaged in a unitary business.

(2) Steps in a vertical process. A taxpayer is almost always engaged in a unitary business when its various divisions are engaged in different steps in a large vertically structured enterprise. For example, a taxpayer that explores for and mines copper ores; concentrates, smelts and refines the copper ores; and fabricates the refined copper into consumer products, is engaged in a unitary business regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the taxpayer's executive offices.

(3) Strong centralized management. A taxpayer which might otherwise be considered as engaged in more than one trade or business is properly considered a unitary business when there is a strong central management coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Thus, some conglomerates may properly be considered a unitary business when the central executive officers are involved in the operations of the various divisions and there are centralized offices which perform for the divisions the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.615

Hist.: 12-70; 8-73; 12-19-75; Material formerly contained in rule transferred to OAR 150-314.363-(A), (B), and (C). Former rule OAR 150-314.615-(F) renumbered (E); REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-315.354(5)

Business Energy Tax Credit: Transfer of Facilities

(1)(a) When a facility is sold, the seller may claim a credit for the year of sale prorated to the portion of the tax year that the seller owned and operated the facility. The buyer also may claim a credit for the year of purchase prorated to the period of ownership and operation of the facility if the buyer applies for and receives a new certificate as required by ORS 315.354(5)(a) and 469.215. If the seller's tax year is not the same as the purchaser's, each taxpayer's credit is based upon the portion of each taxpayer's own tax year in which that taxpayer owned the facility.

Example: Taxpayer A, a calendar year taxpayer, sold a certified facility to Taxpayer B on July 1. Taxpayer B is a fiscal year taxpayer with a tax year ending March 31. Taxpayer A's credit would be limited to 50 percent of a full year's credit (facility owned January 1 through June 30). Assuming Taxpayer B applied for and received a new certificate, Taxpayer B would be entitled to 75 percent of a full year's credit (facility owned July 1 through March 31).

(b) ORS 315.354(5)(a) provides that the tax credit available to the new owner is limited to the amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all previous leases. Therefore, it is necessary for the seller to disclose to the buyer the amount of allowable credit not yet claimed based on the original certificate holder's investment in the facility.

(2) When the credit is available to co-owners of a facility and one owner purchases the interest of another, the credit must be prorated between purchaser and seller. The method of prorating partnership income when a partnership interest is sold that is provided in Internal Revenue Code Section 706(d) must be used to prorate the credit.

(3) When a facility is sold, any credit carryforward from tax periods prior to the sale cannot be sold or otherwise transferred to the buyer. Such credit carry forwards may only be used by the seller.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.354

Hist.: 9-20-89, 12-31-89, 12-31-92, Renumbered from 150-317.104(5); 12-31-93; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-317.092

Definition of "Oregon Sales" for One-time Small Sales Credit

(1) For tax years beginning on or after January 1, 2007, and before January 1, 2008 (tax year 2007), a C corporation with Oregon sales of less than \$5 million is allowed a credit against Corporation Excise Tax or Corporation income tax equal to 67 percent of such tax.

(2) For a taxpayer that apportions business income for tax year 2007 using a method different from that prescribed by ORS 314.650 to 314.665, "Oregon sales" means the numerator of:

(a) The insurance sales factor provided in ORS 317.660(1) for insurers as defined in ORS 317.010(11);

(b) The sales factor, including gross premium receipts, as provided in OAR 150-314.280-(E)(2) for title insurers and health care service contractors not classed as insurers under ORS 317.010(11);

(c) The sales factor as provided in OAR 150-314.280-(G) for carriers of freight or passengers in general;

(d) The sales factor as provided OAR 150-314.280-(H) for railroads;

(e) The sales factor as provided in OAR 150-314.280-(I) for airlines;

(f) The sales factor as provided in OAR 150-314.280-(J) for trucking companies;

(g) The sales factor as provided in OAR 150-314.280-(K) for companies engaged in sea transportation service;

(h) The sales factor as provided in OAR 150-314.280-(L) for companies involved in interstate river transportation service;

(i) The sales factor as provided in OAR 150-314.280-(E)(3), OAR 150-314.280-(F), and ORS 314.650 for public utilities other than those provided for in subsections (c) through (h);

(j) The sales factor as provided in OAR 150-314.280-(N) for financial organizations, as defined in ORS 314.610(4);

(k) The sales factor as provided in OAR 150-314.615-(F) for taxpayers with income from long-term construction contracts;

(l) The sales factor as provided in OAR 150-314.615-(H) for motion picture and television film producers;

(m) The sales factor as provided in OAR 150-314.670-(A) for publishers; and

(n) The sales factor as provided in ORS 314.684 for interstate broadcasters.

Stat. Auth.: ORS 305.100, 317.092

Stats. Implemented: ORS 317.092

Hist.: REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-317.705(3)(a)

Unitary Business

The presence of all of the factors described in ORS 317.705(3) will demonstrate that a unitary business exists, but the presence of one or two such factors may also demonstrate the flow of value requisite for a unitary business determination.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.705

Hist.: 10-7-85, 12-31-85, Renumbered from 150-317.705 to 150-317.705 (3)(a); RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-317.705(3)(b)

Direct or Indirect Relationships

In determining whether a unitary business exists, all direct and indirect relationships must be considered. This is true even when the relationships extend to corporations not includable in the consolidated return. However, relationships that extend to corporations not doing business in the United States or not subject to federal income taxation may only be considered when there is an attempt to evade or avoid taxation.

Example 1: Corporation M is a U.S. company engaged in the marketing of oil and oil products. It has two wholly-owned domestic subsidiaries, Corporations E and R. Corporation E is a drilling company involved in exploration for oil. Corporation R buys the crude oil from E, refines it, and sells the refined oil to M. Although the operations of Corporations E and M are not directly related, they are part of a unitary business by virtue of their indirect relationship through R.

Example 2: Assume the same facts as in Example 1, except that the refining company, R, is jointly owned by Corporation M and another oil company (50 percent each). Although Corporation R is no longer includable in the consolidated return (due to less than 80 percent ownership), Corporations E and M are still considered part of a unitary business.

Example 3: Assume the same facts as in Example 1, except that the refining company, R, is a foreign subsidiary of Corporation M doing business only in Mexico. In determining whether Corporations E and M are part of a unitary business, the relationships and transactions with Corporation R are not considered unless they were made in an attempt to evade or avoid taxation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.705

Hist.: 10-7-85, 12-31-85, Renumbered from 150-317.705; 12-31-86; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

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Rule Caption: Interest, penalty waivers; apportioning refunds; tax credits; nonresident tax exemptions; real estate transaction withholding.

Adm. Order No.: REV 11-2007

Filed with Sec. of State: 12-28-2007

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Notice Publication Date: 11-1-2007

Rules Adopted: 150-314.258, 150-315.521, 150-316.127(10)

Rules Amended: 150-18.385-(A), 150-305.145(3), 150-305.220(2), 150-305.992, 150-314.415.(7), 150-315.262, 150-316.127-(E)

Subject: 150-315.521 is adopted to explain the calculation of the tax credit allowed under ORS 315.521 for donations made to a university venture development fund. The rule clarifies the amount of federal deduction that must be added to taxable income when the deduction serves as the basis for the tax credit.

150-316.127(10) is adopted to illustrate when nonresidents working on the waterways of two states qualify for income exemption

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under the provisions of ORS 316.127 and to clarify that they are not exempt under the existing rules of the Amtrak Act (P.L. 101-322).

150-314.258 is adopted to explain the calculation of withholding on certain real property conveyances entered into by nonresidents or C corporations not doing business in Oregon. The rule provides definitions and examples. (This rule was listed in the Notice of Public Rulemaking as 150-chapter 864, Oregon Laws 2007).

150-18.385-(A) is amended to reflect statutory changes made by Chapter 496, Oregon Laws 2007 relating to exemptions from garnishment.

150-305.145(3) is amended to clarify interest waiver provisions and to explain that the waiver for electronically filed returns applies only one time.

150-305.220(2) is amended to clarify the interest starting date in the examples.

150-305.992 is amended to add an example that further illustrates when a return has previously been assessed a lower penalty, the penalty will not be increased to the 100 percent penalty.

150-314.415(7) is amended to clarify how refunds are apportioned for nonresident spouses.

150-315.262 is amended to reflect changes made by 2007 legislation (HB 2752), which allows taxpayers with a disabled spouse to claim the Working Family Childcare tax credit if the disability prevents the spouse from caring for the child. The rule defines "physical or cognitive condition" and "activities of daily living" for purposes of the credit.

150-316.127-(E) is amended to clarify that taxpayers who claim exemption from Oregon taxation based on the federal Amtrak Act (P.L. 101-322) must maintain records adequate to establish that the duties they performed meet the criteria of the federal Act.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-18.385-(A)

Oregon Department of Revenue Other Agency Account Garnishments

(1) Under ORS 293.250, the Department of Revenue may render assistance to recover delinquent debts owed to any state officer, board, commission, corporation, institution, department or other state organization assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.

(2) Under ORS 18.385(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposable earnings subject to garnishment for the period is determined by ORS 18.385(2)(a) through 18.385(2)(e) minus any amount required to be withheld from an individual's disposable earnings for the period pursuant to an order to withhold child or spousal support issued under ORS 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.

(3) Under ORS 18.385(2)(a) through 18.385(2)(e) the nonexempt disposable earnings subject to garnishment for the period is calculated by reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under ORS 18.385(1) or the minimum exemption amount under 18.385(2)(a) through 18.385(2)(e).

Example 1: Dick has \$1,000 per week of disposable earnings. Dick owes child support totaling \$15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Dick's employer directing the employer to withhold a specified amount of \$218 from Dick's disposable earnings. Dick also owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished Dick's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows: [Calculation not included. See ED. NOTE.]

Example 2: Assume the same facts as in Example 1 except that the order to withhold child or spousal support is \$350. The employer would calculate the order to withhold child or spousal support and garnishment as follows: [Calculation not included. See ED. NOTE.]

Example 3: John has \$200 per week disposable earnings. John owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished John's employer for 25 percent of disposable earnings. John is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows: [Calculation not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 23.185

Hist.: REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185(A) by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186(-A), REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-305.145(3)

Discretionary Waiver of Interest

(1) General Policy. The department does not generally waive interest because interest represents a charge for the use of money.

(2) Interest may be waived for good and sufficient cause upon request of the taxpayer as required in OAR 150-305.145(4) section (4).

(a) The department will waive interest charges if the department determines the taxpayer did not have the use of the money on which the interest is charged.

Example 1: Sue mailed her Oregon tax payment to the Internal Revenue Service (IRS) by mistake. The IRS cashed the check and six months later sent the money back to Sue as an overpayment. Two months later, Sue mailed payment to the department. The department will waive interest for the six-month period that Sue did not have use of the money.

(b) The department will waive interest imposed for failure to pay state tax on or before the due date if the taxpayer:

(A) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(B) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(C) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(D) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Assessment sent to the taxpayer;

(E) Establishes to the department's satisfaction that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid; and

(F) Has not received relief under this subsection before.

(c) The waiver of interest provided by subsection (2)(b) of this rule applies only to interest otherwise imposed on unpaid tax and does not include interest imposed on the underpayment of estimated tax.

(3) When interest will not be waived.

(a) The department will not waive interest on a deficiency resulting from changes made to Oregon tax based on a Federal Revenue Agent's Report (RAR), regardless of the time lapse between completion of the RAR and the completion of the Oregon audit report. ORS 314.380 and 314.410 require a taxpayer to report to the department a change in the taxpayer's net income as defined under OAR 150-314.380(2) resulting from a RAR.

(b) The department will not waive interest to the extent the taxpayer earned interest on the money from another taxing authority.

Example 2: Don mailed his Oregon tax payment with his Idaho return by mistake. Idaho cashed the check and three months later refunded the \$1,000 plus \$25 of interest. One month later, Don mailed his payment to Oregon and requested a waiver of Oregon's interest charge of \$35. The department will waive \$10, which is the excess of interest charged over what Don received from Idaho.

(c) The department will not waive interest on underpayment of tax when the taxpayer requests that a refund shown on a delinquent return be applied to a later tax year. ORS 316.583 requires that a refund from a delinquent return that is applied to the next tax year is credited as an estimated payment as of the date the delinquent return was filed.

Example 3: Scott files his 2006 return on February 19, 2008 and requests that his tax year 2006 refund be applied to his tax year 2007 tentative tax. His 2006 tax return was due April 17, 2007. Because he filed his return late, the refund is credited as an estimated payment on February 19, 2008. The interest charged on the underpayment of 2007 estimated tax will not be waived because ORS 316.583 requires that the payment be credited as of the date the delinquent return is filed.

Stat. Auth.: ORS 305.100, 305.145

Stats. Implemented: ORS 305.145, 316.583

Hist.: REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-305.220(2)

Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2007, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of 0.75 percent per month (9 percent annually). For a fraction of a month, interest will be computed at 0.0247 percent per day.

(2) Interest starting date.

(a) As provided in OAR 150-314.415, the interest starting date for refunds of individual income tax, corporate excise tax, or corporate income tax, is 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is latest.

(b) The interest starting date for refunds not described in (2)(a) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

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(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate paid on refunds will be the same as the interest rate charged on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100, ORS 305.220

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-305.992

Returns Not Filed for Three Consecutive Years; 100 Percent Penalty

(1) General requirements. The 100 percent penalty under ORS 305.992 may be imposed if:

(a) The taxpayer was required to file returns for each tax year of three or more consecutive years including returns for tax periods of less than 12 months; and

(b) All returns due during the three-year period are not filed by the due date (including extensions) of the return required for the third consecutive year. Assessments under ORS 305.265(10) are not returns for the purpose of the penalty under ORS 305.992.

Example 1: On July 1, 2008, Mary filed her Oregon individual income tax returns for 2004, 2005, and 2007. In 2006, Mary was a nonresident and had no Oregon source income. Mary was not required to file an Oregon return for each of three or more consecutive taxable years because she had no Oregon source income in 2006. The 100 percent penalty will not be imposed on the 2004, 2005, or 2007 returns.

Example 2: Assume the same facts as Example 1 except that Mary had income from Oregon sources in 2006 and was required to file a return for 2006 but did not. The requirement that tax returns for three consecutive years were not filed by the due date of the third consecutive year was met and the 100 percent penalty will be imposed on the 2004, 2005, 2006, and 2007 returns.

(2) Under authority granted in ORS 305.229, the department will not impose the 100 percent penalty under ORS 305.992 for returns filed or a Notice of Tax Determination and Assessment (NTDA) that have been assessed a lower failure-to-file penalty.

Example 3: Laurie did not file returns for tax years 2003, 2004, or 2005. In 2005, the department issued NTDA's for tax years 2003 and 2004. The 2003 and 2004 NTDA's reflect a 50 percent failure-to-file penalty under ORS 314.400. In 2006, the department issues a NTDA for tax year 2005. The 2005 NTDA reflects the 100 percent failure-to-file penalty under ORS 305.992. The department will not assess a 100 percent penalty for the NTDA's issued for tax years 2003 and 2004 because a penalty was previously assessed. Thus, the penalty would remain at 50 percent for tax years 2003 and 2004.

Example 4: In November 2007, Hilda filed her 2003 and 2004 tax returns. The department asserted a 25 percent failure-to-file penalty on both the 2003 and 2004 returns. In January 2008, she filed her 2005 and 2006 tax returns. The department asserted the 100 percent failure-to-file penalty on both the 2005 and 2006 returns because the 2003, 2004, and 2005 returns were all filed after the due date for the 2005 return and the 2004, 2005, and 2006 returns were all filed after the due date for the 2006 return. Even though the 2003 and 2004 returns were subject to the 100 percent penalty, the department will not increase the penalty to 100 percent because a lower penalty was previously assessed. Thus, the penalty would remain at 25 percent for tax years 2003 and 2004.

(3) Net tax liability. The penalty is 100 percent of the net tax liability determined for each taxable year. The net tax liability is the tax remaining after subtracting credits, withholding, and other prepayments from the tax required to be shown on the return. A net tax liability may be determined by the taxpayer, an assessment under ORS 305.265(10), an examination, or audit of a return by the department.

Example 4: On September 27, 2007, Jack filed Oregon income tax returns for 2005 and 2006. The 2006 return showed Oregon tax of \$450, state withholding of \$700 and a refund of \$250. The 2005 return has a net tax liability of \$325. Jack was required to file a return for 2004 but did not file a return. Because Jack did not file all returns due during the three-year period by the due date of the 2006 return, the penalty may be assessed on 100 percent of the net tax liability for 2005.

Example 5: Assume the same facts as in Example 4 except that upon examination, the department adjusted the refund claim for 2006 and asserted a deficiency. The penalty may be assessed on 100 percent of the net tax liability for taxable years 2005 and 2006.

Example 6: Assume the same facts as in Example 5 except that the department assessed a tax under ORS 305.265(10) for 2004. The penalty may be imposed on 100 percent of the net tax liability for each taxable year: 2004, 2005, and 2006.

Example 7: Assume the same facts as in Example 4 except that the department assert-

ed a deficiency one year later for tax year 2006 as the result of an audit. The auditor recomputed Oregon tax to be \$1,017. After application of withholding and refunds already received, the taxpayer owed an additional \$567 of tax. The 100 percent penalty may be assessed on the net tax liability of \$317 for tax year 2006 (the corrected tax of \$1,017 less the \$700 of withholding) and on the net tax liability of \$325 for tax year 2005.

Example 8: Assume the same facts as in Example 4 except that Jack was granted a federal extension to file the 2006 return until October 15, 2007. The 100 percent penalty does not apply. The returns for 2005 and 2006 were filed before the due date of the return required for the third year (October 15, 2007).

(4) Timber tax returns. Timber tax returns are those required to be filed under ORS 321.045 and 321.733 (2003) and 321.322 and 321.435 (2001). A timber tax return is required to be filed if a taxpayer:

(a) Harvested timber; or

(b) Obtained a Notification of Operations (permit) indicating the taxpayer would harvest. Obtaining a permit will cause the department to generate returns. There does not need to be a harvest to meet the filing qualification because non-harvests require a "NO HARVEST" filing.

Example 9: A taxpayer was required to file returns for 2003, 2004 and 2005 after harvesting timber in each of those years. If all three returns are not filed by January 31, 2006, the 100 percent penalty may be applied to any net tax liability for each of the three years.

Example 10: In 2003 and 2004 a taxpayer obtained permits to harvest; no harvest occurred for either year and the taxpayer did not file returns. In 2005 the taxpayer did not obtain a permit, but harvested timber. If a return is not filed by January 31, 2006, the 100 percent penalty may be applied to the 2005 net tax liability.

(5) Oregon withholding tax payment due dates are determined by the corresponding federal due dates. Generally, withholding tax reports are filed for four quarters per year. The 100 percent penalty will apply if the taxpayer failed to file 12 consecutive quarters representing three consecutive years.

Example 11: After February 1, 2006, an employer filed withholding tax reports for first through fourth quarter 2005, first through fourth quarter 2004 and first through fourth quarter 2003. The taxpayer is subject to the 100 percent penalty on all of the late reports.

Example 12: On May 30, 2007, an employer files withholding tax reports for first quarter 2007, fourth quarter 2006, and second quarter 2005. All other quarters have been filed timely. The 100 percent penalty is not assessed because the taxpayer was not delinquent for 12 consecutive quarters (three years).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.992

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.258

Withholding on Real Property Interest Conveyances

(1) Definitions. For purposes of ORS 314.258 and this rule, the following definitions apply:

(a) "Authorized agent" means an agent who provides closing and settlement services as part of a conveyance. The term "authorized agent" includes but is not limited to an escrow agent, title company, real estate agent, broker, attorney, and a qualified intermediary (QI) under IRC section 1031. Although the QI is an agent for this purpose, a QI is not an agent for purposes of IRC section 1031. See Treasury Regulation section 1.1031(k)-1(g)(8). An "authorized agent" does not include an employee of a transferee who merely makes payments to a transferor in connection with a conveyance.

(b) "Closing and settlement services" means services provided for the benefit of a transferor or transferee in connection with a conveyance by an authorized agent who receives or disburses moneys in accordance with instructions given by the parties to the conveyance. "Closing and settlement services" does not include services such as inspections, appraisals, drafting services, and recording services performed for the benefit of a transferor or transferee in a conveyance.

(c) "Consideration" is the amount of money and other value given to a transferor for the transferor's conveyance of a real property interest. "Consideration" includes:

(A) The amount of cash given to the transferor for the real property interest;

(B) The amount of any lien, mortgage, contract, indebtedness, or other encumbrance existing against the property interest to which the property interest remains subject or which the transferee agrees to pay or assume;

(C) The fair market value of any property conveyed or transferred to a transferor; and

(D) The fair market value of any service provided to a transferor.

(d) "Conveyance" means a sale, lease, encumbrance, mortgage, or creation of a secured interest in real property, including the conveyance of a real property interest that is described under IRC section 897(c) and located in Oregon. A conveyance does not include the sale of stock or other interest in a corporation described in IRC 897(c)(1)(A)(ii) unless such stock or interest has a business situs in Oregon or is otherwise located in Oregon for purposes of ORS chapter 316, 317, or 318.

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(e) "Transferee" means a person who acquires ownership of a transferor's real property interest or who is a lessee of real property located in Oregon.

(f) "Transferor" means a person who transfers, sells, deeds or otherwise conveys one's real property interest to another person as part of a conveyance.

(2) Withholding requirements. Except as provided in section (2)(a) of this rule, an authorized agent must withhold tax as income is recognized for Oregon tax purposes and remit the tax withheld to the department.

(a) Withholding is not required if the transferor:

(A) Claims exemption from withholding as provided in section (4) of this rule;

(B) Is an estate, trust, S corporation, general partnership, limited partnership, or non-profit corporation, or a limited liability company that for purposes of Treasury Regulation section 301.7701-3 has not elected to be classified as an association taxable as a corporation and is not a disregarded entity the sole member of which is a transferor within the meaning of subsection (2)(b), section 4, chapter 864, Oregon Laws 2007; or

(C) Is an agency or instrumentality of the United States or the State of Oregon or is a city, county, or other municipal or public corporation.

(b) The authorized agent must send the tax withheld to the department within 20 days of the date the proceeds from the conveyance are disbursed to the transferor.

(c) If there is more than one transferor in a single transaction, the authorized agent must withhold tax on each non-exempt transferor's share of the real property interest as if all transferors had equal ownership in the real property interest unless the transferor establishes the actual ownership percentage in the real property interest, such as through recorded documents, tenancy-in-common agreements, or other documents. If the transferor establishes other than equal ownership, the authorized agent must withhold in proportion to each non-exempt transferor's actual ownership percentage in the real property interest.

(d) A transferor may claim the amount withheld by an authorized agent as a credit on the transferor's corresponding personal income tax return or corporate income or excise tax return.

(e) If the transferor is a limited liability company the sole member of which is a transferor within the meaning of subsection 2(b), section 4, chapter 864, Oregon Laws 2007, the transferor is the single member for purposes of this rule.

(3) Calculation of amount to be withheld.

(a) An authorized agent is required to withhold and remit to the department the least of:

(A) Four percent of the consideration for the real property interest;

(B) Four percent of the net proceeds from the conveyance; or

(C) Ten percent of the amount of gain on the conveyance that is includable in the transferor's Oregon taxable income.

(b) "Net proceeds" is the amount shown on the settlement statement (before reducing for withholding) related to the conveyance that is being disbursed to the seller, or any amount related to the conveyance that is disbursed to the seller.

(c) A transferor subject to withholding must deliver to an authorized agent at or before conveyance of the real property interest a signed statement identifying the amount of withholding required by subsection (3)(a) of this rule. If the transferor enters into a deferred exchange under section 1031, the transferor must also provide such a certificate to the authorized agent accommodating the exchange at or before the transferor acquires the replacement property. If the transferor fails to timely deliver the form, the authorized agent must withhold four percent of the amount of consideration, or if less, all the net proceeds.

(d) Example 1: Anne sold her rental property for \$300,000. Her federal and Oregon adjusted basis in the property is \$250,000. She has an outstanding mortgage against the property of \$157,000 and closing costs are \$3,350. At closing, she determines she is not exempt from withholding so her escrow officer must withhold tax based on the least of four percent of the consideration, four percent of the net proceeds, or 10 percent of the gain includable in Oregon taxable income. [Table not included. See ED. NOTE.]

(e) Installment sales. If a transferor elects to recognize income from the conveyance using the installment method under IRC section 453, the transferor may reduce his gain by the amount of the installment that will be recognized in future years. The withholding calculation is based on the entire consideration and net proceeds, or the modified gain to determine the lowest of the three methods provided in subsection (3)(a) of this rule.

(f) Example 2: Assume the same facts as Example 1 except that Anne is selling the property on an installment basis and recognizing the income from the sale using the installment method under IRC section 453 over five years in equal installments. Because Anne is selling the property over time, the amount of gain includable in Oregon taxable income is \$10,000 for the year of the conveyance ($\$50,000 \div 5 \text{ years} = \$10,000$) and \$10,000 in each

year thereafter. Ten percent of the amount included in Oregon taxable income is \$1,000. Anne's escrow officer would withhold and remit \$1,000 for the year of the conveyance because it is the least of the three amounts.

(g) Deferred exchanges. If a transferor enters into a like-kind exchange under IRC section 1031, withholding is not necessary at the time the transferor relinquishes the property to a Qualified Intermediary (QI) unless part of the proceeds from the sale are disbursed to the transferor. If the exchange later fails or the transferor receives from the QI any part of the proceeds from the sale, the QI is required to withhold on the proceeds disbursed to the transferor. The transferor must provide the certificate of exemption or the calculation of withholding to the authorized agent handling the exchange at or before the transferor acquires the replacement property.

(h) Example 3: Robert entered into an exchange under IRC section 1031 to defer tax on the gain from the sale of his rental property. The consideration for the property was \$500,000. Robert's federal and Oregon adjusted basis in the property is \$150,000. He holds a first mortgage of \$190,000 and he incurred \$10,000 in costs related to the conveyance. Robert requested \$50,000 from the consideration directly. Robert's escrow officer transferred title of the property and \$250,000 of the consideration to a QI and the escrow officer disbursed \$50,000 directly to Robert as requested. The escrow officer is required to withhold on the amount disbursed to Robert as follows: [Table not included. See ED. NOTE.]

(j) Example 4: Assume the same facts as in Example 3. Robert identified replacement property within the appropriate period but failed to complete financing on time so the exchange failed. The QI disbursed the remaining proceeds from the sale of the rental property to Robert. Robert's QI is required to withhold as follows: [Table not included. See ED. NOTE.]

(k) Leases. Withholding is required on the transfer of an entire leasehold interest if the total amount of consideration for the leasehold interest exceeds \$100,000. If withholding is required, it is required on the entire amount, not just the amount that exceeds \$100,000. The authorized agent must remit tax withheld to the department within 20 days of the disbursal of the proceeds to the transferor. Withholding must be calculated based on the least of four percent of the consideration, four percent of the net proceeds received, or ten percent of the gain.

(4) Exemption from withholding requirements. A transferor may claim an exemption from the withholding requirements if:

(a) The consideration for the conveyance does not exceed \$100,000;

(b) The transferee is acquiring the real property interest through foreclosure; or

(c) The transferor:

(A) Is an individual who is a resident of Oregon under ORS 316.027;

(B) Is a C-corporation that has a permanent place of business in Oregon; or

(C) Has professionally competent knowledge or advice that the conveyance qualifies for nonrecognition under IRC section 1031 or 1033 or is otherwise nontaxable to the transferor under Oregon law during the tax year of the transferor in which the conveyance occurs. "Professionally competent knowledge or advice" includes oral or written advice from a tax professional (i.e., public accountant, certified public accountant, licensed tax consultant, licensed tax preparer, enrolled agent, or attorney) regarding the conveyance in which that professional advises there likely will be no recognition of gain in connection with the conveyance. Examples of such transactions include but are not limited to a conveyance that constitutes or is accomplished as part of:

(i) The sale of a principal residence in which the entire gain qualifies for exclusion under IRC section 121;

(ii) A transfer to a corporation controlled by the transferor for purposes of IRC section 351;

(iii) A transfer pursuant to a tax-free reorganization under IRC section 361;

(iv) A transfer by a tax-exempt entity that does not give rise to unrelated business taxable income to the transferor under IRC section 512;

(v) A transfer to a partnership in exchange for an interest in the partnership such that no gain or loss is recognized under IRC section 721;

(vi) A transfer between spouses or incident to divorce for purposes of IRC section 1041;

(vii) A transfer where the transferor is conveying the property subject to a mortgage, trust deed or land sale contract to a mortgagee, trust deed beneficiary, or land sale contract vendor as part of a foreclosure action, a non-judicial foreclosure, or forfeiture proceeding, or a transfer by a mortgagor, trust deed grantor or land sales contract vendee in lieu of a foreclosure, with no additional consideration; or

(viii) Any other transaction in which there is no recognition of gain for purposes of ORS chapters 316, 317, and 318, as explained to the department in writing at the time the transaction is completed.

(5) Certificate of exemption.

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(a) To claim exemption under section (4) of this rule, the transferor must complete and sign under penalty of perjury, that the transferor is exempt from withholding before the funds related to the transaction are disbursed. The transferor must provide the completed certificate of exemption to the authorized agent providing closing and settlement services.

(b) In addition to retaining the certificate of exemption in the authorized agent's records, the authorized agent must send a copy of the certification to the department within 20 days of the date of the conveyance if:

(A) The transferor claims exemption as an Oregon resident and has a non-Oregon address; or

(B) The transferor intends the conveyance to qualify for nonrecognition under IRC section 1031 or 1033.

(c) The authorized agent is required to provide the certification to the department upon written request of the department without a subpoena unless a subpoena is required by law.

(d) A transferor described in paragraphs (B) or (C) of section (2)(a) of this rule is not required to submit a claim for exemption.

(6) Failure to withhold. An authorized agent who relies on the representation made by the transferor that the transferor is exempt from withholding, is not liable for amounts required to be withheld under ORS 314.258. An authorized agent who relies on the calculation shown on the certificate provided by the transferor is not liable for the amount that was required to be withheld in excess of that shown on the certificate. The transferor is liable for the tax and may be subject to interest charged on the underpayment of estimated tax.

(7) Failure to remit. If an authorized agent withholds tax from the transferor's disbursement and fails to remit the same amount to the department timely, the authorized agent is liable to the State of Oregon for unremitted amounts and the department may collect such amounts from the authorized agent in the manner provided in ORS 316.162 to 316.221.

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

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.258

Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.415(7)

Separate Refunds When a Joint Return Has Been Filed

(1) The department may, as a convenience to taxpayers, issue separate refunds when either spouse submits a signed request. To issue separate refunds when a joint refund check has already been issued, the check must be returned uncashed. If either spouse has an amount owing to the state of Oregon, any refund due that person will be applied to the liability and the balance, if any, issued in a separate refund check.

(2) For purposes of this rule, the separate adjusted gross income (AGI) of each spouse is equal to each spouse's share of Oregon adjusted gross income. [Table not included. See ED. NOTE.]

(3) For purposes of this rule, items of income and deduction, separate adjusted gross income, and any refund claimed are determined without regard to community property law. [Table not included. See ED. NOTE.]

(4) If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request is not received timely.

(5) Pursuant to ORS 18.655(2), the department cannot issue separate refunds when a garnishment or levy has been served on the department for one or both spouses.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1-69; 11-71; 12-19-75; 1-1-77, Renumbered from 150-316.192(2)-(A); 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-314.415(6), REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-315.262

Working Family Childcare Credit

(1) Definitions. For purposes of ORS 315.262 and this rule:

(a) "Qualifying child" is:

(A) A son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother, sister, stepbrother, stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally placed with the taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendants of all such individuals who;

(i) Lived more than half the year with the qualifying taxpayer;

(ii) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption credit under ORS 316.099 is allowed; and

(iii) Does not provide more than half of his or her own support.

(b) "Federal poverty level" is the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(c) Household size is generally the number of individuals related by birth, marriage, or adoption living in the home that are allowed as exemptions on the taxpayer's return. There are special rules for children whose parents are divorced, legally separated, permanently living apart, or not married but living together. See section (2) of this rule below.

(2) For purposes of this credit, a qualifying child is included in the household size of the custodial parent even if the exemption was released to a noncustodial parent under Internal Revenue Code (IRC) section 152(e). In situations where both parents live in the home with the child more than 50 percent of the year, the child may be included in the household size of either parent, but not both. If the child is claimed on both parent's returns, the child is included in the household size of the parent with the highest adjusted gross income (AGI). An individual cannot be counted in household size on more than one tax return.

Example 1: Dale and Lisa are divorced with two children. The children live in Lisa's home with Lisa for more than half of the year, but she releases the dependent exemption for one child to Dale. Dale has the children on certain weekends, holidays, and one month in the summer. Lisa has remarried and her mother-in-law is a qualifying dependent having lived in Lisa's home the entire year. Both Dale and Lisa may claim the credit based on the child care expenses each paid. Lisa's household size equals five (herself, spouse, one dependent child, one dependent child whose exemption is released to the father, and mother-in-law.) Dale has not remarried so his household size equals one (himself). Although he claims one child on his tax return, the child does not live with him and is not included in his household size.

Example 2: John and Kim have never been married and have two children; Kyle who lives with John all year, and Shannon who lives with Kim all year. In the summer each child spends one month with the child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in August. In addition to the child care for the child that lives with them, each parent also has daycare expenses during those months where both children are living in the parent's home. John may claim one "qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child; Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. Each parent will have a household size of two.

Example 3: Chris and Shelly live together but are not married. They have two children together; Tyler and Alec. Chris's AGI is \$55,000 and Shelly's AGI is \$17,000. The children are qualifying children of both Chris and Shelly because Tyler and Alec live with both parents for more than half the year. Chris and Shelly can choose which of them includes Tyler and Alec in their household size. If Chris and Shelly cannot agree and because Tyler and Alec are qualifying children of more than one taxpayer they are deemed to be the qualifying children of Chris because Chris's AGI is higher than Shelly's.

Example 4: Jason and Larena have three children and also support their parents who do not live with Jason and Larena in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Jason and Larena cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the working family child care credit is five.

(3) For purposes of determining the credit, the credit is limited to costs associated with child care. The payments must be made by the parent claiming the working family child care credit. Payments made by an entity or individual other than the parent claiming the credit are not payments made by the taxpayer.

Example 5: Maria and Kendall are not married and live together with their son, Michael. Michael's child care expense for the year is \$4,600 of which each parent pays half. Kendall's adjusted gross income (AGI) is \$30,000 and Maria's AGI is \$16,000. Under federal law, Michael is the qualifying child of both Kendall and Maria and either could claim Michael for tax purposes. Maria chooses to claim Michael on her return therefore Kendall may not. Maria may claim the working family child care credit based on the \$2,300 of child care she paid and a household size of two.

Example 6: Assume the same facts as example 5 except that both Maria and Kendall file returns listing Michael as a qualifying child and each claims a household size of two. Because Kendall and Maria cannot agree which of them will claim Michael, the tie-breaker rule applies. Kendall's federal AGI is higher than Maria's so Kendall is entitled to claim Michael as a qualifying child based on a household size of two. Maria may not claim the working family child care credit because the tie-breaker rule only allows Kendall to claim Michael as a qualifying child.

(a) Costs associated with child care include:

(A) Child care expenses paid with amounts excluded from income as dependent care benefits under IRC section 129;

(B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or,

(C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section 125.

Example 7: Joan's younger child (Susan) stays at her employer's on-site child-care center while she works. The value of the benefits from this child care qualifies to be excluded from her income under IRC section 129. She received this benefit instead of a salary increase. Her employer reports the value of this service as \$3,000 for the year. This \$3,000 is shown in box 10 of her Form W-2, but is not included in taxable wages in box 1. A neighbor cares for Joan's older child (Seth) after school, on holidays, and during the summer. She pays her neighbor \$2,400 for this care. Because the benefits Joan received from her employer qualify to be excluded from income under IRC 129 Joan may claim a working family child care credit based on \$5,400 in qualifying child care expenses.

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Example 8: Jorge is single with one qualifying child. His employer provides him a \$1,000 qualified child care benefit under an IRC section 125 cafeteria plan. This \$1,000 is excluded from Jorge's income. Jorge's child care expense is \$2,900, of which \$1,000 is paid through the section 125 plan and \$1,900 is paid by Jorge. Jorge may claim a working family child care credit based on \$2,900 in qualifying child care expenses.

Example 9: Tanner has two qualifying children. He contributes \$4,000 pre-tax each year to a flexible spending account (FSA) under IRC section 125. He provides his employer with the required documentation in order to be reimbursed for his child care expenses. Tanner has \$5,000 in child care expenses for his two children. He paid \$1,000 with after-tax dollars and he was reimbursed \$4,000 from his pre-tax FSA. Tanner may claim the working family child care credit based on \$5,000 in qualifying child care expenses.

(b) Costs associated with child care do not include:

(A) Expenses for a child's kindergarten through twelfth grade education at a public or a private institution;

(B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other such activities unless the activities or courses are an ordinary part of the care provided to the child and cannot be separated;

(C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking employment, or not a full-time or part-time student;

(D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming the working family child care credit;

(E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-operator provided to his or her own child; or,

(F) Transactions that are not arm's-length or have no economic substance.

Example 10: Rusty has a five-year-old son who attends a local academy. He pays \$750 per month for his son's kindergarten and child care. Of the amount he pays each month, \$500 is the contract price for child care and \$250 is an additional amount he pays for the child's education. Rusty can only claim \$500 per month as qualifying child care.

Example 11: Jeff and Rochelle are married and they have a three-year old son, Jakob. Jeff and Rochelle are both gainfully employed and they send Jakob to a daycare center near Rochelle's work for child care. Jakob's parents signed him up for a swimming class through the daycare center that costs \$50 per month. They also signed him up for a \$75 per month second language class that the daycare center offers. The daycare center charges \$400 per month for the full-time care of a toddler. The daycare center bills Jeff and Rochelle \$525 per month for Jakob's child care and activities. Jeff and Rochelle can use the child care expenses they paid (\$400 per month or \$4,800 annually) to determine the working family child care credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons or the language class.

Example 12: Kent and Kristen are married and Kent stays home to take care of their four children. Kristen earns \$55,000 annually and they paid \$4,000 in child care during the year. The child care expenses they paid are not costs associated with both Kent and Kristen being gainfully employed, seeking employment, or being a full-time or part-time student. Kent and Kristen cannot claim the working family child care credit.

Example 13: Jim and Denise are married and have two children. Denise works full-time and earns \$25,000. Jim is a full-time student at the local college. He also works part-time and earns \$2,000. They paid \$3,600 in child care expenses while Jim was at school and work. Jim and Denise's qualifying child care expenses are \$3,600 because Denise is gainfully employed and Jim is a full-time student.

Example 14: Debbie works full time and qualifies for state assistance in paying her child care expenses. The child care provider charges Debbie \$600 per month to care for her two children or \$7,200 per year. Of the \$600 per month, the state pays \$450 and Debbie has a copay of \$150. Debbie cannot claim the entire \$7,200 because she did not pay it. She can only claim \$1,800, the amount she actually paid.

Example 15: Shirley is the owner-operator of a registered daycare facility. She cares for six children every day, of which two are her own children. Shirley cannot use the value of the two spaces her children use to calculate her working family child care credit because the forgone revenue is not a cost associated with child care.

(c) Married taxpayer with disabled spouse. Beginning in tax year 2007, a qualified taxpayer is allowed to claim the working family credit based on child care expenses paid even if the expenses were paid when the taxpayer has a spouse did not work, look for work, or attend school as required in subsection (3)(b) of this rule. The expenses may be claimed if the taxpayer's disabled spouse has a physical or cognitive condition which causes the disabled spouse to require assistance in performing basic activities of daily living and prevents the disabled spouse from working, looking for work, and attending school.

(A) A "physical or cognitive condition" is a state where an individual's ability to perform a basic activity of daily living is markedly restricted where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is unable (or requires an inordinate amount of time) to perform an activity of daily living.

(B) "Activities of daily living" include:

(i) Bathing;

(ii) Dressing oneself, except that it does not include any of the activities of identifying, finding, shopping for or otherwise procuring clothing;

(iii) Feeding oneself, except that it does not include any of the activities of identifying, finding, shopping for or otherwise procuring food, or

the activity of preparing food to the extent that the time associated with the activity would not have been necessary in the absence of a dietary restriction or regime;

(iv) Medicating oneself;

(v) Toileting; or

(vi) Transferring, ambulating, and being mobile.

(C) Certification by physician. For a taxpayer to claim child care expenses paid when the taxpayer's spouse is unable to work, look for work, or attend school because the spouse has a disability that prevents the spouse from such tasks, the taxpayer must obtain certification from the physician or other qualified medical professional that the taxpayer's spouse meets the definition of disabled in the statute and this rule. This certification is to be kept in the taxpayer's records and provided to the department upon request.

(4) Schedule WFC, Working Family Child Care Credit.

(a) To claim the working family child care credit, the taxpayer must provide all information requested on the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a completed Schedule WFC with the department may result in denial of the working family child care credit.

(5) Married Individuals Filing Separately:

(a) Taxpayers filing separate returns who share a common household cannot claim the working family child care credit.

(b) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in the future, determine their household size based on the computation defined in subsection (1)(c) of this rule.

Example 16: John and Sue are married and have two children. They are legally separated and live apart permanently, and one child lives with each. John and Sue file separate returns for the tax year and each claims a child as a dependent. John and Sue will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit. John may claim the credit based on the child care costs he paid for the child that lives with him and Sue may claim the credit based on the child care costs she paid for the child that lives with her.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.262

Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2003, f. & cert. ef. 12-31-03; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-315.521

University Venture Development Fund Tax Credit

(1) Under ORS 315.521, taxpayers may claim a credit for donations to a qualified university venture development fund. The total credit is equal to sixty percent of the amount contributed to the university venture development fund that is shown on the tax credit certificate issued by a university. The credit allowable in any one tax year is limited to the lesser of:

(a) \$50,000;

(b) The tax liability of the taxpayer for that year; or

(c) Twenty percent of the amount contributed.

(2) The credit is claimed in the year the donation is made and in any subsequent tax years until the total credit is used.

Example 1: Ian donated \$200,000 to a university venture development fund in 2007. Ian may claim a tax credit of \$120,000 (60 percent of \$200,000). In any one tax year, the maximum credit Ian may claim is the least of \$50,000, his tax liability for the tax year, or \$40,000 (20% of his 2007 contribution).

Ian's tax liability by year; 2007 — \$25,000; 2008 — \$65,000; 2009 — zero; 2010 — \$45,000;

2011 and 2012 — \$35,000

In 2007, Ian may claim \$25,000 (his 2007 tax liability); the lowest of the amounts in subsections (1)(a), (1)(b), or (1)(c) of this rule. Ian has \$95,000 remaining to claim in future tax years.

In 2008, Ian may claim \$40,000 because he may not claim more than 20 percent of the contribution in any one year. Ian has used \$65,000 of his total credit (\$25,000 in 2007 + \$40,000 in 2008).

In 2009, Ian may not claim any credit because he may does not have a tax liability. He has \$55,000 remaining to claim in later years.

In 2010, Ian may claim \$40,000 (20 percent of the contribution in any one year). Ian has used \$105,000 of his total credit (\$25,000 in 2007 + \$40,000 in 2008 + \$40,000 in 2010).

In 2011, he may claim \$15,000 because he may not claim more than the total credit of \$120,000 (\$120,000 total credit — \$105,000 already used = \$15,000 available credit for 2011).

Example 2: Assume the same facts as Example 1, except that Ian contributes an additional \$100,000 to the fund in 2008. The total credit that may be claimed for this contribution is \$60,000 (60 percent of \$100,000). In 2008, Ian has \$95,000 remaining of his 2007 credit to claim in future tax years and the 2008 credit from the new contribution. Ian figures his 2008 credit as follows:

In 2008, Ian may claim \$40,000 of the 2007 credit and \$20,000 of his 2008 credit because he may not claim more than 20 percent of the contributions in any one year. Ian has \$55,000 remaining of his 2007 credit (\$120,000 — \$25,000 — \$40,000 = \$55,000) and \$40,000 of his 2008 credit (\$60,000 — \$20,000) to claim in future tax years.

In 2009, Ian may not claim any credit because he does not have a tax liability. He continues to have \$95,000 in credits remaining to claim in later years.

In 2010, Ian may claim \$40,000 of the 2007 credit because he may not claim more than 20 percent of the contribution in any one year. He may also claim \$5,000 of his 2008 credit because he may not claim more than his tax liability. Ian has \$15,000 remaining of his 2007 credit (\$120,000 — \$25,000 (in 2007) — \$40,000 (in 2008) —

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\$40,000 (in 2009) = \$15,000] and \$35,000 of his 2008 credit [\$60,000 – \$20,000 (in 2008) – \$5,000 (in 2010)] to claim in future tax years.

In 2011, Ian may claim the remaining \$15,000 of his 2007 credit and \$20,000 of his 2008 credit. He may not claim more than \$20,000 of his 2008 credit because he may not claim more than his tax liability or more than 20 percent of the contribution; in this case either is \$20,000. Ian has used his entire 2007 credit and has \$15,000 of his 2008 credit (\$60,000 – \$20,000 – \$5,000 – \$20,000) to claim in future tax years.

In 2012, he may claim the remaining \$15,000 of his 2008 credit.

(3) ORS 315.521 requires that any amount deducted for federal tax purposes that serves as the basis of calculating the credit must be added to taxable income.

Example 3: Ian deducted the \$200,000 contribution on his 2007 federal tax return. Because that amount is used as the basis for determining the tax credit, ORS 315.521(5) requires the \$200,000 be added to Oregon taxable income on the 2007 Oregon tax return.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.521

Hist. REV 7-2007(Temp), f. & cert. ef. 9-21-07 thru 12-31-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-316.127-(E)

Gross Income of Nonresidents; Federal Laws Affecting Nonresident Employees of Motor, Rail, Air and Water Carriers

(1) General: Various federal laws affect the application of Oregon tax laws to nonresident employees of motor carriers, rail carriers, and air carriers. Specific requirements for motor carriers, rail carriers, and air carriers are discussed separately below. For purposes of this rule the following definitions apply to motor carriers, rail carriers, and air carriers:

(a) “Person” means a corporation, company, association, firm, partnership, or individual.

(b) “Common carrier” means:

(A) Any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire; or

(B) Any person who leases, rents or otherwise provides a motor vehicle to the public and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(c) “Regularly assigned duties in more than one state” means duties that are performed on a regular basis in more than one state, e.g., daily, weekly, or monthly assignment. Duties that are performed on an “on-call” or “as-needed” basis, or duties that are performed on a sporadic or intermittent basis during the year, are not considered to be “regularly assigned duties.”

(d) “Property” means the cargo or load being transported.

(e) “Exempt” means that the Amtrak Act prohibits the imposition of Oregon income tax.

(2) Motor carrier employees. Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, and Public Law 104-88, the ICC Termination Act of 1995, provide that no part of the compensation paid by a motor carrier or a motor private carrier to a nonresident employee who performs regularly assigned duties in more than one state is subject to Oregon tax (49 USC §14503). For purposes of this subsection, the following definitions apply:

(a) “Employee” means an individual who:

(A) Directly affects commercial motor vehicle safety in the course of employment; and

(B) Is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, State, or political subdivision of a State; and

(C) Is subject to the jurisdiction of the U.S. Secretary of Transportation; and

(D) Is not covered under the overtime requirements of the Fair Labor Standards Act (if the employee is properly listed as “non-exempt” in personnel and payroll records. This means that the employee is covered under the rules of the Fair Labor Standards Act and thus is not subject to the jurisdiction of the Secretary of Transportation); and

(E) Is one of the following:

(i) An operator of a commercial motor vehicle (including an independent contractor) who, if working for a motor carrier, transports property or passengers, and if working for a motor private carrier, transports property; or

(ii) A mechanic; or

(iii) A freight handler; or

(iv) An individual not an employer.

(b) “Employer” means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it.

(c) “Motor carrier” means a person providing motor vehicle transportation of passengers or property for another for compensation. Motor carriers are required to be licensed as such with the Secretary of Transportation.

(d) “Motor private carrier” means a person, other than a motor carrier, transporting property by commercial motor vehicle when:

(A) The transportation is between two states;

(B) The person is the owner, lessee, or bailee of the property being transported; and

(C) The property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise, and

(D) The person is required to be licensed as such with the Secretary of Transportation.

(e) “Commercial motor vehicle” means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property if the vehicle:

(A) Has a gross vehicle weight rating of 10,001 or more pounds;

(B) Is designed or used to transport passengers for compensation, but excluding vehicles providing taxicab service that:

(i) Have a capacity of not more than 8 passengers; and

(ii) Are not operated on a regular route or between specified places;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used in transporting material found to be hazardous under Title 49 USC 5103 in a quantity requiring placarding under regulations prescribed under Title 49 USC 5103.

(f) “Directly affects” means that the employee is required by his or her regularly assigned routine and duties to work directly with a commercial motor vehicle or its contents. The duties must be of a direct, hands-on nature that requires the employee to physically move, touch or affect the vehicle or its contents. Supervisory, managerial, consulting, or other duties, which indirectly affect the safety of a motor vehicle, do not meet the definition of “directly affects.”

(g) “Driver leasing company” means an employer that employs drivers and leases them to motor carriers or motor private carriers. A driver leasing company is not an employer subject to the jurisdiction of the Secretary of Transportation.

(3) The following examples illustrate the application of sections (1) and (2) of this rule.

Example 1 Subsection 1(c), Regularly Assigned Duties: Adam, a nonresident, works for an Oregon based interstate trucking carrier as a driver. He has a regular route from Idaho to Oregon and picks up or delivers products in Oregon. Adam’s compensation is exempt from Oregon taxation.

Example 2 Subsection 1(c), Regularly Assigned Duties: Brenda, a nonresident, works for an interstate trucking carrier as a driver. She has a regular route from Portland to Vancouver, Washington. It is a daily or weekly route. However, the Portland-Vancouver route only takes about 2 to 3 hours. Brenda has a regular route from Portland to Salem for the remaining time. Brenda is considered to be performing “regularly assigned duties in more than one state” since the Portland-Vancouver assignment is on a regular basis. Therefore, her compensation is exempt from Oregon taxation.

Example 3 Subsection 1(c), Regularly Assigned Duties: Carl, a nonresident, works for an Oregon based interstate trucking carrier as a driver. The company’s customers are mostly lumber mills located in Oregon and Washington. Carl picks up his truck every morning in Washington and receives delivery assignments for the day. Depending on where the lumber needs to be delivered, Carl may not have to come to Oregon on a daily basis. He may pick up and deliver lumber products all within Washington or may do so all within Oregon. However, Carl does drive to Oregon at least once a month due to the company’s customer base. Due to the nature of the business, the company may not be able to assign regular duties to Carl. The company itself does not even know what the delivery route will be until the customers notify the trucking company. Although Carl may not have a regular route in Washington and Oregon, he does drive to Oregon at least once a month. Carl is considered to have “regularly assigned duties in more than one state” as long as all the routes (including interstate routes) are assigned indiscriminately among all drivers on a regular basis. Carl’s compensation is exempt from Oregon taxation.

Example 4 Subsection 1(c), Regularly Assigned Duties: Dave, a nonresident, works for an interstate trucking carrier as a driver. All of his routes are within Oregon, mainly from Portland to Pendleton. However, the company requires that Dave drive to Washington before reaching the destination in Oregon (Pendleton in this case). The company has no business reason for this requirement. There is no product waiting for pick-up or delivery in Washington. Dave’s compensation is taxable by Oregon. He does not have “regularly assigned duties in more than one state.” Dave may drive to Washington every day, but there is no business reason to drive to Washington.

Example 5 Subsection 1(c), Regularly Assigned Duties: Frieda, a nonresident, works for an Oregon retail store as a freight handler. Her regularly assigned duties are to load and unload freight. Occasionally, Frieda is asked to fill in as a driver and, over the course of a year, may drive several routes in and out of Oregon. Frieda does not have “regularly assigned duties in more than one state” and her Oregon-sourced compensation is taxable by Oregon.

Example 6 Subsection 1(c), Regularly Assigned Duties: George, a nonresident, works as a mechanic for an interstate trucking firm. He is assigned to the Portland terminal and performs the majority of his work there. His job duties require that he be available to perform minor repair work away from the terminal on an “as-needed” basis. Several times during a given year, he may be required to travel to Washington to repair a flat tire, do minor engine work, etc. George does not have “regularly assigned duties in more than one state” and his Oregon-sourced compensation is taxable by Oregon.

Example 7 Subsection 2(a), Driver, Mechanic, Freight Handler: Edward, a nonresident, works for an Oregon trucking carrier as a clerk. The company has one terminal in Oregon and one terminal in Washington. Edward regularly works in both terminals, i.e. works in two states. Edward is not considered an employee for purposes of P.L. 101-322. He is not a driver, a mechanic, or a freight handler. His duties do not direct-

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ly affect the safety of the vehicle. Therefore, the Oregon source income is taxable by Oregon.

Example 8 Subsections 2(a) and 2(b), Employer: Mary Lou, a nonresident, is a supervisor who regularly assigns drivers as an interstate trucking firm's Portland and Vancouver terminals. She tracks the hours each driver works to ensure compliance with the Secretary of Transportation's safety regulations regarding maximum hours worked. Though Mary Lou works in two different states and does have an impact on safety, she is considered an employer, not an employee, and must pay Oregon tax on that portion of work performed at the Portland terminal.

Example 9 Subsections 2(a)(A) and 2(f), Directly Affects Safety: Harold, a nonresident, is employed by an interstate trucking firm. Harold's duties include: authorizing and ordering drug testing for employees; road testing a driver's abilities; investigating accidents involving company vehicles; ordering repairs to motor vehicles; removing vehicles from service; and approving and implementing safety programs and policies. While Harold may be responsible for vehicles, and his work may have a significant impact upon safety, that impact is not direct, but is implemented through others. He does not meet the requirement that he "directly affect" the safety of a commercial motor vehicle and his Oregon-sourced compensation is taxable by Oregon.

Example 10 Subsections 2(a)(A) and 2(f), Directly Affects Safety: Garrett, a nonresident, works as a freight handler in the Portland terminal of a trucking company. His duties also require him to attend daylong staff meetings at the company's headquarters in Vancouver, Washington each month. Although Garrett has "regularly assigned duties in more than one state," only the duties he performs at the Portland terminal directly affect the safety of a commercial motor vehicle. Garrett does not have "regularly assigned duties in more than one state" that "directly affect" the safety of a commercial motor vehicle. His compensation related to services performed in Oregon is taxable by Oregon.

Example 11 Subsections 1(d) and 2(d), Property and Motor Private Carrier: Roberto, a nonresident, works for a small furniture manufacturing company located in Oregon. Roberto drives a commercial motor vehicle, and his employer is licensed with the Secretary of Transportation. His job requires him to drive to various states to buy hardwood for use in building the furniture. Roberto is exempt from Oregon taxation on his wages because he transports a product between states to further a commercial business, and his employer meets the other requirements of a motor private carrier.

Example 12: Subsections 1(d) and 2(d), Property and Motor Private Carrier: Barbara, a nonresident, works as a refrigeration mechanic for a dairy. She drives a large repair vehicle to service her employer's refrigerators at all company locations, including those out of state. Even though Barbara drives outside Oregon to repair equipment, she does not transport property to further a commercial business, and is therefore not exempt from Oregon taxation.

Example 13 Subsection 2(e), Commercial Motor Vehicle: Ken, a nonresident, works as a line repairman for a utility company. He uses a company truck with a gross vehicle weight rating in excess of 10,000 pounds when making service calls in both Oregon and Washington. Ken is not exempt from Oregon taxation because he does not drive a "commercial motor vehicle" (i.e., a motor vehicle used to transport passengers or property).

Example 14 Subsection 2(e), Commercial Motor Vehicle: Julie, a nonresident, works as a truck driver for a furniture store. She drives a truck with a gross vehicle weight rating in excess of 10,000 pounds to deliver furniture on a regular basis to residents and nonresident customers who make purchases at her employer's stores. Julie is exempt from Oregon taxation because she directly affects the safety of a commercial motor vehicle and works for a motor private carrier transporting property in interstate commerce.

Example 15 Subsections 2(a)(C) and 2(a)(D), Subject to Jurisdiction of the Secretary of Transportation: Connie Sue, a nonresident, works for an interstate motor carrier on a regular basis at her company's Oregon and Washington yards. She has a variety of duties, including helping with the loading of trucks. Her employer pays her overtime because she is properly listed as "non-exempt" (covered) under the provisions of the Fair Labor Standards Act and thus subject to its requirements. Because she is covered under the Fair Labor Standards Act rather than being subject to the jurisdiction of the Secretary of Transportation, Connie Sue does not meet the requirements for the Amtrak exclusion.

Example 16 Subsection 2(g), Driver Leasing Companies: Larry, a nonresident, is employed by JobProviders, a temporary employment agency. Larry has a commercial driver's license, drives a commercial motor vehicle between states on a regular basis, and is leased by his company exclusively to WeMoveU, a motor carrier properly licensed with the Secretary of Transportation. Larry is under the direction and control of WeMoveU at all times, though he receives his paycheck from JobProviders. Larry is exempt from Oregon taxation. Though he may be considered an employee of JobProviders for other federal tax purposes, he is considered an employee of WeMoveU, a motor carrier, for Amtrak Act purposes.

Example 17 Subsection 2(g), Driver Leasing Companies: Randy, a nonresident, is employed by MechanicalGenius, an Oregon employer, as a truck mechanic. MechanicalGenius leases his services exclusively to OnTheRoad, an interstate motor carrier. Twice per month, Randy must travel to Washington to perform inspections and repairs of OnTheRoad's trucks. Randy is under the direction and control of his supervisor at MechanicalGenius. Even though Randy travels on a regular basis between two states, only repairs on OnTheRoad's trucks, and has a direct effect on the safety of OnTheRoad's commercial motor vehicles, he is subject to Oregon taxation. Randy is considered an employee of MechanicalGenius, which is not a motor carrier, motor private carrier, or other employer subject to the jurisdiction of the Secretary of Transportation.

(4) Changes in exempt status. The determination of whether an employee is exempt under these provisions is generally made for each portion of the year an employee performs a given set of specific job duties.

(a) If an employee does not change job duties during the year and meets the requirements of this section for the taxable year, the individual's compensation is exempt from Oregon taxation for the entire tax year.

(b) If an employee changes job duties during the taxable year, each change in job duties must be considered separately to determine whether the compensation received for that particular set of job duties is exempt from Oregon taxation.

Example 18: Rob, a nonresident, worked through June 30, as a mechanic for an Oregon trucking firm. All of his job duties were performed at the company's Portland terminal. On July 1, Rob began a new job for the same company as a commercial

interstate truck driver. Rob's compensation as a mechanic is not exempt from Oregon taxation, because he did not have regularly assigned duties in two states. For that portion of the year when Rob's duties were performed as a commercial interstate truck driver, his compensation as a truck driver is exempt from Oregon taxation if he meets all other requirements.

Example 19: Ivan, a nonresident, works as a driver for an interstate trucking company. From January 1 through June 30, his regular route is entirely within Oregon. On July 1, Ivan is assigned to a route from Seattle to Spokane that will last for two years. Neither his job duties during the first part of the year nor the last part of the year required him to drive between states. Because Ivan drove only intra-state during each portion of the year, his compensation earned on the Oregon route is not exempt from Oregon taxation. His compensation earned on the Washington route is not taxable by Oregon because it was earned by a nonresident employee for services provided outside Oregon.

(5) Rail carrier employees. Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, and Public Law 104-88, the ICC Termination Act of 1995, provide that no part of the compensation paid by a rail carrier to a nonresident who performs regularly assigned duties on a railroad in more than one state is subject to Oregon income tax (see 49 USC §11502). For purposes of this subsection, the following definitions apply:

(a) "Rail carrier" means a person providing a common carrier railroad transportation for compensation.

(b) "Railroad" includes:

(A) A bridge, car float, lighter, and ferry used by or in connection with a railroad;

(B) The road used by a rail carrier and owned by it or operated under an agreement; and

(C) A switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

(6) Air carrier employees: Federal law provides that the pay of a nonresident employee of an air carrier having regularly assigned duties on aircraft in more than one state is subject to Oregon income tax only if the employee earns more than 50 percent of that pay in Oregon (see 49 USC §40116). The employee is deemed to earn 50 percent or more of the pay in Oregon if, for the calendar year, the employee's scheduled flight time in Oregon is more than 50 percent of the employee's total scheduled flight time. For purposes of this subsection, the following definitions apply:

(a) "Air carrier" means a citizen of the United States, as defined in 49 USC §40102, undertaking by any means, directly or indirectly, to provide air transportation.

(b) "Air transportation" means the interstate or foreign transportation of passengers or property by aircraft as a common carrier for compensation, or the interstate or foreign transportation of mail by aircraft.

Example 20: Jean, a nonresident, works as a pilot for an Oregon-based corporation. Jean transports the corporation's executives to various job locations in the United States. Jean is not exempt from Oregon tax, as she is not employed by an "air carrier" that provides "air transportation." Her wages are subject to Oregon tax to the extent services are performed in Oregon.

Example 21: James, a nonresident, is employed by an air carrier as an office manager. Each calendar year, he works as a substitute pilot outside of Oregon in order to log the minimum amount of flight time required to retain his license. James does not qualify as exempt from Oregon income tax because his "regularly assigned duties" are not on an aircraft, but as a manager in an office.

(7) Substantiation. To claim exemption from income under Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, or Public Law 104-88, the ICC Termination Act of 1995, (49 USC §14503), a taxpayer must maintain records that adequately establish that the taxpayer qualifies for the income exemption.

Example 22: Jason, a nonresident, works for a motor carrier as a Vice President. His typical duties are to travel behind the company's truck drivers to ensure that the drivers follow Department of Transportation (DOT) laws, federal and state safety laws, and company policy. He does random checks of the trucks as the drivers take breaks to ensure the trucks are safe and the drivers are following all applicable federal and state laws. Occasionally, he is required to deliver a truckload himself when the company is short of drivers. He claims the Amtrak deduction on his Oregon nonresident return. He kept no record of his duties that show he has regularly assigned duties in more than one state or that his duties directly affect the safety of a motor vehicle. Because he cannot provide any documentation that he qualifies for the income exemption, his deduction is not allowed.

Example 23: Assume the same facts as in Example 22 except that Jason provides a copy of his Commercial Driver's license, his Department of Transportation (DOT) log books, and verification from the destination that he is in more than one state performing duties. He provides his job description that shows he is required to spot-check whether trucks are safely on the road. He also provides copies of reports that show he has written up employees for failure to comply with safety standards. He has adequately established that he directly affects the safety of commercial motor vehicles. Thus, the exemption from income is allowed.

Example 24: Peter, a nonresident, works for a motor private carrier as a long-haul truck driver. He claims the Amtrak deduction on his Oregon nonresident return. He does not provide any driving logs or documentation to establish that he drives a commercial vehicle in more than one state. Because he does not provide any documentation to establish that he qualifies for the Amtrak deduction, the deduction he claimed is not allowed.

Example 25: Same facts as Example 24 except that Peter provides copies of his Department of Transportation log books, a copy of his bid shift from his employer, as well as receipts that show he is in more than one state at various truck stops while he is on the road. Peter provides enough information to establish he qualifies for income exemption, thus the exemption from income is allowed.

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[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 314.815
Stats. Implemented: ORS 316.127
Hist.: 12-31-93; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 5-2000, f. & cert. ef. 8-3-00; REV 8-2001, f. & cert. ef. 12-31-01; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-316.127(10)

Gross Income of Nonresidents: Waterway Workers

(1) General Policy. Under both federal and state law, compensation of a nonresident waterway worker is exempt from Oregon taxation to the extent the compensation is paid for services performed while on a vessel on the navigable waters of more than one state. Currently, only the Columbia and the Snake rivers are navigable waters of both Oregon and another state. Navigable waters sovereign to Oregon such as the Willamette, Santiam, and Rogue rivers, and coastal ports are not the navigable waters of more than one state.

(2) Compensation of a nonresident waterway worker is not exempt from taxation under Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, or Public Law 104-88, the ICC Termination Act of 1995, (49 USC §14503).

(3) For purposes of ORS 316.127 and this rule:

(a) "Master" is the commander of a merchant vessel, who is in charge of the vessel, its crew, its passengers, and the care and control of the vessel and cargo.

(b) "Member of a crew" or "crew member" is an individual carried on board a vessel who is not required to obtain a license (though they may be required to obtain certification) who provides services such as navigation and maintenance of the vessel, its machinery, systems, or services essential for propulsion and safe navigation or to provide services for passengers on board.

(c) "Navigable waters" are waters that are subject to the ebb and flow of the tide and waters that are presently used, or were used in the past, to transport interstate or foreign commerce.

(d) "Officer" is an individual carried on board the vessel who must obtain a specialized license and who provides navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation.

(e) "Passenger" is a person on board a vessel other than:

(A) The master, a member of the crew, or other person employed or engaged in any capacity in the business of the vessel; or

(B) A child under one year of age.

(f) "Regularly assigned duties" are those duties performed on a regular basis (i.e. daily, weekly, or monthly). Duties that are performed on sporadically or intermittently as occurs when serving on an "on-call" or "as-needed" basis are not "regularly assigned duties."

(g) "Vessel" is watercraft used, or capable of being used, as a means of transportation on navigable waters of more than one state for business purposes.

(h) "Waterway worker" is an individual who performs regularly assigned duties while engaged as a master, officer, or member of a crew operating on the navigable waters of more than one state.

Example 1: Ben, a resident of Washington, is a crew member and works on a dredging platform on the Columbia River four months of the year. The other eight months Ben works in an office in Portland, Oregon. The four months of compensation related to the services that Ben performed on the dredging platform is not taxable by Oregon. The eight months of compensation related to Ben's services not performed on the dredging platform is taxable by Oregon.

Example 2: Kirk, a nonresident, is a crew member and works on a vessel plying the Columbia River. He works half of each day on the vessel between Rainier and Portland and the other half on the docks of the Oregon shore. Half of Kirk's compensation is related to the times spent on the vessel while on the Columbia River is not subject to Oregon tax. However, the other half of the time he spent working on the docks of the Oregon shore is Oregon-source income and subject to Oregon tax. Kirk may exclude half of his total compensation from this job from Oregon taxation.

Example 3: Remy, a nonresident, is a crew member and works on a vessel plying the Columbia and Willamette rivers. Remy makes weekly trips from Hood River to Tualatin and back, hauling cargo on the vessel. Each trip entails three days on the Columbia River and two days on the Willamette River. Sixty percent (3/5) of Remy's compensation is related to the times spent on the vessel while on the Columbia River is not subject to Oregon tax. However, 40 percent of the compensation from the time spent on the Willamette River is Oregon-source income and subject to Oregon tax. Remy would figure his compensation that is taxed by Oregon as follows: [Table not included. See ED. NOTE.]

Example 4: Jim, a nonresident, works in Oregon for a water transportation company that plies the waters of the Columbia River. On occasion, he is called upon to work as a member of a crew for a full day on one of the company's vessels when they are short-handed. His income is taxable by Oregon, even for the days he works on the vessel, because his work on the vessel is on an as-needed, sporadic, or intermittent basis.

Example 5: Ken, a Washington resident, works in Oregon as a manager for a water transportation company whose two vessels traverse the Columbia River. Once every quarter, Ken boards the company's vessels to check on the employees working on the vessel. Ken's income is taxable by Oregon, even for the days that he spends on board a vessel because he is not a pilot, master, officer, or crew member of the vessel.

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

Rule Caption: Property tax and senior and disabled citizen property tax deferral program.

Adm. Order No.: REV 12-2007

Filed with Sec. of State: 12-28-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 150-311.676, 150-311.684, 150-311.689, 150-311.806-(A)

Rules Repealed: 150-307.262(2), 150-309.115(1)-(A), 150-311.676-(B), 150-321.307(4), 150-321.485(4)

Subject: 150-311.676 explains payments made by DOR on deferral accounts may not be charged interest, and are allowed a 3% discount regardless of timing of payment;

150-311.687 explains timing and requirements for repayment when property is disqualified or canceled out of the deferral program;

150-311.689 explains annual income test that must be met to continue tax deferral in subsequent years after initial approval into program;

150-311.806-(A) clarifies priority for refunds of overpaid property tax on an account in the deferral program.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-311.676

Deferred Taxes Paid by the Department

(1) When the department makes a deferral account payment to the county, the department will pay 97% of the amount of the tax assessed, and the county must credit that amount as full payment of such taxes, regardless of whether the department's payment is before, on or after the payment deadline.

(2) The county may not charge the department interest on any deferral account payment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.676

Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 1-2003, f. & cert. ef. 7-31-03; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08

150-311.684

Timing and Repayment of Disqualified or Canceled Accounts Under the Homestead Property Tax Deferral Program

(1) The Department of Revenue will pay property taxes to the county on behalf of each applicant that has been approved for the homestead property tax deferral programs under ORS 311.666 to 311.701. Once the application is approved, the department will pay the taxes each year for as long as the property and applicant remain eligible. A lien will be placed on the property. The department account will include the deferred taxes, lien fees, and interest on the deferred taxes at 6 percent per year.

(2) Any of the four events listed below will result in "disqualification" and require repayment of an account. "Disqualification" means an account is no longer subject to deferral and the department will no longer pay taxes on behalf of the applicant. The department will send notice of disqualification to the applicant which includes a statement that repayment is required by August 15 of the year following the calendar year in which any one of the following events occurs:

(a) The applicant(s) dies;

(b) The property is sold or transferred and a person other than the applicant(s) has become the owner of the property;

(c) The property is no longer the homestead of the taxpayer, except in the case the applicant(s) is required to be absent from the home due to medical reasons; or

(d) The property is a manufactured structure or floating home that is moved out of the state.

(3) "Cancellation" means that an account has been removed from the deferral program at the written request of the applicant, and not for reason of any of the events listed in subsection (2) of this rule.

(a) If an account is cancelled prior to September 1, the department will not pay the current year taxes to the county on behalf of the applicant.

(b) A cancelled account may be paid in full at the time of cancellation.

(4) The department will release its lien on the property only after all taxes, interest and fees that were deferred have been paid.

(a) Repayment of a disqualified account is due and payable to the department August 15 of the year following the calendar year in which a disqualifying circumstance occurred.

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(b) Repayment of amounts due on a cancelled account is not required at the time of cancellation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.666, 311.684
Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; TC 2-1979, f. & cert. ef. 3-5-79; REV 1-2003, f. & cert. ef. 7-31-03; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08

150-311.689

Annual Income Requirements to Continue Property Tax Deferral

(1) For purposes of this rule, the “combined federal adjusted gross income” and “combined FAGI” mean the sum of all applicants’ federal adjusted gross incomes. If an applicant is included on an income tax return jointly with another individual, the department will use the federal adjusted gross income from the applicant’s joint return to determine whether the income limit has been exceeded.

(2) Taxpayers electing to have their property taxes deferred under ORS 311.666 to 311.701 must meet an income limit requirement each year. The limit is based on the income received in the previous calendar year.

(a) The dollar amount of the limit may change each year, based on adjustments to the U.S. City Average Consumer Price Index as provided in ORS 311.668(7).

(b) The limit will be listed in deferral forms and publications produced by the department.

(3) After initial approval into the program, the income limit is applied to the federal adjusted gross income (FAGI) of each applicant. Federal adjusted gross income is defined under the provisions of the Internal Revenue Code Section 62 in effect for the tax year without any of the additions, subtractions or other modifications or adjustments required under ORS chapter 316. The FAGI is reported on the federal income tax return. The combined FAGI of all applicants must be below the limit. In the case of any applicant who files a federal income tax return as “married filing jointly,” the applicant’s FAGI is the joint FAGI required to be reported in the return.

Example 1: Mary Jones and Sue Smith are sisters, who live together and applied as joint owners to have their property taxes deferred. Sue is married to Steve Smith, and they file a joint income tax return even though Steve lives in another house. For each year after approval into the program, the combined FAGI of Mary and Sue must be below the limit in order to continue qualification in the program. Because Sue files a joint return with Steve, the joint FAGI reported on this return is included in the FAGI test, even though Steve does not live in the household.

(4) By June 1, the department will review income tax returns of deferral program applicants to verify that income limits have not been exceeded. If an Oregon income tax return has not been filed, the department may ask the applicants to provide documentation showing their income. Documentation may include, but is not limited to, a copy of the federal income tax return or a completed income worksheet questionnaire that lists all income that is required to be reported on a federal tax return.

(a) Failure to provide the requested documentation will result in the denial of tax deferral for that year. Any past deferred taxes will remain deferred, unless they otherwise become due and payable.

(b) After approval into the deferral program, any year that the income limit is exceeded, the amount of tax for which the deferral is allowed will be reduced by \$0.50 for each dollar of FAGI above the limit.

(A) If the FAGI amount in excess of the income limit exceeds the amount of property tax by a factor of two, no property tax will be deferred for that year.

(B) If the FAGI amount exceeds the income limit, the Department of Revenue will pay only a part or none of the tax due in November, whichever is applicable. The applicant is responsible for paying any property tax not deferred for that year directly to the county. The department will notify applicants of the amount by which the tax deferral will be reduced, and an estimate of the amount of tax that applicants must pay to the county.

(C) Any past deferred taxes will remain deferred, unless they otherwise become due and payable.

(D) The applicant does not qualify for delay of foreclosure under ORS 311.691(1) if the foreclosure is due to delinquent taxes the applicant is required to pay as a result of exceeding the income limit.

(5) When an applicant’s FAGI is in excess of the limit any year, the applicant must notify the department before September 1 that the income limit was exceeded for the previous calendar year.

(6) Examples using \$37,000 as the income limit:

Example 2: John is participating in the Deferral Program. His FAGI was \$41,000 for income tax year 2006, and his 2007-2008 property taxes are \$3,000. The FAGI exceeds the income limit by \$4,000, so the deferred amount is reduced by \$2,000 ($\$4,000 \times \$.50 = \$2,000$). John is responsible to pay \$2,000 (minus 3 percent discount if paid timely) of his 2007-2008 property tax to the county in November. The department will pay the county the remaining \$1,000 (minus 3 percent discount) of John’s 2007-2008 property taxes.

Example 3: Debbie is participating in the deferral program. Her 2007-2008 property taxes are \$3,000. Debbie notifies the department by September 1, 2007 that her FAGI was \$45,000 for income tax year 2006. The FAGI income limit was exceeded by \$8,000, which is more than twice the amount of the property tax due. Debbie is responsible for paying the entire \$3,000 (minus 3 percent discount if paid timely) of

her 2007-2008 property tax to the county in November. The department will not pay any of Debbie’s 2007-2008 taxes.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.689
Hist.: f. 10-14-92, ef. 12-31-92; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08

150-311.806-(A)

Process for Determining Recipient of Property Tax Refund

(1) Definitions: For the purpose of this rule:

(a) “Owner of record on the tax roll” means the owner or an owner of the property or each person in whose name the property is assessed on the last certified tax roll.

(b) “At the time of the refund” means the time at which the tax collector calculates the refund and any applicable interest.

(2) The tax collector must determine the recipients of a refund as follows:

(a) Whenever a refund is the result of an appeal, the refund for each year included in the petition must be made payable to, and be mailed or delivered to, the petitioner as shown on the petition.

(b) If an appeal results in a lowering of value under ORS 309.115 for a subsequent year that was not included in the petition and a refund results, the refund for each subsequent year must be made payable to, and be mailed or delivered to, the petitioner for each year in which that person was the owner, an owner, or the person in whose name the property was assessed; and to the current owner of record on the tax roll at the time of the refund for each year thereafter.

(c) Whenever taxes are collected against property not within the jurisdiction of the levying body, the refund must be made payable to, and be mailed or delivered to the owner of record on the tax roll at the time of the refund.

(d) Whenever taxes are paid on property in excess of the amount actually due the refund must be made payable to, and be mailed or delivered to, the owner of record on the tax roll at the time of the refund.

(e) Whenever taxes are paid on the property of another by mistake of any kind:

(A) The refund must be made payable to, and be mailed or delivered to, the payer of the tax.

(B) If the Department of Revenue pays the taxes on a deferral account under ORS 311.676, and the owner, or another party acting on behalf of the owner, also pays the tax for the same property, any overpayment shall be refunded to the Department of Revenue.

(f) Pursuant to OAR 150-309.110(1)-(D), a refund resulting from a petition to a Board of Property Tax Appeals, the Department of Revenue, or the tax court by one or more owners of property assessed as an undivided interest must be apportioned to all of the owners of the property according to the percentage of interest owned.

(3) Notwithstanding section (2) of this rule, the refund will not be mailed or delivered to the petitioner, owner of record on the tax roll, or payer of the tax if:

(a) The refund is the result of an appeal as described in section (2)(a) or (2)(b) of this rule and the petitioner is represented by an attorney. The refund to which the petitioner is entitled must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney.

(b) The refund is the result of an appeal as described in section (2)(f) of this rule and the petitioner who filed the appeal is represented by an attorney. The refund apportioned to the petitioner must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney. The refund or refunds due to the other owners who did not file petitions must be made payable to, and be mailed or delivered to those individual owners.

(c) The petitioner, owner of record, or payer of the tax named in section (2) of this rule is not represented by an attorney and instructs the tax collector, in writing, to make the refund payable to or to mail or deliver it to someone else. The tax collector must follow such instructions.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.806
Hist.: 10-5-84, 12-31-84, Renumbered from 150-311.806 to 150-311.806-(A); 12-31-87; 12-31-92; REV 6-2001, f. & cert. ef. 12-31-01; REV 6-2003, f. & cert. ef. 12-31-03; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08

Department of Transportation Chapter 731

Rule Caption: Removes the fee for email transmission of documents in response to a records request.

Adm. Order No.: DOT 6-2007

Filed with Sec. of State: 12-24-2007

ADMINISTRATIVE RULES

Certified to be Effective: 12-24-07

Notice Publication Date: 11-1-2007

Rules Amended: 731-001-0025

Subject: In 2006, ODOT added new fees and increased existing fees for public records requests, subject to legislative approval. HB 5048 (2007) approved the fee changes except for the \$5 fee to transmit records by email. As a result, the department stopped charging the email transmission fee as of July 12, 2007, the effective date of the legislation, and has amended its rule to remove the fee.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

731-001-0025

Public Records Request Requirements and Fees

All information in the custody of the Director of the Oregon Department of Transportation (Department) will be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) As used in this rule, the following definitions apply:

(a) "Non-Standard" means

(A) Audio tapes;

(B) Video Tapes;

(C) Microfilm, and

(D) Machine readable formats such as computer hard drives, and magnetic tape.

(b) "Certified copies" means, photocopies, that on the date copied, are true and accurate copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.

(c) "Research" means the compilation of information:

(A) That is not readily and immediately available from a single source or a group of related sources; or

(B) That requires a search to locate the requested information.

(2) A request for photocopies, facsimile (fax) copies, electronically distributed (email) copies and certifications of public records that are on file with the Department can be made verbally, in writing, by fax or by email.

(a) The request must:

(A) Include name and address of the person requesting the public record;

(B) Include telephone number of the person requesting the public record; and

(C) Adequately describe the record(s) requested including subject matter, approximate creation date(s) and name(s) of person(s) involved in creation.

(b) The request should:

(A) Be dated;

(B) Be signed by the person requesting the public record; and

(C) Indicate a date by which the records are being requested.

(3) The Department will respond to the request in a reasonable amount of time and acknowledge the request, identify an estimate of the expected cost of meeting the request, and the expected date and location at which the information will be provided. The regular discharge of duties of the Department will be neither interrupted nor interfered with because of time or effort required to respond to the request.

(4) Unless otherwise provided by statute or other administrative rule, the fees will be calculated as follows:

(a) \$0.25 per page for photocopies.

(b) The cost of records transmitted by fax is \$5.00 for the first page and \$1.00 for each additional page, limited to a 20-page maximum, not including the cover page.

(c) Actual cost for use of material and equipment for producing copies of non-standard records.

(d) Upon request, copies of public records may also be provided on a 3.5-inch computer disk or compact disk (CD) if the document(s) are stored in the Department's computer system. Disks will be provided at a cost of \$5.00 per disk and may contain as much information as the disk will hold. Due to the threat of computer viruses, the department will not permit requestors to provide disks for electronic reproduction of computer records.

(e) Labor charges that include researching, locating, compiling, editing or otherwise processing information and records:

(A) No charge for the first 15 minutes of staff time.

(B) Beginning with the 16th minute, the charge per total request is \$25.00 per hour or \$6.25 per quarter-hour. A prorated fee is not available for less than a quarter-hour.

(f) The actual cost for delivery of records such as postage and courier fees.

(g) \$5.00 for each true copy certification.

(5) Electronic Records. Copies of requested electronic records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records.

(6) The Department may charge a fee for the cost of time spent by an attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. Records request fees will include actual attorney fees charged to the Department related to the request. The Department will not charge a fee greater than \$25.00 under this section unless the Department first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the requester wants the Department to proceed with making the public record available.

(7) Pre-payment may be requested by the Department prior to record(s) being provided.

(8) Provisions in this rule do not apply to records available through the Driver and Motor Vehicle Services Division of the Department of Transportation listed in Oregon Administrative Rule Chapter 735.

(9) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

Stat. Auth.: ORS 184.616, 184.619, 192.430 & 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: DOT 1-1995, f. & cert. ef. 1-6-95; DOT 2-2006, f. & cert. ef. 1-24-06; DOT 6-2007, f. & cert. ef. 12-24-07

Rule Caption: Provides optional security requirement for bid or proposal security

Adm. Order No.: DOT 7-2007(Temp)

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 12-24-07 thru 6-9-08

Notice Publication Date:

Rules Amended: 731-005-0550

Subject: This rule relates to the security requirements for bids and proposals. The amended rule is better aligned with Oregon Statute which allows more flexibility in proposal security requirements. ODOT will soon be soliciting proposals for an alternative contracting method called Construction Manager/General Contractor (CMGC), in which the proposers do not propose a price until well after the contract is executed; therefore, requiring a proposal security of 10 percent of proposal price at the time of proposal submittal is not applicable. In lieu of the fixed 10 percent proposal security previously required by rule, ODOT will have the flexibility to instead establish a "value for the security" in the solicitation documents for certain proposals.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

731-005-0550

Bid or Proposal Security

(1) Security Amount. If ODOT requires Bid security, it shall be 10% of the Offeror's Bid. If ODOT requires Proposal security, it shall be in an amount that ODOT determines to be reasonably necessary or prudent to protect the interests of ODOT, and such amount shall be stated in the Solicitation Document. ODOT shall not use Bid or Proposal security to discourage competition. ODOT shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance. See ORS 279C.365(4) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless ODOT has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, ODOT shall require Bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by ODOT, of more than \$50,000. See ORS 279C.365(5). ODOT may require Bid security even if it has exempted a class of solicitations from Bid security. ODOT may require Proposal security in RFPs when Award of a Public Improvement Contract may be made without negotiation. See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. ODOT may accept only the following forms of Bid or Proposal Security: A surety bond from a surety company authorized to do business in the State of Oregon. If a surety bond

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is submitted, ODOT's standard Bid or Proposal bond form must be used, which is included with the Bid or Proposal booklet. The original bond must be submitted with the surety company's seal affixed, or in the case of an Electronic Offer, an electronic version of the bid bond may be submitted.

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check made out to the Oregon Department of Transportation.

(4) Return of Security. ODOT shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. ODOT may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

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

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

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 4-2007, f. & cert. ef. 5-23-07; DOT 7-2007(Temp), f. & cert. ef. 12-24-07 thru 6-9-08

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

Rule Caption: DMV Hearings

Adm. Order No.: DMV 14-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 12-24-07

Notice Publication Date: 11-1-2007

Rules Amended: 735-010-0045, 735-070-0190, 735-090-0000, 735-090-0020, 735-090-0051, 735-090-0120, 735-090-0130, 735-160-0115

Subject: Chapter 849, Oregon Laws 1999 (HB 2525) created the Hearing Officer Panel in a pilot program. Chapter 75, Oregon Laws 2003 (HB 2526) made the creation permanent and renamed it the Office of Administrative Hearings (OAH). Before the creation of the Hearing Officer Panel, DMV used its own hearing officers to conduct implied consent and APA hearings in DMV cases. After its creation, OAH maintained staff at DMV Headquarters and some of the responsibilities for various tasks related to DMV hearings have become blurred. The OAH is consolidating and moving its staff from the DMV Headquarters building in December 2007. The amendments in this rulemaking will clarify who has responsibility for various tasks in conducting DMV administrative hearings.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-010-0045

Other Department Records and Their Fees

(1) Other records available and the fees for the records are:

(a) Driving Under the Influence of Intoxicants Convictions and Alcohol Diversion Enrollment List (DUII and Diversion Lists) — A list of persons who have been convicted of driving under the influence of intoxicants or have enrolled in an alcohol diversion program. The list includes the name, address if known, date of birth, arrest date, conviction or enrollment date, the court type and location and the zip code, if available. The list is available weekly at a fee of \$7.50 per list.

(b) Duplicate Photo Image — A copy of a duplicate image of a driver license or identification card photograph is available exclusively to law enforcement officials at a fee of \$6.50 per photograph.

(c) Hearing Recordings — Upon request, a copy of the recording of a hearing will be provided to qualified requestors. The request must be in writing and accompanied by a fee of \$6 per recording.

(2) Personal information will not be included in any motor vehicle record requested unless the requester qualifies to receive such information under ORS 802.175 to 802.179 and OAR 735-010-0200 to 735-010-0230.

(3) Requests for information where a fee is not specified in rule or law will be charged actual cost only, using the criteria set forth in OAR 735-010-0000.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 802.220, 802.230

Stats. Implemented: ORS 802.177, 802.179, 802.200, 802.220 & 802.230

Hist.: DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 14-2007, f. & cert. ef. 12-24-07

735-070-0190

Hearing Request for Entry of Positive Drug Test Result on Employment Driving Record

When the Department of Transportation (ODOT) receives a report described in OAR 735-070-0185, ODOT will notify the person who is the subject of the report that the person has a right to request a hearing to determine whether a positive drug test result will be placed on the person's employment driving record.

(1) A hearing request must be in writing and must:

(a) Include the person's full name;

(b) Include the person's complete mailing address;

(c) Include the person's Oregon driver license number;

(d) Include a brief statement of the issues the person proposes to raise at the hearing. The issues are limited to those set forth in ORS 825.412(3);

(e) Be postmarked within 30 days of the date of the notice. If the hearing request is not postmarked or a postmark date cannot be determined, it must be received by the Driver and Motor Vehicle Services Division of ODOT (DMV) within 30 days of the date of the notice; and

(f) Be mailed or personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR 97314, or if sent by facsimile machine (FAX), received by DMV at FAX number (503) 945-5521.

(2) A hearing request should also include:

(a) The person's date of birth;

(b) The telephone number where the person can be reached between 8 a.m. and 5 p.m.; and

(c) The dates and times the person or the person's attorney cannot appear at a hearing.

(3) Except for good cause shown:

(a) Any factual or legal defense not set forth in the hearing request is considered waived; and

(b) No evidence offered by a person who requests a hearing will be admitted into the hearing record on any factual or legal defense that is waived.

(4) If good cause is shown under section (3) of this rule, the administrative law judge must give ODOT sufficient opportunity to obtain and present in the contested case hearing any testimony or documents deemed necessary by the agency to respond to evidence offered by the person on any factual or legal defense.

(5) Except as provided in OAR 137-003-0528, the person's right to a hearing is waived if a hearing is not requested within the time period specified in section (1) of this rule and the notice becomes the final order by default. The test results will be posted to the person's employment driving record. The time period for requesting a hearing will be computed as set forth in OAR 137-003-0520(10).

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 825.412

Stats. Implemented: ORS 825.410 & 825.412

Hist.: DMV 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; DMV 8-2001, f. & cert. ef. 3-7-01; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07

735-090-0000

Definitions

As used in OAR 735-090-0000 through 735-090-0120, unless the context requires otherwise:

(1) "Agency" means Driver and Motor Vehicle Services Division (DMV) of the Oregon Department of Transportation.

(2) "Error of the Department," as used in ORS 813.440(1)(c), means:

(a) An act or omission of the agency or OAH, which by its occurrence, prevented the petitioning party from being present at a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(b) An act or omission of the agency or OAH in issuing a subpoena to a witness, including a police officer, to a recorded or reported hearing that determines the validity of a suspension of driving privileges and where the witness' presence at the reported or recorded hearing is required in order for the agency to establish the required elements under ORS 813.410(5); or

(c) An act or omission of the agency or OAH in issuing a subpoena to a necessary witness where:

(A) The agency receives the petitioning party's request to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; and

(B) The act or omission, by its occurrence, prevented the necessary witness from being present at the hearing; or

(d) An act or omission of the agency or OAH that prevents a recorded or reported hearing that determines the validity of a suspension of driving privileges from being conducted.

(3) "OAH" means the Office of Administrative Hearings when it is performing services on behalf of the agency under OAR Chapter 735 Division 90.

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(4) "Other just cause" as used in ORS 813.440(1)(f) means:

(a) Circumstances beyond the reasonable control of the petitioning party and beyond the ability of a reasonable person to foresee, which:

(A) Prevented the petitioning party from filing of a timely request for a hearing as set forth in ORS 813.410(3); or

(B) Prevented the petitioning party from requesting the agency or OAH to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; or

(C) Prevented the petitioning party from being present at a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(b) Circumstances where a petitioning party moves for a continuance of a hearing or a request that a necessary witness be subpoenaed to a hearing and, due to circumstances beyond the control of the petitioning party:

(A) The necessary witness does not appear at the hearing because the necessary witness was unknown to the petitioning party prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(B) The necessary witness does not appear at the hearing and could not be served with a subpoena at least 72 hours prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(c) Circumstances beyond the control of the agency or OAH that prevented an administrative law judge from conducting a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(5) "Necessary witness" means a witness whose testimony is essential to support a material fact or position of the petitioning party. The fact or position to be supported by the necessary witness must be within the scope of an implied consent hearing as set forth in ORS 813.410(5).

(6) "Offense" means the alleged Driving While Under the Influence of Intoxicants incident.

(7) "Petitioner" means the person whose driving privileges may be suspended.

(8) "Petitioning Party" means the petitioner or the petitioner's attorney.

(9) "Received by DMV" means:

(a) Personally delivered to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR;

(b) Delivered by mail to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR 97314; or

(c) Received by facsimile machine at telephone number (503) 945-5521.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0100; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07

735-090-0020

Hearings Requests

(1) Hearings requests shall be in writing. Request should include:

(a) Petitioner's full name;

(b) Petitioner's complete mailing address;

(c) Date of arrest;

(d) Petitioner's Oregon driver license number;

(e) Petitioner's date of birth;

(f) Telephone number where petitioner can be called between 8 a.m. and 5 p.m.;

(g) Brief statement of the issues the petitioner proposes to raise at the hearing;

(h) Dates and times the petitioner or attorney cannot appear at a hearing;

(i) A request to have the hearing held by telephone, if desired.

(j) A request for an interpreter for a non-English speaking petitioner must be made at the time of the hearing request.

(2) To be considered timely, a hearing request submitted pursuant to ORS 813.132 or 813.410(3), for failure of a breath test or refusal of a breath, blood or urine test, must be received by DMV by the tenth day following the arrest of the petitioner. Oregon Rules of Civil Procedure 10A (ORCP 10A) shall be used to determine the computation of time.

(3) To be considered timely, a hearing request submitted pursuant to ORS 813.410(3), for failure of a blood test, must be received by DMV by the tenth day from the date DMV sends notice of suspension. ORCP 10A shall be used to determine the computation of time.

(4) DMV will issue a final order denying an untimely hearing request unless the petitioning party demonstrates that the request should be granted under ORS 813.440.

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

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0110; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 3-1996, f. & cert. ef. 7-26-96; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07

735-090-0051

Subpoena of Witness

Under no circumstance will DMV or OAH compel a witness to attend and testify at a hearing that determines the validity of a suspension of driving privileges unless the witness is served with a subpoena at least 72 hours prior to the time of the hearing.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07

735-090-0120

Official Duty Conflicts

(1) If a subpoenaed police officer is unable to appear at a hearing under ORS 813.410 due to official duty conflicts, a scheduled hearing shall be set as soon as practicable.

(2) DMV will rescind the suspension of the petitioner's driving privileges pending the outcome of the scheduled hearing conducted pursuant to ORS 813.440(1)(d).

(3) The DMV or OAH may receive notification of an official duty conflict before or after a hearing. Post hearing notification must be received by the DMV or OAH no later than 10 days after the hearing. Verification must be to the satisfaction of the DMV.

(4) An official duty conflict exists if the subpoenaed police officer is unable to attend the hearing due to any of the following conditions:

(a) Community caretaking pursuant to ORS 133.033;

(b) Court;

(c) Hazardous or impeding travel conditions;

(d) Participating in employer approved training;

(e) Physical incapacity; or

(f) Service in the US Armed Forces, military reserves, National Guard or the organized militia.

(5) Nothing in this rule prevents the taking of evidence at the time of the originally scheduled hearing and continuing the hearing for the testimony of the unavailable police witness(es).

Stat. Auth.: ORS 183.341, 184.616, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 14-2007, f. & cert. ef. 12-24-07

735-090-0130

Error of the Department

In accordance with the definition of "Error of the Department" specified in OAR 735-090-0000(3), in a hearing that determines the validity of a suspension of driving privileges under ORS 813.410, if hearsay evidence is used to establish the required elements under ORS 813.410(5) and a petitioning party presents substantial evidence that contradicts the hearsay evidence, DMV will rescind the suspension and OAH will continue the hearing pursuant to ORS 813.440(1)(c) and subpoena the hearsay witness to the continued hearing.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stat. Implemented: ORS 813.410 & 813.440

Hist.: DMV 11-2004(Temp), f. & cert. ef. 5-24-04 thru 11-19-04; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07

735-160-0115

Commercial Driver Training School and Instructor Sanctions

(1) DMV will impose sanctions when it determines a School or an Instructor has violated provisions of the Motor Vehicle Code, or administrative rules promulgated by DMV.

(2) DMV will impose a sanction appropriate for the particular violation. In determining an appropriate sanction, DMV may use the matrix outlined in OAR 735-160-0125 as a guideline and may consider the following criteria:

(a) The severity of the violation or its impact on the safety of the public;

(b) The number of similar or related violations;

(c) Whether the violations were willful or intentional; and

(d) The history of prior sanctions imposed by DMV.

(3) DMV will impose sanctions when it determines violations have occurred or are occurring. These may include one or more of the following:

(a) A written warning, including correction notices;

(b) Suspension of the School Certificate and the right to apply for a School Certificate for up to one year;

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(c) Suspension of the Instructor Certificate and the right to apply for an Instructor Certificate or renewal of an Instructor Certificate for up to one year;

(d) Revocation of the School Certificate and the right to apply for a School Certificate or renewal of a School Certificate for up to five years;

(e) Revocation of the Instructor Certificate and the right to apply for an Instructor Certificate or renewal of an Instructor Certificate for up to five years.

(4) DMV may cancel, suspend or revoke a School Certificate or an Instructor Certificate if the school, the operator or the instructor fail to maintain the eligibility requirements under ORS 822.500 to 822.535 and these OAR division 160 rules.

(5) An Operator or Instructor whose certificate has been suspended, revoked, or cancelled is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) When DMV takes action to suspend, revoke or cancel a School Certificate DMV will send notice to the Operator listed on the School Certificate. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current school address on record with DMV.

(7) When DMV takes action to suspend, revoke or cancel an Instructor Certificate DMV will send notice to the Instructor listed on the Instructor Certificate. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (for an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current school address on record with DMV.

(8) Except as provided for in section (9) of this rule, a request for a hearing must be submitted in writing to, and received by, DMV within 20 days of the date of the notice. If a hearing request is received in a timely manner the suspension, revocation or cancellation will not go into effect pending the outcome of the hearing, unless the certificate is immediately suspended or cancelled.

(9) If the certificate is immediately suspended or cancelled as set forth in OAR 735-160-0125, the request for hearing shall be submitted in writing to, and received by, DMV within 90 days of the date of notice of suspension. The suspension or cancellation shall remain in effect pending the outcome of the hearing.

(10) Except as provided in OAR 137-003-0003, when no request for a hearing is received by the deadline, the Operator or Instructor has waived the right to a hearing, DMV's file shall constitute the record of the case, and a default order shall be issued by DMV.

(11) If a School Certificate or Instructor Certificate has been revoked, the Operator or Instructor may reapply for an original certificate after a period of revocation of five years and must meet all the requirements for the certificate.

(12) If the School Certificate or Instructor Certificate is cancelled, the Operator or Instructor may reapply for an original certificate when they have met all of the requirements for a certificate and fees are paid in accordance with ORS 822.700.

(13) At the end of a suspension period, DMV will reinstate the School Certificate or Instructor Certificate unless the certificate has expired or the Operator or Instructor does not meet the qualification requirements for the certificate. If the certificate has expired, the operator or instructor must reapply for an original certificate, must meet all the requirements for new certification, and pay fees in accordance with ORS 822.700.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515 & 822.530

Stat. Implemented: ORS 822.515

Hist.: DMV 15-2005, f. & cert. ef. 5-19-05; DMV 14-2007, f. & cert. ef. 12-24-07

Rule Caption: Oregon Low-Emission Vehicle Program Standards; Exempt Vehicles.

Adm. Order No.: DMV 15-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 735-030-0300, 735-030-0310, 735-030-0320, 735-030-0330

Subject: Chapter 366, Oregon Laws 2007 requires DMV to deny registration of new motor vehicles, beginning with model year 2009, that do not meet Low Emission Vehicle standards established by Oregon DEQ in 2006. DMV has adopted OAR 735-030-0300 to 735-030-0340 to: (1) establish proof of compliance with LEV standards for purposes of initial registration under ORS 803.350; (2) identify

motor vehicles that are exempt from LEV standards, and (3) define terms contained in the rules.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-030-0300

Purpose and Authority

Oregon administrative rules (OAR) 735-030-0300 to 735-030-0330 are adopted by DMV under the authority of ORS 803.350. These rules:

(1) Establish what constitutes proof of compliance with Oregon Low-Emission Vehicle Program standards implemented by DEQ under OAR chapter 340, division 257 for purposes of motor vehicle registration under ORS 803.350;

(2) Identify motor vehicles that are exempt from vehicle registration requirements for Oregon Low-Emission Vehicle Program standards; and

(3) Define terms contained in the rules.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.350, Ch. 366 OL 2007

Stats. Implemented: 803.350, Ch. 366 OL 2007

Hist.: DMV 15-2007, f. 12-24-07, cert. ef. 1-1-08

735-030-0310

Definitions

The following definitions apply to OAR 735-030-0300 to 735-030-0330:

(1) "Assembled vehicle" as defined in ORS 801.130 and these rules means a vehicle:

(a) With a body that does not resemble any particular year model or make of vehicle;

(b) That is not a vehicle rebuilt by a manufacturer;

(c) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica.

(2) "California motor vehicle emissions standards" means vehicle emissions regulations first adopted by California and which may be adopted by other states under sections 177 and 209 of the federal Clean Air Act.

(3) "Custom vehicle" means a motor vehicle that:

(a) Is a street rod as defined under ORS 801.513; or

(b) Was manufactured to resemble a vehicle at least twenty-five (25) model years old and of a model year after 1948; and

(A) Has been altered from the manufacturer's original design; or

(B) Has a body constructed from non-original materials.

(4) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(5) "Emission control label" or "emissions label" means a tag, plate, or sticker made of metal, plastic or other material that is permanently affixed to a motor vehicle by the manufacturer in an area within the engine compartment (if any) or to the engine. An emissions label contains vehicle information that includes:

(a) The engine family number and engine displacement;

(b) Manufacturer identification and trademark;

(c) Vehicle tune-up and spark plug information; and

(d) Oregon Low-Emission Vehicle program standards compliance information as described in section (2) of OAR 735-030-0320. For example, an emissions label on a vehicle that complies with Oregon Low-Emission Vehicle Program standards, under OAR 735-030-0320, may include the statement, "this vehicle conforms to U.S. EPA regulations and is certified for sale in California," or "this vehicle is certified/legal for sale in 50 states." Conversely, an emissions label on a vehicle that does not comply with Oregon Low-Emission Vehicle Program standards may include the statement, "this vehicle is certified/legal for sale in 49 states."

(e) An example of an emission control label referred to in this rule is contained in **Appendix A**, which is incorporated into this rule by reference.

(6) "MCO" means Manufacturer's Certificate of Origin as defined in OAR 735-022-0300.

(7) "Model year" is the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of a vehicle manufactured in two or more stages, the time of manufacture is the date of completion of the chassis.

(8) "New vehicle" means a motor vehicle with model year of 2009 or newer with 7,500 miles or less on the odometer when the vehicle is initially registered under ORS 803.420(1), 805.100 or 805.120.

(9) "Oregon Low-Emission Vehicle Program standards" means low emission motor vehicle standards as adopted by the Department of Environmental Quality in OAR chapter 340, division 257.

(10) "Replica" as defined in ORS 801.425 and these rules, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer.

[ED. NOTE: Appendix referenced is available from the agency.]

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Stat. Auth: ORS 184.616, 184.619, 802.010, 803.350, Ch. 366 OL 2007
Stats. Implemented: 803.350, Ch. 366 OL 2007
Hist.: DMV 15-2007, f. 12-24-07, cert. ef. 1-1-08

735-030-0320

Proof of Compliance with Oregon Low-Emission Vehicle Program Standards

(1) Unless exempt under OAR 735-030-0330, DMV will not issue registration to a new vehicle as defined under 735-030-0310 unless the applicant for registration provides proof to DMV that the vehicle meets Oregon Low-Emission Vehicle Program standards. Proof under this section must be provided to DMV at the time of application. DMV will accept the following as proof that a vehicle meets Oregon Low-Emission Vehicle Program standards:

(a) An MCO that shows the vehicle complies with California motor vehicle emissions standards; or

(b) Verification by DMV that the vehicle's emission control label complies with section (2) of this rule.

(2) For purposes of section (1) of this rule, an MCO or Emission control label must include at least one of the following:

(a) "This vehicle conforms to (or with) U.S. EPA and state of California regulations;"

(b) "This vehicle conforms to (or with) U.S. EPA regulations and is certified for sale in California;"

(c) "This vehicle conforms to California regulations applicable to new LEV passenger cars;"

(d) "This vehicle has a California emission system;"

(e) "This vehicle meets/satisfies California emission standards;"

(f) "This vehicle is certified/legal for sale in California;"

(g) "This vehicle is certified/legal for sale in 50 states;" or

(h) A similar statement that clearly indicates the vehicle complies with California emission standards/Oregon Low-Emission Vehicle Program standards, is certified legal for sale in 50 states or is certified legal for sale in California.

Stat. Auth: ORS 184.616, 184.619, 802.010, 803.350, Ch. 366 OL 2007
Stats. Implemented: 803.350, Ch. 366 OL 2007
Hist.: DMV 15-2007, f. 12-24-07, cert. ef. 1-1-08

735-030-0330

Vehicles Exempt from Oregon Low-Emission Vehicle Program Standards

The following vehicles are exempt from Oregon Low-Emission Vehicle Program standards:

(1) Vehicles sold for registration and use in a state that is not subject to California motor vehicle emission standards.

(2) Previously registered vehicles with more than 7,500 miles. For vehicle dealers, vehicle mileage at the time of sale is determined by the odometer reading at the time the dealer acquired the vehicle.

(3) Vehicles available only for rent to a final destination in a state that is not subject to California motor vehicle emission standards.

(4) Vehicles purchased by a nonresident before establishing residency in the State of Oregon, regardless of the mileage on the vehicle.

(5) Vehicles purchased by Oregon residents while assigned to active military duty outside the State of Oregon.

(6) Vehicles transferred from one person to another due to: death, inheritance, devise or bequest; divorce, dissolution, annulment or legal separation; merger or consolidation; bankruptcy; court judgment or decree; or possessory lien, seizure or foreclosure.

(7) A vehicle acquired by an Oregon resident to replace a vehicle registered to the resident that was stolen, damaged or failed beyond reasonable repair while out of state, provided that the replacement vehicle is acquired out of state when the previously-owned vehicle was either stolen, damaged, or failed beyond reasonable repair.

(8) A custom, replica or assembled vehicle that:

(a) Is maintained for occasional transportation, exhibitions, club activities, parades, tours, testing of operation, repair, maintenance and similar uses; and

(b) Is not used for general daily transportation.

Stat. Auth: ORS 184.616, 184.619, 802.010, 803.350, Ch. 366 OL 2007
Stats. Implemented: 803.350, Ch. 366 OL 2007
Hist.: DMV 15-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Vehicle Registration Fees: Removes Reference to "Fee Increase," adds term "Fee Change."

Adm. Order No.: DMV 16-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 735-032-0050

Subject: Under ORS 803.420, registration fees for motor homes are based on vehicle length. The greater the length, the higher the registration fee. In the 2007 amendments to the statute, the registration fee is decreased for motor homes 14 feet and under in length. OAR 735-032-0050 addresses registration fee increases, but says nothing about fee decreases. To fix that, the term "fee increase" was deleted and replaced with "fee change."

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-032-0050

Application of Vehicle Registration Fees

(1) This rule applies to any change in registration fees. Regardless of when an applicant applies for registration or renewal of registration or pays the registration fee, DMV will require payment of the registration fee in effect at the time the registration period begins.

(2) When application is made for renewal of registration for a registration period that begins before the date a fee change takes effect, the registration renewal fee is the fee amount in effect before the change.

Example: If the registration fee decreases from \$90 to \$54 effective January 1, the registration or registration renewal fee for a registration period that begins before January 1 is \$90.

(3) When application is made for registration or renewal of registration for a registration period that begins on or after the date a fee change takes effect, the fee is the fee amount in effect after the change.

Example: If the registration fee increases from \$54 to \$90 effective January 1, the registration or registration renewal fee for a registration period that begins on or after January 1 is \$90.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.420
Stats. Implemented: ORS 803.420

Hist.: MV 10-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 16-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Medical Programs including Commercial Driver License Medical Qualifications.

Adm. Order No.: DMV 17-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 735-060-0120, 735-062-0000, 735-062-0073, 735-062-0090, 735-062-0200, 735-064-0040, 735-074-0080, 735-074-0140, 735-074-0180, 735-076-0002, 735-076-0007, 735-076-0018, 735-076-0020, 735-076-0035

Rules Ren. & Amend: 735-074-0260 to 735-063-0050, 735-074-0270 to 735-063-0055, 735-074-0280 to 735-063-0060, 735-074-0290 to 735-063-0065

Subject: The responsibility for determining if a person is medically eligible to drive is moving from the Department of Human Services to DMV. Some rules are amended to change references from the State Health Office (or Officer) to Medical Determination Officer and change the term "certificate of eligibility" to "medical determination." Two rules are amended to include a Doctor of Naturopathic Medicine in the definition of "physician" instead of "health care provider." The rules being moved and amended are specific to CDL qualifications.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-060-0120

The Certification Drive Test

(1) DMV adopts the following Federal Motor Carrier Safety Administration regulations in effect on July 1, 2007 and prescribes that these regulations establish the standards that must be followed in the testing for a commercial driver license:

(a) 49 CFR sec. 383.75, Third Party Testing; and

(b) 49 CFR sec. 383.131 through sec. 383.135.

(2) The certification drive test conducted under the CDL Third Party Tester program shall be by a CDL Third Party Examiner. The CDL Third Party Examiner shall:

(a) Be certified by DMV; and

(b) Not conduct more than eight CDL Class A, B, or C pre-trip inspection tests and on-road drive tests within a single calendar day;

(c) Begin and end all pre-trip inspection and on-road drive tests during daylight hours;

(d) Conduct all pre-trip inspection and on-road drive tests within the State of Oregon;

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(e) Conduct both the pre-trip inspection and on-road drive tests in the same type and class of commercial vehicle. Both the pre-trip inspection and on-road drive tests must be completed on the same calendar day unless the person tested has previously failed the on-road drive test;

(f) Not conduct another on-road drive test until after the minimum waiting period set forth in OAR 735-062-0070(5) has passed, if the person fails a pre-trip inspection test or an on-road drive test;

(g) Conduct the same pre-trip inspection tests and on-road drive tests that are administered by DMV examiners and use test scoring sheets approved by DMV;

(h) Not permit any person who is not a certified examiner, an official with DMV, an official with the Federal Motor Carrier Safety Administration or the person being tested to observe or participate in CDL pre-trip inspection tests or the on-road drive tests without the prior approval of DMV; and

(i) Conduct both the pre-trip inspection and on-road drive tests in English as required by OAR 735-062-0075(2)(d) and (e).

(3) The CDL Third Party Examiner shall do the following before administering a drive test:

(a) Ensure the person being tested has a valid CDL instruction permit or CDL and, if the driver does not have a CDL, an Oregon driver license that was issued at least 21 days prior to the test as required by OAR 735-060-0105(3)(i). A drive test shall not be administered if the CDL Examiner has reason to believe that the driver's driving privileges are suspended, revoked, canceled or have otherwise been withdrawn; and

(b) View the Medical Certificate and any required medical waiver as described in OAR 735-063-0060.

(4) The certification drive test shall be conducted in accordance with the federal regulations adopted by section (1) of this rule and the methods and procedures set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated herein. The certification drive test shall include, but is not limited to, the following:

(a) A pre-trip inspection test. This test is designed to evaluate the tested driver's ability to identify and operate the equipment on the vehicle in which he or she is being tested and to detect and identify unsafe vehicle equipment items. The specific items that must be inspected during a pre-trip inspection are those listed in the Oregon Department of Transportation CDL Examiner's Manual; and

(b) An on-road drive test. This test is designed to evaluate the tested driver's competency to safely operate a commercial motor vehicle or combination of commercial vehicles under actual driving conditions. The tested driver must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road drive test:

(A) It shall be conducted on a drive test route approved by DMV and meeting the specifications set forth in section (5) of this rule;

(B) The commercial motor vehicle or combination of commercial motor vehicles must be of the class for which the tested driver seeks a license or endorsement and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. The CDL Examiner is not required to verify the safe condition of any commercial motor vehicle provided by the tested driver for an on-road test, but shall not conduct the test if it is apparent the vehicle cannot be operated safely and legally; and

(C) The commercial motor vehicle or combination of vehicles need not be loaded, but the test shall be conducted and scored as if the vehicle or combination of vehicles is loaded.

(5) The on-road drive test route shall:

(a) Be designed to enable the CDL Third Party Examiner to evaluate the ability of the driver to perform the maneuvers listed in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein; and

(b) Meet the specifications for an on-road drive test for commercial driver licensing set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein.

(6) The Oregon Department of Education may establish additional requirement for the pre-trip inspection and on-road drive test for applicants for a school bus driver certificate, but may not modify or omit any of the testing requirements set forth in these rules, including those in the Oregon Department of Transportation CDL Examiner Manual, incorporated by reference herein, without the prior approval of DMV.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0710; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-062-0000

Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040 and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) Mother means the biological or adoptive mother of the applicant;

(B) Father means the biological or adoptive father of the applicant;

and

(C) Legal guardian means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Present to DMV documentary proof of the person's age and identity as described in OAR 735-062-0020;

(d) Present to DMV documentary proof of the person's residence address as described in OAR 735-062-0030;

(e) Present to DMV proof, as described in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(f) Surrender to DMV all driver permits and driver licenses in the person's possession that have been issued by:

(A) Another state;

(B) A Canadian province or territory; or

(C) A U.S. territory.

(g) In addition to all requirements in subsections (a) through (f) of this section, a person who holds a commercial driver license from another jurisdiction must satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?";

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?";

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a determination of eligibility from the Medical Determination Officer under ORS 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

ADMINISTRATIVE RULES

(8) A driver license of an applicant with a February 29 birth date expires:

- (a) On February 29 if the expiration year is a leap year; or
- (b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the license or permit and mail it to the address provided by the applicant at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040, 807.050, 807.060, 807.120, 809.310
Stats. Implemented: ORS 807.040, 807.060 & 807.066
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-062-0073

Denial of Further Testing

DMV may refuse to continue a test or conduct further testing if the department determines that the person does not meet the qualifications for the class of license or endorsement for which the person is being tested. To show qualification for a license or endorsement, a person must demonstrate knowledge and understanding of the traffic laws of this state and must demonstrate the person's ability to operate a motor vehicle without endangering the safety of persons or property:

(1) A DMV employee may refuse to conduct or to continue a behind the wheel drive test if the employee reasonably believes that the person is likely to endanger persons or property while being tested.

(2) DMV may deny a drive test, and deny further testing, prior to the start of the test if there are observable reasons to believe the person may endanger the safety of persons or property during a drive test. Observable reasons to deny a drive test before starting the test may include but are not limited to the following:

(a) The person is visibly confused;

(b) The person is unable to follow simple directions needed to prepare for the drive test; or

(c) The person is unable to perform the safety check on the person's vehicle before beginning the drive test.

(3) DMV may immediately stop a drive test if the drive test examiner reasonably believes the person is likely to endanger persons or property. Reasons to immediately stop a drive test include, but are not limited to:

(a) An accident during the drive test which could have been avoided by the driver being tested;

(b) Dangerous driving behaviors including but not limited to the following:

(A) Failure to obey traffic control devices;

(B) Is prevented from causing an accident by the actions of other drivers or the examiner;

(C) Turns from the wrong lane or into the wrong lane in a way that impedes the right of way of others;

(D) Fails to stop for a school bus that has its red lights flashing;

(E) Fails to yield to a pedestrian or fails to stop when another vehicle is stopped at a crosswalk because a person is occupying the crosswalk;

(F) Drives over a curb, sidewalk or median;

(G) Depends on the action of other drivers for his or her own safety; or

(H) Changes lanes or merges into traffic without checking for other vehicles.

(c) Is an experienced driver who is unable to perform basic driving tasks;

(d) Is unable to follow instructions to the point the drive examiner is not certain he or she can verbally guide the driver back to the DMV field office; or

(e) Seems unaware of driving mistakes made, takes no responsibility as mistakes are pointed out and shows a pattern of denial of any error.

(4) A DMV employee may use the guidelines in sections (2) and (3) of this rule, or other actions that occurred during a drive test, to refuse to conduct or continue testing and to recommend denial of further testing.

(5) Upon review of the DMV employee's recommendation and if DMV determines the person is likely to endanger persons or property during subsequent testing, DMV will deny further testing and will:

(a) Send to a person who has not been issued Oregon driving privileges a notice denying further testing. The person is not entitled to a contested case hearing; or

(b) Cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010 and 735-070-0020 if the person has been issued Oregon driving privileges.

(6) Someone who has been denied further testing under this rule must provide adequate proof to DMV that the person has taken steps to improve driving skills and as such can take a drive test without endangering the safe-

ty of persons or property. A person may provide proof, which may alone or in conjunction with other information constitute adequate proof, such as the following:

(a) Successfully complete a driver training course conducted by an ODOT certified commercial driver training school and submits proof of completion to DMV.

(b) Successfully complete a driver rehabilitation program conducted by a rehabilitation specialist and submits proof of completion to DMV.

(c) Submit a medical report form showing that a licensed physician, physician's assistant or nurse practitioner has conducted a diagnostic examination, showing to the satisfaction of the Medical Determination Officer that the person's physical or mental disease or disability has improved or is controlled, so that it does not impair the person's ability to safely operate a motor vehicle.

(d) Show proof that an adaptive device, such as hand controls, has been added to the vehicle and show some documentation that the person knows how to use and has practiced with the adaptive device(s).

(7) To satisfy the requirements of subsections (6)(a) or (b) of this rule, the proof submitted to DMV must include the following:

(a) The applicant's name and either a date of birth or Oregon driver license number;

(b) A certificate or statement from the driver training instructor or school, or the rehabilitation specialist that the person successfully completed a driver training course or a driver rehabilitation program; and

(c) The ODOT certification number of the commercial driver training school, or the rehabilitation program name, address, phone number and the name of the specialist who worked with the person.

(8) To obtain a driver license or endorsement, an applicant who has been denied further testing, or a person whose driving privileges have been cancelled under subsection (5)(b) of this rule, must meet the requirements of section (6) of this rule and must submit an application, pay all required fees, and establish all qualifications for the class of license or endorsement sought.

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

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.070, 807.340 & 807.350

Hist.: DMV 3-2002, f. & cert. ef. 3-14-02; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

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 present to DMV proofs of age and/or identity as set forth in OAR 735-062-0020.

(3) An applicant for the renewal of a driver license or identification card that includes a change of residence address must present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. (Current residence address is the residence address to be included on the license or identification card to be issued.)

(4) DMV may renew an unexpired driver license or identification card up to four months prior to the expiration date.

(5) 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.

(6) 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.

(7) An applicant for a renewal of a commercial driver license must meet the requirements set forth in OAR 735-063-0065.

(8) 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.

(9) 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.

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(10) Notwithstanding section (9) 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.

(11) DMV will not renew an Oregon driver license or permit if the applicant has a current, valid Oregon identification card. To become eligible, the person must surrender the Oregon identification card before DMV will renew the Oregon driver license or permit. If the person's identification card is lost or the person no longer has the identification card in his or her possession, the person must provide a statement attesting to this fact.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012 & 807.040
Stats. Implemented: ORS 802.012, 802.540, 807.040 - 807.060, 807.100, 807.15, 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

735-062-0200

Conversion From Another Jurisdiction's Commercial Driver License

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require an applicant for a commercial driver license in this state who currently holds a CDL issued by another jurisdiction to:

(a) Take and pass the Class C knowledge test and a vision screening; and

(b) Take and pass the pre-trip inspection, drive test and knowledge test required, if the person applies for a higher class license.

(2) DMV may waive the drive tests or knowledge tests, except the Class C knowledge test and the hazardous materials endorsement knowledge test, if the applicant applies for a license equal to the CDL the applicant has been issued by another jurisdiction and the CDL has not been expired for more than one year.

(3) DMV may require any applicant to take a knowledge or drive test prior to issuing a CDL.

(4) When a person has surrendered his or her Oregon CDL to obtain a CDL from another jurisdiction, DMV may replace or renew the Oregon CDL without requiring a drive test or knowledge test if:

(a) The applicant has moved back to Oregon and can provide proof of residence address in Oregon; and

(b) The Oregon CDL is not currently expired, or if expired, has not been expired for more than one year. Rather than issue a replacement CDL, DMV will renew the Oregon CDL if it is due to expire within the next four months.

(5) DMV will not renew an Oregon CDL unless the applicant meets the requirements of OAR 735-062-0090 and 735-063-0065.

(6) DMV will submit an inquiry through the Commercial Driver License Information System (CDLIS) and the National Driver Register (NDR)/ Problem Driver Pointer System (PDPS) before issuing, replacing or renewing an Oregon CDL. DMV will not issue, replace or renew an Oregon CDL if the inquiry shows:

(a) The applicant has a current and valid CDL, issued by another jurisdiction unless the CDL is surrendered to DMV or the applicant certifies it has been lost or destroyed;

(b) The applicant's driving privileges are suspended, revoked or canceled in another jurisdiction; or

(c) The applicant is disqualified from operating a commercial motor vehicle in another jurisdiction.

(7) The driving record of the applicant from another jurisdiction will become a part of the Oregon driving record as provided in OAR 735-062-0210.

(8) A person whose driving privileges have been suspended, revoked, or canceled in another jurisdiction or who has been disqualified from operating a commercial motor vehicle in another jurisdiction, must be eligible for valid driving privileges in the other jurisdiction before an Oregon CDL may be issued. When the person is eligible for valid driving privileges in the other jurisdiction, he or she may ask that DMV check CDLIS and NDR/PDPS to verify the eligibility.

Stat. Auth.: ORS 184.616, 184.619, 807.045, 807.050 & 807.070
Stat. Implemented: ORS 807.045
Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0015; 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

735-063-0050

Medical Standards for Drivers of Commercial Motor Vehicles

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) adopts the United States Department of Transportation Federal Motor Carrier Safety Administration (FMCSA)

regulations in effect on July 1, 2007 contained in 49 CFR § 391.41 through 391.49 pertaining to physical qualifications and medical examination of drivers of commercial motor vehicles. Except as provided in section (2) of this rule, to qualify for a Class A, B, or C commercial driver license a person must obtain an approved medical certificate meeting the requirements of these federal regulations.

(2) DMV may issue a Class A, B, or C commercial driver license to a person who does not meet the physical qualifications outlined in the Federal Motor Carrier Safety Regulations Title 49 CFR § 391.41(b) if the person is issued:

(a) A Waiver of Physical Disqualification, by DMV under OAR 735-063-0070;

(b) An exemption by the Federal Motor Carrier Safety Administration pursuant to 49 USC § 31136 and 31135, and 49 CFR § 381.300 to 381.330; or

(c) A Skill Performance Evaluation Certificate issued by the Federal Motor Carrier Safety Administration pursuant to 49 CFR § 391.49.

(3) DMV will issue a restricted Class A, B or C commercial driver license if the waiver, exemption or Skill Performance Evaluation Certificate described in section (2) of this rule indicate any applicable restrictions, conditions or limitations for issuance of a commercial license.

(4) DMV will suspend a Class A, B or C commercial driver license if a Waiver of Physical Disqualification is not renewed or is suspended or revoked for any reason or for any length of time.

(5) DMV will suspend a Class A, B or C commercial driver license if notified that the Federal Motor Carrier Safety Administration (FMCSA) has revoked or not renewed the Skill Performance Evaluation Certificate issued to the driver under the provisions of 49 CFR § 391.49.

(6) DMV will suspend a Class A, B or C commercial driver license if notified that FMCSA has revoked or not renewed an exemption to physical qualifications issued to a driver under the provisions of 49 U.S.C. § 31135 and 31136(e) and 49 CFR § 381.300 to 381.330.

(7) DMV will suspend a Class A, B, or C commercial driver license if notified by the Medical Determination Officer that the driver no longer meets the physical qualifications outlined in 49 CFR § 391.41 (b).

(8) A person suspended under section (4), (5), or (6) of this rule may reinstate commercial driving privileges if the person obtains a medical certificate as described in section (1) of this rule or is reissued a waiver by DMV or an exemption or Skill Performance Evaluation by FMCSA as described in section (2) of this rule.

(9) A person suspended under section (7) of this rule may reinstate commercial driving privileges if the person is determined by the Medical Determination Officer to meet the physical qualifications for a Class A, B or C commercial driver license.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.040
Stats. Implemented: ORS 807.040 & 807.100
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0730; MV 24-1988, f. & cert. ef. 7-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 11-1992, f. & cert. ef. 9-28-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0140; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0260, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-063-0055

Who Must Have an Approved Medical Certificate

(1) A person with a Class A, B, or C commercial license must have an approved medical certificate as described in OAR 735-063-0060 in their immediate possession while operating any Class A, B or C commercial motor vehicle.

(2) A person who does not have a valid medical certificate approved by the Driver and Motor Vehicle Services Division of the Department of Transportation may drive only non-commercial vehicles even if the person has a Class A, B, or C commercial driver license.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.040
Stats. Implemented: ORS 807.040, 807.100 & 807.150
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0740; MV 6-1990, f. & cert. ef. 4-2-90; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0150; Renumbered from 735-074-0270, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-063-0060

Approved Medical Certificates

(1) DMV approves the following as medical certificates for use when driving Class A, B, or C commercial motor vehicles within Oregon:

(a) Medical Certificate, WTB Form 202B; printed by the Willamette Traffic Bureau and completed in compliance with Title 49, Chapter III, Sections 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations;

(b) Any medical certificate that complies with Title 49, Chapter III, Sections 391.41 through 391.49, of the Federal Motor Carrier Safety

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Regulations. Compliance with these requirements must be explicitly stated on the medical certificate issued; or

(c) An Oregon School Bus Driver's Certificate or Oregon School Bus Driver's Permit (issued by the Oregon Department of Education).

(2) If indicated as required for compliance, the medical certificate described in section (1)(a) of this rule must also be accompanied by a current:

- (a) Waiver of Physical Disqualification (issued by DMV);
- (b) Skill Performance Evaluation Certificate issued by the Federal Motor Carrier Safety Administration; or
- (c) Exemption issued by the Federal Motor Carrier Safety Administration.

(3) The medical certificate must not be expired.

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

Stats. Implemented: ORS 807.040, 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0750; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0160; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0280, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-063-0065

Medical Certificate Procedures

(1) DMV will issue a Class A, B, or C commercial driver permit or license only to applicants who present an approved medical certificate as described in OAR 735-063-0060 and, if required, a Waiver of Physical Disqualification, an exemption or Skill Performance Evaluation Certificate when applying for an original or renewal of a Class A, B, or C commercial permit or driver license.

(2) An applicant for a Class A, B, or C commercial driver license used in interstate commerce must also certify on the application or renewal form that he or she meets all of the driver qualification requirements as required by § 383.71(a) and § 383.71(c)(1) of the Federal Motor Carrier Safety Regulations (FMCSR) of the U.S. Department of Transportation (codified at 49 CFR § 383.71).

(3) DMV may issue a Class C or Class C restricted driver license to a person who applies for the renewal of a Class A, B, or C commercial driver license if the person does not present an approved medical certificate as required or fails to certify he or she meets the driver qualification requirements as required in subsections (3) and (4) of this rule. The lower class of license issued shall be the class requested by the applicant.

(4) A driver who needs to replace a medical certificate because it is lost, mutilated, or destroyed may obtain a duplicate from the same source from which they obtained the original medical certificate.

(5) DMV is not responsible for any expenses an applicant may incur from the acquisition of an approved medical certificate or duplicate medical certificate.

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

Stats. Implemented: ORS 807.040, 807.100 & 807.150

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0760; MV 4-1987, f. & ef. 5-18-87; MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0170; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0290, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-064-0040

Application Requirements for a Hardship or Probationary Permit

(1) Documents required to obtain a hardship permit depend upon the reason(s) for the suspension. Documents required to obtain a probationary permit depend upon whether the applicant's driving privileges are also suspended and the reason for the suspension. An applicant must comply with any sections of this rule that apply to their suspension and/or revocation. All applicants must:

(a) Complete a Hardship/Probationary Application, Form 735-6044. This form is available at any DMV office and on the Internet at www.oregondmv.com; and

(b) Pay the hardship or probationary permit fee and the reinstatement fee.

(2) An applicant whose driving privileges are suspended based upon a conviction for DUII, reckless driving, fleeing or attempting to elude a police officer or misrepresentation of age by a minor to purchase or consume alcohol must obtain the recommendation and signature of the convicting judge on the Hardship/Probationary Application form.

(3) An applicant who is suspended for two or more DUII convictions where the commission of the later offense and the conviction for a separate offense occurred within a five-year period must submit a recommendation for issuance of a hardship or probationary permit from a program approved by AMH.

(4) Unless driving privileges are suspended for a DUII conviction, an applicant for a hardship permit must submit an SR22 insurance certificate or other proof of financial responsibility as described in ORS 806.240. An

applicant whose driving privileges are suspended for a DUII conviction, must submit an SR22 certificate as proof of financial responsibility that shows at least the minimum coverage amounts specified in ORS 806.075. An applicant for a probationary permit shall submit an SR22 insurance certificate if the applicant's driving privileges are suspended in addition to the habitual traffic offender revocation.

(5) An applicant for a probationary permit must submit to DMV a medical report form or a report on the Hardship/Probationary Permit Application (form 735-6044), completed by a licensed physician showing to the satisfaction of DMV that the applicant has no medical condition or impairment that makes it unsafe for the applicant to operate a motor vehicle.

(6) An applicant for a probationary permit must submit verification of the successful completion of a driver improvement course approved by DMV. Names of approved courses can be obtained by calling DMV.

(7) An applicant must provide the following information, depending upon the driving privileges sought:

(a) An applicant who is required to drive for employment purposes must provide the routes, counties, days and times the applicant is required to drive. In addition, this information must be supported by any of the following that apply:

(A) The applicant must submit a letter from the applicant's employer in order to verify the hours of work and the need for on the job driving;

(B) The applicant must submit proof of self-employment. Acceptable proof includes a copy of a business license, business tax statement, newspaper advertisement or business receipts; and

(C) The applicant must provide the days, hours and counties for seeking employment.

(b) An applicant who needs to drive to attend an alcohol or drug treatment or rehabilitation program must provide the name and address of the program, routes, days and times the applicant is required to drive to and from the program;

(c) An applicant for a hardship permit who needs to drive to receive medical treatment on a regular basis for himself or herself or a member of the person's immediate family, must provide the name and address of the medical treatment facility, routes, days and times the applicant is required to drive to receive medical treatment on a regular basis for the person or a member of the person's immediate family. The applicant must submit a signed statement from the physician or certified nurse practitioner treating the person or the person's immediate family member, advising of the need for medical treatment on a regular basis. The statement must include how often the treatment is required and hours of the day and days of the week treatment is available. Actual appointment times are subject to verification by DMV and law enforcement;

(d) An applicant for a hardship permit whose driving privileges are suspended for violation of ORS 165.805, 471.430, or 806.010, is eligible to request driving privileges for family necessities. The applicant must provide the name and address of the person to whom or facility to which the applicant is driving for the family necessity, routes, days and times the applicant is required to drive for family necessities, as defined in OAR 735-064-0005.

(8) Applicants may submit documents to DMV as they meet requirements. DMV, however, will not issue the hardship or probationary permit until all required documents are received and processed by DMV, Driver Suspensions Unit.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240 & 807.270

Stats. Implemented: ORS 807.240, 807.250, 807.270, 807.370, 813.500, 813.510

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0095; MV 29-1989, f. & cert. ef. 10-3-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 2-2006, f. & cert. ef. 2-15-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-074-0080

Definitions

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(2) A "health care provider" is a person licensed, certified or otherwise authorized or permitted by law to administer health care in the State of Oregon. For purposes of these rules, the term health care provider is limited to: a chiropractic physician, nurse practitioner, occupational therapist, physical therapist, optometrist, physician assistant and podiatric physician or surgeon.

(3) "Immediate suspension or cancellation" means the suspension or cancellation of driving privileges or the right to apply for driving privileges before the person is given an opportunity for a hearing to contest the suspension or cancellation.

(4) "Mandatory reporting or a mandatory report" is a report of severe and uncontrollable cognitive or functional impairments, submitted by a physician or designated health care provider as mandated under ORS

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807.710 and these rules. DMV also has a non-mandatory reporting program that can be used by anyone, including physicians and health care providers, that reports medical issues or driving behaviors that may affect the person's ability to safely operate a motor vehicle. The non-mandatory reporting program is outlined in OAR chapter 735, division 76.

(5) "Medical Determination Officer" is a physician, nurse practitioner or physician assistant, licensed to provide health care services by the State of Oregon, and employed or designated by DMV to make medical determinations of a driver's medical eligibility for driving privileges.

(6) A "medical report form" is the form provided to a person or designated by DMV to be used to obtain medical information for determining if the person is eligible or qualified for driving privileges.

(7) A "physician" is a medical doctor or doctor of osteopathic medicine licensed to practice medicine in the State of Oregon by the Board of Medical Examiners or a doctor of naturopathic medicine licensed to practice naturopathic medicine in the State of Oregon by the Board of Naturopathic Examiners.

(8) A "primary care provider" is a physician or health care provider who is responsible for supervising, coordinating and providing a person's initial and ongoing health care. A primary care provider initiates referrals for health care outside of his or her scope of practice, consultations and specialist care to assure continuity of a person's medically appropriate health care.

(9) "Primary and secondary driving controls" mean the steering wheel, gas pedal, brake, clutch (if applicable), turn signal controls, headlight controls, windshield wiper controls, defrost control and horn of a motor vehicle.

(10) "Recertification" or "recertify" is the process for requiring the person to reestablish eligibility at periodic intervals by submitting updated medical or vision information and possibly proving that the mental or physical condition or impairment does not affect their ability to safely operate a motor vehicle by passing DMV tests, receiving a determination of eligibility from the Medical Determination Officer, or both.

(11) "Severe" means that the impairment substantially limits a person's ability to perform activities of daily living, including driving, because it is not controlled or compensated for by medication, therapy, surgery or adaptive devices. Severe does not include a temporary impairment for which the person is being treated by a physician or health care provider and which is not expected to last more than six months.

(12) "Uncontrollable" means the impairment cannot be controlled or compensated for by medication, therapy, surgery, or adaptive devices.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.710

Stat. Implemented: ORS 807.710

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-074-0140

DMV Response to Mandatory Report — Suspension, Opportunity to Re-Test, Reinstatement

(1) DMV will review a report received under OAR 735-074-0120 to determine if sufficient information has been provided. If the report does not contain the information required by OAR 735-074-0120 it may be returned to the reporting physician or health care provider for completion. If the report does not meet the requirements of a mandatory report, but if the report is of a possible mental or physical condition or impairment that indicates the person is no longer qualified to hold a driver license, driver permit or endorsement or may no longer be able to drive safely, DMV will review the report under the non-mandatory program described in OAR chapter 735, division 76 to determine what action, if any, is appropriate.

(2) Using the standards set forth in OAR 735-074-0130, or when otherwise recommended by the Medical Determination Officer, DMV will suspend driving privileges or the right to apply for driving privileges under ORS 809.419(3), if it is determined from the report submitted under OAR 735-074-0120 that the person has a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways. Driving privileges or the right to apply for driving privileges will be immediately suspended if DMV has reason to believe the person may endanger people or property if not immediately suspended.

(3) If DMV receives a report that indicates that a person's vision does not meet the vision standards set forth in OAR 735-062-0050, DMV will immediately suspend the person's driving privileges or right to apply for driving privileges under ORS 809.419(3). To be eligible for reinstatement of driving privileges the person must: submit proof from a licensed optometrist or physician who specializes in the diagnosis and treatment of eye diseases that the person's vision, with or without corrective lenses, meets the vision standards set forth in OAR 735-062-0050, and pass a knowledge and drive test. Proof that vision meets DMV standards is only valid for six months from the date DMV receives the Certificate of Vision

form and the person must pass the knowledge and drive test within this time period for reinstatement of driving privileges.

(4) A person whose driving privileges and right to apply for driving privileges are suspended because of a functional impairment may request to be tested by DMV to demonstrate that notwithstanding the impairment, the person is qualified to safely operate a motor vehicle. If the request is granted, DMV will administer a vision screening under OAR 735-062-0050, a knowledge test under 735-062-0040 and a DMV drive test under 735-062-0070. DMV will deny the request if it has reason to believe the person is unable to safely operate a motor vehicle during a drive test. If the request is denied, DMV may give the person tests if the person:

(a) Receives a determination of eligibility from the Medical Determination Officer;

(b) Submits proof of successful completion of a driver rehabilitation program conducted by a rehabilitation specialist;

(c) Submits proof of successful completion of a driver training course conducted by an ODOT certified commercial driver training school; or

(d) Submits proof that the person's motor vehicle is equipped with an appropriate adaptive device(s), such as hand controls, and provides documentation that the person knows how to use and has practiced with the adaptive device(s).

(5) A person whose driving privileges and right to apply for driving privileges are suspended because of a cognitive impairment or a cognitive impairment in conjunction with a functional impairment reported under OAR 735-074-0110 may request to be tested by DMV to demonstrate that notwithstanding the disorder or the impairment, the person is qualified to safely operate a motor vehicle. Before DMV will grant the request to be tested, the Medical Determination Officer must determine that the person is medically eligible to take tests. If eligible for testing, the person must pass a vision screening under OAR 735-062-0050, a knowledge test under 735-062-0040 and a DMV drive test under 735-062-0070.

(6) The following apply to a request for testing under sections (4) and (5) of this rule:

(a) The request must be made by contacting DMV headquarters; and

(b) For a cognitive impairment or a cognitive impairment in conjunction with a functional impairment, testing must be completed within six months from the date the Medical Determination Officer determines the person is medically eligible to take tests.

(7) DMV may issue a no-fee identification card if a person whose driving privileges are suspended pursuant to this rule, voluntarily surrenders his or her valid driver license or driver permit.

(8) DMV will notify the reporting physician or health care provider if the person's driving privileges are reinstated.

(9) If the person reinstates his or her driving privileges, DMV may require the person to provide periodic medical information based on the recommendation of the Medical Determination Officer or obtain periodic vision exams based on the recommendation of the person's vision specialist. The Medical Determination Officer may review those with functional impairments who are reinstated for determination of whether the person should be medically recertified at a later date. The Medical Determination Officer will include a determination if medical re-certification is needed on cognitive impairments at the time a determination on testing is made. If periodic medical information is required, DMV will send the person a Medical Impairment Recertification form and require the person to obtain information from his or her physician, nurse practitioner or physician assistant and return that to DMV within 30 days of the date on the requirement letter. If a periodic vision exam must be obtained, DMV will send the person a Certificate of Vision form which must be completed by the person's vision specialist and returned to DMV within 30 days of the date on the requirement letter.

(10) A person may be required to successfully complete DMV testing or may have driving privileges suspended based on information contained in the Medical Impairment Recertification form or periodic vision information report submitted under section (9) of this rule.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340, 807.710 & 809.419

Stat. Implemented: ORS 807.340 & 807.710

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 1-2005, f. & cert. ef. 1-20-05; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-074-0180

When a Suspension or Cancellation of Driving Privilege Occurs

(1) DMV may issue an immediate suspension of driving privileges in the following situations:

(a) As set forth in OAR 735-074-0140, if DMV has reason to believe from the information provided in a mandatory report submitted under 735-074-0120 that the person may endanger people or property if not immediately suspended;

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(b) The Medical Determination Officer, upon review of medical information on a driver, recommends an immediate suspension;

(c) Information contained in a required Medical Impairment Recertification form submitted as required under OAR 735-074-0140 indicates that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended; or

(d) Information contained in a required Certificate of Vision form submitted as required under OAR 735-074-0140 indicates the person's vision does not meet minimum vision standards under OAR 735-062-0050 and DMV has reason to believe the person may endanger people or property if not immediately suspended.

(2) DMV will immediately cancel a person's driving privileges if DMV has reason to believe that the person may endanger people or property if not immediately canceled. If DMV has reason to believe a person is unable to safely operate a motor vehicle and may endanger people or property, DMV may immediately cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220.

(3) DMV may cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person's vision does not meet the minimum vision standards set forth in OAR 735-062-0050;

(b) DMV determines the person no longer meets the qualifications for a driver license, driver permit or endorsement because of a physical or mental condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highway or a problem condition involving alcohol, inhalants or controlled substances; or

(c) The person is denied a drive test by DMV or the Medical Determination Officer because of a physical or mental condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highway.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340, 807.350 & 809.419

Stat. Implemented: ORS 807.350 & 809.410

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0410; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; Renumbered from 735-074-0020; DMV 1-2005, f. & cert. ef. 1-20-05; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-076-0002

Definitions

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(2) "Health care provider" is a person licensed, certified or otherwise authorized or permitted by law to administer health care in the State of Oregon. For purposes of these rules, the term health care provider is limited to: a chiropractic physician, nurse practitioner, occupational therapist, physical therapist, optometrist, physician assistant and podiatric physician or surgeon.

(3) "Immediate suspension" means the suspension of driving privileges or the right to apply for driving privileges before the person is given an opportunity for a hearing to contest the suspension.

(4) "Medical Determination Officer" is a physician, nurse practitioner or physician assistant, licensed to provide health care services by the State of Oregon, and employed or designated by DMV to make medical determinations of a driver's medical eligibility for driving privileges.

(5) A "medical report form" is the form provided to a person or designated by DMV to be used to obtain medical information for determining if the person is eligible or qualified for driving privileges.

(6) "Non-mandatory reporting or a non-mandatory report" is a voluntary report to DMV of either a medical condition or impairment that may affect a driver's ability to safely operate a motor vehicle, or a report of actual driving behavior that may indicate the person is no longer able to safely operate a motor vehicle. A non-mandatory report does not include a report that must be filed by a physician or health care provider as required under OAR chapter 735, division 74 of a severe and uncontrollable impairment that affects a person's ability to safely operate a motor vehicle.

(7) A "physician" is a medical doctor or doctor of osteopathic medicine licensed to practice medicine in the State of Oregon by the Board of Medical Examiners, or a doctor of naturopathic medicine licensed to practice naturopathic medicine in the State of Oregon by the Board of Naturopathic Examiners.

(8) "Problem condition involving alcohol, inhalants or controlled substances" has the meaning set forth in ORS 813.040.

(9) "Recertification" or "recertify" is the process for requiring the person to reestablish eligibility for driving privileges at periodic intervals by submitting a medical report form, or by submitting a Certificate of Vision form (DMV form 24) or passing a DMV vision screening. The process may

also include DMV tests, receiving a determination of eligibility from the Medical Determination Officer, or both, if determined necessary by DMV.

(10) "Tests" are examinations under ORS 807.070 that establish a person's eligibility for driving privileges. Tests include a DMV vision screening, a knowledge test and a drive test.

(11) "Unsafe or dangerous driving behavior" means a driver is unable to perform basic driving tasks in a safe and competent manner. Examples include, but are not limited to, the following:

(a) The driver is prevented from causing an accident by an evasive maneuver by another driver(s);

(b) The driver impedes traffic or fails to yield the right of way, such as: driving too slowly; driving in more than one lane of traffic; turning from the wrong lane; or turning into the wrong lane; and

(c) Failure to obey or difficulty obeying a traffic control device, such as: running a red light or stop sign; stopping beyond the designated stop line at a traffic light or stop sign; failing to stop for a pedestrian in a marked crosswalk; or driving the wrong way on a one-way street.

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

Stats. Implemented: ORS 807.340

Hist.: DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-076-0007

DMV Response to Non-Mandatory Report

DMV will review a non-mandatory report meeting the requirements under OAR 735-076-0005 to determine the appropriate action to take, which may include any or all of the following:

(1) No action if the report does not give DMV reason to believe the person being reported is no longer qualified to hold a driver license, driver permit, or endorsement or is no longer able to drive safely. This includes a report from a physician or health care provider indicating the condition or impairment is not likely to recur or does not affect the person's ability to drive safely, or a report of driving behavior that reports a single incident with no indication of a mental or physical condition or impairment affecting the person's ability to safely drive.

(2) The person may be required to reestablish eligibility by taking a test under ORS 807.070 when the report is one or more of the following:

(a) A report of a mental or physical condition or impairment that may affect the person's ability to safely operate a motor vehicle, not including a loss of consciousness or control or a problem condition involving alcohol, inhalants or controlled substances.

(b) A report of unsafe or dangerous driving behavior only.

(3) The person will be required to provide a medical report form or Certificate of Vision form when the report is of the following:

(a) The person's vision may not meet the vision standards set forth in OAR 735-060-0050;

(b) A self-report on a license/permit issuance, renewal or replacement application of a mental or physical condition or impairment that affects the person's ability to drive safely; and the condition or impairment is one that causes the loss of consciousness or control;

(c) A self-report on a license/permit issuance, renewal or replacement application of a problem condition involving alcohol, inhalants or controlled substances that affects the person's ability to drive safely; or

(d) A report of a condition or impairment that involves the loss of consciousness or control, or a possible problem condition involving alcohol, inhalants or controlled substances, and DMV has reason to believe from the report that the person may no longer be qualified for driving privileges or may no longer be able to safely operate a motor vehicle.

(4) The person may be required to receive a determination of eligibility from the Medical Determination Officer under ORS 807.090 when the report indicates one or more of the following:

(a) A loss of consciousness or control is a cause or possible cause of a crash or of unsafe or dangerous driving behavior.

(b) Evidence of continued episodes of loss of consciousness or control despite current treatment.

(c) Evidence of a problem condition involving alcohol, inhalants or controlled substances.

(5) An immediate suspension of the person's driving privileges under ORS 809.419(3)(c), when the report provides DMV reason to believe that the person may endanger people or property if not immediately suspended. To regain driving privileges the person will be required to reestablish eligibility for driving privileges which may include taking tests under ORS 807.070, submitting a medical report form or Certificate of Vision, or receiving a determination of eligibility from the Medical Determination Officer under ORS 807.090.

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 14-2005, f. & cert. ef. 5-19-05; Renumbered from 735-074-0160, DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

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The Process when a Determination of Eligibility from the Medical Determination Officer is Required

(1) When DMV determines that the Medical Determination Officer must determine a person's continuing eligibility for driving privileges, as described in OAR 735-076-0007(4), DMV will require the person to submit a medical report form or Certificate of Vision form as set forth in OAR 735-076-0015.

(2) When received, the medical report form or Certificate of Vision form and any other relevant reports or information in DMV's At-Risk Program file will be reviewed by the Medical Determination Officer. The Medical Determination Officer may determine either that the person is medically eligible or medically ineligible for driving privileges. A determination of medical eligibility may include a requirement that the person's motor vehicle be equipped with an appropriate adaptive device(s), such as hand controls.

(3) A person determined medically eligible for driving privileges may be required to also pass tests as set forth in OAR 735-076-0010, if DMV has reason to believe that notwithstanding the determination of medical eligibility, the person may not be able to safely operate a motor vehicle. The person will also be required to pass a driving test if the Medical Determination Officer requires that the person's motor vehicle be equipped with an appropriate adaptive device(s), such as hand controls, and before a driving test is given, the person must provide documentation that he or she knows how to use and has practiced with the adaptive device(s).

(4) A person who is determined to be medically ineligible for driving privileges must complete the requirements set forth by the Medical Determination Officer, if any, before any subsequent review of medical eligibility can occur. DMV and the Medical Determination Officer will consider newly submitted medical information, at any time, if the reported condition has been resolved and is not likely to recur or if it has been determined that the condition does not affect the person's ability to safely operate a motor vehicle.

Stat. Auth.: ORS 184.616, ORS 184.619, 802.010, 807.340 & 809.419
Stat. Implemented: ORS 807.090 and 807.340
Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0405; MV 37-1989, f. & cert. ef. 10-3-89; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; Renumbered from 735-074-0010; DMV 1-2005, f. & cert. ef. 1-20-05; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 14-2005, f. & cert. ef. 5-19-05; Renumbered from 735-074-0170, DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-076-0020

Suspension or Cancellation of Driving Privileges

(1) DMV may issue an immediate suspension of driving privileges in the following situations:

(a) If DMV determines from a non-mandatory report that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle upon the highways and DMV has reason to believe the person may endanger people or property if not immediately suspended;

(b) If based upon information included in a police accident report or other law enforcement report, DMV has reason to believe that a person may endanger people or property if not immediately suspended due a mental or physical condition that makes it unsafe for the person to operate a motor vehicle upon the highways;

(c) The Medical Determination Officer, upon review of medical information on a driver, recommends an immediate suspension;

(d) Information contained in a required Medical Impairment Recertification form submitted as required under OAR 735-076-0035 indicates that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended; or

(e) Information contained in a required Certificate of Vision form indicates the person's vision does not meet minimum vision standards under OAR 735-062-0050 and DMV has reason to believe the person may endanger people or property if not immediately suspended.

(2) DMV will suspend driving privileges or the right to apply for driving privileges as follows:

(a) Under ORS 809.419(1) if the person fails to successfully complete the required tests within 60 days of the date of the requirement letter, or within the time period granted if an extension is granted under OAR 735-076-0010(2);

(b) Under ORS 809.419(2), for failure to obtain a medical clearance, if the medical report form is not completed by the person and the person's physician, nurse practitioner, or physician assistant, submitted to and received by DMV within 30 days of the date on the letter sent from DMV, unless DMV has granted an extension under OAR 735-076-0015;

(c) Under ORS 809.419(2), for failure to obtain a medical clearance, if the person fails to submit a Medical Impairment Recertification form as required under OAR 735-076-0035, unless an extension is granted by DMV;

(d) Under ORS 809.419(2), for failure to obtain a medical clearance, if the person fails to submit a Certificate of Vision form when the person is required to obtain a periodic vision exam under OAR 735-076-0035, unless an extension is granted by DMV;

(e) Under ORS 809.419(3), as incompetent to drive because of a mental or physical condition or impairment that makes it unsafe for the person operate a motor vehicle, because the Medical Determination Officer determines that a driver is medically ineligible for driving privileges under ORS 807.090, and the person has valid driving privileges;

(f) Under ORS 809.419(3), as incompetent to drive because of a mental or physical condition or impairment that makes it unsafe for the person to operate a motor vehicle, when a person voluntarily surrenders a license to DMV based upon the person's recognition that the person is no longer competent to drive and the person has failed to take or pass required examinations.

(3) DMV will suspend commercial driving privileges as follows:

(a) Under ORS 809.419(3) if the Medical Determination Officer has determined that the holder of a Class A, B, or C commercial driver license no longer meets the physical qualifications outlined in 49 CFR § 391.41 through 391.49.

(b) Under ORS 809.419(3) if a Waiver of Physical Disqualification allowing intrastate operation is revoked or not renewed; or

(c) Under ORS 809.419(3) when DMV is notified by the Federal Motor Carrier Safety Administration that a Skill Performance Evaluation Certificate or exemption has been revoked or not renewed.

(4) DMV may cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person's vision does not meet the minimum vision standards set forth in OAR 735-062-0050; or

(b) DMV determines the person no longer meets the qualifications for a driver license, driver permit or endorsement because of a physical or mental condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highway or a problem condition involving alcohol, inhalants or controlled substances.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340 & 809.419
Stats. Implemented: ORS 807.340 & 809.419

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0460; MV 17-1992, f. 12-16-92, cert. ef. 1-1-93; DMV 16-2001, f. & cert. ef. 9-21-01; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

735-076-0035

Recertification

(1) If the person retains his or her driving privileges, or regains his or her driving privileges after a suspension, recertification may be required when:

(a) The person's reported condition or impairment is progressive or unpredictable;

(b) Recommended by the physician or health care provider when completing a medical report form; or

(c) Recommended by the Medical Determination Officer.

(2) The time period for recertification will be based on the recommendation of the Medical Determination Officer or the person's physician, nurse practitioner or physician assistant, or on the recommendation of the person's vision specialist.

(3) If medical recertification is required, DMV will send the person a Medical Impairment Recertification form which must be completed by his or her physician, nurse practitioner, or physician assistant and returned to DMV.

(4) If vision recertification is required, DMV will send the person a Certificate of Vision form which must be completed by the person's vision specialist and returned to DMV.

(5) The person must submit the completed Medical Impairment Recertification form or Vision form within 30 days of the date of the requirement letter. DMV may grant an extension, not to exceed 120 additional days, if:

(a) The person is seriously ill or injured and a physician requests an extension in writing;

(b) The person is temporarily out of state and a written request is received from the person; or

(c) The person can show that an appointment was requested in a timely manner, but the earliest appointment available exceeded the 30 days.

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

Stat. Implemented: ORS 807.340

Hist.: DMV 6-2006, f. & cert. ef. 5-25-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08

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Rule Caption: Vision Standards and Driving Privileges for Persons with a Limited Vision Condition.

Adm. Order No.: DMV 18-2007

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Rules Adopted: 735-062-0390

Rules Amended: 735-062-0050, 735-062-0320, 735-062-0330, 735-062-0380

Subject: Chapter 588, Oregon Laws 2007 made changes to the program that allows limited driving privileges to a person with a low vision condition who uses a bioptic telescopic lens while driving. These amended rules remove the restriction of only driving on roads with a speed limit of 45 mph or less, allow nighttime driving under certain circumstances, require a nighttime driving training program, establish procedures for issuing driving privileges without a daylight only restriction, and clarify that a person may be granted driving privileges without meeting vision standards if they qualify under the limited vision condition program.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-062-0050

Eyesight Check Content and Standards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will check the following items when testing the eyesight of an applicant for a driver permit or driver license:

- (a) Acuity; and
- (b) Field of vision.

(2) To qualify for driving privileges, a person must meet the following eyesight standards:

(a) Acuity: The person must have a visual acuity level of 20/70 or better when looking through both eyes (or one eye if the person has usable vision in only one eye). A person with usable vision in both eyes will meet the standard if the visual acuity level in one eye is worse than 20/70 so long as the visual acuity level in the other eye is 20/70 or better;

(b) Field of vision: The person must have a field of vision of at least 110 degrees; and

(c) Daylight driving only: DMV will restrict the person's driving privileges to daylight driving only, if the person's best eye is worse than 20/40 and no worse than 20/70, unless in the written opinion of a licensed vision specialist (ophthalmologist, oculist, or optometrist), the person's driving should not be restricted. DMV will restrict a person whose vision is 20/40 or better to daylight driving only unless in the written opinion of a licensed vision specialist such restriction is warranted.

(3) DMV may issue a driver permit or driver license only to a person who meets the standards in Section (2) of this rule except as described in sections (4) and (5) of this rule.

(4) A person may meet the eyesight standards with the use of a corrective lens or lenses. When a person must use a corrective lens or corrective lenses to meet the eyesight standards, DMV will restrict the person to driving only when wearing corrective lenses. DMV may authorize a person to use a bioptic telescopic lens on a corrective lens, as defined in OAR 735-062-0310(1), if when looking through the carrier lens and not the telescopic device, the person meets the eyesight standards set forth in section (2) of this rule.

(5) A person who has a limited vision condition as described in Section 3, Chapter 277, Oregon Laws 2003, may be eligible for restricted driving privileges as set forth in OAR 735-062-0300 through 735-062-0390.

Stat. Auth.: ORS 184.616, 184.619, 802.020 & 807.070

Stats. Implemented: ORS 807.070

Hist.: MV 15-1987, f. 9-21-87, ef. 9-27-87; MV 38-1987(Temp), f. & ef. 12-7-87; MV 5-1988, f. 2-16-88, cert. ef. 2-17-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0031; MV 11-1989, f. & cert. ef. 3-6-89; MV 1-1993, f. & cert. ef. 2-16-93; DMV 7-1996, f. & cert. ef. 8-15-96; DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04; DMV 18-2007, f. 12-24-07, cert. ef. 1-1-08

735-062-0320

Special Limited Vision Condition Learner's Permit

(1) DMV will issue a special limited vision condition learner's permit when:

(a) An applicant has submitted a report from a licensed vision specialist certifying that the person meets the visual standards set forth in Section 3, Chapter 277, Oregon Laws 2003, has been fitted with a bioptic telescopic lens mounted on or above a carrier lens, and would be aided by using a bioptic telescopic lens when operating a motor vehicle;

(b) An applicant submits proof to DMV that the person has been accepted and has enrolled in a rehabilitation training program with a specialist certified by DMV to train persons with a limited vision condition using a bioptic telescopic lens to drive;

(c) An applicant has passed the knowledge test required under ORS 807.070(2); and

(d) An applicant pays a \$13 fee, as required by ORS 807.370(27).

(2) The special limited vision condition learner's permit will:

(a) Be valid for six months;

(b) Be in the form of a letter rather than a laminated card with picture;

(c) Specify that the applicant may only drive when accompanied by the specialist(s) named on the permit;

(d) Include the following restrictions:

(A) Driving during daylight hours only; and

(B) The person must wear a bioptic telescopic lens device while driving.

(e) Be mailed to the rehabilitation training program with which the applicant has enrolled.

(3) If a person discontinues the required training or fails to make satisfactory progress toward a Certificate of Competency, the specialist must notify DMV immediately with a recommendation to terminate or extend the person's training program.

(4) If the specialist's recommendation is to terminate the applicant's training program or the applicant withdraws from the program, DMV will cancel the special limited vision condition learner's permit issued to the applicant. If the permit is cancelled, the applicant must reapply for a new permit and satisfy all the requirements set forth in section (1) of this rule. Knowledge test scores remain valid for two years.

(5) If the specialist's recommendation is to extend the applicant's training program, DMV will re-issue a special limited vision condition learner's permit for an additional six-month period if the applicant provides proof of continued enrollment in a rehabilitation training program, as set forth in subsection (1)(b) of this rule, and pays a \$13 fee.

(6) A copy of the special limited condition learner's permit must be kept in the applicant's file at the school offering the rehabilitation training program.

Stat. Auth.: ORS 184.616, 184.619, 807.350, Sec. 5, Ch. 277, OL 2003, Ch. 588, OL 2007

Stat. Implemented: Ch. 277, OL 2003, Ch. 588, OL 2007

Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 18-2007, f. 12-24-07, cert. ef. 1-1-08

735-062-0330

Training Program for the Use of Bioptic Telescopic Lenses to Drive

(1) The training program for a person issued a special limited vision condition learner's permit may consist of three parts: theoretical instruction; practical training in critical object or condition awareness skills and use of a bioptic telescopic device; and behind-the-wheel training while using a bioptic telescopic lens. The amount of training required is dependent upon the person's skill and will vary with driving experience and other factors. The specialist may determine which type of training is necessary and the number of hours required for each type, but except as provided in section (2) of this rule, must provide a minimum of six hours of practical training and 15 hours of behind-the-wheel training while using a bioptic telescopic lens to all limited vision condition drivers. No behind-the-wheel training can be conducted prior to the rehabilitation training program receiving the person's special limited vision condition learner's permit from DMV in the mail.

(2) Notwithstanding the minimum training requirements set forth in section (1) of this rule, a person who has never been issued a driver license must be provided a minimum of 30 hours theoretical training, six hours of practical training and 24 hours of behind-the-wheel training.

(3) Theoretical instruction may include but not be limited to the following:

(a) Subject matter contained in the Oregon Driver's Manual;

(b) Safe driving practices and traffic laws;

(c) The "Search, Identify, Predict, Decide, Execute" (SIPDE) approach to perceptive driving;

(d) Signs, signals, highway markings, and highway design features required for the safe operation of a motor vehicle;

(e) Driving emergencies such as brake or tire failure, skidding, stuck accelerator, and running off the roadway;

(f) Potential crash locations and situations such as intersections, hydroplaning, railroad crossing, multiple vehicle types in the traffic mix, and pedestrian traffic;

(g) Occupant restraint usage;

(h) Speeding as a major contributing factor in vehicle crashes; and

(i) Driver responsibility and accident reporting.

(4) Practical training must include, but not be limited to, passenger-in-car training that reinforces defensive driving skills, use of mirrors and

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blind spot checks, critical object or condition awareness (roadway characteristics, traffic control devices and other road users), proper and appropriate use of the bioptic telescopic lens system, and hazard perception skills. By the end of training the person will need to demonstrate the ability to change fixation in and out of his or her bioptic telescope effectively in one to two seconds or less per fixation, under stationary and dynamic conditions.

(5) Behind-the-wheel training must include demonstration, instruction and practice while using a bioptic telescopic lens, consisting of:

- (a) Stopping;
 - (b) Starting;
 - (c) Recognizing and responding appropriately to traffic control devices, roadway markings, pedestrians, vehicles and other changes in the driving environment;
 - (d) Lane position;
 - (e) Controlling speed;
 - (f) Managing space around the vehicle by adjusting speed and position to avoid conflicts and reduce risk;
 - (g) Turning, including right and left turns at protected and unprotected intersections;
 - (h) Backing;
 - (i) Parking;
 - (j) How to enter, use and exit different types of intersections;
 - (k) Safe and courteous driving behavior;
 - (l) Driving in residential, business, light and heavy traffic situations;
- and

(m) Dealing with the unexpected — road construction, emergency vehicles, etc.

(6) In addition to the training described in sections (4) and (5) of this rule, practical and behind-the-wheel training may include a nighttime driving training program. A nighttime program must consist of at least two hours of behind-the-wheel training after dark in both well lit and poorly lit areas and on varying types of roadways, such as city streets, residential streets, highways and country roads, while using a bioptic telescopic lens.

(7) No behind-the-wheel nighttime driving training may be conducted prior to the rehabilitation training program receiving the following from DMV:

(a) A special limited vision condition learner's permit without a driving during daylight hours only restriction, as described in OAR 735-062-0390(1); or

(b) A modified restriction letter allowing the person to drive at night with a rehabilitation training specialist, as described in OAR 735-062-0390(2).

(8) To successfully complete a nighttime driving training program, the rehabilitation specialist providing the training must certify the person is able to safely operate a motor vehicle at night while using a bioptic telescopic lens.

Stat. Auth.: ORS 184.616, 184.619 & Sec. 5, Ch. 277, OL 2003
Stat. Implemented: Ch. 277, OL 2003
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04; DMV 18-2007, f. 12-24-07, cert. ef. 1-1-08

735-062-0380

Issuance of a Permit or Driver License to a Person with a Limited Vision Condition

When a person with a limited vision condition has successfully completed a rehabilitation training program as described in OAR 735-062-0320(1)(b), and has received a certificate of competency from the specialist who conducted the person's training, the person may apply to DMV for an instruction permit or a driver license. To obtain an instruction permit or driver license, the person must meet all applicable requirements, except the eyesight check described in OAR 735-062-0050.

(1) To be issued a driver license, the person must successfully pass the drive test described in OAR 735-062-0070 and pay all required fees.

(2) DMV will issue a restricted driver license or instruction permit to a person with a limited vision condition as follows:

(a) Driving during daylight hours only, except as provided in OAR 735-062-0390; and

(b) The person must wear a bioptic telescopic lens device while driving.

(3) An instruction permit allows the person to operate a motor vehicle only when accompanied by a licensed driver at least 21 years of age.

Stat. Auth.: ORS 184.616, 184.619, Sec. 5, Ch. 277, OL 2003, Ch. 588, OL 2007
Stat. Implemented: Ch. 277, OL 2003, Ch. 588, OL 2007
Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04; DMV 18-2007, f. 12-24-07, cert. ef. 1-1-08

735-062-0390

Driving Privileges without a Daylight Hours Restriction for Persons with a Limited Vision Condition

(1) When an applicant meets the requirements in OAR 735-062-0320 for a special limited vision condition learner's permit, DMV will issue the special limited vision condition learner's permit without a driving during daylight hours only restriction, if the applicant also submits:

(a) A report from a licensed vision specialist certifying that the person's vision condition will allow the person to safely operate a motor vehicle at night; and

(b) Proof of enrollment in a nighttime driving training program as described in OAR 735-062-0330(6).

(2) To participate in behind-the-wheel nighttime driving training, a person with a special limited vision condition learner's permit, an instruction permit or a driver license that has a driving during daylight hours only restriction must provide DMV with the name of the rehabilitation specialist and date(s) of the nighttime training, and a report from a licensed vision specialist certifying that the person's vision condition will allow the person to safely operate a motor vehicle at night. If the person qualifies, DMV will send a modified restriction letter to the rehabilitation training specialist to allow the person to drive during nighttime training.

(3) DMV may issue an instruction permit or regular driver license without a driving during daylight hours only restriction to a person with a limited vision condition, or may remove the restriction from the person's driving privileges if the person submits to DMV:

(a) A report from a licensed vision specialist certifying that the person's vision condition will allow the person to safely operate a motor vehicle at night. If this report also certifies that the person's vision meets the vision requirements under section 3, chapter 277, Oregon Laws 2003, no other vision report will be required for two years; and

(b) A certificate issued by a rehabilitation training specialist certifying that the person has completed a nighttime driving training program as described in OAR 735-062-0330(6) and can safely operate a motor vehicle at night.

(4) If DMV has issued an instruction permit without a daylight only restriction to a person who later qualifies for a driver license, that license will be issued without a daylight only restriction as well.

Stat. Auth.: ORS 184.616, 184.619, 802.010; Sec. 5, Ch. 277, OL 2003, Ch. 588, OL 2007
Stat. Implemented: Ch. 277, OL 2003, Ch. 588, OL 2007
Hist.: DMV 18-2007, f. 12-24-07, cert. ef. 1-1-08

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Rule Caption: Traffic Offenses used in Driver Improvement, Habitual Offender and other DMV Programs.

Adm. Order No.: DMV 19-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 735-064-0220, 735-072-0035

Subject: ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes. OAR 735-072-0035 is used only in the Driver Improvement Programs and contains a list of traffic offenses where it takes five offenses listed to equal one driver improvement violation. During the 2007 legislative session, several bills were enacted creating new traffic offenses or amending current traffic offense statutes where changes are required in OAR 735-064-0220 and 735-072-0035. DMV amended OAR 735-04-0220 and 735-072-0035 to implement these laws and moved the offense of operating a Class 1 ATV without driving privileges from OAR 735-064-0220 to OAR 735-072-0035.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-064-0220

Traffic Offenses Used in Habitual Offender, Driver Improvement, CMV Serious Violations and Hardship/Probationary Driver Permit Programs

(1) A conviction for an offense listed in this rule counts toward:

(a) The Habitual Offender Program pursuant to ORS 809.600(2);

ADMINISTRATIVE RULES

(b) The Provisional and Adult Driver Improvement Programs outlined in Oregon Administrative Rule Chapter 735, Division 72;

(c) Motor vehicle traffic control violations connected to a fatal accident as defined in ORS 801.477(1)(k) that can lead to a suspension of commercial motor vehicle driving privileges;

(d) Revocation of a probationary driver permit pursuant to ORS 807.270(7); and

(e) Revocation of a hardship permit pursuant to OAR 735-064-0100 and 735-064-0110.

(2) This section lists the offenses and the statutory citations for Oregon offenses used in the programs identified in section (1) of this rule: [Table not included. See ED. NOTE.]

(3) Offenses from other states may be posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS reference covering an equivalent offense(s) for Oregon: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 809.480 & 809.605
Stats. Implemented: ORS 807.240, 807.270, 809.480, 809.600(2) & 809.605
Hist.: MV 17-1986, f. & ef. 10-1-86; MV 33-1987, f. & ef. 11-2-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0180; MV 32-1989, f. & cert. ef. 10-3-89; MV 7-1990, f. & cert. ef. 5-16-90; MV 18-1991, f. 9-18-91, cert. ef. 9-29-91; MV 26-1991, f. & cert. ef. 11-18-91; DMV 8-1995, f. & cert. ef. 6-19-95; DMV 5-1997, f. & cert. ef. 2-20-97; DMV 8-1998, f. & cert. ef. 6-19-98; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 33-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 4-2004, f. & cert. ef. 2-23-04; DMV 21-2005(Temp), f. 9-19-05, cert. ef. 10-1-05 thru 3-29-06; DMV 28-2005, f. & cert. ef. 12-14-05; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08

735-072-0035

Driver Improvement Offenses

(1) The conviction for an offense listed below counts toward both the Provisional and Adult Driver Improvement Programs. It takes five convictions from the following list to equal one driver improvement violation. All other convictions counting in the Driver Improvement Programs are outlined in OAR 735-064-0220. [List not included. See ED. NOTE]

(2) Offenses from other states are posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, the type of code, a description of the offense and the ORS or administrative rule reference to the equivalent offense(s) in Oregon. The offenses listed below also count towards both the Provisional and Adult Driver Improvement Programs as described in section (1) of this rule. [List not included. See ED. NOTE]

[ED. NOTE: Lists referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619 & 809.480
Stat. Imp.: ORS 809.480
Hist.: DMV 29-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 12-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 19-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Disabled Person Parking Permits.

Adm. Order No.: DMV 20-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 735-080-0020, 735-080-0040, 735-080-0080

Rules Repealed: 735-080-0010, 735-080-0030

Subject: Chapter 411, Oregon Laws 2005 (HB 3047) directed Legislative Counsel to prepare legislation for 2007 to change the term “disabled person” to the term “persons with disabilities” in Oregon law in order to emphasize the individual rather than the disability. Chapter 70, Oregon Laws 2007 (SB 83) implements this legislative mandate. DMV amended the above referenced rules to comply with these statutory changes. The term “disabled person parking permit” is still used in statute so DMV will continue to use that term when describing that actual permit, placard or decal.

Chapter 468 Oregon Laws 2007 (SB 716) requires the Department to issue a wheelchair user disabled person parking placard or decal. Amendments to OAR 735-080-0020 and 735-080-0040 implement this statute and set forth the requirements for issuance and renewal, respectively, of the wheelchair user placard or decal.

OAR 735-080-0020 was rewritten in its entirety to make the rule more readable and the requirements more understandable. The application requirements of OAR 735-080-0030 are being placed in OAR 735-080-0020. DMV repealed OAR 735-080-0010 because the definitions are unnecessary.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-080-0020

Issuance of Disabled Person Parking Permits

(1) The Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) will issue an individual disabled person parking permit or decal, or both, as described in ORS 811.605 to an applicant whose completed application (DMV form 735-265) includes:

(a) The applicant’s name and address;

(b) The applicant’s driver license number, disability golf cart driver permit number or identification card number; and

(c) A certificate, as required by ORS 811.604, that the applicant is a person with a disability.

(2) DMV will issue a wheelchair user disabled person parking permit or decal, as described in Section 4, Chapter 468, Oregon Laws 2007, to an applicant whose completed application (DMV form 735-265) includes:

(a) The applicant’s name and address;

(b) The applicant’s driver license number, disability golf cart driver permit number or identification card number;

(c) A certificate, as described in ORS 811.604, showing that the applicant is a person with a disability and the person has a condition that requires the use of a wheelchair or similar low-powered motorized or mechanically propelled vehicle designed specifically for use by a person with a physical disability; and

(d) The applicant certifies that he or she uses a wheelchair or similar vehicle and requires a van accessible parking space.

(3) DMV will issue a temporary disabled person parking permit, valid for a maximum of six months, to a person whose completed application (DMV form 735-265) includes:

(a) The applicant’s name and address;

(b) The applicant’s driver license number, disability golf cart driver permit number, identification card number, or customer number, if one has been assigned by DMV; and

(c) A certificate, as required by ORS 811.604, except that it certifies that the applicant is temporarily disabled for less than four years. If the certificate specifies an ending date of the disability that is less than six months, that date will be used as the expiration date of the permit.

(4) DMV will issue a foreign visitor permit to a person who meets the requirements of ORS 811.611.

(5) DMV will issue a program disabled person parking permit, as described under ORS 811.607, to a program that regularly operates at least one vehicle for the transportation of persons with disabilities, including, but not limited to a nonprofit organization, an agency, a residential care facility, an assisted living facility, a medical or persons with disabilities transportation service, or an adult foster care home. The program’s completed application must include:

(a) The program’s name and address;

(b) The name of the program’s contact person;

(c) A certification that the program is an organization, agency or business that regularly transports persons with disabilities; and

(d) The number of vehicles in the program that regularly transports persons with disabilities.

(6) DMV will issue a family disabled person parking permit to a family that has more than one person with disabilities residing in the same household. The applicant must be an adult family member and the applicant’s completed application (DMV form 735-265) must include;

(a) The name and address of the applicant;

(b) A certificate, as required by ORS 811.609, that the family includes at least two persons with a disability, including the name of each family member with a disability; and

(c) The number of vehicles regularly used by the family to transport those family members with a disability.

Stat. Auth.: ORS 801.235, 802.010, 811.602 - 811.640 & Ch. 741, OL 1991

Stats. Implemented: ORS 811.602 & 811.604 - 811.609

Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-08810; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08

735-080-0040

Replacement and Renewal of Disabled Person Parking Permits

(1) DMV may replace a disabled person parking permit, including an individual permit, a program permit, a family permit, a temporary permit and a temporary duplicate permit. The applicant’s completed application (DMV form 735-265B) must include:

(a) The name, address and Oregon driver license or permit number (ODL), identification card number (ID) or customer number;

(b) A certification that the original disabled person parking permit is lost or destroyed; and

(c) A certification that the applicant continues to qualify for the permit.

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(2) If a required certificate as described in ORS 811.604 or 811.609 is not on file with DMV, DMV will not replace a lost or stolen disabled person parking permit. The person must apply for an original disabled person permit as set forth in OAR 735-080-0020.

(3) A disabled person parking permit expires on the date the individual, program or family no longer meets the qualifying conditions and must be immediately returned to DMV. If the individual, program or family continues to qualify, the permit expires as set forth in section (4), (5), (6), (7) and (8) of this rule.

(4) An individual permit or decal or wheelchair user permit or decal, expires on the same date as the expiration of the person's driver license, disability golf cart permit, identification card or parking identification card. If the person continues to qualify, the person may renew the disabled persons parking permit in a DMV field office at the time the person renews his or her driver license, disability golf cart permit or identification card by completing DMV form 735-265B. The person may also renew the disabled persons parking permit with or without a parking identification card by completing DMV form 735-265B and mailing it to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The permit must be renewed within one year from the date of expiration of the permit.

(5) A program permit expires eight years from the date of issuance. DMV will renew and issue new permit(s) if the program continues to qualify and completes DMV form 735-265B. The form must be mailed to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The permit must be renewed within one year from the date of expiration of the permit.

(6) A family permit expires eight years from the date of issuance. DMV will renew and issue new permit(s) if a family continues to qualify and completes DMV form 735-265B. The form must be mailed to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The permit must be renewed within one year from the date of expiration of the permit.

(7) A temporary disabled person parking permit expires six months from the date of issuance. The permit may not be renewed but the person may re-apply for a temporary disabled person parking permit by complying with OAR 735-080-0020(3) if the person's temporary disability continues beyond a six-month period.

(8) A Temporary duplicate permit expires 30 days after issuance. A person may not renew a temporary duplicate permit.

Stat. Auth.: ORS 184.616, 184.619, 811.602, 811.607 & 811.609

Stats. Implemented: ORS 811.602 & 811.604 - 811.609

Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0830; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 6-1996, f. & cert. ef. 8-15-96; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 18-2001(Temp), f. & cert. ef. 9-21-01 thru 3-19-01; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08

735-080-0080

Temporary Duplicate Permits

(1) DMV may issue a temporary duplicate permit to an applicant with a valid renewable disabled person parking permit, disabled person parking decal or temporary disabled parking permit and who needs a second permit to travel outside of the person's county of residence. The person must submit a completed application (DMV Form 265).

(2) DMV will only issue a temporary duplicate permit for travel purposes. Travel purposes means a person must park a vehicle in a disabled person parking space to travel outside of the person's county of residence in another vehicle.

(3) DMV will not issue a temporary duplicate permit with an expiration date that is later than the expiration date of the driver license, driver permit or identification card of the individual applying for the permit.

(4) Except as provided in section (5) of this rule, a temporary duplicate permit is valid for a period of 30 days from the date of issuance.

(5) A person may apply for a new temporary duplicate permit within seven days of the expiration of an existing temporary duplicate permit. The effective date of the new temporary duplicate permit will be the day after the expiration date of the existing permit.

Stat. Auth.: ORS 184.616 & 811.602

Stats. Implemented: ORS 811.602

Hist.: DMV 6-1996, f. & cert. ef. 8-15-96; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08

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Rule Caption: Amends Rules Relating to Vehicle Dismantlers.

Adm. Order No.: DMV 21-2007(Temp)

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 735-024-0070, 735-024-0080, 735-032-0020, 735-152-0000, 735-152-0040, 735-152-0050, 735-152-0060

Subject: This temporary rulemaking implements Chapter 683, Oregon Laws 2007, which (1) requires dismantlers to surrender a vehicle's title, ownership record or other ownership document to DMV within 30 days of date a vehicle is acquired for dismantling, (2) grants DMV additional authority to impose sanctions on vehicle dismantlers and to adopt rules establishing appropriate sanctions, and (3) clarifies that dismantlers are no longer subject to the requirements of ORS 819.010.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-024-0070

Vehicles that Are Wrecked, Dismantled, Disassembled, or Substantially Altered in Form — Responsibility of Parties

(1) The types of vehicles that are subject to the provisions of ORS 819.010 (wrecked, dismantled, disassembled or substantially altered) include:

(a) Vehicles of the type that, when operated over the highways of this state, are required to be registered and titled;

(b) Class I or III all-terrain vehicles;

(c) Snowmobiles; and

(d) Any other vehicle that has been issued a title by DMV; or by another jurisdiction.

(2) This rule does not apply to a person who holds a current valid dismantler certificate issued under ORS 822.110.

(3) ORS 819.010 and any related rules apply if the activity described in ORS 819.010 and OAR 735-024-0050 is performed in this state, and the vehicle is of a type covered in section (1) of this rule. This applies to vehicles titled in Oregon, those titled in another jurisdiction, and any vehicle not subject to title requirements.

(4) Primary ownership documents for vehicles described in section (1) of this rule may be surrendered to DMV, in lieu of the certificate of title where a title does not exist, or where ownership is being transferred by operation of law and the title is not available.

(5) The Oregon title certificate, foreign title certificate, or primary ownership document must be surrendered to DMV together with the application for salvage title, if a salvage title is required.

(6) The Oregon title must be surrendered to DMV along with a written statement that indicates the vehicle was dismantled, disassembled, wrecked or substantially altered, if a salvage title is not required. The statement must be submitted on a DMV Form 735-6017, "Notice of Vehicle to be Dismantled/Proof of Compliance."

(7) Except as provided in section (11) of this rule, registration cards and registration plates that are required to be surrendered, may be submitted with the title or primary ownership document, or submitted separately to DMV, along with information as to why they are being surrendered.

(8) Vehicles that are subject to this rule may not be repaired, rebuilt, transferred, or the frame or unibody used for repairing or constructing another vehicle, until a salvage title is applied for and issued, consistent with ORS 819.016 and 819.018.

(9) If a salvage title is not required, DMV may issue proof of compliance upon request, if:

(a) The title or primary ownership document is surrendered to DMV;

(b) DMV is provided with documentation that indicates the vehicle has been wrecked, dismantled or disassembled; and

(c) DMV is satisfied that a salvage title is not required.

(10) The act of wrecking, dismantling, disassembling or substantially altering a vehicle does not by itself cause a vehicle to be considered a totaled vehicle. Such a vehicle:

(a) Is subject to the requirements under ORS 819.010 and DMV rules; and

(b) Is not considered totaled, and is not subject to requirements that apply to totaled vehicles unless the vehicle was determined to be totaled before the vehicle was dismantled, disassembled, wrecked or substantially altered.

(11) Notwithstanding section (7) of this rule, a person subject to ORS 819.010 must destroy the registration card issued to and registration plates attached to a motor vehicle. Registration cards and registration plates must be destroyed to the extent that they can never be used again.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.010 819.012, 819.014, 819.016, 819.018

Stats. Implemented: ORS 819.010, 819.012, 819.014, 819.016, 819.018, 819.030, 819.040
Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

ADMINISTRATIVE RULES

735-024-0080

Abandoned Vehicles Sold Under ORS 819.220

(1) This rule defines terms and establishes procedures and requirements for the sale and purchase of abandoned vehicles under ORS 819.220. As used in this rule:

(a) "Authority" means an agency authorized under ORS 819.140 to take custody of and dispose of abandoned vehicles.

(b) "Purchaser" means a person to whom the authority sold a vehicle under the provisions of ORS 819.220 but does not include a dismantler.

(2) In addition to all other applicable requirements of ORS 819.220, an authority must provide the purchaser a certificate of sale and a Notice of Vehicle to be Dismantled/Proof of Compliance (DMV Form 735-6017).

(3) The purchaser must:

(a) Submit a Form 735-6017 to notify DMV if the purchaser intends to wreck, dismantle, disassemble or substantially alter the form of the vehicle as required under ORS 819.010; and

(b) Submit a second Form 735-6017 to DMV along with the title or primary ownership document (e.g., sheriff's certificate of sale), within 30 days from the date the vehicle was wrecked, dismantled, disassembled or substantially altered, if the vehicle is exempt from salvage title requirements under ORS 819.016 or OAR 735-024-0130.

(4) Except as otherwise provided in ORS 819.016 and OAR 735-024-0130, a purchaser must apply to DMV for a salvage title.

(5) Even if other provisions of this rule apply, a purchaser who purchased a vehicle under ORS 819.220 before January 1, 1992, is not required to apply for salvage title unless:

(a) The vehicle is repaired. If the vehicle is repaired, the applicant may apply for a salvage title or a branded certificate of title showing the vehicle as assembled, reconstructed or a replica, whichever applies;

(b) The vehicle is wrecked, dismantled, disassembled or substantially altered in form; or

(c) Ownership of the frame or unibody of the vehicle is transferred.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: ORS 819.140, 819.220

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-032-0020

Plates Considered Void

Registration plates that are surrendered to DMV are considered void and may not be used to register or operate a vehicle again. This does not apply to plates surrendered to DMV in error and that have not already been destroyed.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: ORS 803.380, 809.080 & 809.110

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0320; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-152-0000

Definitions

As used in this division the following definitions apply:

(1) "Acquires," "acquired" or "acquisition" means physical possession of a motor vehicle together with possession of the vehicle's ownership record.

(2) "Cancellation" has the same meaning as "revocation" as defined in section (17) of this rule.

(3) "Certificate of sale" has the same meaning as defined in ORS 801.183.

(4) "Date of sale" means the date that a purchaser takes possession of a major component purchased from a dismantler.

(5) "Destroy" has the same meaning as defined in ORS 822.133.

(6) "Dismantler" has the same meaning as defined in ORS 801.236.

(7) "Dismantle" means one or more parts are removed from a motor vehicle acquired by a dismantler.

(8) "Dispose" or "disposed of" means a motor vehicle acquired by a dismantler is transferred to another person or is dismantled or destroyed.

(9) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(10) "Employee" means a person over whom a dismantler exercises the type of control typically associated with an employer, including:

(a) Determining the frequency, method and amount of compensation;

(b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(11) "Major component part" has the same meaning as defined in ORS 822.137.

(12) "Primary ownership document" or "ownership record,"- as used in ORS 822.135, has the same meaning as "primary ownership" record as defined in ORS 801.402 and includes the primary ownership documents described in OAR 735-020-0010 or an abandoned vehicle certificate described in OAR 735-024-0077.

(13) "Permanent revocation" means to permanently revoke a dismantler certificate and the right to apply for a dismantler certificate. A person subject to permanent revocation of a dismantler certificate is ineligible to apply for a new dismantler certificate.

(14) "Person" means an individual, partnership, corporation, association, or any other business organization if the context in which the term is used could also include these organizational forms.

(15) "Principal" means any owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(16) "Probation" means a period of time specified by DMV that a dismantler may continue to operate, but only under terms or conditions established by DMV.

(17) "Revocation" means to void and terminate a dismantler certificate.

(18) "Sanction" means an action taken by DMV against a dismantler's certificate, or principal, for non-compliance with Oregon law or DMV rule. Sanctions under this section include cancellation, immediate suspension, suspension, probation and revocation.

(19) "Suspension" means the temporary withdrawal of the authority to act as a dismantler.

(20) "Vehicle Business" includes vehicle dealers as defined in OAR 735-150-0010(14), dismantlers, towing businesses, vehicle transporters and repair shops.

(21) "Violation" means any violation of Oregon law or a DMV rule applicable to a dismantler issued a certificate or any person engaged in dismantling activities.

(22) "Warning" means a documented warning or correction notice issued to a principal or employee of a dismantler business.

(23) "Wrecked vehicle" has the same meaning as defined in ORS 822.133.

(24) "Written report" means DMV Form 270, Vehicle Dismantler's Notice and the original ownership record for the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135, 822.137

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145, 822.150

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-152-0040

Dismantler Violations Subject to Sanction

A dismantler is subject to the sanctions described under OAR 735-152-0050 if the dismantler:

(1) Commits the offense of improperly conducting a motor vehicle dismantling business for any of the reasons set forth in ORS 822.133, 822.135, 822.145 or relevant rules adopted by DMV.

(2) Allows a person who is not an employee of the dismantler to imply or represent an affiliation with the dismantler business in order to engage in any activity that would subject that person to dismantler certification and regulatory requirements.

(3) Fails to allow DMV to conduct an inspection.

(4) Is issued notice that the dismantler's bond under ORS 822.120 is cancelled.

(5) Fails to pay any civil penalty imposed under ORS 822.133 and 822.137.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135, 822.137

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145, 822.150

Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-152-0050

Sanctions

(1) DMV may impose sanctions when it determines a dismantler has violated provisions of the Motor Vehicle Code or rules promulgated by DMV rule relating to the operation of a dismantler business.

(2) Sanctions may be imposed against either or both of the following:

(a) A dismantler's certificate;

(b) A principal of the dismantler business.

(3) Factors DMV may consider when imposing a sanction against a dismantler include:

(a) The severity of the violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether a violation was willful or intentional; and

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(d) Any previous sanction, civil penalty or warning issued or imposed against the dismantler or principal.

(4) DMV will determine the appropriate sanction to impose when it determines a violation has occurred. These may include one or more of the following:

(a) Verbal or written warnings, including correction notices.

(b) A suspension of the dismantler certificate and the right to apply for a dismantler certificate for up to three years.

(c) Permanent revocation of the dismantler certificate and the right to apply for a dismantler certificate.

(d) Suspension of the right of a principal of a dismantler business to apply for a dismantler certificate or another vehicle related business, including a vehicle related business with a different business name, for up to three years.

(e) Permanent revocation of the right of a principal of a dismantler business to apply for a dismantler certificate or another vehicle related business, including a vehicle related business with a different business name.

(f) Cancellation of the dismantler certificate if it is determined the applicant or a principal of the business is ineligible for a dismantler certificate.

(g) Immediate suspension or cancellation as provided in ORS 822.145(2) upon receipt of a notice the dismantler's bond under ORS 822.120 is canceled.

(h) Immediate suspension or cancellation for failure to pay any penalty imposed under ORS 822.137 and OAR 735-152-0045.

(5) A dismantler or principal whose business certificate or privileges are suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) Except as provided in section (7) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 20 days of the date of the notice of revocation, suspension or cancellation. A hearing request received in a timely manner shall result in a withdrawal of the revocation suspension or cancellation pending the outcome of the hearing.

(7) In the instance of an immediate suspension or cancellation as provided by subsection (4)(g) or (h) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 90 days of the date the notice is issued. A hearing request received in a timely manner shall not result in a withdrawal of the suspension or cancellation pending the outcome of the hearing.

(8) In order for a request for hearing to be timely, the request must be postmarked or received by DMV within the time periods established in sections (6) and (7) of this rule. If the request for hearing is not timely received, the person waives their right to a hearing, except as provided in OAR 137-003-0528. The time periods will be computed as set forth in OAR 137-003-0520(8).

(9) When a timely request for a hearing is not received, the dismantler or principal will have defaulted, waived the right to a hearing and DMV's file will then constitute the record of the case.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135, 822.137
Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145, 822.150
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-152-0060

Civil Penalty Matrix for Certified Dismantlers

DMV may impose a civil penalty against a motor vehicle dismantler for any violation described under ORS 822.133, 822.137 and DMV rules. DMV adopts this civil penalty matrix to determine civil penalty amounts that may be imposed against dismantlers for specific violations. DMV may modify a civil penalty assessed against a dismantler under the provisions of OAR 735-152-0045. Under this rule, an offense is a "second or subsequent offense" if a dismantler committed the same offense within three years of the offence under consideration.

(1) Fraudulently obtaining a dismantler certificate by submission of an application under OAR 735-152-0005 containing a false statement or omission of a material fact: \$1,000, for the first and subsequent violation(s).

(2) Failure to notify DMV of any change in the information provided to DMV in the application submitted under OAR 735-152-0005 within 30 days of the change:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(3) Failure to comply with any provision of ORS 822.137(2)(f) or OAR 735-152-0031 concerning dismantler motor vehicle records:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(4) Failure to comply with any provision of ORS 822.137(2)(f) or OAR 735-152-0031 concerning dismantler major component part records:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(5) Failure to comply with ORS 822.133(2)(b), concerning removing parts or destroying a motor vehicle prior to obtaining an ownership record for the vehicle:

(a) For the first violation: \$500;

(b) For the second and subsequent violation(s): \$1,000.

(6) Failure to comply with ORS 822.133(2)(a), by acquiring a motor vehicle or major component part without first obtaining a certificate of sale and, if applicable, a certificate of title:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(7) Failure to comply with ORS 822.133(2)(a) and OAR 735-152-0025(3) concerning physically separating or visually labeling a wrecked vehicle:

(a) For the first violation: \$250;

(b) For the second violation: \$500;

(c) For the third and subsequent violation(s): \$1,000.

(8) Failure to comply with ORS 822.137(2)(b), regarding the possession, sale or disposal of a motor vehicle or any part of a motor vehicle knowing that the vehicle or part has been stolen: \$1,000 for the first violation and subsequent violation(s).

(9) Failure to comply with ORS 822.137(2)(c), regarding selling, buying, receiving, concealing, possessing or disposing of a motor vehicle or any part of a motor vehicle having a missing, defaced, intentionally altered or covered vehicle identification number, unless directed to do so by a law enforcement official: \$1,000 for the first violation and subsequent violation(s).

(10) Failure to comply with ORS 822.137(2)(d) by committing a forgery in the second degree, as defined in ORS 165.007, or misstating a material fact relating to a certificate of title, registration or other document related to a motor vehicle that has been reassembled from parts of other motor vehicles: \$1,000 for the first violation and subsequent violation(s).

(11) Failure to comply with ORS 822.137(2)(e) by fraudulently creating or modifying a dismantler certificate: \$1,000 for the first violation and subsequent violation(s).

(12) Failure to comply with ORS 822.137(2)(h) concerning a dishonest act or omission during the sale of a motor vehicle or major component part that, as determined by DMV, causes a loss to the purchaser: \$1,000 for the first violation and subsequent violation(s).

(13) Failure to comply with ORS 822.137(2)(i) concerning being convicted of a crime involving false statements or dishonesty that directly relates to the business of the dismantler or suffers any civil judgment imposed for conduct involving fraud, misrepresentation or conversion: \$1,000 for the first violation and subsequent violation(s).

(14) Failure to comply with ORS 822.133(2)(e) and OAR 735-152-0034 concerning furnishing DMV with a written report, in a form established by DMV by rule, after a wrecked vehicle is dismantled or destroyed:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(15) Failure to comply with ORS 822.133(2)(c) concerning failure to demolish the registration plates of a wrecked vehicle at the time the ownership record is received:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.133, 822.135, 822.137, 822.150

Stats. Implemented: ORS 183.430, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.150

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

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

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Adm. Order No.: DMV 22-2007(Temp)

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 735-040-0040, 735-040-0050, 735-040-0080, 735-040-0090, 735-040-0100

Subject: New statutory provisions direct DMV to establish a program for veteran recognition registration plates and determine: 1) qualifications for veteran groups to become eligible for recognition plates; 2) when DMV may cease to issue recognition plates; 3) what constitutes proof of veteran status, and 4) what constitutes proof that a person is a surviving family member of a person killed in action and therefore qualified for special veteran recognition plates that include a gold star decal and the words "Gold Star Family." The temporary amendment of DMV's special group registration plate rules implements the requirements of Chapter 564, OL 2007.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-040-0040

Definitions

As used in OAR 735-040-0040 through 735-040-0100:

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(2) "Gold Star Family registration plate" means a registration plate issued to a surviving family member of a person killed in action during an armed conflict while serving in the Armed Forces of the United States.

(3) "Group plates" means plates issued under ORS 805.205 for institutions of higher education and non-profit groups who are tax exempt under 501(c)(3) of the Internal Revenue Code.

(4) "Group" means any organization or institution that applies for or receives approval for the issuance of group plates naming or describing that organization or the institution that they represent.

(5) "Institution of Higher Education" or "institution" means a post secondary institution that has been awarded and currently holds accreditation by the respective commissions of one of six regional accrediting associations that include the:

- (a) Northwest Association of Schools and Colleges;
- (b) Middle States Association of Colleges and Schools;
- (c) New England Association of Schools and Colleges;
- (d) North Central Association of Colleges and Schools;
- (e) Southern Association of Colleges and Schools; and
- (f) Western Association of Schools and Colleges.

(6) "Non-profit group" means a non-profit group that meets the qualifications for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

(7) "An expression of political opinion" includes words, letters or names that:

(a) Connote or denote issues commonly associated with politics or the political process;

(b) Connote or denote social issues or causes that have become factionalized and thus have taken on their own political status (e.g., abortion, environmental issues, etc.);

(c) Connote or denote a definable class of persons and that ridicule or support superiority of that class; or

(d) Promote or discourage social causes, or that ridicule or support superiority of a class or are political.

(8) "An expression of religious belief" means words, letters or names that affirm or support a particular religion or creed, express adherence to a particular sect or denomination, express belief in or the absence of belief in a supreme being or promote or discourage any form of exercise of religion.

(9) "Veterans' group" as used in Ch. 564, OL 2007 and division 40 rules, means a group or organization that meets the qualifications for veterans' recognition registration plates under OAR 735-040-0050.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.205, Ch. 564, OL 2007
Stats. Implemented: ORS 805.205, Ch. 564, OL 2007
Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-040-0050

Veterans' Group Qualifications; Veterans' Recognition Registration Plates

(1) To request issuance of veterans' recognition registration plates, a veterans' group must submit written documentation sufficient to satisfy DMV that the group:

(a) Represents veterans of the Armed Forces of the United States, or is established for the purpose of supporting or recognizing such veterans;

(b) Has an established membership, that includes officers and bylaws; and

(c) Is physically located in Oregon or has a chapter that is physically located in Oregon.

(2) In addition to the requirements under section (1) of this rule, the applicant must submit an application, fees and any other information required to be submitted to DMV under OAR 735-040-0080.

Stat. Auth.: ORS 184.616, 184.619, 802.010, Ch. 564, OL 2007

Stats. Implemented: Ch. 564, OL 2007

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-040-0080

Application, Approval and Renewal Process for Veterans' Group; Veterans' Recognition Registration Plates

(1) A veterans' group that is eligible to apply for veterans' recognition registration plates under 735-040-0050 must submit the following to DMV:

(a) A completed and signed Application for Approval of Veteran Group Plates (DMV Form 7069);

(b) Fees to cover DMV's anticipated administrative expenses related to the design and production of the veterans' recognition registration plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(c) The written documentation required under OAR 735-040-0050, including a copy of the group's bylaws, organization papers or other documents that show it is a veterans' organization;

(d) The names and addresses of the group's current directors or officers, and the name, address and phone number of the group's authorized representative. The authorized representative is the person authorized to apply for veterans' recognition registration plates on behalf of the group and is the contact person for DMV on any matter related to the group plates;

(e) The words, initials or copy of the military related decal the group is requesting for use on the plate to name, describe or represent the group. DMV must approve and authorize any request before it may be used on a veterans' group plate;

(f) A certification or other evidence from the group's authorized representative that the group has the authority to use the requested words, initials or copy of the military related decal on a registration plate;

(g) Specific information as to where moneys collected by DMV from the sale of the group's veterans' recognition registration plates should be deposited. If no account has been specified by the time moneys collected from the sale of the veterans' recognition registration plates are distributed by DMV, the moneys will be deposited in the trust fund established under ORS 406.050 for paying the expenses of operating the Oregon Veterans' Home; and

(h) Whether or not the group requests restrictions on the issuance of the veterans' recognition registration plates as covered in OAR 735-040-0090 and any other information DMV may require concerning the restriction.

(2) In addition to the requirements described in section (1) of this rule, the group must provide an estimate of the number of plates it will sell during the next 12-month period.

(3) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the group is eligible for veterans' recognition registration plates or is authorized to use the words, initials or military related decal requested by the veterans' group. DMV will refuse to approve the issuance of veterans' recognition registration plates to the group, cease to issue veterans' recognition registration plates or may withdraw approval previously granted if DMV determines:

(a) The group is not eligible;

(b) The words, initials or military related decal used, or proposed to be used, do not properly name, identify or represent the group or are not authorized for use on a registration plate; or

(c) The authorized representative fails to provide information or documentation as requested by DMV.

(4) DMV will contact the authorized representative:

(a) At the time the application is approved or denied;

(b) When additional information or documentation is required or consultation is necessary; or

(c) If DMV proposes to withdraw its approval to issue veterans' recognition registration plates for the group.

(5) Once plates are approved, the authorized representative must file an annual statement with DMV showing the group continues to be eligible for veterans' recognition registration plates. The statement must:

(a) Be on a form provided by DMV or that is acceptable to DMV;

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(b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0050;

(c) Include the names and addresses of the current group directors, or officers, and the name, address and phone number of the group's authorized representative; and

(d) Provide an estimate of the number of plates the group expects to sell during the next 12 months.

(6) The group must immediately notify DMV any time:

(a) There is a change in the name, address or phone number of the authorized representative; or

(b) The group is dissolved or is otherwise no longer qualified for veterans' recognition registration plates under OAR 735-040-0050.

Stat. Auth.: ORS 184.616 184.619, 802.010, Ch. 564, OL 2007

Stats. Implemented: Ch. 564, OL 2007

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-040-0090

Veterans' Recognition Registration Plates for Veterans' Groups; Restrictions on Issuance; Proof of Veteran Status

(1) Issuance of veterans' recognition registration plates may be restricted to certain persons as provided under Section (2), chapter 564, Oregon laws 2007 and this rule. Conditions for restrictions are as follows:

(a) Restrictions on issuance of a particular veterans' recognition registration plate as requested by a veterans' group must relate to a person's service in the Armed Services of the United States. For example:

(A) DMV may approve a request to restrict issuance of veterans' recognition registration plate issuance to only veterans or to only those awarded a Purple Heart medal; and

(B) DMV will not approve a request to restrict veterans' recognition registration plate issuance to only veterans who are members of a particular group.

(b) A veteran's group requesting a restriction on plate issuance must do so on the initial Application for Approval of Veteran Group Plates. The group must describe the restriction(s) and the basis for the restriction;

(c) All restrictions must be approved by DMV.

(d) If a requested restriction is approved, DMV will consult the group in determining the criteria DMV will use in issuing veterans' recognition registration plates for that group.

(2) Veterans' recognition registration plates may not be issued as custom plates, or in conjunction with any other special registration or plate type.

(3) When a veterans' group approved by DMV or the Director of Veterans' Affairs requires proof of veteran status or proof of receipt of a service related medal, or the applicant requests "Gold Star Family" registration plates, DMV will accept the following as proof of eligibility:

(a) For plates that include a decal depicting an insignia of a branch of the Armed Services, a Defense Department Form 214, Certificate of Release or Discharge from Active Duty (DD214) or a Correction to DD214 Form (DD215);

(b) For a veterans' group with a service-related restriction approved by DMV under OAR 735-040-0080:

(A) A Form DD214 or DD215; and

(B) A completed signed Group Plate Eligibility Certification (DMV Form 735-6940) certifying the applicant is eligible to receive the group's plates.

(c) For plates that include a decal depicting a service-related medal:

(A) A Form DD214 or DD215; and

(B) A letter, award certificate or other document issued by the US Department of Defense showing the applicant is a recipient of the service-related medal.

(d) For plates displaying a gold star and the words "Gold Star Family," a completed, signed Group Plate Eligibility Certification (DMV Form 735-6940) certifying the applicant is a surviving family member as set forth in section (2), Chapter 564, Oregon laws 2007.

Stat. Auth.: ORS 184.616 184.619, 802.010, Ch. 564, OL 2007

Stats. Implemented: Ch. 564, OL 2007

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-040-0100

Refund of Fees; Withdrawal and Reinstatement of Group Plates

(1) DMV will refund a group's \$10,000 application fee if the group sells at least 1,000 sets of plates within the first 12-month period following issuance of the plates. The refund will be issued in the name of the group and mailed to the group's authorized representative designated on the group plate application form.

(2) DMV will stop production of a group's plate if the group:

(a) Fails to provide an annual statement as required under 735-040-0095 or 735-040-0097;

(b) The group ceases to exist;

(c) The group's approval is otherwise withdrawn;

(d) DMV determines the word(s), initials, image or logo used to name or describe the group are inconsistent with statute or rule; or

(e) DMV fails to sell or renew at least 500 sets of plates within any 12 consecutive month period. For purposes of this rule and OAR 735-040-0055, 735-040-0061, 735-040-0095 or 735-040-0097:

(A) "Sets" mean any plate(s) issued other than those issued as a replacement plate(s), whether one or two plates are issued; and

(B) The first day of the month in which the group plates are first offered for sale will be used to determine the start of the first 12-month period.

(3) DMV will notify the group's authorized representative if DMV will no longer produce plates for the group.

(4) Except as provided in section (5) of this rule, when DMV stops production of a group's plate DMV will continue to issue any remaining plate inventory until the inventory is depleted.

(5) If DMV stops production of a group's plate because the word(s), initial(s), image or logo used to identify the group is determined to be inconsistent with statute or rule:

(a) DMV may restart production if:

(A) The group is otherwise eligible and qualified to have group plates; and

(B) After consulting with the authorized representative, a different word(s), initial(s), image or logo is approved by DMV to identify the group or institution; and

(b) DMV will destroy any remaining plate inventory.

(c) If DMV ceases to order plates for any reason not covered in this section, DMV will continue to issue any remaining plate inventory until the inventory is depleted.

(6) If production of a group's plate is discontinued for reasons other than those described in section (5) of this rule, to restart production, the group must reapply and pay all required fees as described in OAR 735-040-0055, 735-040-0061, 735-040-0095 or 735-040-0097.

Stat. Auth.: ORS 184.616; 184.619, 805.205 & 805.206

Stats. Implemented: ORS 805.205 & 805.206

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 14-2004, f. & cert. ef. 6-24-04; DMV 22-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

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

Adm. Order No.: DMV 23-2007(Temp)

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 735-046-0010, 735-046-0050

Subject: These rules describe the procedures and requirements for the application and issuance of custom registration plates—sometimes referred to as personalized license plates. Chapter 311, OL 2007, directs DMV to issue custom registration plates that contain the words "Medal of Honor" to qualified Congressional Medal of Honor recipients. The temporary amendments add new provisions to DMV's custom plate rules to comply with the new statutory requirements.

Rules Coordinator: Lauri Salsbury—(503) 986-3171

735-046-0010

Custom Plates — Application and Standards

(1) A person who wishes to obtain custom plates must submit an application for custom plates to DMV.

Custom plate choices:

(a) May not be reserved in advance of application and payment of required fees; and

(b) Are approved and assigned by DMV on a first-come, first-served basis. When two or more applications requesting an identical plate choice are received, whether it be an application for renewal of a custom plate which has been expired for more than 30 days or an original application, the one for which DMV first receives the application and required fees shall be the one considered for approval of that plate choice. "Application" as used in this subsection may include application by phone provided DMV is in possession of the required fees. For example, a call is made to request an alternate choice because the original choice is not available.

(2) Except as provided in OAR 735-046-0020, applicants for custom plates shall otherwise qualify for Oregon title and registration for the vehi-

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cle to which the plates are to be assigned, and shall pay any applicable fees. Such requirements and fees shall be submitted with the request for approval of a custom plate choice, unless previously submitted to DMV.

(3) A custom plate choice shall not be considered approved and assigned until the plate has actually been issued by DMV.

(4) To be considered for approval by DMV a requested plate choice shall:

(a) Be compatible with DMV's computer system;

(b) Not be identical to any plate configuration reserved for current Congressional Medal of Honor Recipients, Oregon office holders, the Governor or Honorary Consular Corps Representatives, unless the custom plate is being issued under the provisions of OAR 735-046-0050;

(c) Not begin with the letters CMH, MOH, SEN, REP, USS, USR or ORE and be followed by numbers;

(d) Be limited to alphabetic or numeric characters, or combinations thereof, and shall not include any punctuation or symbols other than a dash or space;

(e) Include at least one alphabetic or numeric character;

(f) Be limited to no more than six alphabetic characters, numeric characters, spaces or dashes, except that a seventh character shall be allowed provided it is a space or a dash;

(g) Except as provided in section (6) of this rule, not be identical to any other plate configuration in current use. The use of a space or a dash within a plate choice shall not be considered when determining whether the plate is identical to another plate configuration; and

(5) In addition to other provisions of this rule, all of the following apply to approval of a plate choice that is identical to a plate configuration that is in current use:

(a) DMV may approve a plate choice that conflicts with a plate configuration currently in use for motor vehicles registered under ORS 803.420(1) (i.e., passenger plated vehicles) if:

(A) The specific plate configuration requested has previously been issued and is not still in inventory or to be issued in the future;

(B) The previously issued plates bearing the plate choice are surrendered to DMV with the custom plate request, or are no longer in circulation. If there is any question about such plates being in circulation, it shall be the applicant's responsibility to satisfy DMV that the plates have been destroyed, surrendered to DMV, surrendered to another state, or otherwise not available for use on a vehicle; and

(C) The plate choice is to be assigned to a vehicle that qualifies for registration under ORS 803.420(1).

(b) For motor vehicles other than those registered under ORS 803.420(1), i.e., those which are not passenger plated vehicles, DMV may approve a plate choice that is identical to a plate configuration that is in current use if:

(A) The vehicle to which the custom plates are to be issued is of a different type than the vehicle to which the plates bearing the identical plate configuration are in current use or could be issued. For example, a plate choice that is identical to a disabled veteran plate configuration (for example D00001) cannot be assigned to a custom plate issued to either a passenger vehicle or motor home. A plate choice that is identical to a motor home plate configuration (for example H00001) cannot be assigned to a custom plate issued to a motor home but can be assigned to a custom plate issued to a passenger vehicle;

(B) The plate choice requested is not currently assigned to a registration plate; and

(C) The plate choice requested will not be assigned to a future plate series.

(6) DMV shall not approve a custom plate choice, including plate choices that would do so by means of foreign or slang words or phrases, by use of phonetic, numeric or reverse spelling, or by being viewed in mirror image, that:

(a) Would have the effect of alarming, threatening, offending or misleading a reasonable person. Such choices may include, but are not limited to, combinations of letters, numbers or both that:

(A) Refer to intimate bodily parts or to sexual or excretory acts or functions;

(B) Refer in an alarming or offensive manner to a person or class of persons on the basis or race, color, gender, ethnic heritage, national origin, or other characteristic;

(C) Suggest that the vehicle to which the custom plate is issued is an official vehicle of a public agency or official, when it is in fact not such a vehicle; and/or

(D) Refer to illegal acts.

(b) Refers to alcoholic beverages, or controlled substances or paraphernalia used in the consumption thereof by combinations of letters, numbers or both.

(7) DMV may use any reliable lexicological source to determine the meaning of any word, symbol or phrase.

(8) When reviewing a plate choice for approval, DMV need not consider the applicant's subjective intent or declared meaning.

(9) DMV shall approve the transfer of registration plates which are not from a current issue of plates as custom plates under the provisions of ORS 805.242. All of the following apply to such a transfer:

(a) For vehicles which require two registration plates, the applicant must have two registration plates available for transfer to the vehicle;

(b) The registration plates being transferred must not be so old, damaged, mutilated or otherwise rendered illegible as to be not useful for purposes of identification;

(c) The registration plates being transferred must be from a series in current use;

(d) The registration plates may only be transferred to a vehicle type that is otherwise eligible for custom plates; and

(e) The registration plates may only be transferred to a vehicle of the same registration type to which they were originally issued (e.g., passenger vehicle to passenger vehicle).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.200, 805.205, 805.220, Ch. 311, OL 2007
Stats. Implemented: ORS 803.420, 803.535, 805.220, 805.240, ORS 805.242, 805.250, Ch. 311, OL 2007

Hist.: MV 25-1988, f. & cert. ef. 10-3-88; MV 48-1989, f. & cert. ef. 11-16-89; DMV 9-1994, f. & cert. ef. 9-30-94; DMV 8-1997, f. & cert. ef. 10-16-97; DMV 23-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

735-046-0050

Congressional Medal of Honor, Elected Official and Honorary Consul Plates

(1) Requirements and Qualifications. In addition to all other requirements for registration, an applicant for Congressional Medal of Honor plates, elected official plates or honorary consul plates must submit to DMV, an application for registration and all applicable fees, including any fee required for the custom plate requested. At the time of application, the applicant must:

(a) Be the registered owner of the vehicle listed on the application;

(b) For Medal of Honor Recipients, meet the qualifications for issuance of Medal of Honor Plates under chapter 311, Oregon Laws, 2007 and this rule;

(c) For elected officials, meet the qualifications of ORS 805.220, and hold the office specified on the application. DMV may contact the Secretary of State to verify compliance with this subsection;

(d) For members of the Honorary Consular Corps, submit proof to DMV that the applicant is affiliated with, or represents a foreign consulate. Proof under this subsection must be a letter that clearly indicates the applicant is designated as an honorary consul. The letter must be from the designating nation and must be on official letterhead.

(2) Plate Transfer. In addition to all other requirements for transferring registration plates, an applicant for a plate transfer must submit to DMV, a completed, signed application to transfer registration plates and all applicable fees. At the time of transfer, the applicant must be the registered owner of the vehicle listed on the application. There is no plate transfer fee for elected official plates.

(3) Plate Configurations. The following plate configurations are reserved as specified:

(a) For Congressional Medal of Honor recipients: The applicant may choose "MOH" or "CMH," followed by a single number of 1 thru 9;

(A) A total of 18 pair of Medal of Honor plates are reserved for issuance to qualified Congressional Medal of Honor recipients.

(B) Once a Congressional Medal of Honor plate configuration is issued, it is removed from the list of available plate choices and will not be issued again. For example, after "CMH 1" is issued, it is longer available as a plate choice, and only 17 plate configuration choices are available to the next applicant.

(b) For elected officials:

(A) Governor: "GOV1";

(B) Secretary of State: "2";

(C) State Treasurer: "3";

(D) President of the Senate: "4";

(E) President pro tempore of the Senate: "4A";

(F) Speaker of the House of Representatives: "5";

(G) Speaker pro tem of the House: "5A";

(H) State Senators: "SEN" followed by the applicable Senate district number;

(I) State Representatives: "REP" followed by the applicable House district number;

(J) U.S. Senator: "USS" followed by a number; and

(K) U.S. Representative: "USR" followed by the House District number.

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(L) For members of the Honorary Consular Corp: "ORE" followed by a number assigned by DMV.

(4) In addition to the elected official plate for Governor under subsection (3)(b) of this rule, DMV will issue regular series plates to the Governor upon request from the Governor's office. The fee for a regular series plate issued under this section is the plate manufacturing fee established under ORS 803.570.

(5) A person who no longer qualifies for elected official plates or honorary consul plates must remove them from their vehicle at the end of their term of office, appointment, or at the time they no longer act in the official capacity of their position. When this occurs, the person may surrender the plates to DMV or retain the plates as a souvenir.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.200, 805.205, 805.220, Ch. 311, OL 2007
Stats. Implemented: ORS 803.420, 803.530, 803.535, 805.220, 805.240, 805.242, 805.250, Ch. 311, OL 2007
Hist.: MV 25-1988, f. & cert. ef. 10-3-88; MV 13-1992, f. & cert. ef. 10-16-92; DMV 23-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08

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**Department of Transportation,
Highway Division
Chapter 734**

Rule Caption: Outdoor advertising sign rules for Protected Areas; definitions

Adm. Order No.: HWD 8-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 12-24-07

Notice Publication Date: 11-1-2007

Rules Adopted: 734-059-0020, 734-059-0025, 734-059-0030, 734-059-0050

Subject: Recent legislation changed what types of signs require permits from the state. Certain signs that did not need a permit before will need one now, and others that did have permits will not need them under the new system. Also, the state did not have an inventory and information on all signs under its jurisdiction - only on those that had a permit under the old system - making it is impossible to know how many signs will have their status changed by the statute. The purpose of these new administrative rules is to provide more specific program information based on the new and amended provisions in statute.

Rules Coordinator: Lauri Salsbury—(503) 986-3171

734-059-0020

Business Defined

(1) As used in OAR chapter 734, division 059, unless the context of the rule requires otherwise, a business means a commercial or industrial enterprise operated with the intent of economic gain.

(2) The location of a business includes the main buildings as well as other physical areas necessary or customarily incident to the business, including a limited amount of open space as is arranged and designed to be used in immediate connection with such buildings and uses.

(3) In determining whether a location is a business, the Department may consider the totality of the circumstances, including but not limited to the following:

- (a) Whether the operation is open to potential customers;
- (b) Whether the operation has the appropriate license, permit, or meets other requirements to operate under local, state, and federal law;
- (c) How long the operation has been in existence;
- (d) Whether the primary use of the location is as a residence;
- (e) Whether the location has indices of operation such as telephone and other communication service, appropriate equipment, appropriate vehicular access, parking and other facilities, regular hours of operation, etc.

(4) Vacant lots, fields used for crops, grazing or timber are not considered the location of a business.

(5) The following are not businesses for the purposes of ORS 377.710(20):

- (a) Public or private utilities (e.g. telephone poles, cell phone towers);
- (b) Railroad tracks;
- (c) Outdoor advertising sign or other signs.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.720
Stats. Implemented: ORS 377.710, 377.720
Hist.: HWD 5-2007(Temp), f. & cert. ef. 7-19-07 thru 1-14-08; HWD 8-2007, f. & cert. ef. 12-24-07

734-059-0025

Activity Open to the Public

As used in OAR chapter 734, division 059, unless the context of the rule requires otherwise, an activity open to the public means a location, the main purpose of which involves the admission of or providing service to members of the public. This includes without limitation:

- (1) Places of worship;
- (2) Educational facilities;
- (3) Meeting halls;
- (4) Facilities of non-profit or charitable organizations;
- (5) Public parks;
- (6) Government offices.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.720
Stats. Implemented: ORS 377.710, 377.720
Hist.: HWD 5-2007(Temp), f. & cert. ef. 7-19-07 thru 1-14-08; HWD 8-2007, f. & cert. ef. 12-24-07

734-059-0030

Compensation Defined

(1) As used in OAR chapter 734, division 059, unless the context of the rule requires otherwise, compensation means the exchange of something of value. It includes, without limitation, money, securities, real property interest, personal property interest, barter of goods or services, promise of future payment, or forbearance of debt.

(2) Compensation does not include:

- (a) Goodwill;
- (b) The exchange of a de minimis value in relation to the benefit acquired. When an exchange of substantial value is for a purpose other than posting of a sign on the land, and a negligible amount of value is added for the sake of a sign as an accessory to that purpose, the Department may consider that a de minimis amount that does not constitute compensation for purposes of ORS 377.710(20).

(c) An exchange of value that a land owner (or other person with a right to possession of the land) provides to a sign company when:

- (A) The compensation to the sign company is only for sign structure construction or maintenance on behalf of the land owner; and
- (B) The land owner fully controls the content of the sign.

(3) In all cases the Department shall consider the totality of the circumstances, including without limitation, whether the compensation arrangement is reasonable and credible.

Stat. Auth.: ORS 184.616, 184.619, 377.710, 377.720
Stats. Implemented: ORS 377.710, 377.720
Hist.: HWD 5-2007(Temp), f. & cert. ef. 7-19-07 thru 1-14-08; HWD 8-2007, f. & cert. ef. 12-24-07

734-059-0050

Signs in Protected Areas

(1) As used in OAR chapter 734, division 059, unless the context of the rule requires otherwise, the following definitions apply:

(a) "Center line of the highway" means the line equidistant from the edges of the median separating the main-traveled ways of a divided highway or is the center line of the main traveled way of a nondivided highway.

(b) "Entrance Road" means any public road, including acceleration lanes by which traffic may enter the main-traveled way of an Interstate highway, irrespective of whether traffic may also leave the main-traveled way by such road.

(c) "Exit Road" means any public road, including deceleration lanes by which traffic may leave the main-traveled way of an Interstate highway, irrespective of whether traffic may also enter the main-traveled way by such road.

(d) "Interstate System" means I-5, I-84, I-82, I-105, I-205, and I-405 within Oregon's borders.

(e) "Main-traveled way" means the traveled way of an Interstate Highway on which through-traffic is carried. It does not include frontage or service roads.

(f) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(2) Signs Allowed in Protected Areas. Only the following signs may be erected or maintained in protected areas of the Interstate System:

(a) Class 1: Official signs. Official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with authorization in State or Federal law, for the purpose of carrying out an official duty or responsibility.

(b) Class 2: Signs that are not outdoor advertising signs.

(c) Class 3: Outdoor advertising signs, subject to the permit and other requirements of the Oregon Motorist Information Act and these rules.

(d) Class 4: Temporary signs, subject to the requirements of the Oregon Motorist Information Act.

(3) Prohibited Signs. The following signs are not allowed in Protected Areas:

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- (a) Signs that are illegal under ORS 377.720.
- (b) Signs that exceed twenty feet in length, width, or height, or exceed 150 square feet in area, except for those signs that are not "outdoor advertising signs" as that term is defined in ORS 377.710.
- (c) Signs that do not adhere to these rules.
- (d) Signs that do not adhere to the other requirements of the Oregon Motorist Information Act (ORS 377.700-377.840 and 377.992).
- (4) Measurement of Distances. Distances under these rules are measured in the following manner:
- (a) Distance from the edge or a right of way shall be measured horizontally along a line normal or perpendicular to the center line of the interstate highway.
- (b) All distances for location of signs and spacing requirements shall be measured along the center line of the interstate highway between two vertical planes that are normal or perpendicular to and intersect the center line of the interstate highway and that pass through the termini of the measured distance.
- (5) Number of Class 3 signs and spacing requirements. The erection and maintenance of Class 3 signs within protected areas shall not be allowed in any manner that is inconsistent with the following:
- (a) In advance of an intersection of the main-traveled way of a protected area and an exit road, such signs will not be permitted to exceed the following numbers: [Table not included. See ED. NOTE.]
- (b) Subject to the provisions of subsection (a) of this section, not more than two such signs will be permitted within any mile distance measured from any point, and no such signs will be permitted to be less than two thousand feet apart.
- (c) No class 3 sign will be permitted adjacent to an exit road or entrance road.
- (d) No class 3 sign will be permitted within 1000 feet of the furthest point of the intersection between the traveled way of the entrance road and the main-traveled way of the interstate highway.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth: ORS 184.616, 184.619, 377.710, 377.720
Stats. Implemented: ORS 377.710, 377.720
Hist.: HWD 5-2007(Temp), f. & cert. ef. 7-19-07 thru 1-14-08; HWD 8-2007, f. & cert. ef. 12-24-07

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Department of Veterans' Affairs
Chapter 274

Rule Caption: Veterans' Organizations and Expansion and Enhancement Appropriations.

Adm. Order No.: DVA 4-2007

Filed with Sec. of State: 12-20-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 9-1-2007

Rules Adopted: 274-030-0602

Rules Amended: 274-030-0500, 274-030-0505, 274-030-0506, 274-030-0510, 274-030-0515, 274-030-0520, 274-030-0535, 274-030-0545, 274-030-0550, 274-030-0555, 274-030-0560, 274-030-0565, 274-030-0570, 274-030-0575, 274-030-0600, 274-030-0610, 274-030-0620, 274-030-0630, 274-030-0640

Rules Repealed: 274-030-0500(T), 274-030-0505(T), 274-030-0506(T), 274-030-0510(T), 274-030-0520(T), 274-030-0545(T), 274-030-0550(T), 274-030-0555(T), 274-030-0560(T), 274-030-0565(T), 274-030-0570(T), 274-030-0575(T), 274-030-0600(T), 274-030-0602(T), 274-030-0610(T), 274-030-0620(T), 274-030-0630(T), 274-030-0640(T), 274-030-0605

Subject: The Temporary Rules filed on July 25, 2007, are repealed and superceded. In addition to making the Temporary Rules permanent, OAR 274-030-0515 and 274-030-0535 are being amended to include per House Bill (HB) 2158 and HB 2161 of the 2007 Regular Legislative Session which are effective January 1, 2008.

HB 2158 amends the role of the Advisory Committee as it relates to the Director of Veteran's Affairs for purposes of consistency with ORS 406.030, 406.215, and 406.217.

HB 2161 of the 2007 Regular Legislative Session change the phrase "war veteran" to "veteran."

Housekeeping corrections have also been made to ensure rule consistency and for clarification purposes.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-030-0500

Definitions for 274-030-0500 – 274-030-0575

Whenever used in these rules or any amendments thereof, or in any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the Director of Veterans' Affairs of the State of Oregon or any of his duly authorized agents or employees in connection with the administration of the provisions of ORS 406.310 to 406.340 and 406.450 to 406.462, providing for distribution of funds to organizations and counties for rehabilitation services, the terms herein defined shall have the meanings herein set forth unless the context of the words with which a term is used shall clearly indicate a different meaning:

(1) "Advisory Committee" shall mean the Advisory Committee to the Director of the Department of Veterans' Affairs as provided for in ORS 406.210.

(2) "Benefits" shall mean funds available for distribution to veterans' organizations and counties of the State of Oregon under ORS 406.310 to 406.330 and 406.450 to 406.462.

(3) "Capital outlay" shall be synonymous with and mean the same as "capital assets" as defined in the Oregon Accounting Manual, Number 10.50.00 PR. Copies of the Oregon Accounting Manual are available from the Department of Veterans' Affairs or the Department of Administrative Services Division website.

(4) "County" shall mean a county which carries on a program of veterans' rehabilitation work and which contracts for or employs a part-time or full-time Service Officer.

(5) "County Service Officer" shall mean a person contracted with or employed as a part-time or full-time agent or employee of the governing body of the county whose duty is to carry on a program of rehabilitation and service to veterans.

(6) "Department" means the Department of Veterans' Affairs for the State of Oregon.

(7) "Director" shall mean Director of the Department of Veterans' Affairs for the State of Oregon.

(8) "Funds Available" shall mean the funds remaining from those that have been designated by the Director, with advice from the Advisory Committee, to aid organizations and counties in connection with their respective programs of service to veterans.

(9) "Rehabilitation and Service". For the purpose of these rules, the words "rehabilitation" and "service to veterans" shall be synonymous and shall be interpreted to mean assistance rendered by paid Service Officers accredited by the U.S. Department of Veterans Affairs.

(10) "Rehabilitation Program for Two Years Preceding". For the purpose of these rules the phrase, "However, a veterans' organization does not qualify for benefits under ORS 406.310 unless it has carried on a program of veterans' rehabilitation work in Oregon for not less than two years immediately preceding", is interpreted to mean that, for the two years immediately preceding application for benefits under ORS 406.310, a veterans' organization must have in its employ a part-time or full-time paid Service Officer who is accredited by the U.S. Department of Veterans Affairs and who, during the past two years, has been active in representing veterans before the rating boards of the Portland Regional Office of the U.S. Department of Veterans Affairs.

(11) "Service Officer" shall mean a part-time or full-time paid state or national employee of a veterans' organization who is accredited by the U.S. Department of Veterans Affairs and employed to represent veterans before rating boards of the U.S. Department of Veterans Affairs.

(12) "Supplant" means to remove from a situation and replace or supplant with a substitute.

(a) For purposes of the Expansion and Enhancement Program, county funding for the fiscal year ending on June 30, 2005, will be considered the minimum level of funding a county must maintain for their Service Officer Program in order for the county to receive state expansion and enhancement appropriations.

(b) Exceptions may be granted by the Department for one-time county funding made in fiscal year 2005, such as funds used to purchase a vehicle for transportation of veterans.

(13) A "veterans' organization" shall mean a veterans' organization accredited by the U.S. Department of Veterans Affairs, which has carried on a program of veterans' rehabilitation work in Oregon for not less than two years immediately preceding application, by a part-time or full-time paid Service Officer.

(14) "Voluntary Service Officer" shall mean an appointee of a County Court or Board of Commissioners who acts as County Service Officer without remuneration.

Stat. Auth.: ORS 406 & 408.410
Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.450 - 462
Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

274-030-0505

Original Application

Each organization desiring to apply for benefits under ORS 406.310 to 406.340 must submit an application in writing to the Director before August 15th of the year of application. The application shall set out the organization's eligibility for benefits as defined by law, together with a statement covering its rehabilitation program carried out for a period of at least two years immediately preceding. There shall be attached to said application as an exhibit a statement of its expenditures for such work for said period of time and a copy of the approved budget for its rehabilitation program for the forthcoming fiscal year.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310 - 406.340

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0506

Late Applications

Any application filed after August 15 for participation in Department of Veterans' Affairs funds for the current fiscal year will be granted by the Director, with advice from the Advisory Committee, only if sufficient funds are available. This rule applies to original applications only.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.210, 406.215, 406.310 - 406.340

Hist.: DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0510

Subsequent Application

Each organization which has received benefits during the preceding fiscal year and which desires to apply for benefits during the forthcoming year shall submit a request to the Director in writing before August 15th and shall attach to the application a copy of its approved budget for the forthcoming year.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310 - 406.340

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0515

Allocation of Funds

Upon receipt of said applications, the merits of each application shall be determined by the Director, with the advice of the Advisory Committee, and then the allocation of funds shall be made, and the organizations shall be notified regarding their entitlement to funds. Funds will be allocated on a fiscal year basis starting July 1st and ending June 30th.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.210, 406.215, 406.310 - 406.340

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0520

Quarterly Reports and Audits

Veterans' organizations found eligible to receive benefits shall submit a quarterly report of the activities of their accredited Service Officers and a quarterly report of the expenses of their accredited Service Officers on forms prescribed by the Director before reimbursements may be authorized. The Director may audit and examine the activities and expenditures of veterans' organizations in connection with their programs of service to veterans before approving reimbursements.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.450 - 406.462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0535

Limitation on Distribution of Funds

Unless otherwise decided by the Director, with the advice of the Advisory Committee, no organization shall receive from the Director more than 50 percent of its approved budget, nor more than 50 percent of actual budgeted expenditures. However, in those instances where the national headquarters of an organization bears the major portion of its State Service Officer expenses, the State headquarters of that organization may consider as its State expense that portion of the annual dues of its members that are sent to its national headquarters for the purpose of paying a portion of the expenses of its State Service Officer. To meet the terminology of any organization affected by this section, the terms "State Service Officer" and "National Service Officer" are deemed synonymous.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.210 - 406.217, 406.310, 406.450 - 406.462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0545

Application

Counties desiring to apply for benefits under ORS 406.310 shall apply in writing and shall submit budget reports and revenue and expense reports for their respective County Service Officer departments before August 15th of the year in which they wish to receive benefits.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.310

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0550

Late Applications

Any application for benefits filed after August 15 will be granted by the Director, with the advice of the Advisory Committee, only if sufficient funds are available. This rule applies to both late applications and a request for an increase in funds because of proposed additional expenditures.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.450, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0555

County Programs

The governing body of counties which have qualified for funds shall submit quarterly reports of expenses of their County Veterans' Service Officer Programs, and county Service Officers shall submit quarterly reports of their activities on forms provided by the Director before benefits shall be authorized.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.310, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0560

Quarterly Reports and Audits

(1) Quarterly benefits to counties shall be approved for payment only after the Service Officer's activity report, the county report of expenditures, and all supporting documentation have been received by the Veterans Services Division on forms prescribed by the Director.

(2) Completed reports must be received by the Department by the last working day of the month following the end of each fiscal quarter.

(3) The Director may audit and examine the activities and expenditures of counties in connection with their programs of service to veterans before approving benefits.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0565

Fiscal Division of Funds

(1) Of the funds available for the biennium for disbursement to counties, not more than one-half shall be disbursed during the first fiscal year of the biennium.

(2) The maximum benefit to counties during the fiscal year shall be 75 percent of the approved budgeted expenditures, not to exceed \$12,500.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0570

Distribution of Funds

The Director, with the advice of the Advisory Committee, shall determine the maximum amount of benefits payable to each county. Benefits will not be allowed for capital outlay.

Stat. Auth.: ORS 406

Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.330, 406.450 - 462

Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0575

Payments and Adjustments

(1) Benefits shall be paid quarterly at the rate of reimbursement as described in OAR 274-030-0565, Fiscal Division of Funds; however, no more than 75 percent of the approved authorized funds shall be paid during the first three quarters of any fiscal year.

(2) After the required reports for the fourth quarter of the fiscal year have been filed with the Director, the total expenditures for the year by each county shall be calculated and applied against its authorized annual benefits, whereupon adjustment shall be made to allow the county to be reimbursed to its full entitlement for the year; however, benefits shall not exceed the maximum amount set forth for that county for the year.

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(3) All rates of payments and adjustments shall be made upon advice from the Advisory Committee.

Stat. Auth.: ORS 406
Stats. Implemented: ORS 406.030, 406.215, 406.217, 406.450, 406.450 - 462
Hist.: DVA 28, f. 8-16-61; DVA 4-1984, f. 6-15-84, ef. 7-1-84; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0600

Expansion and Enhancement Appropriations Program

(1) This program's objective is to provide designated funds which are to be utilized to expand and enhance the services provided by county veterans' service programs.

(2) The Department has the responsibility to establish, revise, or add to this program's rules.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 406.340, 406.450 - 406.462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 406.462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0602

County Responsibilities

(1) In order to receive expansion and enhancement funds, the governing body of qualified counties shall submit the following forms as prescribed by the Department:

(a) An annual application to receive funds.

(A) The application will include a copy of the county's plan to use the expansion and enhancement funds. Counties must have an approved plan in order to receive expansion and enhancement funds.

(B) Financial reports, including revenue and expense and budget reports may also be required.

(b) Quarterly Expense Reports of the County Service Officer Program, including any required attachments.

(c) Quarterly Activity Reports of the County Service Officer Program, including any required attachments.

(2) Counties shall not use expansion and enhancement funds for capital outlay.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 406.462 & 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462 & 408.410
Hist.: DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0610

Formula For and the Disbursement of Funds

(1) The Department, after consultation with the Advisory Committee, shall determine the maximum amount of funds payable to each county.

(2) Payment amounts will be calculated using a formula based on, but not limited to, the following:

- (a) A base amount;
- (b) The number of veterans residing in each county;
- (c) The existing veterans' service resources available in each county;
- (d) The rehabilitation of the greatest number of Oregon veterans; and
- (e) The elimination, as much as possible, of any duplication of effort and inefficient expenditure of funds.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.215, 406.450 - 462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0620

Quarterly Reports and Audits

(1) Quarterly disbursements to counties shall be approved for payment only after the County Service Officer's activities report, the county report of expenditures, and all supporting documentation have been received by the Veterans Services Division on forms prescribed by the Department.

(2) Completed reports must be received by the Department by the last working day of the month following the end of each fiscal quarter.

(3) The Department may audit and examine the activities and expenditures of counties in connection with their programs of service to veterans before approving reimbursements. Results, including any findings, will be provided to the director approximately 90 days after the start of an audit.

(4) Audits may require refunds of prior disbursements if expansion or enhancement activities cannot be verified.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 406.462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0630

Withholding Funds

(1) Funds may be withheld by the Department due, but not limited, to the following conditions:

(a) Reports are not submitted in the timeline established in OAR 274-030-0620, Quarterly Reports and Audits.

(b) Reports do not contain accurate or verifiable information.

(c) Lack of evidence that previous funds were used in a manner established in OAR 274-030-0602, County Responsibilities.

(d) Lack of evidence that acceptable progress has been made in accomplishing the timelines, goals, and objectives as contained in the county's approved plan.

(e) The determination that a county is supplanting funds.

(A) Establishment of a Baseline. For purposes of the Expansion and Enhancement Program, county funding for the fiscal year ending on June 30, 2005, will be considered the minimum level of funding that a county must maintain for their Service Officer Program in order for the county to receive state expansion and enhancement appropriations. Exceptions may be granted by the Department for one-time county funding made in fiscal year 2005, such as funds used to purchase a vehicle for transportation of veterans, or other extenuation circumstances.

(B) Except as outlined in ORS 406.460, counties must annually fund their County Veterans' Service Program at or above the established baseline to avoid supplanting.

(C) Noncompliance. The amount of supplanted monies will be withheld dollar for dollar from that county's expansion and enhancement funds. When sufficient evidence has been received by the Department showing supplanted funds have been restored to the County Veterans' Service Program, withheld funds will be released to the county, subject to budgetary limitations and if all required reports were in a current received status at the time supplanting was discovered.

(2) Withheld funds will be released at the conclusion of the quarter following the Department's receipt of:

(a) Prior quarterly reports and supporting documentation.

(b) Amended reports with accurate and verifiable information.

(c) Sufficient evidence that funds were used in the manner established in ORS 406.450 and OAR 274-030-0602(2), County Responsibilities.

(d) Sufficient evidence has been received that acceptable progress has been made in accomplishing the timelines, goals, and objectives as outlined in the county plan.

(3) In order for any withheld expansion and enhancement funds to be released, the current quarter's reports and any required attachments must be received within the timeframe outlined in OAR 274-030-0620

(4) Unless otherwise legislatively restricted, funds withheld by the Department at the conclusion of the biennium may be disbursed to all remaining qualified counties as determined by the Director, with the advice of the Advisory Committee.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 406.340, 406.450 - 406.462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 406.462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

274-030-0640

Waiver of Rules

Subject to the limitations of the law, and at its sole discretion, the Department may waive all or part of these administrative rules.

Stat. Auth.: ORS 406.030, 406.050, 406.310 - 340, 406.450 - 406.462, 408.410
Stats. Implemented: ORS 406.030, 406.050, 406.450 - 462, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06; DVA 6-2006, f. & cert. ef. 6-16-06; DVA 1-2007(Temp), f. & cert. ef. 7-25-07 thru 1-18-08; DVA 4-2007, f. 12-20-07, cert. ef. 1-1-08

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Rule Caption: Oregon Veterans' Emergency Financial Assistance Program.

Adm. Order No.: DVA 1-2008(Temp)

Filed with Sec. of State: 1-7-2008

Certified to be Effective: 1-7-08 thru 6-30-08

Notice Publication Date:

Rules Amended: 274-012-0001, 274-012-0100, 274-012-0120

Subject: OAR 274-012-0001 is amended to reflect House Bill 2157 of the 2007 Legislative Session which revised ORS 408.500 to

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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

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;

(e) Temporary income after military discharge; and

(f) Legal assistance.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

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

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

Stats. 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

Economic and Community Development Department Chapter 123

Rule Caption: Amend rules related to ad hoc committees, as well as clarifying contested case proceedings language.

Adm. Order No.: EDD 1-2008

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08

Notice Publication Date: 12-1-2007

Rules Amended: 123-001-0050, 123-001-0300, 123-001-0500, 123-001-0520, 123-001-0700, 123-001-0725, 123-001-0750

Subject: The proposed administrative rule change addresses the statutory changes implemented in SB 350 (2007 Legislature) regarding the Oregon Economic Development Commission and advisory committees under its charge, as well as making a technical correction regarding the Finance Committee to reflect current practice. In addition, the proposed rule clarifies the language regarding contested case proceedings for rejected applications for certain programs.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-001-0050

Definitions

For purposes of this division of administrative rules, and generally throughout this chapter of administrative rules, unless the context demands otherwise:

(1) Commission means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(2) Department means the State of Oregon Economic and Community Development Department as established under ORS 285A.070.

(3) Director means the director of the Department as appointed under ORS 285A.070.

(4) Governor means the sitting Governor of the State of Oregon, pursuant to Article V of the Constitution of Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A & 285B; OL 1999, Ch. 509

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08

123-001-0300

Waivers of Provisions Provided by Rule in This Chapter

The Director or the Director's designee may formally waive requirements otherwise prescribed by this chapter of administrative rules, if such a waiver serves to further the goals and objectives of ORS chapters 285A, 285B and 285C and results in sound economic development or job creation in the state, such that:

(1) The requirement must be an invention of the administrative rule itself, and not arise from policies established by the Commission or from any state or federal law, including cases where state law might in some way be ambiguous, but the administrative rule is considered to correctly and optimally clarify or interpret that law;

(2) This rule applies whether or not the division of administrative rule similarly provides for waiver by the Director; and

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(3) This rule does not interfere with other ways to make exceptions or to provide flexibility, as described elsewhere for certain administrative rules, and it is not meant to substitute for the timely amendment of administrative rules.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A & 285B
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08

123-001-0500

Commission Committees

For purposes of advisory and technical committees for the Commission:

(1) These committees are different from, and this rule does not apply to, statutory boards or commissions affiliated with the Department, but whose appointment, authority, duties and relationship to the Commission, if any, are prescribed (such as the Oregon Arts Commission under ORS 359.010 to 359.137) by the Legislative Assembly.

(2) The committees under this rule, which are part of the Department and are public bodies as subsidiaries to the Commission, consist of **Ad Hoc Committees** established solely by authority of the Commission and operating at its discretion under ORS 285A.060.

(3) An Ad Hoc Committee ("it" for purposes of this section), as defined in subsection (2) of this rule, is subject to the following parameters:

(a) The Commission must create it by a formal and public action for a certain definite period, or otherwise it may exist and operate until the Commission terminates or suspends it;

(b) The chair of the Commission is primarily responsible for appointing each of its members, which serve at the chair's pleasure (the Director or designee is always an ex officio member), and for determining its make-up and similarly fundamental attributes;

(c) Its membership shall broadly reflect the different geographic regions of this state, and at least one of its members shall reside east of the Cascade Range;

(d) It shall provide advice and recommendations to the Commission or the Department, although it may exercise, on a day-to-day basis, such duties or powers as the Commission delegates to it;

(e) It is subject to the Commission's review and to reporting its decisions, actions and agenda for future meetings, which any member of the Commission may attend;

(f) It may adopt standards and procedures for its activities, with or without direction from the Commission; and

(g) Regardless of anything described in this chapter of administrative rules, the Commission reserves the discretion to change any delegation and directive related to its future functions, at any time.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.060
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08

123-001-0520

Finance Committee for the Commission

The **Finance Committee** is an Ad Hoc Committee that has been formed and empowered by the Commission in accordance with OAR 123-001-0500, such that:

(1) The Commission charges the Finance Committee (pursuant to divisions of this chapter of administrative rules) with the following:

(a) Immediate oversight and the approval of projects and proposals under the following business finance programs:

(A) Economic Development Revenue Bonds (Division 011); and

(B) Oregon Business Development Fund (Division 017);

(b) Consideration on appeal of administrative denials of business loans under the following programs:

(A) Entrepreneurial Development Loan Fund (Division 019); and

(B) Credit Enhancement Fund (Division 021); and

(c) Immediate oversight and the approval of projects and proposals and of agreements with port districts under the Port Revolving Loan Fund (Division 030).

(2) The Finance Committee's members:

(a) Are appointed by the chair of the Commission to include representation from among this state's banking and financial community, as well as at least one member possessing general experience with a traded-sector industry or industry association; and

(b) Serve indefinite terms at the pleasure of the Commission's chair, such that a newly appointed Commission chair assumes the makeup and organization of the current Finance Committee until the Commission chair initiates changes.

(3) The Commission's chair shall select a chairperson for the Finance Committee, such that:

(a) The chairperson shall call meetings and set agendas for the Finance Committee with the assistance of Department staff; and

(b) A member chosen by the chairperson (or otherwise, the longest-serving member present) shall preside over a Finance Committee meeting at which the chairperson is absent.

(4) The supervisor of the Department's business finance programs shall administer the operations of the Finance Committee, officially carry out its decisions, prepare business for its consideration with the chairperson's consent, and serve as an ex officio member on behalf of the Director.

(5) Nothing in this rule, or elsewhere in this chapter of administrative rules, interferes with the Commission's authority to dissolve the Finance Committee or to redirect its future procedures and purposes.

Stat. Auth.: ORS 285A.075, 285B.056, 285B.206(3) & 285B.743(2)
Stats. Implemented: ORS 285A.060, 285A.666 - 285A.732, 285B.050 - 285B.098, 285B.200 - 285B.218, 285B.320 - 285B.371 & 285B.740 - 285B.758
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08

123-001-0700

Purpose, Scope and Definitions

(1) OAR 123-001-0700 to 123-001-0799 establish procedural steps and options for handling appeals, in the manner of a contested case under ORS 183.310 to 183.550, when the Department denies:

(a) An application for either preliminary certification or annual certification to exempt the taxable income of a facility under ORS 316.778 or 317.391 (division 155 of this chapter of administrative rules), other than when denial results from objection to preliminary certification by the city, county or port; or

(b) Any other application or request for which state law provides for appeal by contested case.

(2) Except as otherwise provided under state law or elsewhere in this chapter of administrative rules, this rule and contested case provisions do not pertain to any other proceeding, hearing, determination or decision by the Department, Director, Commission or any subsidiary body.

(3) OAR 123-001-0700 to 123-001-0799 are intended only to supplement mandatory elements of contested case proceedings under the Administrative Procedures Act for matters specific to the Department. Therefore, OAR 137-003-0501 to 137-003-0700 are incorporated into and adopted as part of this division of administrative rules, by reference.

(4) For purposes of OAR 123-001-0700 to 123-001-0799, unless the context demands otherwise:

(a) "Applicant" means the person (including but not limited to a business firm) that sought approval under section (1) of this rule, as identified in the application form or other submitted materials. This person is thus the affected party or appellant for purposes of the contested case, and the submitted address given in the form is assumed correct for mailing the Notice.

(b) "Notice" means the formal written statement on Department letterhead that the Department initially sends to the Applicant, in accordance with OAR 123-001-0725.

Stat. Auth.: ORS 183.341(2), 183.464(2) & 285A.075; OL 2007 Ch. 288, §(2)
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08

123-001-0725

Steps and Reservations of the Department

(1) As described in OAR 123-001-0700, the Department shall send Notice to the Applicant, such that:

(a) The Department sends Notice by registered or certified mail;

(b) If a copy is sent also by regular, first-class mail, it must be so mailed at least five days prior to the Notice as described in subsection (a) of this section; and

(c) The Department shall also furnish a copy to the Department of Revenue/county assessor as appropriate.

(2) The Notice, on Department letterhead, shall include but is not limited to the following:

(a) The date and other pertinent facts of the Department's receipt of the application;

(b) Brief explanation of why the Department is unable to approve it;

(c) Reference to the specifically relevant statutory subsection(s) or administrative rule section(s), and further explanation, as warranted, regarding how these references support the Department's conclusion(s);

(d) Statement of the Applicant's right to a contested case hearing on the matter before an administrative law judge and to be represented by legal counsel;

(e) Designation of the Department's current file on the application as the record for purposes of proving a prima facie case upon default; and

(f) Instruction on how the Applicant must file a written request in order to receive the hearing, such that the request is received by the Department on or before a specified date not less than 30 calendar days after the Notice.

(3) The Department reserves the option (at its sole discretion) to withdraw the proposed denial and grant certification to the Applicant for any reason, prior to a final order, including but not limited to the re-submission

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of a new application or the consideration of evidence that alters the Department's prior conclusion(s), as otherwise allowed under the applicable laws.

(4) Upon default by the Applicant, including but not limited to failure to timely file a request for a hearing with the Department, the Department shall promptly issue a final order denying certification, furnishing a copy to the Department of Revenue/county assessor as appropriate.

(5) If the Applicant files a timely request for a contested case hearing, the case shall be referred to the Office of Administrative Hearings and a copy of the referral furnished to the Applicant, General Counsel and the Department of Revenue/county assessor as appropriate.

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

(7) A proposed order in section (6) of this rule shall not become final if:

(a) The Department gives timely written notification to the parties and the administrative law judge of its intent to alter the findings or effect of the order, subsequent to which it shall issue an amended proposed order and/or final order, as warranted.

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions with both the Department and the administrative law judge that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps. Such steps include, but are not limited to, an official response to the exceptions or the hearing of new or additional evidence.

Stat. Auth.: ORS 183.341(2), 183.464(2) & 285A.075; OL 2007 Ch. 288, §4(2)
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08

123-001-0750

Representations by Agency Representative

For purposes of any contested case hearing before an administrative law judge:

(1) Subject to the approval of the office of Attorney General of the State of Oregon under ORS Chapter 180, the Director may authorize an officer or employee of the Department to appear on behalf of the Department.

(2) Such a Department representative may not present legal argument on behalf of state government.

(3) The Department retains its full prerogative, with or without intervention by the administrative law judge, to consult with or otherwise involve the office of Attorney General. Such prerogative includes but not necessarily limited to the sole purpose of having the office of Attorney General present legal argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(4)(a) "Legal argument" includes arguments on:

(A) The jurisdiction to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures followed in the contested case hearing.

Stat. Auth.: ORS 183.452(2) & 285B.075
Stats. Implemented: ORS 183.452; OL 2007, Ch. 116, §2
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08

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Rule Caption: Amend rules related to the Community Development Fund.

Adm. Order No.: EDD 2-2008

Filed with Sec. of State: 1-2-2008

Certified to be Effective: 1-2-08

Notice Publication Date: 12-1-2007

Rules Amended: 123-009-0060, 123-009-0080, 123-009-0090

Subject: The amendments to the administrative rule address the statutory changes implemented in SB 350 (2007 Legislature) regarding the Community Development Fund. The amendments also remove reference to the OECD Commission establishing initial, biennial targets for allocation of the fund. This proposed change is consistent with the statutory direction established in SB 350, to provide the Commission and Department with the flexibility necessary to implement programs and policies in the most effective manner possible to advance Oregon's economy. Furthermore, the OECD Commission was not bound by these preliminary targets, and the practice ultimately proved to be an inefficient use of time and resources.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-009-0060

Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Fund" means the Oregon Community Development Fund established in ORS 285A.227, which includes lottery funding for grant and loan programs and contracted services and all interest earnings that accrue to the Fund.

(2) "Commission" means the seven-member Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(3) "Director" means the Director of the Oregon Economic and Community Development Department established in ORS 285A.070.

(4) "Allocation Plan" means the distribution plan of the legislatively authorized Community Development Fund biennial budget.

Stat. Auth.: ORS 285A.075, 285A.227(2)
Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08

123-009-0080

Commission Responsibilities

(1) The Commission shall review and approve a biennial Allocation Plan for the Fund.

(2) The Commission shall be responsible for making allocations from the Fund and may adjust these allocations based on need. In the event of lottery revenue shortfalls, the Commission may adjust allocations in accordance with any Legislative direction and recommendations of the Commission.

Stat. Auth.: ORS 285A.075, 285A.227(2)
Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08

123-009-0090

Criteria for Allocations

The Commission shall make biennial allocations from the Fund based on the following criteria:

(1) Funding shall be based on the principles established in ORS 285A.020.

(2) Allocations from the Fund shall be used to enhance coordination among internal and external programs, contractors and other organizations.

(3) Funds may be reserved and allocated to address opportunity-driven investments, projects and unanticipated needs.

(4) Consideration may be given to eliminating or combining funding for programs in allocations.

Stat. Auth.: ORS 285A.075, 285A.227(2)
Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08

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Employment Department

Chapter 471

Rule Caption: Suspension of the Oregon Employment Department's existing rule regarding confidentiality as the department finalizes the permanent rule change brought about by the recent statutory changes to ORS 657.665 and 657.670.

Adm. Order No.: ED 1-2008(Temp)

Filed with Sec. of State: 1-7-2008

Certified to be Effective: 1-7-08 thru 7-5-08

Notice Publication Date:

Rules Suspended: 471-010-0050, 471-010-0051, 471-010-0052, 471-010-0054, 471-010-0055, 471-010-0057

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Subject: Suspension of the permanent rules OAR 471-010-0050, 0051, 0052, 0054, 0055, 0057. Senate Bill 197 proposed a rewrite of ORS 657.665 and 657.670 both of which pertain to confidential information disclosure, the accompanying rules (OAR 471-010-0050, 0051, 0052, 0054, 0055, 0057) need to be rewritten to reflect the changes brought about by this recent rewrite. This suspension will the department sufficient time to rewrite the rule to comply with the statute. The new language of the statute is such that no customer's confidentiality will be at risk while the rule is suspended.

Rules Coordinator: Janet Orton—(503) 947-1724

471-010-0050

Definitions

(1) "Agent" means an individual who is authorized to act for or in the place of another individual or entity.

(2) "Aggregate information" means:

(a) For information relating to businesses: there must be at least three firms and no one firm makes up more than 80% of the data item being measured;

(b) For information relating to individuals: there must be at least three individuals in each aggregated data group being released.

(3) "Customer" means any employer, individual, public agency, public employee (other than Oregon Employment Department staff in the performance of duty), non-governmental entity or member of the public that provides information to the department or receives a department service.

(4) "Confidential information" means information obtained from employing units, employees or other individuals pursuant to ORS Chapter 657.

(5) "Discharge of duties" means the duties related to the department programs and services pursuant to ORS Chapter 657, which includes, but is not limited to:

(a) Administration of the department;

(b) Delivery of department and workforce programs and services in accordance with state or federal law;

(c) Cooperation with public employees in federal and state agencies administering unemployment insurance laws including, but not limited to system administration, coverage, collection of contributions, determination of eligibility and payment of benefits;

(d) Cooperation with public employees in state agencies administering recognized Oregon compensation and retirement, relief or welfare laws;

(e) Administration of federal or state grant programs awarded to the department in accordance with applicable laws, regulations or guidelines associated with the grant program;

(f) General duties of an agency head including, but not limited to cooperation with law enforcement and elected officials; or

(g) Cooperation with public employees in federal and state agencies charged with enforcing anti-discrimination and fair employment practice laws.

(6) "Functional control" means supervision by an Employment Department management employee over the work activities of a hosted worker, in the area of the public labor exchange (selecting and referring job seekers on employer openings on jobs listed with the Employment Department, directly assisting employers in listing jobs, and providing marketing or outreach services to the business community).

(7) As used in ORS Chapter 657.665(3)(a), the following terms have the following meaning:

(a) "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;

(b) "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;

(c) "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;

(d) "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; and

(e) "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.

(8) "Hosted Worker" means a non-Department employee or volunteer who works, at least partially, under the functional control of an Employment Department management staff. The roles and responsibilities as well as the duties and confidentiality implications must be addressed in a written agreement with the Hosted Worker's actual employer or the Worker if there is no employer.

(9) "Informed consent" means that, prior to collecting or disclosing information from customers:

(a) The customer shall be informed of:

(A) How the information will be used;

(B) The authority which authorizes the collection or disclosure of the information;

(C) Whether the collection or disclosure of the information is mandatory or voluntary;

(D) That any information disclosed will come from state government files;

(E) The effects on the customer, if any, of not allowing collection or disclosure of the information; and

(b) If the information from the customer is to be submitted to the Employment Department by a one-stop delivery system partner for a cross-match with Employment Department information, the customer shall also be informed that:

(A) The information may be shared with the Employment Department; and

(B) The information to be shared may be matched with information from Employment Department records.

(10) "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. It does not include:

(a) Accessing confidential information to satisfy curiosity, for personal gain, or to provide the information to friends, spouses, relatives or any other unauthorized individual;

(b) Discussing confidential information among co-workers except as needed to perform official duties; or

(c) Disclosing or discussing confidential information on personal time or in non-work settings.

(11) "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) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(12) "One-stop delivery system partner" means entities authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(13) "Party" has the same meaning as in ORS 183.310(6).

(14) "Person" has the same meaning as in ORS 183.310(7).

(15) "Recognized compensation and retirement, relief or welfare laws," includes, but is not limited to the following:

(a) Indigent Defense Program administered by the State Court Administrator pursuant to ORS 151.430 et. seq.;

(b) Compensation of Crime Victims administered by the Department of Justice pursuant to ORS 147.005 et. seq.;

(c) Housing for low income individuals administered by local housing authorities pursuant to ORS Chapter 456;

(d) Programs administered by the Family Health Insurance Assistance Program pursuant to ORS 735.722 et. seq.; and

(e) Programs administered by the Department of Human Services, including, but not limited to:

(A) Children, Adults and Families administering:

(i) Foster care maintenance payments for youth administered in conjunction with the Oregon Youth Authority pursuant to ORS 420.810 et. seq.;

(ii) Maintenance payments to individuals with occupational handicaps administered pursuant to ORS 344.511 et. seq.;

(iii) Temporary Assistance to Needy Families; and

(iv) Food Stamps.

(B) Seniors and People with Disabilities.

(16) "Third Party" means an individual or entity other than an agent to whom the customer has authorized and directed disclosure.

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(17) "Written disclosure agreement" means an interagency or other applicable agreement for sharing or disclosing information by written, electronic, paper, verbal or other means.

(18) "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 & 657

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 6-1980, f. & ef. 9-8-80; 1DE 2-1984, f. & ef. 9-28-84; 1DE 3-1985, f. & ef. 12-16-85; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 7-2002(Temp), f. 9-27-02, cert. ef. 9-29-02 thru 3-28-03; ED 4-2003(Temp), f. 3-27-03, cert. ef. 3-29-03 thru 9-24-03; ED 12-2003, f. 9-19-03, cert. ef. 9-21-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05; ED 6-2006, f. 4-21-06, cert. ef. 4-23-06; Suspended by ED 1-2008(Temp), f. & cert. ef. 1-7-08 thru 7-5-08

471-010-0051

Disclosure Charges

(1) The department may charge a reasonable fee for disclosures of records that involve more than incidental Oregon Employment Department staff time to prepare or require special processing. Examples of such disclosures include, but are not limited to requests under the Oregon Public Records law for numerous documents or records; or discreet, one-time only requests for a cross-match of records against department records. The department's designated Custodian of Records shall have the final authority to set and approve charges.

(2) The department shall submit invoices for the charges. Programming costs are due upon receipt of billing. The invoice shall note the agency's contract number.

(3) Charges for disclosure of records to private entities shall be set by written agreement with the entity.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657

Hist.: 1DE 6-1980, f. & ef. 9-8-80; 1DE 1-1982, f. & ef. 6-30-82; 1DE 2-1984, f. & ef. 9-28-84; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; Suspended by ED 1-2008(Temp), f. & cert. ef. 1-7-08 thru 7-5-08

471-010-0052

Information Collection

(1) The department shall only collect and maintain customer information that is relevant and necessary under ORS Chapter 657 and 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 purpose as 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 their social security number.

(3) Oregon Employment Department staff must safeguard the confidentiality of information collected or obtained and disclose only information about the customer necessary under ORS Chapter 657 and 657A.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 657

Hist.: 1DE 6-1980, f. & ef. 9-8-80; 1DE 2-1984, f. & ef. 9-28-84; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; Suspended by ED 1-2008(Temp), f. & cert. ef. 1-7-08 thru 7-5-08

471-010-0054

Authorized Disclosure

(1) The department is authorized to disclose confidential information or records to public agencies, provided that a written disclosure agreement is in place, under the following circumstances:

(a) In the "discharge of duties" as authorized by the department Director;

(b) For public administration of compensation and retirement, relief or welfare laws;

(c) To state and federal government agencies authorized by ORS Chapter 657;

(d) For the purpose of providing payment of unemployment insurance benefits; or

(e) To state, federal, and local government agencies for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions, consistent with Sections (2) and (3) of this rule.

(2) The department is authorized to disclose confidential information or records for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions by state, federal, or local agencies only if:

(a) The information is only used for planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis purposes;

(b) The information is necessary for the successful performance of those planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis activities; and

(c) The requesting agency's authorizing statute reasonably provides that the agency perform planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis functions.

(3) As used in ORS Chapter 657.665(3)(a), the terms "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) The department is authorized to disclose confidential information or records as authorized under ORS Chapter 657 to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires informed consent from the individual to whom the information pertains;

(b) Safeguards 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.

(5) The department is authorized to disclose confidential information or records to a third party or agent if:

(a) The Oregon Employment Department staff receives a written authorization signed and dated by the customer that specifically states the information that may be disclosed;

(b) The written authorization is witnessed or verified by Oregon Employment Department staff, or notarized;

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(6) The Department is authorized to disclose confidential information or records to one-stop delivery system partners within the state or local one-stop delivery system if:

(a) An agreement between the Employment Department and the one-stop delivery system partner(s), addressing confidentiality and authorized uses of the customer information, has been completed;

(b) The customer whose information or records are being disclosed has provided informed consent authorizing that the information may be shared or disclosed; and

(c) Notice is provided that a consent, or authorization, is on file with the one-stop delivery system.

(7) Unless otherwise authorized by these rules the department is authorized to disclose confidential information or records to a customer only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer, or was previously provided to the customer; 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; and

(c) The Oregon Employment Department staff is sure that the customer's identity is the customer to which the information directly relates.

(8) The department is authorized to disclose confidential information or records to the customer's attorney or Certified Public Accountant without written authorization by the customer if the attorney or CPA affirmatively represents their client relationship with the customer. Disclosure to any other agent of the customer requires a written authorization under Section (5) of this rule.

(9) The department is authorized to disclose:

(a) 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, or for a review arising under a state or federal program administered by the department to a party or agent of a party.

(b) Hearing records that are part of the official record of the hearing. Information or records submitted but not received into evidence remain confidential and are not subject to disclosure except to the party submitting the information or records.

(10) The department is authorized to disclose confidential information or records pursuant to a customer's request, to a legislator or other elected official, or their staff, if the department receives a copy of the cus-

ADMINISTRATIVE RULES

customer's letter to the legislator or other elected official. The department will treat the letter as the customer's authorization for the legislator or other elected official, or their staff, to disclose the information necessary to fulfill the customer's request. If no letter is available, Oregon Employment Department staff will provide customer information only after verifying with the legislator or other elected official, or their staff, that the contact is from the customer. If contact was not from the customer, a written authorization is required.

(11) The department is authorized to disclose confidential information or records without the customer's specific authorization and without a written disclosure agreement under the following provisions:

(a) In the "discharge of duties" as authorized by the department Director for Oregon Employment Department programs under ORS Chapter 657;

(b) For mandatory disclosures under the Social Security Act or other federal law; or

(c) In accordance with state or federal laws requiring cooperation with properly identified law enforcement officers or District Attorneys in the performance of their duties and pursuant to a warrant for the arrest of an individual;

(d) To a court in a civil, criminal or grand jury proceeding to which the State of Oregon is a party;

(e) To authorized personnel of agencies of other states for the purpose of administering federally funded unemployment insurance programs, Temporary Assistance to Needy Families, child support enforcement programs, and food stamps;

(f) To properly identified officials of the United States Social Security Administration and the United States Department of Health and Human Services for audit and administration of the Supplemental Security Income Program;

(g) To properly identified officials of the United States Department of Agriculture for audit and administration of the food stamp program; or

(h) To properly identified officials of state and federal agencies charged with administration of fair employment practices and anti-discrimination activities.

(12) The department is authorized to publish aggregated information, even if that information is based on confidential records, using the standards in OAR 471-010-0050(2). Customers or one-stop delivery system partners receiving confidential information for approved purposes are required to adhere to the same confidentiality and aggregation standards that the Employment Department uses.

(13) Oregon Employment Department staff are expected to comply with Oregon child abuse reporting laws under ORS Chapter 419B.010, elderly abuse reporting laws under ORS Chapter 124.060, and patient abuse reporting laws under ORS 677.190.

(14) When an authorized representative of the department has been served a subpoena or other legal compulsory process to produce or disclose information from department records and the disclosure of such information is not specifically allowed under ORS Chapter 657 or this rule:

(a) The Director shall promptly inform the Assistant Attorney General assigned to the department of such demand;

(b) If the disclosure would, in the opinion of the Assistant Attorney General, be inconsistent with the provisions of state law or any policy or rule adopted pursuant to such law, the Assistant Attorney General shall take action to prevent the disclosure.

(15) 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.

(16) The Workforce Investment Act establishes a one-stop delivery system through which core services are provided, including those of the Wagner-Peyser Act (29 U.S.C. 49 et seq.), and where one-stop delivery system partners work on a collaborative and cooperative basis. The Workforce Investment Act also calls for the state to use Unemployment Wage Records, to the extent possible by state law, for the purpose of evaluation performance outcomes by other one-stop delivery system partners. It is the responsibility of the Director of the Employment Department to disclose all appropriate information to one-stop delivery system partners for necessary delivery of service, program evaluation, and performance measurement purposes. For these purposes, the following activities are within the Director's "discharge of duties":

(a) The department is authorized to disclose confidential unemployment insurance wage records to one-stop delivery system partners for performance measurement purposes only under the following conditions:

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) The individual for whom information is requested must have given informed consent for the information to be shared;

(C) The information requested shall not be used for eligibility determination, case management, intake, compliance, or any other purposes, except as required by state or federal law; and

(D) There must be an interagency or other applicable agreement with the one-stop delivery system partners that provides for safeguarding of the disclosed information, prohibits re-disclosure of the information without the express consent of the Employment Department, and imposes sanctions for the unauthorized disclosure of confidential information.

(b) Job listing information provided by employers to the Employment Department for the purpose of administering the public labor exchange. At the employer's direction the following information may be shared with job seekers who are interested in a particular job opening:

(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 or authorized Hosted Workers.

(c) Information, not including employer wage records or employer tax data, necessary for providing services to businesses for activities within the one-stop delivery system or for activities of the regional Workforce Response Teams (described in the Governor's Executive Order #03-16). 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 if there is an agreement with the one-stop delivery system partner(s) or the Workforce Response Team. The agreement should provide for steps in safeguarding confidential employer information

(d) The department is authorized to disclose job seeker information to one-stop delivery system partners under the following conditions:

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) There is an interagency or other applicable agreement with the one-stop delivery system partner describing how the information will be used, that provides for the safeguarding of the information, and imposes sanctions for the unauthorized re-disclosure of the information;

(C) The individual for whom information is requested must have been provided with informed consent; and

(D) The information to be disclosed must be:

(i) Based on the one-stop delivery system partner's "need to know" to perform official duties of their program; or

(ii) The individual job seeker has specifically directed or authorized the sharing of the information.

(17) Oregon Employment Department staff, hosted workers 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 & 657

Hist.: IDE 6-1980, f. & ef. 9-8-80; IDE 1-1981, f. & ef. 1-15-81; IDE 1-1982, f. & ef. 6-30-82; IDE 2-1984, f. & ef. 9-28-84; IDE 3-1985, f. & ef. 12-16-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 3-2001(Temp), f. 3-16-01, cert. ef. 3-18-01 thru 9-14-01; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 9-2002(Temp), f. 11-27-02 cert. ef. 12-1-02 thru 5-30-03; ED 9-2003, f. 5-22-03, cert. ef. 5-25-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05; Suspended by ED 1-2008(Temp), f. & cert. ef. 1-7-08 thru 7-5-08

471-010-0055

Sanctions for Unauthorized Disclosure or Redisclosure

(1) Any officer or employee of the Director of the department, who, except with authority of the director or pursuant to regulations, or as otherwise required by law, shall disclose confidential information under these rules, thereafter may be disqualified from holding any appointment or employment by the director.

(2) Any person or officer or employee of an entity to whom information is disclosed or given by the Employment Department pursuant to these rules, who divulges or uses such information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure, may be disqualified from holding any appointment or employment, or performing any service under contract, with the state agency employing that person or officer.

(3) Anyone who is not an employee of the State of Oregon who is authorized to access confidential information under a written agreement shall be subject to the sanctions specified in the agreement regarding unauthorized disclosures.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: IDE 6-1980, f. & cert. ef. 9-8-80; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; Suspended by ED 1-2008(Temp), f. & cert. ef. 1-7-08 thru 7-5-08

ADMINISTRATIVE RULES

471-010-0057

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 16-2003, f. 12-31-03, cert. ef. 1-4-04; Suspended by ED 1-2008(Temp), f. & cert. ef. 1-7-08 thru 7-5-08

Rule Caption: Pertaining to Division 41—Appeals, Higher Appeals Procedure, Application for Review.

Adm. Order No.: ED 2-2008

Filed with Sec. of State: 1-8-2008

Certified to be Effective: 1-8-08

Notice Publication Date: 12-1-2007

Rules Amended: 471-041-0060

Subject: Permanent rule removes reference to the Office of Administrative Hearings from the Employment Appeals Board's request for reopening of a Unemployment Insurance hearing and cites the statute as the authority for considering the request for reopening as opposed to the rule.

Rules Coordinator: Janet Orton—(503) 947-1724

471-041-0060

Application for Review

(1) An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the party requests review of a specific hearing decision, or otherwise expresses intent to appeal a specific hearing decision.

(2) An application for review may be filed in person, by mail or by fax to EAB, or any office of the Employment Department, or any Employment Security Agency in any other state or jurisdiction where a party is claiming benefits.

(3) An application for review that does not conform to the requirements of this rule is subject to dismissal.

(4) EAB will treat an application for review by a party whose request for hearing was dismissed because that party failed to appear as a request to reopen the hearing under ORS 657.270(6)(c).

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.685

Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0005; ED 1-1995, f. & cert. ef. 1-9-95; ED 6-1996, f. 10-15-96, cert. ef. 10-21-96; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 3-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 5-2004, f. 7-30-04, cert. ef. 8-1-04; ED 8-2006, f. 7-27-06, cert. ef. 7-30-06; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06; ED 5-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; ED 2-2008, f. & cert. ef. 1-8-08

Employment Relations Board

Chapter 115

Rule Caption: Amends rules which establish fees the Employment Relations Board charges for services.

Adm. Order No.: ERB 3-2007

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 12-26-07

Notice Publication Date: 11-1-2007

Rules Amended: 115-010-0032, 115-010-0115, 115-035-0035, 115-040-0005, 115-070-0000, 115-070-0035

Subject: These rules make permanent the temporary rules to implement House Bill 2070, which increases the fees to file an answer to a public sector unfair labor practice complaint and establishes filing fees and answer fees for private sector unfair labor practice charges. These rules also amend fees that have been in place since at least 2000 and no longer cover the cost of providing services and update rules to account for new technology used in the current business environment.

Rules Coordinator: Leann G. Wilcox—(503) 378-8610

115-010-0032

Board Public Records

(1) Inspection. All records of the Board, which are defined as public records and are not exempt from disclosure under ORS 192.410 to 192.505, shall be available for inspection by members of the public at the current principal offices of the Board, in Salem, Oregon. Inspection of such records will be permitted:

- (a) Upon request by an interested person of the custodian of such records;
- (b) During normal work hours of the Board;
- (c) At reasonable times, provided there is no undue disruption of the work of the Board or its agents.

(2) Custodians and Certification:

(a) The following agents of the Board are designated as custodians of Board public records:

(A) Board Administrative Assistant, for case logs, case reports, correspondence and other files maintained by and for the Board itself;

(B) Administrator of Conciliation Service for records concerning mediation, fact finding, and interest arbitration;

(C) Administrator of Hearings Division for matters contained in representation and unfair labor practice case files and for matters contained in State Personnel Relations System case files.

(b) Each custodian shall designate an alternate to act in his or her absence;

(c) Custodians and alternates shall certify, upon request, released copies of Board public records as true copies.

(3) All requests for copies of Board public records must be made in writing.

(4) The Employment Relations Board may assess a fee to provide public records. The requesting party must agree to pay the fee before the records will be made available. The amount of the fee will be the actual cost to locate, compile, make available for inspection, prepare copies (whether in paper, audio, microfilm, machine readable format, or other format), and deliver the public records.

(5) The following fees shall be charged for copies of Board public records or other nonexempt documents:

(a) One dollar and fifty cents per page for copies of any Board transcript or document of public record that is certified as a true copy;

(b) Twenty-five cents per page for copies of documents that are not certified, including paper, electronic, or facsimile copies.

(c) Fifteen dollars for a copy of the first compact disk (CD) recording of a hearing and ten dollars for each subsequent CD;

(d) Fifteen dollars for a computer disk containing copies of Board forms;

(e) One hundred fifty dollars per calendar year to receive copies of final Board Orders once a month;

(f) No fees will be charged to state agencies for providing copies of Board transcripts, tapes, Orders or any document or exhibit included in a case record which is not exempt from disclosure under ORS 192.410 to 192.505.

Stat. Auth.: ORS 240 & 243.766(7)

Stats. Implemented: ORS 192.410 & 192.500

Hist.: ERB 4-1980, f. 8-15-80, ef. 8-18-80; ERB 4-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

115-010-0115

Facsimile Filings

(1) Any complaint, answer, petition or other document required or allowed to be filed with the Board or served on a party may be filed or

ADMINISTRATIVE RULES

served by means of a telephonic facsimile communication device. The Board fax number is (503) 373-0021.

(2) Filings with the Board by facsimile are subject to the following conditions:

(a) A filing must conform with all applicable rules. Except for (2)(e) below, only one copy of a document need be filed by facsimile even when multiple copies otherwise would be required;

(b) A complaint or answer will not be considered filed until the filing fees required by ORS 243.672(3) have been paid.

(c) The Board will charge twenty five dollars for each filing by means of facsimile;

(d) When reception of a document begins after 5 p.m., the date of filing of that document, for purposes of Board rules, shall be the date of the next regular workday.

(e) A party filing a complaint or answer by fax must simultaneously mail to the Board three copies of the complaint or answer.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 240.086(3), 243.766(7) & 663.320
Hist.: ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

115-035-0035

Answer to Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent states in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. Complainant shall be required to establish a prima facie case. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the complainant or its representative of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Failure to File. If the respondent fails to file a timely answer, absent a showing of good cause, it will not be allowed to present evidence at the hearing, and will be restricted to making legal arguments.

(4) Filing Fee. A filing fee of \$250 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

NOTE: Former (2) Motion to Make More Definite is now renumbered as 115-035-0007.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.672(3) & 243.676
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

115-040-0005

Conciliation Service Fees

(1) Interest Mediation: When mediation concerns negotiations over the terms of a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$500 for mediation services. If two or more mediation sessions are provided after a notice of intent to strike or notice of intent to implement the employer's last offer has been given, the local public employer and the exclusive representative each will be charged an additional \$500 for mediation services.

(2) Grievance Mediation: When mediation concerns a grievance arising under a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$250.

(3) Unfair Labor Practice Mediation: When mediation concerns a pending unfair labor practice complaint, a local public employer and an exclusive representative each will be charged \$250.

(4) Interest-Based Training: The Conciliation Service shall offer training in interest-based bargaining, labor/management cooperation, problem solving and similar programs specifically designed for particular local public employer/exclusive representative needs. Fees for such training shall be \$2,500 for two-day training programs, \$1,500 for one-day refresher training, and \$700 for half-day training programs. The fees for facilitations and related travel time shall be \$60 per hour.

(5) Billing: For mediation services, parties will be billed when the first mediation session occurs. For training, parties will be billed when the training session occurs, with the employer and exclusive representative sharing equally the costs unless the parties agree otherwise.

(6) Definitions: "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district, mass transit district, metropolitan service district, pub-

lic service corporation or municipal corporation and a public and quasi-public corporation. "Exclusive representative" has the meaning given that term in ORS 243.650(8).

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 240.610
Hist.: ERB 1-1995(Temp), f. 6-26-95, cert. ef. 7-1-95; ERB 5-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

115-070-0000

Filing an Unfair Labor Practice Charge

(1) Who May File. An injured party may file a charge alleging that a person(s) has engaged in or is engaging in an unfair labor practice. Such charge shall be filed in triplicate with the Board on forms provided by the Board.

(2) Content of Charge. The charge shall contain the following information:

(a) The name and address of the person making the charge;

(b) The name and address of the person(s) against whom the charge is made;

(c) A description of the nature of the business involved;

(d) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(e) The signature of the person filing the charge.

(3) Supporting Data. At the time the charge is filed, the charging party shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places, together with any documentary evidence which may be relevant to the issues raised by the charge.

(4) Service of Charge. Concurrent with the filing of the charge, the filing party shall serve a copy of the charge upon the person against whom the charge is made and certify such service to the Board.

(5) Filing fee. A filing fee of \$250 must be paid at the time the charge is filed. Charges that are filed without a filing fee are subject to dismissal for that reason.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.175 & 663.180
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

115-070-0035

Answer to the Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent shall state in the answer that he/she is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and shall set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the charging party or his/her attorney of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Filing Fee. A filing fee of \$250 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.185
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

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Rule Caption: Establishes rules for public employees to designate a collective bargaining representative without an election.

Adm. Order No.: ERB 4-2007

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 115-025-0065, 115-025-0070, 115-025-0075

Rules Amended: 115-025-0000, 115-025-0010, 115-025-0015, 115-025-0020, 115-025-0023, 115-025-0025, 115-025-0030, 115-025-0035

Subject: These rules establish procedures for the Employment Relations Board to certify a labor organization as a public employee collective bargaining representative without an election in accordance

ADMINISTRATIVE RULES

with House Bill 2891 passed by the 20007 Legislative Assembly and signed into law by the Governor.

Rules Coordinator: Leann G. Wilcox—(503) 378-8610

115-025-0000

Representation Petitions

(1) Who may file:

(a) A petition for an election to certify a public employee representative may be filed by any labor organization claiming to represent 30 percent of the public employees in an alleged appropriate bargaining unit. A petition for certification also may be filed by any labor organization claiming that 30 percent of the employees in a bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the bargaining unit and that they want the petitioning labor organization to represent them;

(b) A petition for an election to certify a public employee representative may be filed by a public employer alleging that one or more labor organizations have presented to it a request to be recognized or continue to be recognized as employee representative and that the employer has a good faith doubt as to the continued majority status of the incumbent labor organization based on reasonable objective standards;

(c) A petition under ORS 243.682(2)(a) to certify a public employee representative without an election may be filed by an employee, group of employees or a labor organization claiming that a majority of employees in an appropriate unit wish to be represented by a labor organization and that no other labor organization is certified or recognized as the exclusive representative of any employee in the proposed unit;

(d) A petition for decertification may be filed by a public employee or group of public employees alleging that 30 percent of the employees in a bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

(e) A petition for redesignation of a bargaining unit represented by a recognized or certified exclusive representative may be filed by a public employer contending that the existing bargaining unit includes an employee or employees who should not be included in such bargaining unit under the criteria set forth in ORS 243.682(1)(a). The timeliness requirements of OAR 115-025-0015 shall serve as a bar to petitions under this subsection even if an election is not held. A petition for a redesignation where a contract exists must be filed not more than 180 days and not less than 150 days before the end of the contract period. If a contract is for more than three years, a petition may be filed not more than 180 days and not less than 150 days before the end of the expiration of the first three years of the contract or anytime after three years from the effective date of the contract. However, if a new contract is negotiated during the fourth year of the contract and prior to the filing of a petition for election, the new contract shall serve as a contract bar. An order redesignating a unit where a contract exists shall be effective upon expiration of the contract.

(2) Petitions shall be filed in writing with the Board on a form approved by the Board. The Board Agent shall serve a copy of the petition upon the parties disclosed therein.

Stat. Auth.: ORS 240 & 243

Stats. Implemented: ORS 243.682

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1981(Temp), f. 8-6-81, ef. 8-10-81; ERB 1-1982, f. & ef. 1-19-82; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; 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

115-025-0010

Contents of Petitions

(1) Certification of Public Employee Representative Filed by a Labor Organization Under ORS 243.682(1). A petition for an election to certify a public employee representative shall, when filed by a labor organization, contain the following:

(a) Name, address, telephone number of the public employer and the employer representative to contact, including his/her title, if known;

(b) A description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(c) Name, address, and telephone number of the recognized or certified exclusive representative, if any, and the date of prior certification or recognition and the expiration date of any applicable contract, if known to the petitioner;

(d) Names, addresses, and telephone numbers of any other interested labor organizations, if known to the petitioner;

(e) Any other relevant facts;

(f) Name and affiliation, if any, of the petitioner and its address and telephone number;

(g) The signature of the petitioner's representative, including his/her title and telephone number; and

(h) A petition shall be accompanied by a showing of interest of not less than 30 percent of the employees in the unit alleged to be appropriate. "Showing of interest" means the evidence of support a petitioner must show in a bargaining unit or proposed bargaining unit before its petition will be acted upon. The showing may be made by original authorization cards or petitions which must include a statement of a desire by affected employees to be represented by the petitioner for purposes of collective bargaining and which must be signed and dated by employees in the unit during the 90 days preceding the filing of the petition; by dues records or payroll deduction records showing the employees to be current members of a petitioning organization; or, by an existing or the most recently expired bargaining agreement applicable to the bargaining unit, to which the petitioning organization was a party.

(2) Certification of Public Employee Representative Filed by a Public Employer:

(a) A petition filed by a public employer shall state that a request for representation or continued representation has been made by one or more labor organizations and that the public employer has a good faith doubt concerning the majority representative of its employees;

(b) A petition shall include all of the information set forth in section (1) of this rule, except subsections (1)(f) and (h) of this rule.

(3) Decertification of Public Employee Representative Filed by an Employee or a Group of Employees. A petition for decertification of public employee representative shall contain the following:

(a) A statement that the labor organization certified by the Board or recognized by the public employer no longer represents a majority of the employees in the bargaining unit in which it is currently recognized or certified;

(b) The petition also shall contain the information set forth in section (1) of this rule; and

(c) The petition shall be accompanied by a showing of interest of not less than 30 percent of the employees in the unit in which an employee representative has been recognized or certified. The showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective bargaining by the recognized or certified representative. (See subsection (1)(h) of this rule for definition of "showing of interest".)

(4) Clarification of Unit or Amendment of Certification Filed by the Recognized or Certified Representative or by the Public Employer. A petition shall, in addition to setting forth the information required by section (1) of this rule, except subsections (1)(b) and (h) of this rule, further contain the following:

(a) A description of the present bargaining unit and the date of the certification or recognition;

(b) Proposed clarification or amendment of the unit; and

(c) A statement by petitioner setting forth specific reasons as to why clarification or amendment is requested.

(5) Certification of Public Employee Representative Without an Election. An employee, a group of employees, or a labor organization may file a petition under ORS 243.682(2) to certify a public employee representative without a representation election. The petition shall contain the following:

(a) The name, address, telephone number and affiliation, if any, of the labor organization for which certification is sought;

(b) A statement that the petitioner seeks certification without an election based on the Board's card check procedures;

(c) The name, address and telephone number of the public employer and the employer representative to contact, including his/her title, if known;

(d) A description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the labor organization named in the petition. The bargaining unit description shall indicate the general classifications or job titles of employees to be included and those to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(e) A statement that no other labor organization is currently certified or recognized as the exclusive bargaining representative of any employee in the proposed unit;

(f) Any other relevant facts;

(g) The name, mailing address, telephone number and signature of the petitioner(s) or petitioner's representative; and

(h) A petition shall be accompanied by signed authorization cards, arranged alphabetically, from a majority of the employees in the proposed unit designating the labor organization named in the petition as the exclusive bargaining representative. Authorizations which do not substantially comply with OAR 115-025-0065(2) shall not be counted.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.682

ADMINISTRATIVE RULES

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-2000, f. & cert. ef. 12-1-00; 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

115-025-0015

Timeliness of Petitions

(1) Election Bar. No election may be held, and no petition for certification without an election may be filed, for a bargaining unit or a subdivision of one in which a valid election has been held or a petition for certification without an election has been filed during the preceding 12-month period. In mail ballot elections, the date of the election shall be the deadline for return of ballots to the Board. In on-site elections, the date of the election shall be the last day that the polls are open. In mixed on-site and mail ballot elections, the date of the election will be the latest of the foregoing dates.

(2) Contract Bar. The existence in an appropriate bargaining unit of a written collective bargaining agreement with a term of up to three years' duration shall be a bar to any election involving employees covered by the contract for its entire term. A contract with a term of more than three years shall be a bar for only the first three years of its term. A contract renewed either by new agreement or as the result of an automatic renewal provision shall have the same effect as a new contract. However, the short term extension of an existing contract to afford the parties time to negotiate a new contract shall not operate as a bar. The Board shall rule that a contract will not be given the effect of barring an election if it finds that unusual circumstances exist under which the contract is no longer a stabilizing influence and an election should be held to restore stability to the representation of employees in the unit.

(3) Certification Bar. The certification of an exclusive bargaining representative will serve as a bar to an election for a period of one year from the date of certification unless:

- (a) The certified labor organization has dissolved or has become defunct;
- (b) A schism developed in the certified labor organization so that it cannot effectively represent bargaining unit members;
- (c) The size of the bargaining unit has fluctuated radically within a short period of time; or
- (d) Other changed circumstances warrant waiver of the certification bar.

(4) Open Period for Filing. A petition for an election where a contract exists must be filed not more than 90 days and not less than 60 days before the end of the contract period. If a contract is for more than three years, a petition for an election may be filed not more than 90 and not less than 60 days before the end of the expiration of the first three years of the contract or anytime after three years from the effective date of the contract. However, if a new contract is negotiated during the fourth year of the contract and prior to the filing of a petition for election the new contract shall serve as a contract bar.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.682

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 1-2000, f. & cert. ef. 12-1-00; 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

115-025-0020

Validity of Showing of Interest

The authorization cards or showing of interest submitted under Division 25 of these rules shall not be furnished to any of the parties, except that the petitioner may examine cards or petition signatures that are deemed invalid. The authorization cards, showing of interest cards or petition shall be destroyed when the file is closed. The Board or its agents shall determine the adequacy of the authorization cards or showing of interest and such decision shall not be subject to collateral attack.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.682

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; 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

115-025-0023

Amendments to Petitions

(1) The board agent may require amendments to correct representation petitions filed under OAR 115-025-0000 or clarification petitions filed under OAR 115-025-0005 where the petitions are timely but are lacking in specificity or detail due to a failure to fully comply with OAR 115-025-0010(1) or (5), or because of inadvertent omissions from requested information blocks on the Board petition forms. A petition may be dismissed if petitioner fails to amend the petition within ten days of such board agent request without good cause.

(2) A petitioner may amend a petition under OAR 115-025-0000 or 115-025-0005 at any time before it is served on respondents. Once the peti-

tion is duly served, amendments may only be made with approval of the board agent.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.682

Hist.: 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

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 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

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;

(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) A statement that employees have 14 days from the date of the notice to notify the Board in writing that the employee rescinds the signed authorization designating a bargaining representative. A timely rescission shall be effective if it substantially complies with OAR 115-025-0065(3).

ADMINISTRATIVE RULES

(f) 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

115-025-0035

Intervention

(1) Except in petitions for certification without an election under OAR 115-025-0010(5), a labor organization may intervene as a candidate for representative of a bargaining unit if it files a representation petition within 14 days from the date of a notice of petition and supports its petition with a showing of interest of ten percent of the employees in the unit. A labor organization may intervene for the purpose of representing a bargaining unit of employees different from that sought by the petitioner, but including some of the employees in the bargaining unit proposed by the petitioner. In such case, it must file a petition for representation within 14 days from the date of the notice of petition and be supported by a showing of interest of 30 percent of the employees in its proposed unit.

(2) A labor organization currently certified or recognized as the exclusive representative of all or a major portion of the employees in the requested bargaining unit will be included as a party in interest in any hearing on the petition and included on the ballot in any resulting election unless it files a disclaimer pursuant to OAR 115-025-0060(3).

Stat. Auth.: ORS 243
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 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

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) Rescission of an Authorization Card. An employee may rescind his or her authorization card by providing a written statement to the Board within 14 days of the date of the notice posted pursuant to OAR 115-025-0030(2). The written statement must contain the employee's name typed or legibly printed, the employee's signature, the date of the signature, the name of the employee's public employer and a statement that the employee rescinds the prior designation of the named labor organization as the employee's exclusive bargaining representative. An authorization card that has been timely rescinded shall be invalid.

(4) 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.

(5) 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.

(6) 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.

(7) Authentication. The Board shall determine whether each otherwise valid authorization card was signed by an eligible employee;

(8) 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.

(9) 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

115-025-0070

Objections to Petition For Certification Without Election

Objections to a petition for certification without election, including objections to the scope of the appropriate bargaining unit, shall be expedited and resolved under the procedures of OAR 115-025-0045. If an election is requested under OAR 115-025-0075, the resolution may occur after the election. The Board may delay counting the ballots until all objections are resolved.

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

115-025-0075

Petition For Representation Election

(1) Petition for Election. After a petition for certification without an election has been filed under OAR 115-025-0010(5), an employee or group of employees in the proposed bargaining unit may petition the Board for a representation election. The petition for an election must be filed within 14 days from the date of the notice posted under OAR 115-025-0030(2), and it must be accompanied by a showing of interest from at least 30 percent of the employees in the bargaining unit designated in the petition for certification without an election.

(2) Showing of Interest. For purposes of this section, a showing of interest must contain the employee's name typed or printed legibly, the employee's signature, the date of the employee's signature, and a statement to the effect that the employee requests an election on whether the Board should certify the named labor organization as the exclusive bargaining representative for the employees of the employer. The showing of interest shall be submitted in alphabetical order.

(3) Notice and Election. If the Board determines that the petition for election is accompanied by a sufficient showing of interest, the Board shall conduct an election by secret ballot. The Board Agent shall require the employer to post notice of the election under OAR 115-025-0055 at least 14 days before the election. The election may be conducted on site or by mail. In an election by mail, the date of the election shall be the date on which the ballots are to be returned to the Board. Ballots must be delivered to the Board in person by the voter or by US mail. Ballots not so delivered by the date of the election shall be void. The election shall be completed within 45 days from the date of the petition requesting an election.

(4) Procedures. All employees in the bargaining unit designated in the petition for certification without an election shall be eligible to vote. The two choices on the ballot shall be no representation or the labor organization named in the petition for certification without an election. The election shall follow the procedures in OAR 115-025-0060(4) and (7)-(12).

Stat. Auth.: ORS 243.766(7)

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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

Rule Caption: Establishes fees to apply for and remain on the Employment Relations Board Panel of Arbitrators.

Adm. Order No.: ERB 5-2007

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 115-040-0030

Subject: These rules implement the fee schedule established in Senate Bill 58, which was passed by the 2007 Legislative Assembly and passed into law by the Governor.

Rules Coordinator: Leann G. Wilcox—(503) 378-8610

115-040-0030

Panel of Arbitrators and Factfinders

(1) The State Conciliation Service of the Employment Relations Board shall maintain a panel of qualified labor arbitrators and factfinders for referral, upon request, to the parties to a labor dispute. Panel members are expected to conform to the ethical standards and procedures set forth in the code of professional responsibility for arbitrators of labor disputes as approved by the National Academy of Arbitrators.

(2) Persons seeking to be listed on the panel must complete and submit an application form. The form may be obtained from the State Conciliation Service of the Employment Relations Board. Upon receipt of a completed application, including the application fee in subsection (4) of this section, the Chair and the Conciliator will review the completed application in light of the criteria set forth below and decide whether to include an applicant on the panel. Each applicant will be notified in writing of the decision:

(a) General Criteria. Applicants will be accepted on the panel if they:

- (A) Are experienced in decision-making roles in the resolution of collective bargaining or labor relations disputes; or
- (B) Have extensive experience in relevant positions in collective bargaining; or
- (C) Have relevant academic experience at the college or university level; and

(D) Are capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits, and appear, based on references, to be acceptable to the parties.

(b) Proof of Qualification. The qualifications listed in subsection (2)(a) of this rule, are preferably demonstrated by the submission of actual arbitration awards and/or factfinding reports prepared by the applicant while serving as an impartial arbitrator or factfinder chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies also may be considered.

(c) Advocacy:

(A) An advocate is a person who or a member of a firm/business which represents employers or labor organizations, as an employee, attorney or consultant, in matters related to collective bargaining;

(B) No advocate shall be listed on the panel. A person who becomes an advocate while listed on the panel must notify the Conciliator immediately.

(d) Duration of Listing. A member will be removed from the panel by the Chair and Conciliator whenever the member:

- (A) No longer meets the criteria for admission;
- (B) Has been repeatedly and flagrantly delinquent in submitting awards;
- (C) Has refused to make reasonable and periodic reports to the State Conciliation Service, as required;
- (D) Has been the subject of complaints by parties who use the State Conciliation Service Panel and facilities and cause for removal has been shown;

(E) Is determined to be unacceptable to the parties who use the State Conciliation Service Arbitration and Factfinding Panel. The determination of unacceptability may be based on the State Conciliation Service records showing the number of times the arbitrator/factfinder's name has been proposed to the parties and the number of times it has been selected; or

(F) Fails to pay the annual fee in subsection (4) of this section within 90 days of billing;

(3) Procedures for Cancellation or Suspension of a Listing. The Conciliator, at the direction of the Board Chair, will review the reasons alleged for the cancellation or suspension. Prior to a cancellation or sus-

pension of a listing, a panel member will be provided 30 days written notice of the proposed action. The notice will specify the action that is proposed, the reasons for the action, and the results of any review conducted by the Conciliator into this matter. The notice will also provide an opportunity for the panel member to submit a response or information to the Board Chair, or a designated representative, showing why the listing should not be canceled or suspended. The Board Chair's decision shall be in writing and shall be a final decision.

(4) An applicant to the panel of qualified arbitrators and factfinders shall pay a \$50 application fee. A member of the panel shall pay an annual fee of \$100 to remain on the panel.

(5) Nothing contained herein should be construed to limit the right of parties to select jointly any arbitrator or arbitration procedure acceptable to them.

(6)(a) Arbitrators and factfinders selected by the parties pursuant to State Conciliation Service procedures shall promptly notify the Service of their selection;

(b) Arbitrators and factfinders selected pursuant to State Conciliation Service procedures shall promptly provide the State Conciliation Service with copies of decisions or recommendations.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.722(2) & 243.746(2)

Hist.: ERB 1-1984, f. & ef. 4-11-84; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 5-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 5-2007, f. 12-17-07, cert. ef. 1-1-08

Landscape Contractors Board Chapter 808

Rule Caption: Changes title of Landscape Contractor and Landscaping Business per HB 2117 (Oregon Laws 2007).

Adm. Order No.: LCB 4-2007

Filed with Sec. of State: 12-19-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 808-001-0020, 808-002-0020, 808-002-0210, 808-002-0220, 808-002-0280, 808-002-0328, 808-002-0330, 808-002-0500, 808-002-0540, 808-002-0665, 808-002-0870, 808-002-0900, 808-002-0920, 808-003-0010, 808-003-0015, 808-003-018, 808-003-0020, 808-003-0030, 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0090, 808-003-0095, 808-003-0100, 808-003-0105, 808-003-0110, 808-003-0112, 808-003-0125, 808-003-0130, 808-003-0135, 808-003-0200, 808-003-0220, 808-003-0225, 808-003-0230, 808-003-0235, 808-003-0255, 808-003-0440, 808-004-0120, 808-004-0320, 808-004-0340, 808-004-0400, 808-004-0450, 808-004-0540, 808-004-0600, 808-005-0020

Subject: Changes title of Landscape Contractor to Landscape Construction Professional and title of Landscaping Business to Landscape Contracting Business.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-001-0020

Charges for Documents; Refunds

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board's office shall be in writing.

(2) Charges to the general public and to state agencies shall be payable in cash, check, money order, Visa or Mastercard unless billing to such agencies is authorized by the Administrator. Checks or money orders shall be made payable to the Landscape Contractors Board.

(3) The Board accepts Visa and Mastercard submitted in person or by mail, e-mail or fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection.

(4) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, twenty-five cents per image;

(b) \$20 for each certification that an entity has or has not been licensed with the Landscape Contractors Board.

(c) \$20 for certified copies of documents.

(d) \$100 for listing of individual landscape construction professional or landscape contracting businesses on CD or disk. Requests for searching or formatting the data will be billed as per subsection (e) of this rule. The Administrator may waive this charge for other public agencies.

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(e) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time;

(f) For both machine copies and documents, an additional amount set at the discretion of the Administrator for staff time required for search, handling, and copying.

(g) \$20 for duplicate tape recording of Board meetings.

(h) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for each additional 90 minute or fraction thereof of the hearing or arbitration.

(i) "Avoiding Landscaping Problems" brochure:

(A) First ten (10) copies are free;

(B) \$4.25 per 25 copies ordered. They must be ordered in multiples of 25.

(j) "You Get What You Pay For" DVD:

(A) First Copy is free; and

(B) Additional copies are \$5.00 each.

(5) Refunds: All requests for refunds must be in writing.

(a) Except as set forth in subsection (b) of this section, applicant and licensing fees are non-refundable and nontransferable.

(b) When an applicant withdraws their renewal or fails to complete the renewal process the agency may retain a-processing fee of \$20. When an applicant withdraws their application for a landscape contracting business license or renewal or fails to complete the licensing process, the agency may retain a-processing fee of \$50.

(6) If the agency receives payment of any fees or penalty by check and the check is returned to the agency by the bank, the payer of the fees will be assessed a charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 183, 293.445 & 671, Ch. 541, OL 2007

Stats. Implemented: ORS 183, 192.430, 293.445 & 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1988(Temp), f. 3-17-88, cert. ef. 4-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2004(Temp), f. & cert. ef. 6-11-04 thru 12-6-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0020

Minimum Standards for Written Contracts and Billings

(1) Landscaping contracts and subcontracts shall include, but not be limited to, the following:

(a) Landscape contracting business name, license number, business address and telephone number;

(b) Consumer's name and address;

(c) Address or location of work to be performed if different from the consumer's address;

(d) A list of plant materials, if any, together with the size and quantity;

(e) General description of the work to be performed;

(f) Estimated time for completion or estimated completion date;

(g) Price and payment schedule;

(h) Description of guarantee; if no guarantee such a statement shall be included;

(i) Signatures of the business licensee and consumer;

(j) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(2) All billings by a licensed landscape contracting business shall include the following:

(a) Name, address and telephone number of the licensed landscape contracting business;

(b) Name and address of the consumer;

(c) Total contract price and amount paid to date;

(d) The amount now due and the work performed for the amount due.

Stat. Auth.: ORS 183, 671.670 & 670.310

Stats. Implemented: ORS 671.625

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-020-0010 & 808-020-0020; LCB 1-1991, f. & cert. ef. 7-22-91; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0210

Claimant

"Claimant" means a person who files a claim against a landscape contracting business under ORS 671.690 to 671.710.

Stat. Auth.: ORS 671, Ch. 541, OL 2007

Stats. Implemented: ORS 671

Hist.: LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0220

Claims

"Claims" as used in ORS 671.690 to 671.710 and in division 4 of this chapter are:

(1) "Breach of contract claim" means a claim for amounts due from a landscape contracting business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.710.

(2) "Material or equipment claim," means a claim for amounts due from a landscape contracting business for material or for renting or supplying equipment to a landscape contracting business.

(3) "Employee claim" means a claim for unpaid wages or benefits filed by an employee of a landscape contracting business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscape contracting business for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 671.

(4) "Negligent or improper work claim" means a claim for amounts due from a landscape contracting business as a result of negligent or improper work subject to ORS 671.510 to 671.710.

(5) "State tax and contribution claim" means a claim filed by the State of Oregon for amounts due from a landscape contracting business for taxes and contributions due to the State of Oregon from a landscape contracting business.

(6) "Subcontractor claim" is a claim filed by a subcontractor arising out of a contract between the subcontractor and a landscape contracting business for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670, Ch. 541, OL 2007

Stats. Implemented: ORS 671.510 - 671.720

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0280

Date Work Completed

"Date Work Completed" is:

(1) The date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or

(2) The date the landscape contracting business ceased work, if the landscape contracting business fails to substantially fulfill the provisions of the contract.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670, Ch. 541, OL 2007

Stats. Implemented: ORS 671.710

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0328

Direct Supervision

"Direct supervision" as used in ORS 671.540(15) and (16), means that a licensed landscape construction professional supervises another person who performs landscaping work such that:

(1) The other person works under the instruction of the licensed landscape construction professional; and

(2) The licensed landscape construction professional is reasonably available to the other person such that, even if not physically on the job site, the licensed landscape construction professional can be contacted and is available for consultation and able to provide direction during the time the landscaping work is being performed by such other person.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.540

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0330

Dishonest or Fraudulent Conduct

"Dishonest or fraudulent conduct," as used in ORS 671.610(1)(o), includes, but is not limited to, the following:

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

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

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide the services required by the contract or agreement in a diligent manner and failing to return payment for unper-

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formed work, upon reasonable and proper demand, within ten days of demand; or

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

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

(6) Submitting a false statement to the board in order to qualify for a reduced bond or irrevocable letter of credit, as required by ORS 671.690; or

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

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279.348 to 279.380; or

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

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

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

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

(13) Misrepresenting the employment relationship between a landscape contracting business and a landscape construction professional.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.610

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0500

Landscaping Work

(1) "Landscaping Work," as used in ORS 671.540, 671.570, 671.660(5) and 671.690, means the planning or installing of lawns, shrubs, vines, trees, and nursery stock including the preparation of property on which the vegetation is to be installed, the construction or repair of ornamental water features, drainage systems and irrigation systems for lawns, shrubs, vines, trees and nursery stock. For the purposes of this rule, "preparation of property" includes, but is not limited to, the adding and incorporating of soil amendments, importation of topsoil, removal of soil and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed.

(2) "Landscaping work" includes the planning and installing of fences, decks, arbors, patios, landscape edging, driveways, walkway and retaining walls when performed by a licensed landscape contracting business.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.520, 671.530, 671.540 & 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0540

Last-Known Address of Record

(1) "Last-known address of record" for a landscape construction professional, a landscape contracting business or for a claimant, as used in ORS 671.603(2), means the most recent of:

(a) The mailing address provided by the landscape construction professional, landscape contracting business or claimant in writing to the agency, designated by the landscape construction professional, landscape contracting business or claimant as the landscape construction professional, landscape contracting business' or claimant's mailing address; or

(b) The forwarding address for the landscape construction professional, landscape contracting business or claimant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

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

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.603

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0665

Monetary Damages

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

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

(2) The dollar amount paid to the licensed landscape contracting business less the reasonable value of any work properly performed by the licensed landscape contracting business, plus the cost to demolish negligent or improper work, and to restore the property to the condition it was in before work began.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0870

Respondent

"Respondent" as used in this chapter, means a landscape contracting business that a claim is filed against under ORS 671.690 to 671.710 or that the board proposes to impose a penalty against under ORS 671.510 to 671.625 and 671.950 to 671.992.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.690 - 671.710

Hist.: LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2002, f. & cert. ef. 12-4-02, Renumbered from 808-002-0670; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0900

Work is Performed Pursuant to a Permit Issued by the Local Building Official

"Work is performed pursuant to a permit issued by the local building official" as used in ORS 671.540(9) and (10) means irrigation or ornamental water feature work for which the general contractor has:

(1) Obtained, from the appropriate building official, a permit to tap into the potable water system and install irrigation backflow prevention device(s), and

(2) Subcontracted with a licensed plumbing contractor or a licensed landscape contracting business to tap into the potable water supply and install the backflow prevention device(s), and

(3) Complied with all other conditions the local building official may require related to installing the irrigation work.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.540

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-002-0920

Work Period

"Work Period" as used in OAR 808-004-0320 and 808-004-0600 means the time period from the date a landscape contracting business accepts a payment, offers a written proposal which is later accepted as a contract or enters into a contract or begins construction, whichever occurs first, until the date the work is completed as defined in OAR 808-002-0280 or the landscape contracting business ceases work.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.710

Hist.: LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0010

Advertising

Advertising:

(1) All written advertising, except telephone and internet directory line listings, shall include the landscape contracting business license number.

(2) Advertising shall include, but not be limited to:

(a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671.510 through 671.710;

(b) Telephone or internet directory space ads, display ads and line listings;

(c) Business cards;

(d) Business flyers;

(e) Business letterhead;

(f) Business signs at construction sites; and

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(g) Websites.

(3) No person shall advertise under the heading of "landscape contractor" or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds an active landscape contracting business license.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.530

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0012; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0015

Application for Landscape Contracting Business and Landscape Construction Professional License

(1) Application for a landscape contracting business license shall be on forms provided by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional assumed business names under which the landscaping business is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;

(b) Mailing and location address of the business entity;

(c) Name of all owners and percent of ownership of each owner;

(d) Name and license number of all licensed landscape construction professional employed by the landscape contracting business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A landscape contracting business may meet the requirements of ORS 671.565, notwithstanding the conditions or ORS 657.044, if the licensed landscape construction professional is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscaping business' operations and is receiving remuneration, whether by salary or other payment, for services provided.

(e) Independent contractor certification statement;

(f) A signed statement by the owner of the landscape contracting business, on which the landscape contracting business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(g) List of all owners and percent of ownership of each owner;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct

(2) Application for a landscape contracting business license must be accompanied by:

(a) Required license fee;

(b) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships; and

(e) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional who is supervising work for the landscape contracting business as required in OAR 808-003-0018.

(3) Application for a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) Required application and examination fees;

(b) Verification of experience and/or transcripts or copies of completion certificates from courses of study; and

(c) If applicable, name of employing licensed landscape contracting business or businesses.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0018

Employment, Change of License Phase, Supervisory Responsibilities

(1) If a landscaping business employs only one licensed landscape construction professional, that licensed landscape construction profession-

al must hold a license covering each phase of landscaping work that the landscape contracting business offers and must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscape work related to the landscape construction professionals phase of license.

(2) If a landscape contracting business employs more than one licensed the combined licenses must cover each phase of landscape contracting that the business offers and must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscape work related to the landscape construction professionals phase of license.

(3) The licensed landscape construction professional who holds part or wholly the phase basis of the landscape contracting business license must perform the following supervisory services:

(a) Review and initial the landscape plan and written contract for each job; and

(b) Attend all on-site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

(c) Directly supervise all non-licensed employees employed by the landscape contracting business as defined in OAR 808-002-0328.

(4) A landscape contracting business must require a licensed landscape construction professional to supervise the landscaping operation of the business and directly supervise the unlicensed employees of the landscape contracting business who are performing work related to the landscape construction professional's phase of license.

(5) Upon application for and before the renewal of a landscape contracting business license, and at any other time the board requests, a landscape contracting business must:

(a) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional for whom the landscape contracting business:

(b) A copy of the landscape construction professional's current pay stub issued by the landscape contracting business if the landscape construction professional is a paid employee with the social security number and dollar amounts redacted or blackened out;

(c) A Verification form when a new individual landscape construction professional becomes part or the whole basis of the landscape contracting business license.

(6) The Verification form verifies that the licensed landscape construction professional:

(a) Is a paid employee of the landscape contracting business and is on the payroll each hour or meets the salary test for salaried, exempt employees or is an owner of the business as defined in OAR 808-002-0734 during the time the business is performing landscape work related to the landscape construction professional's phase of license;

(b) Will directly supervise work based on the landscape construction professional's phase of license;

(c) Will attend on site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

(d) Understands the requirement to notify the board within ten calendar days after termination of employment from the landscaping business.

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

Stats. Implemented: ORS 671.565

Hist.: LCB 2-1998, f. & cert. ef. 4-30-98; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2006, f. 8-2-06, cert. ef. 10-2-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0020

Assumed Business Names

Before license or renewal of a landscape contracting business:

(1) An assumed business name shall be registered with the Corporation Division of the State of Oregon.

(2) A corporation or other business entity shall be registered to do business in Oregon with the Corporation Division of the State of Oregon.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0033; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0030

Expiration of Application

Applicants who fail to complete the license process within the following time periods must submit a new application and fee and, if applicable, retake and pass the exam.

(1) A landscape contracting business license application will expire one year from the date the application was received by the agency.

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(2) An individual landscape construction professional license application will expire two years after the last examination sitting or two years after the application was received by the agency, whichever is later. Exam results are subject to OAR 808-003-0065.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.670

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0017; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0035

License Categories

(1) Licenses may be issued only for the following:

- (a) All Phase;
- (b) Standard; or
- (c) Irrigation and Backflow Prevention.

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:

- (a) General;
- (b) Irrigation;
- (c) Irrigation and Backflow Prevention;
- (d) Sod & Seed; and
- (e) Trees.

(3) The "All Phase" license shall include standard, irrigation, and Backflow Prevention, unless, in lieu of Backflow Prevention, the landscape construction professional has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work, with the penalty for violation of the agreement being \$1,000 and suspension of the landscape contracting business license and the landscape construction professional license who is the phase basis of the landscaping business.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0020; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 1-1994, f. 5-26-94, cert. ef. 6-1-94; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0040

Limitation of Service by License

(1) A licensed landscape contracting business shall perform only those phases of landscape contracting for which its employed landscape construction professional are licensed.

(2) The landscape contracting service or services a licensed landscape contracting business offers shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscape contracting, including the installation of backflow prevention devices unless, in lieu of Backflow Prevention, the landscape construction professional has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;

(b) A general limited license holder may perform all landscape contracting functions except irrigation and the installation of backflow assemblies;

(c) An irrigation; no backflow limited license holder may only perform irrigation functions;

(d) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(e) A tree limited license holder may only install new or transplant trees;

(f) A standard limited license holder may perform all areas of landscape contracting except irrigation and the installation of backflow assemblies;

(g) An irrigation plus backflow license holder may perform only irrigation and the installation of backflow assemblies.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by plumbers licensed by the State Plumbers Board or by licensed landscape construction professional who have been qualified by examination to install backflow assemblies and who are either employees or owners of landscape contracting businesses. If the backflow assembly is installed by a landscape construction professional, the landscape construction professional or landscape contracting business shall obtain all required permits and shall install the backflow assemblies in conformance with the permits;

(b) If a landscape construction professional or a landscape contracting business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow assemblies or fails

to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape construction professional and the landscape contracting business license.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 447.060 & 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0045

Change to Limited Licenses

(1) Landscape construction professional holding limited licenses may add to the phase of landscape contracting they perform by taking and passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be taken and passed to hold a standard landscape license:

(a) General license holders must take Laws and Rules, General A, General B, General C, and General D;

(b) Sod & Seed license holders must take General A, General B, General C, and General D.

(c) Tree license holders must take General A, General B, General C, and General D.

(3) Holders of a General license, Sod & Seed license or a Tree license must take and pass the irrigation and Backflow Prevention sections of the landscape examination to become licensed to perform irrigation work and install backflow prevention devices.

(4) If a landscape contracting business' phase of license changes because its employed landscape construction professional's phases of license changes or because an employed landscape construction professional ceases to be employed by the business, the business shall notify the agency in writing within ten (10) days of the change of license phase to obtain an updated license.

(a) If the individual license holder for a business leaves the employ of the business, the individual license holder must notify the agency in writing (regular mail, fax or email) within ten (10) days of date of departure; and

(b) The business for which this licensee worked must immediately stop performing those phases of landscape contracting work until they have an owner or employee who is licensed to perform those phases of landscape contracting work.

(5) When license limitations change, the agency will issue new a license at no cost to the licensee. The landscape contracting business shall not offer or perform services for which it does not employ or have as an owner a corresponding landscape construction professional licensed to perform those phases of landscape contracting.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0090

Employer Status

Landscape contracting businesses shall be licensed as either nonexempt (employer with employees) or exempt (no employees) as provided in ORS 671.525.

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

(a) Sole proprietors, partnerships, corporations, limited liability companies with one or more employees, and

(b) Partnerships, corporations, and limited liability companies with more than two partners, corporate officers, or members, if any of the partners, corporate officers, or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, or grandchildren.

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

(3) The maximum number of exempt individuals in an entity without employees other than same-family partners, members, or corporate officers shall be:

(a) Two partners in a partnership;

(b) Two members in a limited liability company; and

(c) Two corporate officers in a corporation.

(4) An exempt landscape contracting business may work with the assistance of individuals who are employees of a nonexempt landscaping business so long as the nonexempt landscape contracting business:

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(A) Is in compliance with ORS chapters 316, 656, and 657 and is providing the employee(s) with workers' compensation insurance; and

(B) Does the payroll and pays all its employees, including those employees who assist an exempt contractor.

(5) Non-exempt entities shall supply employer account numbers for workers' compensation, unemployment, state Department of Revenue, and IRS identification.

(6) Exempt entities need supply no employer account numbers except as stated below.

(7) Partnerships without employees other than the partners may be classed as "nonexempt-no construction work" when the entity certifies that all partners or members qualify as nonsubject workers as provided in ORS 656.027, by virtue of their not being directly involved in construction work. Such partnerships need supply no employer account numbers except the IRS account number.

(8) Corporations and limited liability companies qualifying as exempt as provided by ORS 656.027(10) shall supply Employment Division and Department of Revenue account numbers unless the corporation or limited liability company certifies that corporate officers or members receive no compensation (salary or profit) from the corporation or limited liability company. Exempt corporations shall supply IRS account numbers.

(9) Out-of-state businesses with no Oregon employees shall supply their home state account numbers, and workers' compensation account.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.525

Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0095

Liability Insurance

(1) An applicant for the landscape contracting business license or renewal shall submit a "Certificate of Insurance" from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and will continue to meet those insurance requirements for as long as the applicant is licensed. The certificate shall include the name of the insurance company, policy number, and coverage amount, and may also include the agent's name, and agent's telephone number and state that the Oregon Landscape Contractors Board is the certificate holder.

(2) This certificate constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.

(3) If the requirements of subsection (1) of this rule have been met, and the agency receives a notice of cancellation, the agency may send a notice to the licensee, by regular mail, reminding the licensee of the obligation imposed by the licensee's insurance certification.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.565

Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0100

Licenses

(1) A landscape construction professional license or landscape contracting business license and its identifying license number will be issued to one individual or entity only. Other individuals or entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No entity may perform work subject to ORS chapter 671 through the use of another individual's or entity's license.

(2) The Board adopts the form "Independent Contractor Certification Statement", as required by ORS 671.565.

(3) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another type of entity and a new Employer Identification Number is required, the former landscape contracting business license will be terminated. The new entity must license anew.

(4) Landscape construction professional licenses shall be issued in the name of the individual.

(5) Landscape contracting business licenses shall be issued as follows:

(a) A sole proprietorship shall be issued in the name of the sole proprietor;

(b) A sole proprietorship using an assumed business name shall be issued in both the name of the individual and assumed business name

(c) A partnership shall be issued in the name of the partners;

(d) A partnership using an assumed business name shall be issued in the name of the partners and the assumed business name;

(e) A corporation shall be issued in the corporate name;

(f) A limited liability company shall be issued in the limited liability company name.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0030; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0105

License Cards

(1) A license card issued to a landscape contracting business is valid for the term for which it is issued only if the following conditions are met throughout the license period:

(a) The business has a licensed landscape construction professional as an owner or as an employee at all times; and

(b) The surety bond remains in effect and undiminished by payment of Landscape Contractors Board final orders; and

(c) The insurance required by ORS 671.565 remains in effect; and

(d) If the licensee is a sole proprietorship, survival of the sole proprietorship; or

(e) If the licensee is a partnership or limited liability partnership, no change in the composition of that partnership, by death or otherwise; or

(f) If the licensee is a corporation or limited liability company, survival of that corporation or limited liability company, including compliance with all applicable laws governing corporations or limited liability companies.

(2) If a license is no longer valid, the agency may require the return of the license and pocket card(s).

(3) No person shall advertise or otherwise hold out to the public that person's services as a landscape contracting business unless that person holds an active license, nor shall any person claim by advertising or by any other means to be licensed, bonded, insured, or licensed unless that person holds an active license.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LCB 2-2002, f. & cert. ef. 5-24-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0110

Bonds, Irrevocable Letters of Credit and Deposits

(1) The landscape contracting business name must be the same on the bond as it appears on the records of the Corporation Division, if applicable.

(a) If the landscape contracting business is a sole proprietorship, only the name of the owner shall appear on the bond or irrevocable letter of credit;

(b) If the landscape contracting business is a partnership or joint venture, all partners or joint venturers (other than limited partners) shall be listed on the bond or irrevocable letter of credit;

(c) If the landscape contracting business is a limited partnership, the names of all the general partners shall appear on the bond or irrevocable letter of credit;

(d) If the landscape contracting business is a corporation or trust, only the corporate name or trust name shall appear on the bond or irrevocable letter of credit;

(e) If the landscape contracting business is a limited liability company, only the limited liability company name shall appear on the bond or irrevocable letter of credit.

(2) If at any time the landscape contracting business changes its business entity form or its business name, the landscape contracting business must notify the board within 30 days from the date of the change. The landscape contracting business may be required to post a new bond or irrevocable letter of credit if the current bond or irrevocable letter of credit cannot be amended to cover the new business entity or new business name. Alternatively, if acceptable to the board under ORS 671.690(3), the landscape contracting business may be required to transfer cash or negotiable securities on deposit for the benefit of the new business entity.

(3) If the bond, irrevocable letter of credit or deposit is reduced to less than the amount required by ORS 671.690, the landscape contracting business shall immediately file a replacement bond, a replacement irrevocable letter of credit, a rider on the existing bond, an amended irrevocable letter of credit, or increase the deposit permitted by ORS 671.690(3), if applicable, so that the amount on deposit is equal to or greater than the amount required by ORS 671.690.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.690

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0031; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

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808-003-0112

Social Security Number

(1) The Landscape Contractors Board will not issue or renew a landscape construction professional license or landscape contracting business license issued to an individual, a sole proprietorship or a general partnership unless an applicant provides his or her social security number on the application or renewal form. The applicant need not provide the social security number on the application for renewal, if the applicant's social security number has previously been provided to the Landscape Contractors Board and is in the record.

(2) If an individual, the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings) has not been issued a social security number by the United States Social Security Administration, the Landscape Contractors Board will accept a written statement from the individual, owner or partners to fulfill the requirements of section (1). The individual, owner or partner must submit the written statement on a form provided by the agency. This form must:

(a) Be signed by the individual, owner or partner (where the partner is a human being);

(b) Attest to the fact that no social security number has been issued to the individual, owner or partner by the United States Social Security Administration; and

(c) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6,250.

Stat. Auth.: ORS 671.630

Stats. Implemented: ORS 25.278

Hist.: LCB 2-2004, f. 1-27-04, cert. 2-1-04; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0125

Notification

Within ten (10) days following a change of ownership, address, or bond/deposit information, the landscape construction professional or landscape contracting business shall submit written notification to the agency as provided in ORS 671.603.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.600 & 671.605

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0034; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0130

Fees

(1) Initial license or renewal of active license

(a) Landscape contracting business; \$225.

(b) Landscape construction professional; \$75.

(2) Renewal of inactive license:

(a) Landscape contracting business; \$225.

(b) Landscape construction professional; \$75.

(3) Late penalty fee:

(a) Landscape contracting business; \$25.

(b) Landscape construction professional; \$25

(4) Individual Landscape construction professional License

Application fee: \$60.

(5) Initial examination fee for any phase of license is:

(a) \$15 for first section of the exam; and

(b) \$10 for each additional section per exam sitting.

(6) Exam retake fees for any section of the exam is:

(a) \$15 for first section of the exam; and

(b) \$10 for each additional section per exam sitting.

(7) Exams sent to the DMV, additional processing and mailing fee:

\$12.

(8) Examination, failure to show for a scheduled appointment:

(a) In Board office, \$20 without a 24 hour advance cancellation notice to the Board office.

(b) At Proctor Exam Site, forfeits full payment for that exam sitting.

(9) If a landscape construction professional license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(10) If a landscape contracting business license expires, and the landscape contracting business has continuously maintained its bond, irrevocable letter of credit or deposit together with required liability insurance, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

(11) If a landscape contracting business license expires, and no bond, irrevocable letter of credit or deposit, or required liability insurance, has been in effect during the interim, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a

late penalty fee for each year. The reinstatement date will be the date the required fee and documentation are received in the board office.

(12) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(13) The board may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by an board error or omission.

(14) The board may waive the failure to show for a scheduled examination appointment fee for good cause. Documentation may be required.

Stat. Auth.: ORS 183.310 - 183.545, 670.310 & 671.670

Stats. Implemented: ORS 671.650 & 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0135

Date of Issue/Expiration

(1) All licenses shall be issued on the date all application requirements are met. New licenses are valid for up to 13 months. Renewal licenses are valid for one year.

(2) Except as set forth in (3) of this rule, the expiration date will be the last day of the month in which the license was originally issued.

(3) At the request of the licensee, the agency may adjust the expiration date of the landscape construction professional license to correspond with that of the landscape contracting business license in accordance with ORS 670.310.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0036; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0200

Bidding Exceptions

A landscape contracting business may bid on a job or perform a contract that includes the phase of landscape contracting for which it is not licensed if it employs a landscape construction professional, or subcontracts with another licensed landscape contracting business, licensed for that phase.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.530

Hist.: LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0039; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 1-1993, f. & cert. ef. 1-19-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0220

Voluntary Surrender/Resignation of License

(1) A landscape construction professional or landscape contracting business may resign and surrender the license issued under ORS 671, by submitting a written resignation, together with the original license card issued by the Board. The licensee's resignation shall be accepted by the Board only if the licensee acknowledges in writing that:

(a) The license issued to the licensee must be returned to the Board; and

(b) After such resignation, in the event that the licensee wishes to reapply for a license to perform landscape contracting work, the licensee will be required to meet all requirements of ORS Chapter 671 and OAR chapter 808.

(c) All resignations are effective upon acceptance by the Board.

(2) If the licensee's license is the subject of a complaint filed with the Board or a Board investigation, or if disciplinary proceedings are pending against a licensee, the resignation by such licensee shall be deemed to be a revocation for misconduct in the event that the licensee applies for a license after such resignation is accepted by the Board. The Board may refuse to accept a resignation under this provision if the written resignation does not include a written acknowledgment by the resigning licensee of the following:

(a) That the licensee is required to return the license card to the Board;

(b) That the licensee has knowledge of any pending investigation or disciplinary proceedings and does not wish to contest or defend the matter;

(c) That the licensee understands that in the event the licensee submits a subsequent application to be licensed to perform landscape contracting

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work, the licensee shall not be entitled to a reconsideration or re-examination of the facts, complaints, or instances of misconduct upon which investigations or disciplinary proceedings were pending at the time of the resignation; and

(d) That upon any subsequent application to perform landscape contracting work, the licensee must meet all requirements of ORS Chapter 671 and OAR chapter 808.

(e) Unless otherwise ordered by the Board, any pending investigation or disciplinary proceeding shall be closed upon acceptance of the licensee's resignation.

(3) Requirements upon acceptance of resignation. Upon resignation, a former licensee is required to:

(a) Surrender the license card to the Board; and

(b) Take all reasonable steps to avoid foreseeable harm to any client.

(4) A licensee may voluntarily surrender a license only upon the express written consent of the Board. Such license will not be subject to renewal.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implements: ORS 671.525 & 671.565

Hist.: LCB 5-2004, f. & cert. ef. 10-4-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0225

Terms of Probation

The board may place a landscape contracting business, landscape contracting business owner or landscape construction professional on probation pursuant to Chapter 609, Oregon Laws 2005, section 4. In placing a landscaping contracting business, landscaping contracting business owner or landscape construction professional on probation, the board may, in addition to imposing conditions outlined in Chapter 609, Oregon Laws 2005 section 4(3) and (4), require that the landscaping contracting business, landscaping contracting business owner or landscape construction professional:

(1) Submit to the board copies of all written contracts entered into during the period of probation;

(2) Submit to the board copies of all billing invoices (or those that the board specifies) issued during the period of probation;

(3) Submit copies to the board of all permits required for landscaping work during the period of probation;

(4) Authorize the board to contact the customers of the landscaping contracting business and supply to the board the names, addresses and phone numbers of such customers; and

(5) Maintain a log of site visits and customer contacts during the period of probation.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 609, OL 2005

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0230

Renewal of Landscape Contracting Business and Landscape Construction Professional License

(1) Application for renewal of a landscape contracting business license shall be on forms provided by the agency and shall be accompanied by:

(a) Required renewal fee;

(b) Proof of surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) List of licensed landscape construction professionals, with accompanying license numbers, employed by the business as required under ORS 671.565;

(e) A signed statement by the owner of the business, on which the landscaping business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license; and

(f) List of all owners and percent ownership of each owner;

(2) Application for renewal of a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) Required renewal fee;

(b) If applicable, name of employing licensed landscaping business or businesses.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.565 & Ch. 609, OL 2005

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0235

Inactive Status Generally

(1) A licensee may not convert a license to inactive status if the licensee is engaged in work as a landscape contracting business or is operating as a landscape construction professional;

(2) A licensee may not offer to undertake, advertise for, submit a bid to, obtain a permit for, or perform landscaping work while in inactive status;

(3) A licensee shall notify the board of any change of address while in inactive status. While the licensee is inactive, the board will send notices and communications to the licensee at the licensee's last known address of record.

(4) To convert to inactive status:

(a) A licensee must have a current active license;

(b) If the licensee was subject to discipline or probation by the board, the licensee must satisfy any conditions imposed by the board as a result of the discipline;

(c) The licensee must submit a request to convert to inactive status on forms provided by the board; and

(d) The licensee must comply with OAR 808-003-0240 or 808-003-0245.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 609, OL 2005

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0255

Converting from Inactive to Active Status

(1) To convert from inactive status to active status, a licensee must:

(a) Submit a request to convert to active status on forms provided by the board;

(b) If the licensee is a landscape contracting business, submit a surety bond, irrevocable letter of credit or deposit as required by ORS 671.690;

(c) If the licensee is a landscape contracting business, submit proof of insurance as required by ORS 671.565(1)(e); and

(d) Comply with all other licensing requirements as prescribed by the board.

(2) If a licensee requests conversion from an inactive to active status at the time of renewal, the licensee must submit all fees required under OAR 812-003-0130.

(3) If a licensee requests conversion from inactive to active status other than at the time of renewal, the licensee must be current to date upon all fees due and owing under OAR 812-003-0130.

(4) If a license is converted from inactive to active status, the board shall establish the effective date of the license. The expiration date of the license will remain unchanged.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 609, OL 2005

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-003-0440

Notification of Conviction of a Crime

A sole proprietor or partner in a partnership or individual landscape construction professional licensed by the agency who is convicted of a crime listed in ORS 671.610(1)(q) 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 & 671.670

Stats. Implemented: ORS 671.610

Hist.: LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0120

Liability of Landscaping Business

A licensed landscape contracting business participating in a corporation wholly-owned by the landscaping business, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held liable for claim actions brought under ORS 671.690 to 671.710, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership or partnership was licensed as required by ORS chapter 671.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671

Stats. Implemented: ORS 671.

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0320

Jurisdiction Requirements

(1) A claim must be of a type described under ORS 671.690(2)(c) and OAR 808-002-0220.

(2) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

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(b) Labor, material and equipment claims must be filed within one year of the delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(3)(a) A claim will be processed only against a licensed landscape contracting business.

(b) For a State tax and contribution claim, the landscape contracting business against which the claim is filed will be considered licensed if the tax and contribution liability arose while the business was licensed.

(c) For a material claim, the landscape contracting business against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the landscaping business was actively licensed. Damages will be awarded only for material delivered within the period of time that the landscape contracting business was actively licensed.

(d) For any other claim, the landscape contracting business against which the claim is filed will be considered licensed if the landscape contracting business was actively licensed during all or part of the work period.

(4) A labor, material and equipment claim, negligent or improper work claim or breach of contract claim will be accepted only when one or more of the following relationships exist between the claimant and the licensed landscape contracting business:

(a) A direct contractual relationship based on a contract entered into by the claimant and the landscape contracting business, or their agents; or

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(5) A claim by a person furnishing material, or renting or supplying equipment to a landscape contracting business may not include a claim for non-payment for tools sold to a landscape contracting business, for equipment sold to the landscaping business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(6) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(7)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscape contracting business.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0020; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0340

Form of Claims

(1) A claim must be submitted on a Statement of Claim form provided by the agency. The agency may require the use of the most recent revision of the Statement of Claim form.

(2) The claimant must provide the following information with the Statement of claim, if applicable:

(a) The name, address, and telephone number of the claimant;

(b) The name, address, telephone number and license number of the landscape contracting business;

(c) The amount, if known at the time the Statement of Claim is filed, that the claimant alleges is due from the landscape contracting business after crediting payments, offsets, and counterclaims in favor of the landscape contracting business to which the claimant agrees;

(d) Identification of the type of claim as defined in OAR 808-002-0220;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract with attached material invoices, time sheets, or other relevant attached documents;

(g) Job site address with driving directions to the job site;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets, and counterclaims of the landscaping business, if known, to which the claimant does not agree;

(j) A certification by the claimant that the Statement of Claim is true;

(k) A copy of any court judgment or arbitration award, including the original complaint and any answers or counter-suits related to the work that is the subject of the claim; and

(1) Additional information required under sections (3) through (8) of this rule.

(3) A claim by a subcontractor shall include a copy of each original invoice relating to the claim.

(4) An employee claim shall include copies of time cards or other evidence of the amount of compensation claimed.

(5) A material supplier or equipment claim shall include a copy of each original invoice relating to the claim and a recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, and each invoice amount. Claimant shall include documentation that claim is a minimum of 60 days old and two attempts to collect have been made.

(6) A claim involving negligent or improper work shall include a list of the alleged negligent or improper work.

(7) A claim involving a breach of contract shall describe the nature of the breach of contract.

(8) The Statement of Claim form must be signed by the claimant or an agent of the claimant.

(9) A Statement of Claim that does not comply with the requirements of this rule is subject to OAR 808-004-0350.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0040; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0010; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0400

Initial Administrative Processing of Claims

(1) Upon receipt of a claim, the agency shall

(a) Make a preliminary determination that the board has or lacks jurisdiction over the claim based on the information provided by the claimant;

(b) Verify that claimant has provided information required under OAR 808-004-0340 and request additional information from claimant if necessary;

(2) If the agency determines that the claim should not be dismissed based on the information submitted by the claimant, the agency shall:

(a) Furnish the landscape contracting business with a copy of the claim; and

(b) Request the landscape contracting business respond to the claim items.

(3) If the agency determines that the claim should be dismissed based on the information submitted by claimant, the agency shall issue a proposed order to dismiss under OAR 808-004-0550.

(4) The agency may initiate an investigation to determine the validity of the claim. The investigation may include an on-site meeting.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 183.415, 183.460 & 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0450

On-site Meeting and Attendance of Claimant

(1) The agency may schedule an on-site meeting among the parties for the purpose of discussion of a settlement of a claim and investigation of the claim under ORS 671.703. The agency shall mail notice of the meeting no less than 14 days prior to the date scheduled for the meeting. The notice shall include notification of the requirements of section (2) and (3) of this rule and shall comply with the requirements of OAR 808-004-0260.

(2) If the agency schedules an on-site meeting, the following apply:

(a) The claimant must allow access to the property that is the subject of the claim.

(b) The claimant or an agent of the claimant must attend the meeting. An agent of the claimant must have knowledge of all claim items included in the claim and must have authority to enter into a settlement of the claim. The agency may waive the requirement that an agent have authority to enter into a settlement of the claim if there is evidence that the respondent will not attend the on-site meeting.

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(c) The claimant must allow the respondent to be present at the on-site meeting as required under ORS 671.703.

(d) The individual landscape construction professional whose phase of license is the basis for the landscape contracting business license and who supervised the project must attend the meeting as required by OAR 808-003-0018.

(3) If the claimant fails to comply with the requirements of section (2) of this rule, the agency may close the claim under OAR 808-004-0260.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0540

Establishing Monetary Damages, Issuing Proposed Default Order or Referring Claim for Hearing

(1) A claimant may seek monetary damages if the agency has not closed the claim and:

(a) The claimant disagrees with the resolution proposed by the agency;

(b) The respondent cannot or will not comply with the resolution proposed by the agency;

(c) The parties signed a settlement agreement proposed by the agency but, through no fault of the claimant, the respondent has not fulfilled the terms of the settlement agreement, and the agency is so advised in writing by the claimant within 30 days of the date the settlement agreement was to have been completed.

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount the claimant alleges the respondent owes the claimant, limited to claim items listed in the Statement of Claim. The agency may require the claimant to submit, in support of the amount alleged:

(a) One or more estimates from licensed landscape contracting businesses for the cost of correction of each of the claim items; or

(b) Other basis for monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for a hearing under section

(4) of this rule after each party to the claim has had an opportunity to provide evidence supporting its position with regard to the claim. The agency may require that the claimant file a declaration of damages and supporting evidence described under section (2) of this rule. The declaration of damages shall be limited to claim items listed in the Statement of Claim.

(4) After documentation required under sections (2) or (3) of this rule is received, the agency may:

(a) Issue a proposed default order proposing dismissal of the claim under OAR 808-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Office of Administrative Hearings for a hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount, is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to claimant if the record of the claim contains evidence that persuades the agency that:

(A) Claimant suffered damages;

(B) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(C) The monetary value of those damages is substantiated on the record.

(b) The agency may issue a proposed default order that is not described in subsection (a) of this section if the record of the claim contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 183, 670.310, 671.670

Stats. Implemented: ORS 183.415, 183.460, 183.470, 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-004-0600

Payment From Bond, Irrevocable Letter of Credit or Other Security

(1) The board may notify the surety company of claims pending.

(2) The board shall notify the surety company or deposit holder of claims ready for payment. This notice shall constitute notice that payment

is due on the claim. Claims are ready for payment when all of the following have occurred:

(a) An arbitration award has been issued and is ready for payment under OAR 808-008-0440 after 30 days have elapsed to allow the respondent time to pay the award or file exceptions with the circuit court or a final order has been issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order;

(b) The board has received no evidence that the respondent has complied with the final order or award;

(c) The board has not granted a stay of enforcement of the final order pending judicial review by the Court of Appeals; and

(d) All other claims filed against the licensee under ORS 671.510 to 671.710 within the same or prior 90-day period under ORS 671.710 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Claims related to jobs that are satisfied from a surety bond, irrevocable letter of credit or deposit shall be paid as follows:

(a) If a surety bond, irrevocable letter of credit or deposit was in effect when the work period began, payment shall be made from that surety bond or deposit.

(b) If no surety bond, irrevocable letter of credit or deposit was in effect when the work period began, but a surety bond, irrevocable letter of credit or deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, irrevocable letter of credit or deposit to become effective after the beginning of the work period.

(4) If during a landscape job the job charges increase to an amount that requires an increase in the bonding amount for a landscape contracting business, any claims filed on that specific landscape job and any other landscape jobs contracted for by this business after the effective date of the increased bond amount will have access to the higher bond amount. Landscape jobs that were contracted for before the effective date of a bond increase will only have access to the bond amount in effect at the time of entering into the contract for that job unless the job charges on that contracted job increase to an amount requiring an equal to or greater bond amount for the landscape contracting business.

(5) The full penal sum of the bond, irrevocable letter of credit or deposit shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under ORS 671.690.

(6) 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 claimant and payment is due from the surety bonds, irrevocable letters of credit or deposits of the respondents, payment shall be made in equal amounts from each bond, irrevocable letter of credit or deposit subject to payment. If one or more of the bonds, irrevocable letters of credit or deposits is or becomes exhausted, payment shall be made from the remaining bond, irrevocable letter of credit or deposit or in equal amounts from the remaining bond, irrevocable letter of credit or deposits. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond, irrevocable letter of credit or deposit under this section by an amount equal to the payment made by the respondent.

(7) A surety company may not condition payment of a claim on the execution of a release by claimant.

(8) An expired or terminated status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.690 & 671.710

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-004-0060; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

808-005-0020

Schedule of Civil Penalties

The board may assess civil penalties according to the following schedule, which may be adjusted per the terms of a settlement agreement:

(1) For operating as a landscape contracting business in violation of ORS 671.530(3) or (4), \$1,000.

(2) For operating as a landscape contracting business in violation of ORS 671.530(3) or (4), when a claim has been filed for damages arising out of that work, \$2,000.

(3) For operating as a landscape contracting business in violation of ORS 671.530(3) or (4), when one or more previous violations have occurred, \$2,000.

(4) For advertising in violation of ORS 671.530(2) or (4), \$600.

(5) For advertising in violation of ORS 671.530(2) or (4) when one or more previous violations have occurred, \$1,000.

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(6) for advertising outside the scope of the landscape contracting business license in violation of OAR 808-003-0040, \$500.

(7) For operating as a landscape contracting business without employing at least one licensed landscape construction professional licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045, \$500.

(8) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) \$200 for the first; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(9) For failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(10) For performing work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040, \$500.

(11) For installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(12) For failure to maintain the insurance required by ORS 671.565 or bond as required by ORS 671.690 in effect continuously throughout the license period, \$500.

(13) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, \$2,000, in addition to such other action as may be authorized by statute.

(14) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(15) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(16) Violating an order to stop work as authorized by ORS 671.510 to 671.710; \$1,000 per day.

(17) For failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements; \$500.

(18) Failure to obtain the appropriate building code permit(s), \$500.

(19) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(20) Failure of a landscape contracting business to notify the board of a change in the landscape contracting business phase of license as required by OAR 808-003-0045(4); \$500.

(21) Failure by the landscape contracting business to provide a signed Verification of Employment form with the application or renewal of the business license, refuse to issue or renew the license until the agency receives the Verification of Employment form.

(22) Failure by the landscape construction professional to comply with the supervisory responsibilities as required by OAR 808-003-0018;

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(23) Failure of the landscape construction professional to notify the landscape contractors Board of a change of address or employment in writing on line at the LCB website as required by ORS 671.603 and OAR 808-003-0045, \$200.

(24) Failure of a landscape contracting business to notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603, \$200

(25) Failure of a landscape contracting business to require the landscape construction professional to directly supervise unlicensed employees of the landscape contracting business performing landscaping work that is related to the landscape construction professionals landscape construction professional phase of license, \$500.

(26) Failure of a landscape contracting business to maintain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1), \$1,500 and suspension of the landscape contracting business license until it obtains and maintains the surety bond or irrevocable letter of credit required by law.

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

Stats. Implemented: ORS 671.720

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08

Rule Caption: Clarifies what is required for owner or managing employee.

Adm. Order No.: LCB 5-2007

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Subject: 808-002-0625—Defines Manages or shares in the management

808-030-0010—Clarifies owner/managing employee

808-030-0020—Clarifies course requirements

808-003-0030—Clarifies requirements for course providers

808-030-0040—Clarifies course material and subjects to be covered

808-030-0050—Clarifies testing requirements

808-030-0060—Clarifies testing subversion

808-030-0070—Clarifies course expiration

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-002-0625

Managing Employee

The term "Managing Employee" is defined as any individual, including a general manager, business manager, or administrator employed full time by a landscape contracting business who exercises operational or managerial control over the business activities of the landscape contracting business. An individual can only be a managing employee of one landscaping business at a time.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: Ch. 249 OL 2007

Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0010

Owner/Managing Employee

(1) As used in these rules, a managing employee has that meaning as provided in OAR 808-002-0625 and owner has the meaning as provided in 808-002-0734

(2) Upon initial application, an applicant for a landscape contracting business license shall designate at least one managing employee or owner and provide evidence that this individual has completed the course and passed the test as provided for in Chapter 249, Oregon Laws, 2007 Section 2(2)

(3) An employee who is not an owner may not be designated as the managing employee of more than one landscape contracting business.

(4) Landscape contracting businesses actively licensed prior to January 1, 2008 are not required to meet the requirements of Chapter 249, Oregon Laws 2007 Section 2(2) unless the business is required to make application for a new business license as required in ORS 671.600, 671.660 or OAR 808-003-0220 on or after January 1, 2008.

(5) Landscape contracting businesses issued on or after January 1, 2008 and before January 1, 2009 must meet the requirements of Chapter 249, Oregon Laws 2007, Section 2(2) on or before the expiration date of that license in the year 2009.

(6) If a managing employee or owner is no longer acting in this role, the landscape contracting business shall so notify the Board, in writing, within 10 calendar days of the date on which the managing employee or owner ceased to act in that role and have designated a new managing

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employee or owner within 30 days of the date the resignation of the previous managing employee.

Stat. Auth.: ORS 670.310, 671.670
Stats. Implemented: Ch. 249 OL 2007
Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0020

Course Requirements

(1) The course required in Chapter 249, Oregon laws 2007, Section 2(4) shall cover the subjects listed in OAR 808-030-0040.

(2) The course shall consist of 16 class room hours. For the purposes of this rule a class room hour is a minimum of 50 minutes in length.

(3) The Course must be offered by a provider approved by the agency as provided in OAR 808-030-0030

Stat. Auth.: ORS 670.310, 671.670
Stats. Implemented: Ch. 249 OL 2007
Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0030

Requirements of Course Provider

(1) In order for individuals or organizations to be listed as a provider of approved courses the individual or organization must submit an application to the agency on forms provided by the agency. Information provided on the application must include, but not be limited to:

(a) Name and address and contact information of the course provider;

(b) Instructor resumes and work summaries that demonstrate that all instructors have at least two years experience either teaching in the subject areas related to the course material or working in subject areas related to the course material.

(2) All providers must receive written agency approval prior to offering or providing the course.

(3) A provider must comply at all times with the following requirements:

(a) The provider will provide 16 classroom hours of course material under OAR 808-030-0040;

(b) The provider will use agency-approved course materials;

(c) The provider will send electronic records of completion to the agency within 14 days in a format approved by the agency and keep records of completion for a minimum of three years;

(d) The provider will communicate law changes and program procedural changes received from the agency to the provider's instructors and will implement these changes within 30 calendar days;

(e) The provider will request and receive, in writing, agency approval of all instructors at least 20 calendar days before instructors are scheduled to teach; and

(f) The provider will comply with all applicable federal and state laws.

(4) The agency may publicize a provider's test passage rate for its students

(5) The agency may revoke a provider's approval and right to offer the course at any time for the following:

(a) The provider fails to comply with these rules;

(b) If more than 10% of the total students who have received instruction from a provider fail to pass the examination administered by the board by their third attempt; or

(c) The provider acquires or attempts to acquire agency test questions by unauthorized means, including but not limited to, photographing, photocopying or videotaping any part of the agency's test or paying or offering incentives to employees or business entities to write down, photograph or videotape any part of the agency's test.

Stat. Auth.: ORS 670.310, 671.670
Stats. Implemented: Ch. 249 OL 2007
Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0040

Course Material and Subjects

(1) The course required under Chapter 249, Oregon Laws 2007, Section 2(2) must consist of the following subjects:

(a) Landscape Contractors Board:

(A) Role and authority;

(B) Application and licensing requirements;

(C) Dispute resolution processes (Claims);

(D) Types of Business entities;

(E) Rights and responsibilities of consumers and Landscape

Contracting Businesses;

(F) Address change and employment change notification;

(G) Enforcement processes;

(H) Supervision requirements;

(I) Statutes and rules that govern individual and business licensees;

and

(J) How to become a member of the Board.

(b) Employer requirements and employee's rights:

(A) Information and resources on employer requirements, employee's rights, workers' compensation insurance, and required workplace postings;

(B) Civil rights;

(C) State and Federal laws that include but are not limited to: Title VII, child labor, minimum and prevailing wage laws and state and federal wage and hour laws; and

(D) Employees versus independent contractors.

(c) Taxes, record keeping, accounting, budgeting, and pricing:

(A) Required employment forms;

(B) Identification numbers;

(C) Cost of employees;

(D) Importance of good record keeping;

(E) Ways to organize records;

(F) Required tax forms and reporting times;

(G) Professional help; and

(H) Profit, budgeting and cash flow;

(d) Building codes:

(A) Applicable codes and revisions;

(B) Required Specialty licenses and inspections;

(C) Permit and Inspection procedures;

(D) Stop work orders.

(e) Oregon Occupational Safety and Health Division:

(A) OR-OSHA regulations, job site inspections and resources;

(B) Equipment basics and maintenance;

(C) General safety practices; and

(D) Responsibilities of landscape contracting businesses, general contractors and subcontractors on a job site.

(f) Environmental practices and laws:

(A) Laws and regulations governing handling and disposal of environmentally hazardous material;

(B) Proper handling and disposal of job site debris;

(C) Laws and regulations that govern environmental conditions at a job site that include but is not limited to: impact of construction on rivers, wetlands, water quality, sewage, underground storage/heating oil tanks and erosion control.

(g) Contract law:

(A) Written Contract Requirement;

(B) Ten Elements of Contracts for Landscape Work;

(C) Minor and major breach of contract;

(D) Written change orders;

(E) Subcontracting and relationship to subcontractor;

(F) Negotiation;

(G) Mediation, arbitration and litigation clauses; and

(H) Buyer's Right to Cancel.

(h) Oregon construction lien law:

(A) Purpose;

(B) Required notices;

(C) Lien law procedures;

(D) Steps and timelines to perfect a lien and foreclose; and

(E) Important lien law differences of other states.

(i) Project management, estimating and scheduling:

(A) Importance of project management and consequences for failing to do so;

(B) Simple written estimates that include cost, overhead and profit; and

(C) Simple project schedules and consequences of improper job scheduling.

(j) Business Practices:

(A) Customer Communication;

(B) Listening Skills;

(C) Employee retention;

(D) Meeting Customer expectations; and

(E) Hiring and Firing.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: Ch. 249 OL 2007

Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0050

Testing Requirements

(1) The test required in Chapter 249, (2007 Laws): Effective date January 1, 2008 shall cover the subjects listed in OAR 808-030-0040.

(2) A person seeking to take the test shall:

(a) Apply on a form provided by the agency;

(b) Pay any fees required by the agency;

(c) Provide approved government-issued picture identification to the agency;

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(d) Pay for the approved interpreter if needed to take the test in a language other than English; and

(e) Complete the test within a time limit approved by the agency.

(3) A person taking the test shall be allowed to use material acquired from the agency or an approved course provider and one language translation book excluding any exams given by any provider.

(4) A person taking the test shall not be accompanied by anyone while taking the test, except an approved interpreter.

(5) After the test is completed, a person is not permitted to review the test questions or answers.

(6) There are no reciprocal agreements with other states or organizations that test owners or managing employees of landscape contracting businesses.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: Ch. 249 OL 2007

Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0060

Testing Subversion

(1) Testing subversion is the use of any means to alter the results of a test to cause the results to inaccurately represent the competency of an examinee. Testing subversion includes, but is not limited to:

(a) Communication between examinees inside the testing room

(b) Giving or receiving any unauthorized assistance on the test while the test is in process;

(c) Having any printed or written matter or other devices in the examinee's possession during the test except:

(A) The Oregon Landscape Contractors Board Owner/Managing Employee Reference Manual; specified text book and

(B) One language translation book.

(d) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured test questions or other secured examination material prior to, during or after the administration of the examination;

(e) Copying another examinee's answers or looking at another examinee's materials while a test is in process;

(f) Encouraging anyone to copy answers to the test;

(g) Copying or removing any test questions from the testing area;

(h) Allowing another person to take the test in the examinee's place;

(i) Writing notes or questions in the Oregon Landscape Contractors Board Owner/Managing Employee Reference Manual, specified text book or language translation book during the test; or

(j) Leaving the room during the test for an unapproved purpose.

(2) At the discretion of the agency or its designees, if there is evidence of testing subversion by an examinee prior to, during, or after the administration of the test, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the test if testing subversion is detected before the administration of the test;

(b) If the testing subversion detected has not yet compromised the integrity of the test, such steps as are necessary to prevent further testing subversion shall be taken, and the examinee may be allowed to continue with the test;

(c) The examinee may be requested to leave the testing facility if testing subversion is detected during the test. If the examinee does not leave the facility, the examinee will be deemed a trespasser;

(d) The examinee's test results may be invalidated and the application fee forfeited; or

(e) The examinee may not be allowed to sit for an examination for up to one year.

(3) If testing subversion is detected after the administration of the test, the agency or its designee shall make appropriate inquiry to determine the facts concerning the testing subversion and the agency or its designee may take any of the actions described in this rule.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: Ch. 249 OL 2007

Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

808-030-0070

Course Taking and Testing Period

(1) For course taking and testing completed on or after March 2008, the course and testing required under Chapter 249, (2007 Laws) shall be valid for 24 months from the date the course was completed. Course taking and testing that is past the 24-month period from the date of the completed course will not be considered for the purposes of fulfilling the requirements set forth in Chapter 249, (2007 Laws).

(2) In lieu of complying with section (1) of this rule, a managing employee may satisfy the requirements of Chapter 249, (2007 Laws) provided that the managing employee:

(a) Has completed the course and passed the test; and

(b) Has been the managing employee of another licensed landscape contracting business within two years of the date of application by the new applicant; and

(c) The license of the landscape contracting business that was previously owned by or that previously employed the managing employee has not lapsed or, if lapsed, has lapsed for not more than 24 months.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: Ch. 249 OL 2007

Hist.: LCB 5-2007, f. 12-24-07, cert. ef. 1-1-08

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Rule Caption: Clarifies SB 62 regarding filing claims for construction liens.

Adm. Order No.: LCB 6-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Adopted: 808-002-0590, 808-004-0530

Rules Amended: 808-002-0220, 808-002-0325, 808-004-0250, 808-004-0340

Subject: 808-002-0590—Defines "Lienor"

808-004-0530—Adds section regarding what is required to show a valid lien claim and what may be awarded.

808-002-0220—Adds "Lien Claim" to definition of claims.

808-002-0325—Clarifies direct contractual relationship with a construction lien claim

808-004-0250—Clarifies an order in a lien claim may include attorney fees, court costs, interest and service charges.

808-004-0340—Lists what is required to be submitted to show a construction lien claim.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-002-0220

Claims

"Claims" as used in ORS 671.690 to 671.710 and in division 4 of this chapter are:

(1) "Breach of contract claim" means a claim for amounts due from a landscaping business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.710.

(2) "Material or equipment claim," means a claim for amounts due from a landscaping business for material or for renting or supplying equipment to a landscaping business.

(3) "Employee claim" means a claim for unpaid wages or benefits filed by an employee of a landscaping business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscaping business for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 671.

(4) "Negligent or improper work claim" means a claim for amounts due from a landscaping business as a result of negligent or improper work subject to ORS 671.510 to 671.710.

(5) "State tax and contribution claim" means a claim filed by the State of Oregon for amounts due from a landscaping business for taxes and contributions due to the State of Oregon from a landscaping business.

(6) "Subcontractor claim" is a claim filed by a subcontractor arising out of a contract between the subcontractor and a landscape business for unpaid labor or materials furnished under the contract.

(7) "Lien Claim" means a claim filed by an owner against a landscape contracting business to discharge or to recoup funds expended in discharging a construction lien.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670, Ch. 541, OL 2007

Stats. Implemented: ORS 671.510 - 671.720

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 6-2007, f. 12-24-07, cert. ef. 1-1-08

808-002-0325

Direct Contractual Relationship

"Direct Contractual Relationship" as used in OAR 808-004-0320 has the following meanings:

(1) For a negligent or improper work claim, a breach of contract claim, or a construction lien claim "direct contractual relationship" means a relationship created by a contract between claimant and respondent providing that respondent performs landscape construction work in return for valuable consideration conveyed directly from claimant to respondent.

(2) For a material claim or subcontractor claim, "direct contractual relationship" means a relationship created by a contract between claimant and respondent providing that claimant provide labor, material or rental

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equipment in return for valuable consideration conveyed directly from respondent to claimant.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.610 & 670.600
Hist.: LCB 1-2005, f. & cert. ef. 2-15-05; LCB 6-2007, f. 12-24-07, cert. ef. 1-1-08

808-002-0590

Lienor

"Lienor" means a person who holds a construction lien on another's property.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Chapter 149 OL 2007
Hist.: LCB 6-2007, f. 12-24-07, cert. ef. 1-1-08

808-004-0250

Exclusion of Certain Damages from Award

(1) Except as provided in section (2) of this rule and subject to OAR 808-008-0420, an order or arbitration award of the board awarding monetary damages in a claim, including but not limited to an order of the Board arising from a court judgment, award or decision by a court, arbitrator or other entity may not include an award for:

- (a) Attorney fees;
- (b) Court costs;
- (c) Interest;
- (d) Costs to pursue litigation or the claim;
- (e) Service charges or fees; or
- (f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the claim.

(2) An order or arbitration award by the board awarding monetary damages that are payable from the respondent's bond required under ORS 671.690 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order or arbitration award in an owner claim may include interest expressly allowed as damages under a contract that is the basis of the claim.

(b) An order or arbitration award by the board may include attorney fees, court costs, other costs and interest included in a court order or award of a court, arbitrator or other entity that are related to the portion of the order or award of a court, arbitrator or other entity that is within the jurisdiction of the board if the court order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

- (A) That was initiated by the respondent; or
- (B) That the agency required the claimant to initiate under ORS 671.703(12) due to the nature or complexity of the claim.

(c) An order in a construction lien claim may include attorney fees, court costs, interest and service charges allowed under OAR 808-004-0530(4).

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 183.415 & 183.460
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2005, f. & cert. ef. 2-15-05; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 6-2007, f. 12-24-07, cert. ef. 1-1-08

808-004-0340

Form of Claims

(1) A claim must be submitted on a Statement of Claim form provided by the agency. The agency may require the use of the most recent revision of the Statement of Claim form.

(2) The claimant must provide the following information with the Statement of claim, if applicable:

- (a) The name, address, and telephone number of the claimant;
- (b) The name, address, telephone number and license number of the landscaping business;
- (c) The amount, if known at the time the Statement of Claim is filed, that the claimant alleges is due from the landscaping business after crediting payments, offsets, and counterclaims in favor of the landscaping business to which the claimant agrees;
- (d) Identification of the type of claim as defined in OAR 808-002-0220;
- (e) The date on which the contract was entered into;
- (f) If the contract was in writing, a copy of the contract with attached material invoices, time sheets, or other relevant attached documents;
- (g) Job site address with driving directions to the job site;
- (h) The beginning and ending date of the work or invoices;
- (i) Payments, offsets, and counterclaims of the landscaping business, if known, to which the claimant does not agree;
- (j) A certification by the claimant that the Statement of Claim is true;

(k) A copy of any court judgment or arbitration award, including the original complaint and any answers or counter-suits related to the work that is the subject of the claim; and

(1) Additional information required under sections (3) through (8) of this rule.

(3) A claim by a subcontractor shall include a copy of each original invoice relating to the claim.

(4) An employee claim shall include copies of time cards or other evidence of the amount of compensation claimed.

(5) A material supplier or equipment claim shall include a copy of each original invoice relating to the claim and a recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, and each invoice amount. Claimant shall include documentation that claim is a minimum of 60 days old and two attempts to collect have been made.

(6) A claim involving negligent or improper work shall include a list of the alleged negligent or improper work.

(7) A claim involving a breach of contract shall describe the nature of the breach of contract.

(8) A construction lien claim must include evidence that the claimant paid the landscape contracting business as required in OAR 808-004-0530(1)(a), a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lienor, if applicable and any foreclosure documents.

(9) The Statement of Claim form must be signed by the claimant or an agent of the claimant.

(10) A Statement of Claim that does not comply with the requirements of this rule is subject to OAR 808-004-0350.

Stat. Auth.: ORS 183, 670.310 & 671.670
Stats. Implemented: ORS 671.703
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0040; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0010; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 6-2007, f. 12-24-07, cert. ef. 1-1-08

808-004-0530

Construction Lien Claims

(1) For a construction lien claim to be valid, the following conditions must be met:

(a) The claimant must have paid the respondent in full for the landscape job or paid in full for the materials supplied or equipment rented and the landscape contracting business must have failed to pay the subcontractor or material or equipment supplier, thereby causing the subcontractor or material or equipment supplier to file a lien against the claimant's property;

(b) The lienor must have delivered to the claimant a "Notice of the Right to Lien" as specified in ORS 87.018, 87.021 and 87.025; and

(c) The lienor must have filed the lien with the recording officer of the county in accordance with ORS 87.035.

(2) If the respondent contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the respondent's account, the respondent may subpoena the lienor and pertinent records to an arbitration or contested case hearing on a claim processed under this rule in accordance with OAR 808-009-0095.

(3) If at any time before the issuance of an order the agency determines that the lien is unenforceable or invalid, the agency must dismiss the claim. Before the proposed order of dismissal is issued by the agency, the lienor must be notified, by certified mail, of the lienor's opportunity to become a party, as that term is defined in ORS 183.310, to the claim and to request arbitration or a hearing.

(4) A construction lien claim may include attorney fees, court costs, interest and service charges if these items are included as part of the lien or incurred as costs to discharge the lien. An award to the claim for attorney fees incurred to discharge the lien must not exceed the amount of the lien or \$3,000, whichever is less.

(5) The agency may reduce the amount awarded to the claimant by:

(a) Any amount the claimant owes the landscape contracting business; and

(b) Any amount included for tools sold to a landscape contracting business, for equipment sold to the landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(6) If a claimant files two or more claims against the respondent relating to work performed under the same contract and if the claimant has not paid the respondent the full amount of the contract, the amount awarded on each claim will be reduced on a pro rata basis. A proposed or final order

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may not be issued on a claim until all claims involving the claimant and the respondent filed within the same 90-day period are ready for an order.

(7) If an action is filed to enforce a lien that is the subject of a claim, the agency must send notice to the claimant that:

(a) The agency will hold the claim open for 60 days from the date of the notice to allow the claimant to file a counter-suit or complaint in the foreclosure action; and

(b) The agency may close the claim under section (10) of this rule if the agency does not receive evidence within 60 days from the date of the notice that the claimant filed a complaint as a counter-suit or complaint in the court.

(8) Upon timely receipt of evidence that the claimant filed a counter-suit or complaint in the court under paragraph (7)(b) of this rule, the agency must suspend processing the claim and send notice to the claimant of the requirements of OAR 808-004-0520(3). Further processing of the claim must be under OAR 808-004-0520.

(9) Time limitations in this rule supersede conflicting time limitations in OAR 808-004-0520.

(10) The agency may close a construction lien claim under OAR 808-004-0260 if the agency does not receive evidence that the claimant obtained a stay or filed a counter-suit or complaint within the time limitation in the notice required under section (7) of this rule.

(11) If a construction lien claim involves the same facts and issues as any other open claim, the agency must process the claims together.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: CH. 149 OL 2007

Hist.: LCB 6-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Adds fee for initial landscape contracting business license, clarifies charges, refunds and amends penalty for improper bond amount.

Adm. Order No.: LCB 7-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Amended: 808-001-0020, 808-003-0130, 808-005-0020

Subject: 808-001-0020—Deletes fee for “Avoiding landscaping problems” brochure and “You Get What You Pay For” DVD, adds fee for vehicle stickers, plant CD, and “Landscape Construction” book, clarifies refund will not be provided for overpayments of \$20 or less unless requested in writing within three years of payment.

808-003-0130—Adds \$75 fee for initial landscape contracting business application, \$50 fee for probationary landscape construction professional license application and \$30 initial exam fee for owners or managing employee and \$15 retake fee.

808-005-0020—Amends penalty for improper bond amount.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-001-0020

Charges for Documents; Refunds

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board’s office shall be in writing.

(2) Charges to the general public and to state agencies shall be payable in cash, check, money order, Visa or Mastercard unless billing to such agencies is authorized by the Administrator. Checks or money orders shall be made payable to the Landscape Contractors Board.

(3) The Board accepts Visa and Mastercard submitted in person or by mail, e-mail or fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection.

(4) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, twenty-five cents per image;

(b) \$20 for each certification that an entity has or has not been licensed with the Landscape Contractors Board.

(c) \$20 for certified copies of documents.

(d) \$100 for listing of individual landscape contractors or landscape businesses on CD or disk. Requests for searching or formatting the data will be billed as per subsection (e) of this rule. The Administrator may waive this charge for other public agencies.

(e) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time;

(f) For both machine copies and documents, an additional amount set at the discretion of the Administrator for staff time required for search, handling, and copying.

(g) \$20 for duplicate tape recording of Board meetings.

(h) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for each additional 90 minute or fraction thereof of the hearing or arbitration.

(i) Vehicle Stickers:

(A) Year stickers are \$.50 each;

(B) Set of stickers includes one year sticker and one license sticker and are \$1.00 per set.

(j) Plant CD:

(A) First copy is free to landscape construction professional application;

(B) \$5.00 (this includes shipping & handling).

(K) Landscape Construction book by David Sauter is the cost of the item, the cost of shipping and a fee for the cost of processing the order. Contact the State Landscape Contractors Board for the current charges.

(5) Refunds: All requests for refunds must be in writing.

(a) Except as set forth in subsection (b) of this section, applicant and licensing fees are non-refundable and nontransferable.

(b) When an applicant withdraws their renewal or fails to complete the renewal process the agency may retain a-processing fee of \$20. When an applicant withdraws their application for a landscape business license or renewal or fails to complete the licensing process, the agency may retain a-processing fee of \$50.

(6) If the agency receives payment of any fees or penalty by check and the check is returned to the agency by the bank, the payer of the fees will be assessed a charge of \$25 in addition to the required payment of the fees or penalty.

(7) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

Stat. Auth.: ORS 183, 293.445, 671

Stats. Implemented: ORS 183, 192.430, 293.445 & 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1988(Temp), f. 3-17-88, cert. ef. 4-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2004(Temp), f. & cert. ef. 6-11-04 thru 12-6-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08

808-003-0130

Fees

(1) Initial license or renewal of active license

(a) Landscaping business, \$225.

(b) Landscape contractor, \$75.

(2) Renewal of inactive license

(a) Landscaping business, \$225.

(b) Landscape contractor, \$75.

(3) Late penalty fee:

(a) Landscaping business, \$25.

(b) Landscape contractor, \$25.

(4) Individual Landscape Contractor License Application fee: \$60.

(5) Initial examination fee for any phase of license is:

(a) \$15 for first section of the exam; and

(b) \$10 for each additional section per exam sitting.

(6) Exam retake fees for any section of the exam is:

(a) \$15 for first section of the exam; and

(b) \$10 for each additional section per exam sitting.

(7) Exams sent to the DMV, additional processing and mailing fee: \$12.

(8) Examination, failure to show for a scheduled appointment:

(a) In Board office, \$20 without a 24 hour advance cancellation notice to the Board office.

(b) At Proctor Exam Site, forfeits full payment for that exam sitting.

(9) Landscape Contracting Business License Application fee: \$75.

(10) Probationary Individual Landscape Construction Professional License Application: \$50.

(11) Initial examination fee for owner or managing employee: \$30.

(12) Examination retake fee for owner or managing employee: \$15.

(13) If a landscape contractor license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(14) If a landscaping business license expires, and the landscaping business has continuously maintained its bond, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

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(15) If a landscaping business license expires, and the landscaping business has continuously maintained its bond, irrevocable letter of credit or deposit together with required liability insurance, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

(16) If a landscaping business license expires, and no bond, irrevocable letter of credit or deposit, or required liability insurance, has been in effect during the interim, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the required fee and documentation are received in the board office.

(17) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(18) The board may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by a board error or omission.

(19) The board may waive the failure to show for a scheduled examination appointment fee for good cause. Documentation may be required.

Stat. Auth.: ORS 183.310 - 183.545, 670.310 & 671.670

Stats. Implemented: ORS 671.650 & 671.660, OL 2007, Ch. 249

Hist.: LC 3, f. & cert. 2-7-77; LC 1-1981, f. & cert. 10-8-81; LC 1-1983(Temp), f. 10-14-83, f. 10-15-83; LC 1-1984, f. & cert. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08

808-005-0020

Schedule of Civil Penalties

The board may assess civil penalties according to the following schedule, which may be adjusted per the terms of a settlement agreement:

(1) For operating as a landscaping business in violation of ORS 671.530(1) or (3), \$1,000.

(2) For operating as a landscaping business in violation of ORS 671.530(1) or (3), when a claim has been filed for damages arising out of that work, \$2,000.

(3) For operating as a landscaping business in violation of ORS 671.530(1) or (3) when one or more previous violations have occurred, \$2,000.

(4) For advertising in violation of ORS 671.530(2), or (5), \$600.

(5) For advertising in violation of ORS 671.530(2), or (5) when one or more previous violations have occurred, \$1,000.

(6) For advertising outside the scope of the landscaping business license in violation of OAR 808-003-0040, \$500.

(7) For operating as a landscaping business without employing at least one licensed landscape contractor licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045, \$500.

(8) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) \$200 for the first; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(9) For failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(10) For performing work outside the scope of the landscaping business license in violation of OAR 808-003-0040, \$500.

(11) For installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(12) For failure to maintain the insurance required by ORS 671.565 or bond as required by ORS 671.690 in effect continuously throughout the license period, \$500.

(13) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, \$2,000, in addition to such other action as may be authorized by statute.

(14) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(15) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(16) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(17) For failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements as required by OAR 808-003-0040(3)(a), \$500.

(18) Failure to obtain the appropriate building code permit(s), \$500.

(19) When as set forth in ORS 671.610(5), the number of licensed landscaping businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(20) Failure of a landscaping business to notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0045(4), \$500.

(21) Failure by the landscaping business to provide a signed Verification of Employment form with the application or notification of new employment of a landscape construction professional, refuse to issue or renew or the suspension of the license until the agency receives the Verification of Employment form.

(22) Failure by the landscape contractor to comply with the supervisory responsibilities as required by OAR 808-003-0018;

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(23) Failure of the landscape contractor to notify the Landscape Contractors Board of a change of address or employment in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0045, \$200.

(24) Failure of a landscaping business to notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603, \$200.

(25) Failure of a landscaping business to require the landscape contractor to directly supervise unlicensed employees of the landscaping business performing landscaping work that is related to the landscape contractors phase of license, \$500.

(26) Failure of a landscaping business to obtain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1):

(a) \$500 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;

(b) \$1,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.

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

Stats. Implemented: ORS 671.720

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Clarifies House Bill 2538 re: continuing education for landscape contractors.

Adm. Order No.: LCB 8-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

ADMINISTRATIVE RULES

Rules Adopted: 808-040-0010, 808-040-0020, 808-040-0025, 808-040-0030, 808-040-0040, 808-040-0050, 808-040-0060, 808-040-0070, 808-040-0080

Subject: 808-040-0010—Clarifies when continuing education applies

808-040-0020—Clarifies continuing education requirement

808-040-0025—Clarifies eligible programs and activities

808-040-0030—Clarifies how continuing education hours are measured

808-040-0040—Clarifies acceptable subject matter for continuing education

808-040-0050—Clarifies program approval process

808-040-0060—Clarifies continuing education audit

808-040-0070—Clarifies waiver of continuing education requirement

808-040-0080—Clarifies continuing education requirement for reinstatement of license

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-040-0010

Continued Competency

(1) To ensure continuing efforts on the part of licensed landscape construction professionals to remain current with new developments in landscape technology and to encourage better business practices and safety in the profession continuing education is required as a condition of license renewal.

(2) Continuing education requirements apply whether the renewal applicant is living or working within Oregon or outside of the state so long as Oregon licensure is maintained.

(3) It is the obligation of each licensee to select a course of study that contributes to the licensee's professional competence in landscape contracting. The licensee may take programs in a variety of topics that are relevant to the licensee's area of practice.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0020

Continuing Education Biennial and Reporting Requirement

(1) Biennial CEH requirement. To maintain registration, a landscape construction professional must complete 20 hours of continued education hours (CEH) every two years unless such requirement is waived by the Board under Chapter 550, Oregon Law 2007, Section 2(4) and OAR 808-040-0070:

(a) The 20 CEH must be completed during the two-year period immediately preceding the renewal date of the landscape construction professional license.

(b) The 20 CEH must conform to OAR 808-040-0040 and include a minimum of 4 CEH in subjects related to landscape business practices and a minimum of 8 CEH in subjects related to the technical area of landscape construction. The remaining hours may be in either of the above subjects or in subjects including but not limited to workplace safety, environmental and sustainable landscape practices, and/or community service.

(2) Reporting Requirement at Renewal. As a requirement of renewal of an active landscape construction professional license, licensees are required to certify that the licensee has fulfilled the CEH requirement by listing the CEH completed at the time of renewal. The listing must include:

(a) The name of the program sponsor,

(b) Program title,

(c) Date(s) program attended,

(d) Type of CEH claimed, and

(e) The number of CEH claimed.

(3) Licensees with Even Numbered Licenses. All licensees holding even numbered licenses on or before January 1, 2009 shall complete and report ten (10) CEH requirement with the conditions of (1)(b) of this rule being prorated for their first renewal in 2010 and then report the full 20 CEH with the renewal every second (2nd) year thereafter.

(4) Licensees with Odd Numbered Licenses. All licensees holding odd-numbered licenses shall complete and report the 20 CEH requirement beginning with the renewal period in 2011 and every second (2nd) year thereafter. The 20 hour CEH requirement shall be completed as per (1)(b) of this rule.

(5) New Licensees. CEH requirements for new licensees are as follows:

(a) New licensees who receive an even numbered license in an odd numbered year after January 1, 2009 will report a 10 CEH requirement with

the conditions of (1)(b) of this rule being prorated for their first renewal period and then report the full 20 CEH with the renewal every second (2nd) year thereafter. An example of this is an individual who receives an even numbered license in 2009 must report 10 CEH in 2010 and then 20 CEH in 2012.

(b) New licensees who receive an even numbered license in an even numbered year after January 1, 2009 will report the 20 CEH requirement every second (2nd) year thereafter.

(c) New licensees who receive an odd numbered license in an even numbered year after January 1, 2009 will report a 10 CEH requirement with the conditions of (1)(b) of this rule being prorated for their first renewal period and then report the full 20 CEH with the renewal every second (2nd) year thereafter. An example of this is an individual who receives an odd numbered license in 2010 must report 10 CEH in 2011 and then 20 CEH in 2013.

(d) New licensees who receive an odd numbered license in an odd numbered year after January 1, 2009 will report the 20 CEH requirement every second (2nd) year thereafter

(e) CEH obtained during any month of the prorated two year CEH requirement period will be eligible to meet the initial CEH requirement.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0025

Continued Education Programs

In order to qualify for CEH credit under these rules, a CEH program must be a formal program or board approved program of learning that contributes directly to the professional competence of the licensee

(1) Eligible Programs and Activities. The following programs will qualify for CEH credit provided they also meet the requirements of section (2) through (5) of this rule:

(a) Programs presented by national, state or local landscape industry organizations.

(b) Programs offered by a firm to licensees.

(c) Programs sponsored by organizations that provide professional educational programs.

(d) Correspondence courses or other individual independent study programs and activities do not qualify for CEH credit unless both the CEH sponsor and the specific CEH program or activity are approved by the Board prior to the offering of, presentation of, attendance of, or participation in the program or activity.

(e) Volunteering activities for industry related boards, commissions, and designated committees.

(f) Making presentations or teaching courses related to approved subjects for the CEH credit.

(2) Sponsored Program and Activity requirements. Sponsored CEH programs must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider;

(e) The program is conducted by a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular program.

(f) Evidence of completion is provided to participating licensees in the form of a certificate that must include:

(A) Name of sponsoring institution, association or organization;

(B) Title of the presentation;

(C) Name of instructor or presenter;

(D) Date of presentation;

(E) Type of CEH;

(F) Number of approved CEH; and

(G) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and completion of the course.

(3) Correspondence and Independent Study courses. Correspondence courses or other individual independent study programs and activities must meet the following requirements to qualify for CEH credit:

(a) An outline of the program is prepared in advance and preserved;

(b) The program must cover at least one of the topic areas listed in 808-040-0040;

(c) The program is at least one hour (fifty-minute period) in length;

(d) A record of attendance is maintained by the provider; and

(e) The provider of the correspondence or independent study course is a qualified instructor or presenter whose background, training, education or experience qualifies the person to teach or lead a discussion on the subject matter of the particular course.

ADMINISTRATIVE RULES

(4) Volunteering. Education opportunities that engage the licensee in volunteering must meet the following requirements to qualify for CEH credit. The volunteer activity must be directly related to the landscape construction industry, such as but not limited to:

(a) Serving on industry related boards, commissions or committees; or

(b) Providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment or natural resources through landscape planning, installation and maintenance.

(5) Teaching and Presenting. Activities that engage the licensee in teaching and presenting courses must meet the following criteria to qualify for CEH credit:

(a) The licensee must be an actively licensed landscape construction professional;

(b) The licensee must have been actively licensed for a period of not less than five (5) years;

(c) An outline of the course is prepared in advance and preserved;

(d) The course must cover at least one of the topic areas listed in 808-040-0040;

(e) The course is at least one hour (fifty-minute period) in length;

(f) A record of attendance is maintained by the licensee;

(g) The course is presented for an education provider; a school, university or college; a landscape contracting business, or any industry related organization or association.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0030

Continuing Education Credit Criteria

CEH are measured by participation time and program length with one 50-minute class period equal to one CEH credit in most cases and will be based on the following criteria:

(1) CEH credit will be awarded for established courses taken from a recognized college or university at the rate of 1 semester course credit is equal to 15 CEH and 1 quarter course credit is equal to 10 CEH.

(2) Professional courses which meet academic requirements in content, instruction and evaluation will be assigned 1 CEH for each 50-minute class period attended. These courses must be pre-approved by the board prior to the actual presentation of the course.

(3) Courses or activities which do not meet standards as set forth in subsection (1) and (2) of this section, such as workshops, symposiums, seminars, volunteering, independent education, or any applied experience with or without formal classroom work may receive CEH credit at a rate determined by the Board during the approval process. These courses or activities must be pre-approved by the board prior to the actual presentation or participation in the course or activity.

(4) Partial completion by the licensee for programs, courses or classes will not be granted CEH and are not subject to being prorated.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0040

Acceptable Subject Matter

The subjects listed in this rule serve as examples only, and are not all-inclusive.

(1) Technical Subjects. Subjects that may qualify for technical subjects include, but are not limited to:

(a) The construction and installation techniques for lawns, trees, vines, shrubs, nursery stock, erosion control, retaining walls, patios, decks, fences, driveways, walkways, arbors, landscape edging, drainage systems, water features, low voltage lighting, irrigation systems including backflow and backflow testing; and

(b) Subjects related to soil science, pesticide application; landscape design; landscape architecture; arboriculture; or horticulture; and

(c) Subjects related to landscape practices for sustainability and environmental issues including but not limited to:

(A) Storm water management;

(B) Living soils management;

(C) Water-wise site design and principles;

(D) Smart technologies;

(E) Low volume irrigation installation and management; or

(F) Integrated pest management.

(d) Any other subject the Board determines applicable.

(2) Business Practice Subjects. Subjects that may qualify for business related subjects are:

(a) Accounting (cash flow, budgeting, pricing);

(b) Business law (liens, tax, employment, etc);

(c) Production and operation management;

(d) Client communication;

(e) Human resource management;

(f) Business management, marketing;

(g) Business ethics;

(h) Leadership;

(i) Storm water management;

(j) Smart technologies;

(k) Integrated pest management; or

(l) Any other subject the Board determines applicable.

(3) Other Acceptable Subjects. Subjects that may qualify related to workplace safety, public or community service are:

(a) Safety meetings;

(b) Voluntary OSHA inspections;

(c) First aid training;

(d) Classroom or seminar teaching of related subjects;

(e) Serving as a volunteer on landscape related Boards and Commissions or designated committees;

(f) providing a not-for-profit service to local or state entities for the enhancement and preservation of the environment or natural resources through landscape planning, installation and maintenance; or

(g) Any other subject the Board determines applicable.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0050

Program Approval Process

(1) Pre-approval Process. Programs offered by any institution, agency, professional organization or association, which conducts educational meetings, workshops, symposiums, seminars and other such activities where a CEH credit is desired must be approved by the Board prior to the presentation of the program and prior to the attendance by a licensee. The written request for the issuance of CEH credit must:

(a) Be received on a form provided by the Board at least 30 calendar days prior to the presentation date and include:

(A) Name of sponsoring institution, association or organization;

(B) Title of the presentation;

(C) Date of presentation;

(D) Topic covered from list in 808-040-0040;

(E) A written outline of the program;

(F) The length of the program in hours;

(G) Name of instructor or presenter;

(H) Type of CEH requested;

(I) Copy of the certificate to be given to each attendee with the signature of the instructor or presenter or the official stamp of the sponsor on the certificate. If more than one presenter is authorized to sign, then the signatures of each presenter must be on the certificate or on copies of the certificate; and

(J) Contact information for the provider which must include the address, phone number, fax number and email (if available) for the provider.

(b) Upon receipt of all documentation required in subsection (1) of this rule the board will review the request and notify the provider by either email or regular mail the determination of the CEH allowed by the board.

(2) Other Approval Process. In the event a landscape construction professional attends or wants to attend a program that is not pre-approved as outlined in section (1) above,

(a) The landscape construction professional may request approval of the program by submitting written documentation before the program date or postmarked no later than 7 days after the date the program was attended that includes:

(A) Name of sponsoring institution, association or organization;

(B) Topic of the presentation;

(C) Title of the presentation;

(D) Name of instructor or presenter;

(E) Date of presentation;

(F) Length of presentation in hours;

(G) Type of CEH; and

(H) Number of CEH claimed.

(I) Signature of the instructor or presenter or official stamp of the sponsor signifying attendance and completion of the course.

(b) The board, after reviewing the submitted documentation, will determine:

(A) If the program meets the conditions for the CEH requirement; and

(B) The number of CEH allowed for the program, if any.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

ADMINISTRATIVE RULES

808-040-0060

Continuing Education: Audit, Required Documentation and Sanctions

(1) To ensure adequate proof of continuing education course completion is available for audit or investigation by the Landscape Contractors Board the licensees shall maintain a record of attendance for two years following renewal.

(2) The Landscape Contractors Board will audit a select percentage of renewals determined by the Board to verify compliance with continued education hour requirement at intervals determined by the Board.

(3) Licensees notified of selection for audit of continuing education verification shall submit to the agency within 20 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education outlined in OAR 808-040-0020.

(4) Documentation in the form of a certificate of attendance for a program or course provided by any institution, agency, professional organization or association, must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation;
- (c) Name of instructor or presenter;
- (d) Date of attendance;
- (e) Type of CEH as described on the renewal form;
- (f) Number of approved CEH; and
- (g) Sponsor's signature or official stamp signifying attendance and completion of the course.

(5) Documentation for independent study course, volunteering and other non-sponsored education must include:

- (a) Name of business or organization;
- (b) Date of educational event;
- (c) Names and contact information for a minimum of three (3) persons other than the licensee in attendance;
- (d) Type of CEH claimed;
- (e) Number of CEH approved by the Board; and
- (f) Signature of owner of the business; director of the organization or person leading the event.

(6) If documentation of continuing education is incomplete, the registrant must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for suspending the license, refusing to renew or termination of the license.

(7) Misrepresentation of continuing education or failing to meet continuing education requirements may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the landscape construction professional license.

(8) Failure to submit any of the required CEH documentation as required in subsection (3) through (5) of this rule will result in a civil penalty of \$500 plus suspension of the landscape construction professional license until the complete documentation of the required CEH is received and validated.

(9) The Board may perform an audit on any licensee at any time the board determines necessary to maintain compliance with the CEH requirement.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 550 OL 2007
Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0070

Waivers

(1) CEH waivers. The Board, in its discretion, may waive CEH requirements for:

- (a) Reasons of health, certified by a medical doctor, that prevents the licensee from complying with CEH requirements;
- (b) A licensee who is on extended active military duty, who does not practice as a landscape construction professional during the renewal period, and who provides a copy of orders to active military duty; or
- (c) Other good cause, to be demonstrated as the Board requires.

(2) Requests for waivers. A request for waiver of CEH requirements must be submitted in writing for each renewal period during which the conditions supporting the waiver exist.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 550 OL 2007
Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

808-040-0080

CEH Requirement for Reinstatement to Active Status

Any licensee that desires to reinstate their landscape construction professional license from:

- (1) Inactive status to active status, in addition to any fees must:
- (a) Make a written request for reinstatement of the license;

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 20 CEH requirement for the two years immediately preceding the date the request for reinstatement is received by the LCB agency; and

(c) Meet the CEH requirement for each subsequent renewal period.

(2) Suspended status to Active status, in addition to any fees must:

(a) Fulfill the requirements for removing the suspension as ordered by the board; and

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 20 CEH requirement for the two years immediately preceding the date the request for reinstatement is received by the LCB agency; and

(c) Meet the CEH requirement for each subsequent renewal period.

(3) Expired status to Active status, if the license has been expired less than 24 months, in addition to any fees must:

(a) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 20 CEH requirement for the two years immediately preceding the date the request for reinstatement is received by the LCB agency; and

(b) Meet the CEH requirement for each subsequent renewal period.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: Ch. 550 OL 2007

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Clarifies requirement for probationary license.

Adm. Order No.: LCB 9-2007

Filed with Sec. of State: 12-24-2007

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Rules Amended: 808-003-0015, 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0060

Subject: 808-003-0015 Clarifies requirement for application for a license for probationary license and clarifies what is required at the time of application for a licensed for any unpaid court judgments, arbitration awards or administrative agency final orders.

808-003-0035 Adds probationary as a license category.

808-003-0040 Clarifies limitations for probationary license.

808-003-0045 clarifies how to have probationary status removed.

808-003-0060 Clarifies the examination sections and timelines for a probationary license.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-003-0015

Application for Landscape Contracting Business and Landscape Construction Professional License

(1) Application for a landscaping business license must be on forms provided by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional assumed business names under which the landscaping business is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;

(b) Mailing and location address of the business entity;

(c) Name of all owners and percent of ownership of each owner;

(d) Name and license number of all licensed landscape contractors employed by the business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A business may meet the requirements of ORS 671.565, not withstanding the conditions or ORS 657.044, if the licensed landscape contractor is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscaping business' operations and is receiving remuneration, whether by salary or other payment, for services provided.

(e) Independent contractor certification statement;

(f) A signed statement by the owner of the business, on which the landscaping business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(g) List of all owners and percent of ownership of each owner;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with

ADMINISTRATIVE RULES

the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(j) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) Application for a landscaping business license must be accompanied by:

- (a) Required license fee;
- (b) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships; and

(e) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape contractor who is supervising work for the landscaping business as required in OAR 808-003-0018.

(3) Application for a landscape contractor license shall be on forms provided by the agency and shall be accompanied by:

- (a) Required application and examination fees;
- (b) Verification of experience and/or transcripts or copies of completion certificates from courses of study; and
- (c) If applicable, name of employing licensed landscaping business or businesses.

(d) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" means the person applying for the individual landscape construction professional license;

- (e) Social security number of the applicant;
- (f) Mailing address; and
- (g) Signature of applicant.

(4) If an applicant as defined in subsections (1) and (3) of this rule has any unpaid damages as stated in subsections (1) and (3) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to issue the license.

(5) Application for a probationary landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

- (a) A non-refundable application fee,
- (b) An examination fee; and
- (c) If applicable the name of the employing licensed landscape contracting business or businesses.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08

808-003-0035

License Categories

(1) Licenses may be issued only for the following:

- (a) All Phase;
- (b) Standard; or
- (c) Irrigation and Backflow Prevention.
- (d) Probationary All Phase Plus Backflow

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:

- (a) Irrigation;
- (b) Irrigation and Backflow Prevention;
- (c) Sod & Seed; and
- (d) Trees.

(3) The "All Phase" license shall include standard, irrigation, and Backflow Prevention, unless, in lieu of Backflow Prevention, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work, with the penalty for violation of the agreement being \$1,000 and suspension of the landscaping business license and the landscape contractor license who is the phase basis of the landscaping business.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0020; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 1-1994, f. 5-26-94, cert. ef. 6-1-94; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08

808-003-0040

Limitation of Service by License

(1) A licensed landscaping business shall perform only those phases of landscape work for which its owners or employees who are landscape construction professionals are licensed.

(2) The landscape work a licensed landscaping business offers to perform shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscape work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work;

(b) An irrigation; no backflow limited license holder may only perform irrigation functions;

(c) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(d) A tree limited license holder may only install new or transplant trees;

(e) A standard limited license holder may perform all areas of landscape work except irrigation and the installation of backflow assemblies;

(f) An irrigation plus backflow license holder may perform only irrigation and the installation of backflow assemblies.

(g) A probationary All Phase Plus Backflow license holder may perform all areas of landscape contracting, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000,

(h) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscaping business within a 12 month period the owner or employee who holds the probationary license and is providing supervision as described in ORS 671.540(15) and (16) or 671.565(1)(b) may be required to take specific continued education hours (CEH) as required by the board that are related to the claim issues. Failure to complete the required CEH within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by plumbers licensed by the State Plumbers Board or by licensed landscape contractors who have been qualified by examination to install backflow assemblies and who are either employees or owners of landscaping businesses. If the backflow assembly is installed by a landscape contractor, the landscape contractor or landscaping business shall obtain all required permits and shall install the backflow assemblies in conformance with the permits;

(b) If a landscape contractor or landscaping business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow assemblies or fails to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape contractor or landscaping business license.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 447.060 & 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08

808-003-0045

Change to Limited Licenses

(1) Landscape construction professional holding limited licenses may add to the phase of landscape contracting they perform by taking and passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be taken and passed to hold a standard landscape license:

(a) General license holders must take Laws and Rules, General A, General B, General C, and General D;

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(b) Sod & Seed license holders must take General A, General B, General C, and General D.

(c) Tree license holders must take General A, General B, General C, and General D.

(3) Holders of a General license, Sod & Seed license or a Tree license must take and pass the irrigation and Backflow Prevention sections of the landscape examination to become licensed to perform irrigation work and install backflow prevention devices.

(4) If a landscape contracting business' phase of license changes because its employed landscape construction professional's phases of license changes or because an employed landscape construction professional ceases to be employed by the business, the business shall notify the agency in writing within ten (10) days of the change of license phase to obtain an updated license.

(a) If the individual license holder for a business leaves the employ of the business, the individual license holder must notify the agency in writing (regular mail, fax or email) within ten (10) days of date of departure; and

(b) The business for which this licensee worked must immediately stop performing those phases of landscape contracting work until they have an owner or employee who is licensed to perform those phases of landscape contracting work.

(5) When license limitations change, the agency will issue new a license at no cost to the licensee. The landscape contracting business shall not offer or perform services for which it does not employ or have as an owner a corresponding landscape construction professional licensed to perform those phases of landscape contracting.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08

808-003-0060

Examinations

(1) The exam will consist of the following sections:

(a) Laws & Rules which includes Contract Law, General Business, and Agency Involvement;

(b) General which includes the following sections:

(A) Plants and turf;

(B) General construction;

(C) Grading and drainage; and

(D) General safety, estimating, soil science, chemicals.

(c) Irrigation, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps.

(d) Backflow Prevention, which includes, but is not limited to irrigation and ornamental water feature backflow assemblies, piping, valves, and related plumbing code provisions.

(2) All applicants must take and successfully pass the Laws & Rules section.

(3) If an applicant desires to be able to perform all landscaping including irrigation and the installation of the backflow assemblies, the applicant must take and successfully pass the Laws & Rules, General, Irrigation and Backflow Prevention sections.

(4) If an applicant desires to be able to perform all landscaping except irrigation and the installation of the backflow assemblies, the applicant must take and successfully pass the Laws and Rules and General sections.

(5) If an applicant desires to be able to perform only irrigation and the installation of the backflow assemblies, the applicant must take and successfully pass the Laws and Rules, Irrigation and Backflow Prevention sections.

(6) If an applicant desires to obtain the probationary All Phase Plus Backflow license, the applicant must take and successfully pass the Laws & Rules, General, Irrigation and Backflow Prevention sections within 12 months after the first sitting of any section of the examination.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0025; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Clarifies what is required at time of application and renewal for license for any unpaid court judgments, arbitration awards or administrative agency final orders.

Adm. Order No.: LCB 10-2007

Filed with Sec. of State: 12-24-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 808-003-0230

Subject: 808-003-0230 Clarifies what is required at the time of renewal of a license for any unpaid court judgments, arbitration awards or administrative agency final orders.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-003-0230

Renewal of Landscaping Business and Landscape Contractor License

(1) Application for renewal of a landscaping business license shall be on forms provided by the agency and shall be accompanied by:

(a) Required renewal fee;

(b) Proof of surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) List of licensed landscape contractors, with accompanying license numbers, employed by the business as required under ORS 671.565;

(e) A signed statement by the owner of the business, on which the landscaping business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license; and

(f) List of all owners and percent ownership of each owner;

(g) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(2) Application for renewal of a landscape contractor license shall be on forms provided by the agency and shall be accompanied by:

(a) Required renewal fee;

(b) If applicable, name of employing licensed landscaping business or businesses;

(c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" means the person applying for the individual landscape construction professional license;

(e) Social security number of the applicant;

(f) Mailing address; and

(g) Signature of applicant.

(3) If an applicant as defined in subsections (1) and (2) of this rule has any unpaid damages as stated in subsections (1) and (2) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to renew the license.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.565 & Ch. 609, OL 2005

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 10-2007, f. 12-24-07, cert. ef. 1-1-08

Rule Caption: Suspends delegated authority for an ALJ to issue a final order on behalf of the LCB.

Adm. Order No.: LCB 1-2008(Temp)

Filed with Sec. of State: 1-14-2008

Certified to be Effective: 1-14-08 thru 3-7-08

Notice Publication Date:

Rules Suspended: 808-009-0360

Subject: This rule is being suspended to withdraw the delegated authority for an ALJ to issue a final order on behalf of the LCB.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

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808-009-0360

Order Based on Hearing

If a hearing is conducted, the administrative law judge will prepare findings of fact and conclusions based upon evidence received at the hearing and issue a proposed order for a specific violation or a final order dismissing the matter.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 183.415

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-005-0010; Suspended by LCB 1-2008(Temp), f. & cert. ef. 1-14-08 thru 3-7-08

Oregon Criminal Justice Commission Chapter 213

Rule Caption: Amends Oregon sentencing guidelines in light of 2007 legislative actions.

Adm. Order No.: CJC 3-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 213-018-0068

Rules Amended: 213-003-0001, 213-017-0002, 213-017-0003, 213-017-0004, 213-017-0006, 213-017-0007, 213-017-0008, 213-017-0009, 213-017-0010, 213-018-0050

Subject: The Oregon Legislature enacted legislation creating new crimes (and modifying existing crimes) during the 2007 legislative session. The Criminal Justice Commission is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. CJC also may classify the offenses as person felonies or person misdemeanors for purposes of the rules it is required to adopt. These rules are necessary to comply with that legislative directive.

The rule changes accomplish the following:

Sets the crime seriousness category at 4 for the new crime of Organized Retail Theft—in response to 2007 Oregon Laws Ch. 498 (SB 331 Section 2 (2007)).

Sets the crime seriousness category at 5 for the new crime of Aggravated Identity Theft—in response to 2007 Oregon Laws Ch. 584 (SB 464 Section 1 (2007)).

Sets the crime seriousness category at 5 for the new crime of Purchase or Sale of a Body Part for Transplantation or Therapy, and classifies the crime as a person felony; sets the crime seriousness category at 4 for the new crime of Alteration of a Document of Gift, and classifies the crime as a person felony—in response to the 2007 Oregon Laws Ch. 681 (HB 3092 Section 21, 22 (2007)).

Sets the crime seriousness category at 6 (if vehicle worth \$50,000 or more, excluding theft of motor vehicle used primarily for personal rather than commercial transportation), at 5 (if vehicle worth \$10,000 or more, but less than \$50,000, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation), at 4 (if vehicle worth \$5,000 or more but less than \$10,000, or if vehicle worth \$10,000 or more and used primarily for personal rather than commercial transportation), at 3 (if vehicle worth \$1,000 or more but less than \$5,000, or if vehicle worth more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation), and at 2 (if vehicle worth \$1,000 or less) for the new crime of Criminal Possession of a Rented or Leased Motor vehicle; amends corresponding rule identifying this crime as one divided into different subcategories—in response to 2007 Oregon Laws Ch. 684 (HB 3379 Section 1 (2007)).

Sets the crime seriousness category at 9 (if the offender threatened to cause death or serious physical injury to a person) and at a 6 (if the offender physically restrained or threatened to restrain a person) for the new crime of Subjecting Another Person to Involuntary Servitude I, classifies the crime as a person felony and adopts rule identifying crime as one divided into different subcategories; sets the crime seriousness category at 5 for the new crime of Subjecting Another Person to Involuntary Servitude II, and classifies the crime as a person felony; classifies the new crime of trafficking in Persons

as a person felony—in response to 2007 Oregon Law Ch. 811 (SB 578 Section 2.3 92007)).

Sets the crime seriousness category at 10 for the new crime of Aggravated Vehicular Homicide and classifies the crime as person felony—in response to 2007 Oregon Laws Ch. 867 (HB 2740 Section 1 (2007)).

Sets the crime seriousness category at 6 for the new crime of Luring a Minor and classifies the crime as a person felony; classifies new crime of furnishing sexually explicit material to a child as a class A person misdemeanor—in response to 2007 Oregon Laws Ch. 869 (HB 2843 Section 2,3 (2007)).

Sets the crime seriousness category at 6 for the new crime of Online Sexual Corruption of child in the second degree, and at 8 for the new crime of Online Sexual Corruption of a child in the first degree, and classifies both crimes as person felonies—in response to 2007 Oregon Laws 876 (HB 3515 Section 2,3 (2007)).

Corrects typographical errors in rule numbering and deletes duplicative crime citations.

Rules Coordinator: Craig Prins—(503) 378-4830

213-003-0001

Definitions

As used in these rules:

(1) “Bench probation” means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) “Board” means the State Board of Parole and Post-Prison Supervision.

(3) “Correctional supervision status” means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) “Department” means the Department of Corrections.

(5) “Departure” means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) “Dispositional departure” means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) “Dispositional line” means the solid black line on the Sentencing Guidelines Grid (Appendix 1) which separates the grid blocks in which the presumptive sentence is a term of imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions.

(8) “Durational departure” means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) “Grid” means the Sentencing Guidelines Grid set forth as Appendix 1.

(10) “Grid block” means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender’s criminal history classification.

(11) “Juvenile adjudication” means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) “Non-person felonies” are any felonies not defined as a person felony in section (14) of this rule.

(13) “Optional probationary sentence” means any probationary sentence imposed pursuant to OAR 213-005-0006.

(14) “Person felonies” are in numerical statutory order: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070(1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.160(3) Felony Domestic Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse II; ORS

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163.427 Sexual Abuse I; ORS 163.465 Felony Public Indecency; ORS 163.479 Unlawful Contact with a Child; ORS 163.452 Custodial Sexual Misconduct in the First Degree; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child In Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS 163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.732 Stalking; ORS 163.750 Violation of Court's Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate In Possession of Weapon; ORS 166.385(3), Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 468.951 Environmental Endangerment; ORS 475.984 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.986 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, 0008, and 0011); ORS 609.990(3)(b) Maintaining Dangerous Dog; ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010, Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; 2007 Oregon Laws Ch 681 Purchase or Sale of a Body Part for Transplantation or Therapy, Alteration of a Document of Gift; 2007 Oregon Laws Ch 811 Subjecting Another Person to Involuntary Servitude I and II, Trafficking in Persons; 2007 Oregon Laws Ch 867 Aggravated Vehicular Homicide; 2007 Oregon Laws Ch 869 Luring a Minor; 2007 Oregon Laws Ch 876 Online Sexual Corruption of a Child I and II; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.187 Strangulation; ORS 163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.454 Custodial Sexual Misconduct in the Second Degree; ORS 163.465, Public Indecency; ORS 163.467 Private Indecency; ORS 163.476 Unlawfully Being in a Location Where Children Regularly Congregate; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; ORS 609.990(3)(a) Maintaining Dangerous Dog; ORS 813.010, Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); 2007 Oregon Laws Ch 869 Furnishing Sexually Explicit Material to a Child; and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history or a sentence designated as a presumptive sentence by statute.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) "Supervisory agent" means the local community corrections agency responsible for supervising the offender.

(19) "Supervisory authority" means the state and local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

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

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 387, 510, 635, 828, 857, 884 & 2003 OL Ch. 453, 577 & 2007 OL Ch. 681, 811, 867, 869, 876

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 2-1995, f. & cert. ef. 11-2-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-003-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC

2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0002

Crime Category 10

The following offenses are classified at crime category 10 on the Crime Seriousness Scale:

- (1) ORS 163.095 — AGGRAVATED MURDER — (U). (Attempt or Solicit)
- (2) ORS 163.118 — MANSLAUGHTER I — (A).
- (3) ORS 163.185 — ASSAULT I — (A). (If victim did not substantially contribute to the commission of the offense by precipitating the attack; otherwise CC 9.)
- (4) ORS 163.235 — KIDNAPPING I — (A).
- (5) ORS 163.375 — RAPE I* — (A). (If aggravated by factors listed below; otherwise CC 9.)
- (6) ORS 163.405 — SODOMY I* — (A). (If aggravated by factors listed below; otherwise CC 9.)
- (7) ORS 163.411 — SEXUAL PENETRATION I* — (A). (If aggravated by factors listed below; otherwise CC 9.)
- (8) ORS 164.325 — ARSON I — (A). (If offense represented threat of serious physical injury; otherwise CC 9, 8 or 7.)
- (9) 2007 Oregon Laws Ch 867 — AGGRAVATED VEHICULAR HOMICIDE — (A).

* Rape I, Sodomy I and Sexual Penetration with Foreign Object I shall be ranked at Crime Category 10 if one or more of the following factors were included in the commission of the offense:

- (a) The offender used or threatened to use a weapon;
- (b) The offender caused or threatened to cause serious physical injury;
- (c) The victim was under the age of twelve; or
- (d) The victim was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2007 OL Ch. 867

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0003

Crime Category 9

The following offenses are classified at crime category 9 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.175 — ASSAULT II — (B).
- (3) ORS 163.185 — ASSAULT I — (A). (If victim(s) substantially contributed to the commission of the offense by precipitating attack; otherwise CC 10.)
- (4) ORS 163.225 — KIDNAPPING II - (B).
- (5) ORS 163.375 — RAPE I — (A). (If not categorized at CC 10.)
- (6) ORS 163.405 — SODOMY I — (A). (If not categorized at CC 10.)
- (7) ORS 163.411 — SEXUAL PENETRATION I — (A). (If not categorized at CC 10.)
- (8) ORS 164.225 — BURGLARY I — (A). (If offender was armed with a deadly weapon, or caused, threatened or attempted physical injury; otherwise CC 8 or 7.)
- (9) ORS 164.325 — ARSON I — (A). (If offense did not represent a threat of serious physical injury (CC 10) and the economic loss is greater than \$50,000; otherwise CC 8 or 7.)
- (10) ORS 164.405 ROBBERY II — (B).
- (11) ORS 164.415 ROBBERY I — (A).
- (12) 2007 Oregon Laws Ch 811 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B). (If offender caused or threatened to cause death or serious physical injury to a person; otherwise CC 6.)

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453, 815

Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998 & 2003 OL Ch. 815, 2007 OL Ch. 811

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04, CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0004

Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.125 — MANSLAUGHTER II — (B). (If not categorized at CC 9.)
- (3) ORS 163.145 — NEGLIGENT HOMICIDE — (B). (If not categorized at CC 9.)
- (4) ORS 163.207 — FEMALE GENITAL MUTILATION — (B)
- (5) ORS 163.365 — RAPE II — (B).
- (6) ORS 163.395 — SODOMY II — (B).

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- (7) ORS 163.408 — SEXUAL PENETRATION II — (B).
(8) ORS 163.427 — SEXUAL ABUSE I — (B).
(9) ORS 163.537 — BUYING/SELLING THE CUSTODY OF A MINOR — (B). (If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5)
(10) ORS 163.670 — USING CHILD IN DISPLAY OF SEXUAL CONDUCT — (A).
(11) ORS 163.684 — ENCOURAGING CHILD SEX ABUSE I — (B).
(12) ORS 163.732 — STALKING — (C).
(13) ORS 163.750 — VIOLATE COURT STALKING ORDER — (C).
(14) ORS 164.225 BURGLARY I — (A). (If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)
(15) ORS 164.325 — ARSON I — (A). (If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.)
(16) ORS 164.877(3) — TREE SPIKING-INJURY — (B).
(17) ORS 166.275 — INMATE POSSESSION OF WEAPON — (A). (if firearm, otherwise CC 7.)
(18) ORS 167.012 — PROMOTING PROSTITUTION — (C).
(19) ORS 167.017 — COMPELLING PROSTITUTION — (B).
(20) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A). (CC 4 if minor less than 3 yrs. younger than offender)
(21) ORS 811.705 — HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) — (B).
(22) 2007 Oregon Laws Ch 876 — ONLINE SEXUAL CORRUPTION OF A CHILD I — (B).
Stat. Auth.: ORS 137.667, 811.707 & 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, 2007 OL Ch. 876
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08
- 213-017-0006**
Crime Category 6
The following offenses are classified at crime category 6 on the Crime Seriousness Scale:
(1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).
(2) MAJOR DRUG OFFENSES (See division 19.)
(3) ORS 162.015 — BRIBERY — (B).
(4) ORS 162.025 — BRIBE RECEIVING — (B).
(5) ORS 162.065 — PERJURY — (C).
(6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).
(7) ORS 162.155 — ESCAPE II — (C).
(8) ORS 162.185 — SUPPLYING CONTRABAND — (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
(9) ORS 162.265 — BRIBING A WITNESS — (C).
(10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).
(11) ORS 162.285 — TAMPERING W/ WITNESS — (C).
(12) ORS 162.325 — HINDERING PROSECUTION — (C).
(13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).
(14) ORS 163.165 — ASSAULT III — (C).
(15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).
(16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).
(17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).
(18) ORS 163.275 — COERCION — (C). (No threat of physical injury; otherwise CC 7.)
(19) ORS 163.355 — RAPE III — (C).
(20) ORS 163.385 — SODOMY III — (C).
(21) ORS 163.465 — FELONY PUBLIC INDECENCY — (C).
(22) ORS 163.525 — INCEST — (C). (If one of the participants is under the age of 18; otherwise CC 1.)
(23) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).
(24) ORS 163.688 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).
(25) ORS 164.055 — THEFT I* — (C).
(26) ORS 164.057 — AGGRAVATED THEFT — (B). (Economic loss was greater than \$50,000; otherwise CC 5.)
(27) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY * — (C).
(28) ORS 164.075 — THEFT BY EXTORTION* — (B).
(29) ORS 164.085 — THEFT BY DECEPTION* — (C).
(30) ORS 164.125 — THEFT OF SERVICES* — (C).
(31) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).
(32) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY * — (C).
(33) ORS 164.215 — BURGLARY II* — (C).
(34) ORS 164.315 — ARSON II* — (C).
(35) ORS 164.365 — CRIMINAL MISCHIEF I* — (C).
(36) ORS 164.377 — COMPUTER FRAUD (LOTTERY) * — (C).
(37) ORS 164.377(3) — COMPUTER CRIME* — (C).
(38) ORS 164.868 — UNLAWFUL LABEL SOUND RECORD-ING* — (C).
(39) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).
(40) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).
(41) ORS 164.877(1) — TREE-SPIKING — (C).
(42) INTERFERE W/ AGRICULTURAL RESEARCH* — (C).
(43) ORS 165.013 — FORGERY I* — (C).
(44) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).
(45) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).
(46) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).
(47) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD * — (C).
(48) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).
(49) ORS 165.800 — IDENTITY THEFT* — (C).
(50) ORS 166.015 — RIOT — (C).
(51) ORS 166.165 — INTIMIDATION I — (C).
(52) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).
(53) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).
(54) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).
(55) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN and 5)(a) — PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL — (C).
(56) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).
(57) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).
(58) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).
(59) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
(60) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION * — (C).
(61) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).
(62) ORS 647.150 — TRADEMARK COUNTERFEITING I* -- (B).
(63) ORS 811.182 — DRIVING WHILE SUSPENDED/ REVOKED — (C).
(64) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).
(65) ORS 813.010 — FELONY DRIVING UNDER THE INFLUENCE — (C).
(66) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).
(67) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C). (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
(68) ORS 830.475 — HIT AND RUN BOAT — (C).
(69) 2003 Oregon Laws Ch 543 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).
(70) 2007 Oregon Laws Ch 684 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).
(71) 2007 Oregon Laws Ch 811 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)
(72) 2007 Oregon Laws Ch 869 — LURING A MINOR — (C).
(73) 2007 Oregon Laws Ch 876 — ONLINE SEXUAL CORRUPTION OF A CHILD II — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.
Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

ADMINISTRATIVE RULES

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635 & 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, & 876
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0007

Crime Category 5

The following offenses are classified at crime category 5 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).
- (2) DRUG-RELATED OFFENSES. (See division 19).
- (3) ORS 162.185 — SUPPLYING CONTRABAND — (C). (If contraband includes a controlled substance but no firearms (CC 7) or dangerous weapons (CC 6); otherwise CC 4.)
- (4) ORS 163.537 — BUYING OR SELLING THE CUSTODY OF A MINOR — (B). (If cannot be ranked at CC 8.)
- (5) ORS 163.686 — ENCOURAGING CHILD SEX ABUSE II — (C).
- (6) ORS 164.055 — THEFT I* — (C).
- (7) ORS 164.057 — AGGRAVATED THEFT — (B). (If not categorized at CC 6.)
- (8) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY* — (C).
- (9) ORS 164.075 — THEFT BY EXTORTION* — (B).
- (10) ORS 164.085 — THEFT BY DECEPTION* — (C).
- (11) ORS 164.095 — THEFT BY RECEIVING — (C). (If part of an organized operation; otherwise CC 3.)
- (12) ORS 164.125 — THEFT OF SERVICES* — (C).
- (13) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE * — (C).
- (14) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY * — (C).
- (15) ORS 164.215 — BURGLARY II* — (C).
- (16) ORS 164.315 — ARSON II* — (C).
- (17) ORS 164.365 — CRIMINAL MISCHIEF I * — (C).
- (18) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY) * — (C).
- (19) ORS 164.377(5) — COMPUTER CRIME* — (C).
- (20) ORS 164.395 — ROBBERY III — (C).
- (21) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).
- (22) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).
- (23) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).
- (24) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH* — (C).
- (25) ORS 165.013 — FORGERY I* — (C).
- (26) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).
- (27) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).
- (28) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).
- (29) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD * — (C).
- (30) ORS 165.800 — IDENTITY THEFT* — (C).
- (31) ORS 166.087 — ABUSE OF CORPSE I — (B).
- (32) ORS 166.385(3) — FELONY POSSESSION OF A HOAX DESTRUCTIVE DEVICE — (C).
- (33) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).
- (34) ORS 609.990(3)(b) — MAINTAINING A DANGEROUS DOG — (C).
- (35) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).
- (36) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).
- (37) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).
- (38) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C). (If not categorized at CC 6.)
- (39) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES — (C) <120,000.
- (40) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS — (C)
- (41) ORS 181.599 — FAIL/REPORT SEX OFFENDER — (C).
- (42) 2007 Oregon Laws Ch 584 — AGGRAVATED IDENTITY THEFT — (B).

(43) 2007 Oregon Laws Ch 681 — PURCHASE OR SALE OF A BODY PART FOR TRANSPLANTATION OR THERAPY — (C).

(44) 2007 Oregon Laws Ch 684 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

(45) 2007 Oregon Laws Ch 811 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE II — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or

(b) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.643 & 2003 OL Ch. 383, 453, 543, 632, 2005 OL Ch. 708, 2007 OL Ch. 584, 681, 684, & 811

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0008

Crime Category 4

The following offenses are classified at crime category 4 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).
- (2) DRUG OFFENSES (See division 19).
- (3) ORS 162.185 — SUPPLYING CONTRABAND — (C). (If offense cannot be ranked at CC 5, 6 or 7.)
- (4) ORS 162.205 — FAILURE TO APPEAR I — (C).
- (5) ORS 163.245 — CUSTODIAL INTERFERENCE II — (C).
- (6) ORS 163.689 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF CHILD II — (C).
- (7) ORS 164.055 — THEFT I * — (C).
- (8) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY* — (C).
- (9) ORS 164.075 — THEFT BY EXTORTION* — (B).
- (10) ORS 164.085 — THEFT BY DECEPTION* — (C).
- (11) ORS 164.125 — THEFT OF SERVICES* — (C).
- (12) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).
- (13) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY* — (C).
- (14) ORS 164.215 — BURGLARY II* — (C).
- (15) ORS 164.315 — ARSON II* — (C).
- (16) ORS 164.365 — CRIMINAL MISCHIEF I* — (C). (Except ORS 164.365(1)(e).)
- (17) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY)* — (C).
- (18) ORS 164.377(5) — COMPUTER CRIME* — (C).
- (19) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).
- (20) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).
- (21) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).
- (22) ORS 165.013 — FORGERY I* — (C).
- (23) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).
- (24) ORS 165.032 — CRIMINAL POSSESSION OF FORGERY DEVICE — (C).
- (25) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).
- (26) ORS 165.065 — NEGOTIATING BAD CHECKS * — (C).
- (27) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD * — (C).
- (28) ORS 165.581 — CELLULAR COUNTERFEITING I — (B).
- (29) ORS 165.800 — IDENTITY THEFT* — (C).
- (30) ORS 165.810 — UNLAWFUL POSSESSION PERSONAL ID DEVICE. — (C).
- (31) ORS 166.023 — DISORDERLY CONDUCT I — (C).
- (32) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If not categorized at CC 6)
- (33) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A). (CC 8 if minor 3 or more yrs. Younger than offender.)
- (34) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).
- (35) ORS 181.599 — FAIL/REPORT SEX OFFENDER — (C).
- (36) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).
- (37) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).

ADMINISTRATIVE RULES

- (38) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).
(39) 2007 Oregon Laws Ch. 498 — ORGANIZED RETAIL THEFT — (B).
(40) 2007 Oregon Laws Ch. 681 — ALTERATION OF A DOCUMENT OF GIFT — (C).
(41) 2007 Oregon Laws Ch 684 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

- (a) The value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or
(b) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.
Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.643 & 2003 OL Ch. 383, 453, 543, 632, 2005 OL Ch. 708, 2007 OL Ch. 498, 681 & 684
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0009

Crime Category 3

The following offenses are classified at crime category 3 on the Crime Seriousness Scale:

- (1) ORS Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).
(2) ORS 162.305(2)(b) — TAMPER LOTTERY RECORDS — (C).
(3) ORS 162.355 — SIMULATING LEGAL PROCESS — (C).
(4) ORS 162.365(3)(b) — CRIMINAL IMPERSONATION OF PEACE OFFICER, JUDGE OR JUSTICE OF THE PEACE — (C).
(5) ORS 162.367 — FALSE LAW ENFORCEMENT ID — (C).
(6) ORS 163.535 — ABANDON CHILD — (C).(If not ranked at CC 7.)
(7) ORS 163.555 — CRIMINAL NONSUPPORT — (C).
(8) ORS 164.055 — THEFT I* — (C).
(9) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY* — (C).
(10) ORS 164.075 — THEFT BY EXTORTION* — (B).
(11) ORS 164.085 — THEFT BY DECEPTION* — (C).
(12) ORS 164.095 — THEFT BY RECEIVING — (C).(If not ranked at CC 5.)
(13) ORS 164.125 — THEFT OF SERVICES* — (C).
(14) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE * — (C).
(15) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY * — (C).
(16) ORS 164.215 — BURGLARY II* — (C).
(17) ORS 164.315 — ARSON II* — (C).
(18) ORS 164.365 — CRIMINAL MISCHIEF I* — (C).
(19) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY)* — (C).
(20) ORS 164.377(5) — COMPUTER CRIME* — (C).
(21) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).
(22) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).
(23) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* - (C).
(24) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH* — (C).
(25) ORS 165.013 — FORGERY I* - (C).
(26) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).
(27) ORS 165.055(4)(B) — CREDIT CARD FRAUD* — (C).
(28) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).
(29) ORS 165.070 — POSSESSION OF FAKE COMMUNICATIONS DEVICE — (C).
(30) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD * — (C).
(31) ORS 165.800 — IDENTITY THEFT* — (C).
(32) ORS 166.085 — ABUSE OF CORPSE II — (C).
(33) ORS 167.062(4) — PROMOTING LIVE SEX SHOW — (C).
(34) ORS 167.137 — UNLAWFUL GAMBLING I — (C).
(35) ORS 167.137 — POSSESSION OF GAMBLING RECORDS I — (C).
(36) ORS 167.320 — FELONY ANIMAL ABUSE I — (C).
(37) ORS 167.322 — AGGRAVATED ANIMAL ABUSE I — (C).
(38) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).
(39) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).

- (40) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).
(41) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).
(42) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES — (C) <60,000.
(43) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS - (C) <\$5,000
(44) 2007 Oregon Laws Ch 684 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 3 if either of the following factors was included in the commission of the offense:

- (a) The value of the property stolen or destroyed was \$1,000 or more but less than \$5,000; or
(b) The property stolen was a vehicle valued at more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation.
Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804 Sec. 30 & 58
Stats. Implemented: ORS 137.667 - 137.669, 164.889, 167.109, 167.320, 2003 OL Ch. 383, 453, 804, 2007 OL Ch. 684
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-017-0010

Crime Category 2

The following offenses are classified at crime category 2 on the Crime Seriousness Scale:

- (1) ORS Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).
(2) ORS 164.055 — THEFT I* — (C).
(3) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY * — (C).
(4) ORS 164.075 — THEFT BY EXTORTION* — (B).
(5) ORS 164.085 — THEFT BY DECEPTION* — (C).
(6) ORS 164.125 — THEFT OF SERVICES* — (C).
(7) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).
(8) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY* — (C).
(9) ORS 164.215 — BURGLARY II* — (C).
(10) ORS 164.315 — ARSON II* — (C).
(11) ORS 164.365 — CRIMINAL MISCHIEF I* — (C).
(12) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY)* — (C).
(13) ORS 164.377(5) — COMPUTER CRIME* — (C).
(14) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).
(15) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).
(16) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).
(17) ORS 164.889 — INTERFERE W/AGRICULTURAL RESEARCH* — (C).
(18) ORS 165.013 — FORGERY I — (C).
(19) ORS 165.022 — CRIMINAL POSSESSION FORGED INSTRUMENT I* — (C).
(20) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).
(21) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).
(22) ORS 165.074 - UNLAWFUL FACTORING PAYMENT CARD * — (C).
(23) ORS 165.085 — SPORTS BRIBERY — (C).
(24) ORS 165.090 — RECEIVING SPORTS BRIBE — (C).
(25) ORS 165.579 — CELLULAR COUNTERFEIT II — (C).
(26) ORS 165.800 — IDENTITY THEFT* — (C).
(27) ORS 166.642 — FELON POSSESS SOFT BODY ARMOR — (C).
(28) ORS 167.164 — POSSESS GRAY MACHINE — (C).
(29) ORS 167.167 — CHEATING AT GAMBLING — (C).
(30) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).
(31) ORS 411.630 — OBTAINING PUBLIC ASSISTANCE UNLAWFULLY — (C).
(32) ORS 411.840 — OBTAIN/USE FOOD STAMPS UNLAWFULLY — (C).
(33) ORS 496.992(3) — VIOLATION OF WILDLIFE LAWS — (C).
(34) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).
(35) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).
(36) ORS 811.540 — FELONY ATTEMPTING TO ELUDE (in a vehicle) — (C).
(37) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).

ADMINISTRATIVE RULES

(38) 2003 Oregon Laws Ch 550 — ORGANIZE SPEED RACING EVENT — (C)

(39) 2003 Oregon Laws Ch 632 — UNLAWFUL POSSESSION FICTITIOUS ID — (C)

(40) 2003 Oregon Laws Ch 633 — UNLAWFUL PRODUCTION ODOT ID CARDS — (C)

(41) 2007 Oregon Laws Ch 684 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 2 if the value of the property stolen or destroyed was less than \$1,000.
Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.642, 2003 OL Ch. 383, 453, 550, 632, 633, 2007 OL Ch. 684
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-018-0050

Property Offenses

(1) The same offense seriousness subcategories shall be used for the following offenses ("property offenses"):

- (a) Arson II (ORS 164.315);
- (b) Blue Sky Laws and Securities Laws (ORS Chapter 59);
- (c) Burglary II (ORS 164.215);
- (d) Computer Crime (ORS 164.377(5));
- (e) Computer Fraud (Lottery) (ORS 164.377(5));
- (f) Credit Card Fraud (ORS 165.055(3)(b));
- (g) Criminal Mischief I (ORS 164.365);
- (h) Criminal Possession of Forged Instrument I (ORS 165.022);
- (i) Criminal Possession of a Rented or Leased Motor Vehicle (2007 Oregon Laws Ch 684);
- (j) Forgery I (ORS 165.013);
- (k) Identity Theft, (ORS 165.800);
- (l) Interference with Agricultural Research, (ORS 164.889);
- (m) Interference with Livestock Production (ORS 167.388);
- (n) Negotiating Bad Checks (ORS 165.065);
- (o) Possession of Rented Property (ORS 164.140(4));
- (p) Possession of Stolen Vehicle (ORS 819.300);
- (q) Theft by Deception (ORS 164.085);
- (r) Theft by Extortion (ORS 164.075)(except if threat of physical injury (CC 7));

- (s) Theft I (ORS 164.055);
- (t) Theft of Lost/Mislaid Property (ORS 164.065);
- (u) Theft of Services (ORS 164.125);
- (v) Trademark Counterfeiting I and II, (ORS 647.150; 647.145);
- (w) Unauthorized Use of Vehicle (ORS 164.135);
- (x) Unlawful Factoring Payment Card (ORS 165.074);
- (y) Unlawful Label Sound Recording (ORS 164.868);
- (z) Unlawful Label Videotape (ORS 164.872);
- (aa) Unlawful Record Live Performance (ORS 164.869).

(2) CRIME CATEGORY 6:

(a) Property offenses shall be ranked at Crime Category 6 if the value of the property stolen or destroyed, or if the face value of the instrument forged, possessed or negotiated was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

(b) ORS 165.055(4)(b) Credit Card Fraud shall be ranked at Crime Category 6 if the property stolen or attempted to be stolen was \$50,000 or more.

(3) CRIME CATEGORY 5:

(a) Property offenses shall be ranked at Crime Category 5 if the value of the property stolen or destroyed, or if the face value of the instrument forged, possessed or negotiated was \$10,000 or more but less than \$50,000, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

(b) ORS 165.055(4)(b) Credit Card Fraud shall be ranked at Crime Category 5 if the property stolen or attempted to be stolen was \$10,000 or more but less than \$50,000.

(4) **CRIME CATEGORY 4:** Property offenses shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed, or the face value of the instrument forged, possessed or negotiated was \$5,000 or more but less than \$10,000; or

(b) For offenses charged under ORS 165.055(4)(b), the value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or

(c) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

(5) **CRIME CATEGORY 3:** Property offenses shall be ranked at Crime Category 3 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed, or the face value of the instrument forged, possessed or negotiated was \$1,000 or more but less than \$5,000; or

(b) For offenses charged under ORS 165.055(4)(b), the value of the property stolen or destroyed was \$1,000 or more but less than \$5,000; or

(c) The property stolen was a vehicle valued at more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation.

(6) **CRIME CATEGORY 2:** Property offenses shall be ranked at Crime Category 2 if they cannot be ranked at Crime Category 3, 4, 5, or 6.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453
Stats. Implemented: ORS 137.667 - 137.669, 164.889 & 2003 OL Ch. 383, 2007 OL Ch. 684
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

213-018-0068

Subjecting Another Person to Involuntary Servitude I (2007 Oregon Laws Ch 811)

(1) **CRIME CATEGORY 9:** Subjecting Another Person to Involuntary Servitude I shall be ranked at Crime Category 9 if the offender caused or threatened to cause death or serious physical injury to a person.

(2) **CRIME CATEGORY 6:** Subjecting Another Person to Involuntary Servitude I shall be ranked at Crime Category 6 if the offender restrained or threatened to physically restrain a person.

Stat. Auth.: ORS 137.667
Stats. Implemented: ORS 137.667-137.669; 2007 OL Ch. 811
Hist.: CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08

Rule Caption: Adopts rule governing process for awarding grants for Drug Court Programs.

Adm. Order No.: CJC 4-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 4-12-08

Notice Publication Date: 11-1-2007

Rules Adopted: 213-001-0010

Subject: The legislature has appropriated funding to the Oregon Criminal Justice Commission (CJC) for the purpose of awarding it for use in starting or expanding drug court programs. The Oregon Legislature has directed CJC to adopt rules governing the drug court grant process. This rule is necessary to comply with that legislative directive.

The rule provides as follows: CJC must issue a written request for grant applications for all grant that exceed \$10,000. CJC may award smaller grants using an alternate procedure. CJC must award grant funds based on criteria set forth in the solicitation. CJC may negotiate with a grant applicant to clarify an application or to effect modifications making the application more advantageous to CJC. In evaluating the grant applicants, CJC may consider the merits of each proposal, the geographic distribution of the grant awards, and other criteria deemed relevant by CJC. CJC shall determine the number of grants to be awarded. CJC may waive solicitation requirements or cancel the solicitation in whole or part if such action the Commission determines that it is in its best interest to do so. CJC may amend a grant awarded under the rule. The rule is retroactive to January 1, 2006.

Rules Coordinator: Craig Prins—(503) 378-4830

213-001-0010

Drug Court Grant Procedure

(1) For grants exceeding \$10,000.00, CJC shall use a written solicitation to obtain grant applications. For grants up to and including \$10,000.00, CJC may use alternate methods of selection.

(2) CJC may negotiate with an applicant to clarify its application or to effect modifications that will make the application acceptable or make the application more advantageous to CJC.

(3) CJC shall award grant funds to applicants based on criteria set forth in the solicitation. CJC, in its sole discretion, shall determine the number of grants to be awarded. In awarding grant funds, CJC may consider the merits of each solicitation, the geographic distribution of awardees, and other factors determined to be relevant by CJC.

(4) CJC may, in its sole discretion, waive solicitation requirements or cancel any solicitation in whole or in part if it deems such action to be in the best interests of the Commission.

(5) CJC may amend a grant awarded under this rule.

ADMINISTRATIVE RULES

(6) The provisions of this rule shall apply retroactively to January 1, 2006.

Stat. Auth.: ORS 136.656
Stats. Implemented: ORS 3.450 & 137.656
Hist.: CJC 2-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; CJC 4-2007, f. 12-31-07 & cert. ef. 4-12-08

Oregon Government Ethics Commission Chapter 199

Rule Caption: Lobbyist reporting requirements for last half of 2007 Expenditures.

Adm. Order No.: GEC 1-2007(Temp)

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 1-2-08 thru 6-30-08

Notice Publication Date:

Rules Adopted: 199-010-0068

Subject: The purpose of this rule is to establish the deadline for filing the lobbyist expenditure reports disclosing expenditures for the last six months of 2007. This is the final report filed under ORS 171.745 prior to the January 1, 2008 effective date of OR Laws 2007, Chapter 877 (SB 10).

Rules Coordinator: Virginia Lutz—(503) 378-5105

199-010-0068

Lobbyist reporting requirements for the last half of 2007 expenditures.

(1) The purpose of this rule is to establish the deadline for filing the lobbyist expenditure reports disclosing expenditures for the last six months of 2007. This is the final report filed under ORS 171.745 prior to the January 1, 2008 effective date of Or Laws 2007, Chapter 877 (SB 10).

(2) Lobbying activity expenditures incurred between July 1, 2007 and December 31, 2007 must be reported by January 31, 2008, according to the schedule that was operative, as described in ORS 171.745, prior to January 1, 2008.

Stat. Auth.: ORS 244.290(2)
Stats. Implemented: ORS 171.745
Hist.: GEC 1-2007(Temp), f. 12-31-07, cert. ef. 1-2-08 thru 6-30-08

Oregon Housing and Community Services Chapter 813

Rule Caption: Adds eligibility and the application process for the Housing Preservation Community Incentive Fund.

Adm. Order No.: OHCS 15-2007(Temp)

Filed with Sec. of State: 12-18-2007

Certified to be Effective: 12-18-07 thru 6-14-08

Notice Publication Date:

Rules Adopted: 813-140-0095

Rules Amended: 813-140-0010, 813-140-0050, 813-140-0090

Subject: 813-140-0010 Adds terms and definitions for the Housing Preservation Community Incentive Fund. Administrative changes such as alphabetizing the terms and definitions.

813-140-0050 Removes a project listed on the Oregon Economic and Community Development's "Needs and Issues Inventory" as an eligible project.

813-140-0090 Adds Housing Preservation Community Incentive Fund loans as a loan that the Department may make. Establishes the interest rate and term.

813-140-0095 Establishes the application process for participation in the Housing Preservation Community Incentive Fund.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-140-0010

Definitions

All terms used in OAR chapter 813, division 140, unless otherwise specifically defined herein have the meanings given in ORS 458.705 through 458.740. As used in OAR chapter 813, division 140, unless the context indicates otherwise:

(1) "Board" means the Community Development Incentive Advisory Board established pursuant to ORS 458.710.

(2) "Economic Revitalization Team" means the program of agency cooperation by the Governor's Office to coordinate and streamline state policies, programs and procedures and provide coordinated state agency assistance to local governments. These agencies are: Economic and

Community Development Department, Department of Environmental Quality, Oregon Housing and Community Services Department, Department of Land Conservation and Development, and Oregon Department of Transportation, Department of State Lands, the Department of Agriculture and the Department of Business and Consumer Services. "Regional Economic Revitalization Team" means a regional team comprised of one regional employee with each of the agencies listed above.

(3) "Fund" or "Incentive Fund" means the Community Development Incentive Project Fund.

(4) "Gap Financing" means financing provided by the Fund when other state or private financing sources are inadequate or unavailable to finance a development project.

(5) "Housing Preservation Community Incentive Fund" means a program that provides grants and/or loans to preserve affordable housing developments financed presently or previously by OHCS that have Section 8 project-based rental assistance contracts which have been renewed or will be renewed.

(6) "Program Overview" means a publication available from the Department setting forth general guidelines and information about the program and application process.

(7) "Rural Community" and "Rural Service Center," means an unincorporated community which consists of permanent residential dwellings, and commercial, industrial or (in the case of a Rural Community) public uses to the community, the surrounding rural area, or to persons traveling through the area.

(8) "Six Budget Principals" means those principles stated in Governor Kulongoski's budget document presented in 2004 for the 2005/2007 Legislative Session to grow Oregon's economy and ensure that all Oregon communities — large and small, urban and rural, survive. Those principals are:

(a) Provide our children and adults with the educational opportunities they need to succeed today and in the future;

(b) Take care of our most vulnerable citizens;

(c) Create family-wage jobs for Oregonians;

(d) Maintain the high quality of life we enjoy in Oregon;

(e) Ensure that our citizens are safe in their homes and in their communities, and

(f) Provide for a safe, efficient and accountable state government.

(9) "Small Community Incentive Fund" means a program that provides loans and grants of \$80,000 or less for development projects, meet the criteria of the Incentive Fund program.

(10) "Urban Unincorporated Community," means an unincorporated community which has at least 150 permanent residential dwelling units, contains a mixture of land uses, and includes areas served by a community sewer system and water system.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06; OHCS 17-2006, f. & cert. ef. 9-15-06; OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08

813-140-0050

Eligible Applicants and Eligible Projects

(1) Eligible applicants include local governments and nonprofit and for-profit organizations.

(2) To be eligible for funding, a proposed project must meet the following criteria:

(a) The project must be located within the urban growth boundary of an incorporated city in this state, or in an Urban Unincorporated Community, Rural Community, or Rural Service Center that is served by a community sewer system and/or water system.

(b) The project must achieve at least one of the following three main purposes found in ORS 458.725:

(A) Promoting affordable housing near jobs or transit, developments near jobs and transportation;

(B) Revitalizing downtowns and community centers; and

(C) Rebuilding rural and distressed economies.

(c) The project must demonstrate financial feasibility and soundness based on cash flow projections or documentation submitted with the application.

(d) The project must promote achievement of at least one of the Governor's "Six Budget Principles."

(e) The project must comply with local comprehensive plans and land use ordinances or other regional or local plans.

(f) The project sponsor must demonstrate capacity (including capacity provided by outside consultants or developers) to fully implement the project as documented in application materials.

ADMINISTRATIVE RULES

(g) The project must be locally supported and serve to further the community's goals related to livability and growth.

(h) The for-profit developer that is or will be the owner of the project must demonstrate investment or equity in the project.

(3) Eligible projects include, but are not limited to, a development project that has joint public and private sponsorship and/or ownership.

Stat. Auth.: ORS 458.705 - 458.740
Stats. Implemented: ORS 458.705 - 458.740
Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06; OHCS 17-2006, f. & cert. ef. 9-15-06; OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08

813-140-0090

Lending Criteria

(1) The Department's lending criteria allows the Fund to create quality development patterns, produce a sound loan portfolio and create a sustainable loan fund.

(2) The Department shall permit the assumption of an appropriate level of risk, maintain a reserve for losses, and provide for the periodic monitoring of reserve adequacy as follows:

(a) An applicant for a loan shall demonstrate an ability to repay the debt through forma and other documentation submitted with the application. When applicable, the Department may offer a combination of grants and loans as well as a combination of loan products and terms, as it, in its sole discretion, deems appropriate to ensure repayment.

(b) A loan may be for an income-producing project or for a project in an urban renewal district with available tax increment financing.

(c) A loan may be subordinate to other loans both in terms of payment and lien securing repayment.

(3) The Department may make the following types of loans:

(a) Predevelopment loans for projects that are in the early stage. The purpose of these loans is to finance eligible predevelopment expenses such as architectural, engineering, environmental studies, purchase of options or other eligible expenses as determined by the department. A predevelopment loan shall have maximum term of 12 months and shall be 100% secured by collateral acceptable to the Department. The borrower shall pay a loan fee of 1% of the principal amount of the loan for the regular, or "large" Community Incentive Fund. There is no fee for Small Community Incentive Fund pre-development loan borrowers.

(b) Short-term loans having terms not to exceed 5 years. These loans shall accrue interest at the rate of 1% per annum for the "large" program and 3% for the Small Community Incentive Fund program. Both shall require minimum annual interest payments.

(c) The "large" Community Incentive Fund can offer long-term loans having terms exceeding 5 years, but not exceeding 15 years. These loans shall accrue interest at a rate of 3% per annum and shall require minimum annual interest payments. The Small Community Incentive Fund does not offer long-term loans.

(d) For existing owners remaining in the program, the Housing Preservation Community Incentive Fund can offer 2 percent interest loans with a maximum term of 20 years. Other loans will be at an interest rate and term determined by the Department through project underwriting to best meet the financial viability of the project.

(4) A borrower shall execute such agreements, instruments and other documents that are required by the Department and that are in form and substance satisfactory to the Department. These documents may contain terms and provisions regarding required insurance coverage, loss reserve and periodic reporting requirement, financial ratios, escrow payments, late charges, defaults, priority of liens, and such other matters as the Department deems prudent or appropriate.

Stat. Auth.: ORS 458.705 - 458.740
Stats. Implemented: ORS 458.705 - 458.740
Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06; OHCS 17-2006, f. & cert. ef. 9-15-06; OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08

813-140-0095

Application Process for Housing Preservation Community Incentive Fund

(1) All housing projects financed by OHCS with HUD Section 8 rental assistance contracts which have been renewed or will be renewed are eligible to apply.

(2) Applicants must obtain application materials directly from the Department.

(3) Applicants must submit their applications to the Department contact person listed on application materials.

(4) The Department will analyze the application and determine the appropriate mix of funding sources including tax credits, credit equity, grants and/or loans.

(5) The applications that, in the judgment of the Department, meet program requirements (see Program Overview and application materials), will be summarized for submission to the Advisory Board for their review and recommendation.

(6) Projects will be selected for financing, which in the judgment of the Board (as evidenced by its recommendations to the Director) and the Director achieve the requirements of the Housing Preservation Incentive Fund based on the criteria outlined in application materials and Program Overview.

Stat. Auth.: ORS 458.705 - 458.740
Stats. Implemented: ORS 458.705 - 458.740
Hist.: OHCS 15-2007(Temp), f. & cert. ef. 12-18-07 thru 6-14-08

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend rule to change fee for Temporary Sale Licenses and qualifications for certain categories of applicants.

Adm. Order No.: OLCC 24-2007

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Amended: 845-005-0440

Subject: This rule needs amendment in order to comply with statutory changes regarding temporary sales Licenses (TSL). The amendments will a) change the TSL fee from 425 per five-hour period to \$50 per day, b) change the qualification standard for one category of TSL applicants, from minor patrons being allowed anywhere on the licensed premises throughout the time the event occurs, to commission of approval of a written plan detailing how minors will be prevented from gaining access to alcoholic beverages and how minors will be prevented from gaining access to any portion of the licensed premises prohibited to minors, and c) allow a TSL to be issued to a non-profit trade association whose membership is primarily comprised of persons holding winery licenses or grower sales privilege licenses. The changes need to be made to comply with the 2007 legislature's House Bill 2168. Further amendments proposed by staff are a) adding language defining "License Day" in the new section (2) and adding language clarifying the number of license days that can be approved on a single application in the new section (3), b) deleting section (12) regarding the prohibition against "ongoing business operation" while replacing it with new language in the new section (17) clarifying the limitation that the same licensee at a single event can be issued TSL's for no more than 31 license days per calendar year, and c) the deletion of language distinguishing between routine and non-routine applications and modifying the timeline prior to the event for application submittal in the new section (7).

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

845-005-0440

Temporary Sales Licenses

(1) A person must obtain from the Commission a license or authority to sell alcoholic beverages. ORS 471.405 establishes a prohibition on sale of alcoholic beverages without a license or authority. ORS 471.406 defines sale of alcoholic beverages. This rule sets the requirements for obtaining a Temporary Sales License.

(2) Definitions. For this rule:

(a) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$50 per license day or for any part of a license day.

(b) "Nonprofit trade association" means an organization comprised of individual or business members where the organization represents the interests of the members and is registered with the state of Oregon as a nonprofit association.

(c) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(d) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity.

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(e) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(g) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(3) ORS 471.190 authorizes the Commission to issue a Temporary Sales License. Temporary Sales Licenses are issued in increments of one license day. The Commission will not approve more than seven license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than seven days. The Commission may issue a Temporary Sales License only to applicants that qualify under the Commission's licensing standards and that are:

(a) A nonprofit or charitable organization that is registered with the state, including nonprofit trade associations where at least 51% of the total membership is comprised of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227; or

(b) A political committee that has a current statement of organization filed under ORS 260.039 or 260.042; or

(c) An agency of the State; or

(d) A local government or an agency or department of a local government; or

(e) Any applicant not described in (3)(a)–(3)(d) of this subsection, including licensees of the Commission.

(4) A Temporary Sales License may authorize the licensee to sell wine, malt beverages and cider at retail for consumption on the licensed premises and for consumption off the licensed premises. All alcohol sold for consumption off the licensed premises must be in a manufacturer-sealed container that does not hold more than two and one-quarter gallons.

(5) A Temporary Sales License may authorize the licensee to sell distilled liquor by the drink at retail for consumption on the licensed premises.

(6) The Commission may authorize sales of manufacturer-sealed containers of wine, malt beverages or cider under a Temporary Sales License for the purpose of a raffle. The Commission shall issue a Temporary Sales License for the purpose of a raffle only to a nonprofit or charitable organization that is registered with the state.

(7) Applicants must apply in writing for a Temporary Sales License, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(8) The application for a Temporary Sales License under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (9) of this rule; and

(C) Alcohol consumption by adults.

An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (7) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage events on the licensed premises;

(c) Identification of the premises proposed to be licensed;

(d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

(f) The recommendation in writing of the local governing body where the licensed premises will be located;

(g) License fees as established by ORS 471.311.

(9) A plan for managing patronage by minors under subsection (8)(a) of this rule must meet the following requirements:

(a) If the Temporary Sales License will be on any part of a premises, room, or area with a permanent license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the permanent license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the Temporary Sales License will not be on any part of a premises, room, or area with a permanent license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(10) Minors are prohibited from the licensed premises or portions of the licensed premises as follows;

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there is video lottery games, social games, or nude entertainment or where such activities are visible.

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(11) Alcohol servers at locations licensed under subsections (3)(b)-(e) of this rule must hold valid service permits unless specifically exempted under authority of subsection (12) of this rule.

(12) The Commission may waive the service permit requirement for the holder of a Temporary Sales License issued under subsections (3)(b)-(e) of this rule, and the licensee's alcohol servers, if:

(a) The license is used only for package sales; or if

(b) The Commission concludes alcohol service by individuals who do not hold a service permit does not pose a significant risk for public safety problems or non-compliance with liquor laws; and

(c) Each alcoholic beverage point-of-sale at the licensed location is staffed, at all times alcoholic beverages are being sold or served, by an individual who has completed a Server Education course successfully within 5 years prior to the date of the event.

(13) At events licensed under subsection (3)(a) of this rule, before allowing alcohol servers to sell or serve alcoholic beverages, the licensee must ensure that all alcohol servers have met one of the following standards:

(a) The alcohol server has a valid service permit or has successfully completed a Server Education course within 5 years prior to the date of the event, or

(b) The alcohol server has attended training provided by the licensee, and has read, signed and dated the Commission-provided brochure, *What Every Volunteer Alcohol Server Needs to Know*. The licensee-provided training must address the topics included in the brochure, including but not limited to: minors and proper checking of identification, and how to recognize and respond appropriately to visibly intoxicated persons. At any time while on duty, the alcohol server shall make the signed brochure available for immediate inspection by any inspector or investigator employed by the Commission or by any other peace officer.

(14) If there are compliance problems with an operator or an event, the Commission may add other requirements for the education of servers at events licensed under this rule.

(15) The Commission may deny, cancel or restrict a Temporary Sales License for any reason for which the Commission may deny, cancel or restrict a regular license.

(16) The Commission may deny or restrict a Temporary Sales License if the applicant has a serious violation history at events previously licensed with a Temporary Sales License within the past 36 months.

(17) The Commission shall limit the issuance of Temporary Sales Licenses to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year, unless the Commission determines that the applicant would be eligible for an annual license based on the applicant's personal qualifications and the total number of license days at the same location does not exceed 60 in that calendar year.

(18) The Commission may refund the Temporary Sales License fee if the application is withdrawn by the applicant or denied by the Commission, if the event does not take place because of circumstances beyond the applicant's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(19) When the Commission approves a written plan under subsection (8)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a category III violation.

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(20) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

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

Stats. Implemented: ORS 471.190

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 4-2001(Temp), f. & cert. ef. 8-15-01 thru 2-11-02; OLCC 13-2001, f. 12-18-01, cert. ef. 2-12-02; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 24-2007, f. 12-17-07, cert. ef. 1-1-08

Rule Caption: Amend to allow minors in performing arts centers when there is drinking in the seats.

Adm. Order No.: OLCC 25-2007

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Amended: 845-006-0340

Subject: This rule describes the minor postings that the Commission assigns to those licensed premises that allow on-premises consumption. These minor postings define if and under what conditions minors are allowed in areas where alcohol is consumed or there is a drinking environment.

Section (2)(b) of this rule regarding concert halls and performing arts centers is being amended so that minors may be allowed to attend their events while adults are drinking alcoholic beverages in the seating areas. Minors are currently allowed in these venues if drinking is limited to the lobby areas before the event and during intermission. The licensee must give the Commission a written security plan that convinces the Commission minors will not get alcohol.

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

845-006-0340

Minor Postings

(1) Purpose. The Commission is charged with regulating the sale of alcohol in a manner which protects the safety and welfare of the citizens, and ensures that alcohol is used legally. As a policy making body, the Commission has a responsibility to send a clear message to the community and its youth that drinking alcohol is an adult activity, and that drinking environments are for adults. At the same time, the Commission recognizes the need to maximize opportunities for minors to eat at licensed premises while minimizing their exposure to drinking environments. This rule applies only to licenses that allow on-premises consumption.

Note: Words or phrases followed by an asterisk (*) are defined in Section 8, Definitions, of this rule.

(2) When Minor Patrons are Allowed. Unless prohibited under Section 3, the Commission uses the criteria in this section to assign minor postings. The Commission allows minors on licensed premises where the license allows on-premises consumption only under the following circumstances:

(a) Minors may be in an area for the purpose of consuming food or refreshments during hours when eating predominates* in that area;

(b) Minors may be in concert halls* and at performing arts centers* for the purpose of attending a performance or lecture if drinking is minimal and is allowed in lobby areas preceding the event and during intermissions and in seating areas during the event, or if drinking is physically confined to areas prohibited to minors. The licensee must give the Commission a written security plan that convinces the Commission minors will not get alcohol;

(c) Minors may be in dance halls* for the purpose of attending a dance if drinking at the time of the dance is physically confined to areas prohibited to minors, and if alcohol service is incidental, and if:

(A) The areas where minors are allowed is lighted to allow effective monitoring of patron activity;

(B) The area where minors are allowed has minimal alcohol advertising or references;

(C) The area where alcohol is sold, dispensed and/or consumed is physically confined and is not visible from the area where minors are allowed, or if visible, has substantial barriers to ensure minors will not obtain alcohol;

(D) The licensee has a Commission approved security plan that convinces the Commission minors will be in an environment that is consistent with section (1) of the rule, where they will not get alcohol, and that the licensee will employ sufficient staff to monitor patron activity.

(E) If a liquor law violation involving a minor occurs, the Administrator may require that additional control measures be added to the security plan before the next license renewal date.

(d) Minors may be in a foyer or similar area if the area does not have a drinking environment*;

(e) Minors may be in an area of a hotel, convention center, golf course, bowling alley, zoo, amusement park, museum, laundromat or bookstore where there is no drinking environment as defined in Section (8)(d)(B) of this rule, and where drinking is minimal;

(f) Minors may be in a separate game room if no alcohol is allowed in the room and if minors are otherwise allowed in the premises;

(g) Minors may accompany their parent or legal guardian in the tasting room or tasting area of an Off-Premises Sales, Winery, Brewery, brandy Distillery or business with a Grower Sales Privilege license;

(h) Minors may be in areas of an Off-Premises Sales, Winery, Brewery, brandy Distillery or business with a Grower Sales Privilege license where there is no drinking;

(i) Minors may be in an area prohibited to minors while in the immediate company of their spouse who is at least 21 years old, if the licensee permits it;

(j) Minors may be allowed in other circumstances where the licensee's operating plan is consistent with the intent of this rule, and the Administrator approves it. The Administrator periodically reports these circumstances to the Commissioners to determine whether clarifying rule-making is needed.

(3) Exceptions. Even when allowed under the above circumstances:

(a) Minors may not sit at a bar;

(b) Minors may not be in an area where there is a drinking environment during happy-hours or similar reduced-price drink hours;

(c) Minors may not be in a Number IV posted area except for the purpose of consuming food, and may not use entertainment devices in that area;

(d) Minors may not be in an area where there is video poker or other gambling (except parimutuel gambling, bingo, raffles, keno monitors, pull tabs and lottery scratch tickets authorized and regulated by the State of Oregon), nude entertainment or stage revues* which are often found in adult* drinking environments. Minors may not be in an area where this entertainment is visible;

(e) Section (3) of this rule does not apply to minor spouses, as provided in Section (2)(i) of this rule.

(4) Minor Postings. The Commission uses the following minor posting signs to tell the public where minors are allowed or prohibited, and to assist licensees in controlling the presence of minors. When the facts do not clearly and convincingly meet the criteria for allowing minors, the Commission interprets the rule to prohibit minors. The Commission does not assign more than one type of minor posting to an area unless there are definable boundaries. The following information is intended as general guidance to Commission staff.

(a) "No Minors Permitted Anywhere on This Premises", (Number I Minor Posting). The Commission typically assigns this posting to entire premises where there is a drinking environment. Some examples are taverns and one-room bars.

(b) "No Minors Permitted in This Portion of The Premises", (Number II Minor Posting). The Commission typically assigns this posting to areas of premises where there is a drinking environment. Some examples are lounges, gambling rooms, the bar and other drinking areas.

(c) "Minors Allowed in This Area", (Number III Minor Posting). The Commission typically assigns this posting to areas or entire premises where eating or some other activity generally predominates over drinking. The Commission does not assign this posting to areas where there is a drinking environment. The Commission does not generally require the Number III sign to be physically posted. Minors may use entertainment devices in Number III posted areas. Some examples are restaurants, dining rooms in premises with separate lounges, hotel lobbies, bowling alley concourses and golf courses.

(d) "Minors Allowed From: ___ To: ___ (Hours) On: ___ (days)", (Number III-A Minor Posting). The Commission typically assigns this posting to allow minors in restaurants or dining rooms during times when eating predominates and where there is not a drinking environment (as defined in Section (8)(d)(B)), and to prohibit minors during times when more people are drinking alcohol than eating meals. Minors may use entertainment devices. Minors may not be in Number III-A posted areas after 9:00 p.m. An example is a pizza parlor with karaoke in an area that does not have a likeness to a tavern, bar or lounge (Section (8)(d)(B)), and eating predominates during some hours. Minors are allowed in the area and may participate in karaoke during the hours when eating predominates, but minors are not allowed during the hours when eating does not predominate.

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(e) "Minors Allowed During These Hours Only. On: (days) from: ___ to: ___ and only for the purpose of consuming food, (Number IV Minor Posting). The Commission typically assigns this posting to an area or entire premises that often has a drinking environment to let minors consume food during times when eating predominates. An example is a tavern or pub where eating predominates over drinking during lunch or dinner.

(f) "No Minors Permitted Unless with a Parent or spouse age 21 or over", (Number V Minor Posting). The Commission typically assigns this posting to tasting rooms.

(5) Temporary Relaxation of Minor Postings. The Commission recognizes that under special, limited circumstances, it may be appropriate to allow minors in areas where minors are normally prohibited. The Commission does this to meet a community need or to offer minors a controlled alternative to alcohol-oriented private parties. Therefore, the Commission may grant a temporary relaxation of a minor posting for an occasional event held on a licensed premises.

(a) The Commission does not grant relaxations when:

(A) There has been a recent serious violation history* in the room, area or entire premises; or

(B) During the activity, the area has video poker or other gambling (except parimutuel gambling, bingo, raffles, keno monitors, pull tabs and lottery scratch tickets authorized and regulated by the State of Oregon), stage revues, wet t-shirt events, mud wrestling or nude entertainment which are often found in adult drinking environments. The Commission does not grant relaxations if any of this entertainment is visible from the area where the activity is held.

(b) The Commission may temporarily allow minors into a normally prohibited area under these circumstances:

(A) The licensee needs additional space for overflow family dining for widely recognized holidays, such as Mother's Day, Father's Day and Thanksgiving, and eating predominates;

(B) The activity is a special family event held in a physically separate room or area. The general public is not allowed at the event. Some examples are wedding receptions and family reunions;

(C) The activity is sponsored and promoted by a civic group*. An example is a school-sponsored party. The following conditions apply:

(i) The group must make a written statement that no other facility in the community is available that can reasonably accommodate the activity;

(ii) A group may sponsor one activity at a licensed premises per quarter;

(iii) The licensed premises has no recent serious violation history*;

(iv) All alcohol must be covered and may not be served or consumed in the room or area;

(v) No imitation cocktails or non-alcoholic beer or non-alcoholic wine are allowed;

(vi) No alcohol advertising is visible; and,

(vii) Minor posting signs which prohibit minors must be covered during the activity.

(c) If the Commission grants a relaxation and the licensee violates any of the conditions, it is a Category IV violation.

(6) Temporary and Permanent Changes to Minor Postings:

(a) A licensee may not change a minor posting without prior written approval of the Commission. A licensee must submit a change request in writing. The Commission approves or denies a licensee's request in writing.

(b) The Commission may change a minor posting if:

(A) The posting is inconsistent with this rule;

(B) A licensee requests a posting that is consistent with this rule; or

(C) As a result of a liquor law violation, minors should be prohibited.

(7) Licensee Responsibilities:

(a) The burden is on the licensee to convince the Commission that "eating predominates", that the premises does not have a "drinking environment" or that drinking is minimal;

(b) The licensee is responsible for developing and completing any required written security plan;

(c) A licensee must place minor posting signs in full public view as directed by the Commission. A licensee must immediately replace any altered, unreadable or missing sign. Failure to do so is a Category V violation.

(8) Definitions. For this rule:

(a) "Eating predominates" means at least two of the following conditions exist in the area proposed for minor patronage during the time minors are present:

(A) More people eat meals than drink alcohol (or the licensee reasonably projects this);

(B) Gross sales of food exceed gross sales of alcohol (or the licensee reasonably projects this);

(C) More floor or table space is used for eating meals than for drinking alcohol.

(b) "Concert hall" and "performing arts center" mean a premises offering live performances of the arts such as music, dance, theater, or lectures where fixed seating is provided in the performance room for each ticket holder and there is no location provided for patron dancing.

(c) "Dance hall" means a premises or a portion of the premises which is not ordinarily used as a dining area, and where music is provided and where minors patrons or patrons of all ages are provided a location where they may dance.

(d) "Drinking environment" means:

(A) More people drink alcohol than eat meals; or

(B) There is a combination of conditions and factors which collectively create a likeness to a tavern, bar or lounge. Examples are cocktail tables, a bar, bar equipment and accessories, dance floor, dim lighting, alcohol advertising, entertainment devices, games, music and multiple televisions.

(e) "Recent serious violation history" generally means two violations involving minors, visibly intoxicated people, illegal activities, disorderly conduct or drinking on duty. However, if the circumstances of a violation are severe, one violation may be sufficient. Recent means within the last two years while operating with a liquor license.

(f) "Civic group" means a non-profit corporation, association or political entity, or any authorized representative of a governmental entity. Examples are parent-teacher associations, Rotary and Toastmasters. Civic group does not include any group made up primarily of minors.

(g) "Stage revue" means a live performance with adult or sexual themes of a type usually performed on a stage, involving players performing such activities as skits, song, dance and comedy routines.

(h) "Adult" means 21 years of age or older.

(9) Other Information on Minor Postings.

(a) The Commission does not usually assign minor postings in:

(A) Private clubs;

(B) Catered and temporary events;

(C) Areas of annually licensed businesses which are used for a variety of events, except those areas where there is a drinking environment as defined in paragraph (8)(d)(B). Some examples are convention centers, sports arenas, operations with banquet rooms, and multi-use outdoor areas; or

(D) Designated tasting areas in Off-Premises Sales licensed premises that are not used primarily for tasting.

(b) However, the Commission may assign a minor posting to these businesses for the following reasons:

(A) To prevent violations from occurring or reoccurring;

(B) In response to the licensee's request; or

(C) To manage special events on annually licensed premises.

However, the Commission generally regulates the presence and activities of minors on these premises by placing conditions and/or restrictions on the license, or by approving or rejecting the licensee's plan for premises and patron management.

(c) Minor Postings apply 24 hours a day.

(10) Hearing Rights. If Commission staff deny a licensee's written request to change or temporarily relax a minor posting, the licensee has the right to a hearing to contest the decision. However, the licensee must comply with the decision unless the Commission issues a final order which reverses the staff decision.

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

Stats. Implemented: ORS 471.430(3)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2003, f. 9-23-03 cert. ef. 11-1-03; OLCC 25-2007, f. 12-17-07, cert. ef. 1-1-08

Rule Caption: Amend rules to allow progressive coupons for both distilled spirits & beer, wine and cider

Adm. Order No.: OLCC 26-2007

Filed with Sec. of State: 12-17-2007

Certified to be Effective: 1-1-08

Notice Publication Date: 10-1-2007

Rules Amended: 845-007-0015, 845-015-0165

Subject: OAR 845-015-0165 Supplier Rebates on Distilled Spirits:

This rule describes the sorts of rebates and coupons which are allowed for distilled spirits, and regulates how rebate coupons are to be redeemed. The Distillery Representatives of Oregon and Young's Market Company of Oregon petitioned the agency to amend OAR 845-015-0165 by deleting language which only permits progressive-type coupons for a limited period of time. The rule language allowing progressive-type coupons was due to expire March 1, 2008. Progressive-type coupons allow a larger discount as progressively more

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alcohol is purchased. Per the petitioner's request, we eliminate the "sunset" provision on progressive-type coupons for distilled spirits.

OAR 845-007-0015 Advertising Media, Coupons:

This rule regulates the sorts of advertising and coupons which are allowed for the sale of beer, wine and cider in Oregon. Because, parallel to the distilled spirits rule, the intent of OAR 845-007-0015 was to allow progressive-type coupons for beer, wine and cider for a limited time period so as to evaluate their impact, the Commission initiated action on this rule at the same time it accepted the distilled spirits rule petition. Because this rule was silent on the issue of progressive-type coupons, this rule was also amended, adding language so as to parallel the amendment of OAR 845-015-0165.

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

845-007-0015

Advertising Media, Coupons

(1) The Commission prohibits advertising through:
(a) Handbills that are posted or passed out in public areas such as parking lots and publicly owned property; and
(b) Point of sale items on premises where the advertised product is not sold.

(2) The Commission may prohibit advertising through additional media consistent with the objectives in OAR 845-007-0005.

(3) The Commission allows manufacturers to give consumer rebates on malt beverages, wine and cider. Progressive-type coupons which provide a larger rebate when progressively more alcohol is purchased are permitted. An example of this would be a rebate that offers \$5 for the purchase of one six-pack/bottle but \$12 for two. All advertising associated with rebate coupons must comply with applicable state and federal law and regulations. The manufacturer must furnish rebate coupons to all licensees carrying the product for off-premises consumption. The manufacturer is responsible for the redemption of rebate coupons. No retail licensee may receive any money or similar benefit from the redemption of any coupons. All rebate coupons offered in the State of Oregon must meet the following requirements:

- (a) Coupons must be redeemable only by mail;
 - (b) Coupons must bear an expiration date;
 - (c) Manufacturers must require proof of purchase;
 - (d) Coupons must be valid only for adults of legal drinking age.
- (4) The Commission may require withdrawal of the rebate coupon if the manufacturer does not comply with the conditions of the rebate coupon or Commission rules.

(5) The Commission allows the use of instantly redeemable and mail-in coupons for food, non-alcoholic beverages and non-food items. Coupons are prohibited for generic products (for example: "beef," "soda," "flowers," etc.) Use of coupons must conform with the principles of OAR 845-013-0001. Coupons are prohibited for items prepared or manufactured by the retailer, such as: deli trays, in-house bakery products, "ready to eat" foods, and private label products. A licensee who violates this section commits a Category IV violation under the Commission's sanction schedule (OAR 845-006-0500).

(6) The Commission allows customer loyalty programs such as "club cards" if the promotion (club card) is offered without discrimination to all customers of the retail licensee. The retail licensee must pay for all discounts on alcoholic beverages provided to holders of the club card.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.750(7)
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; LCC 7-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0091; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 6-1998, f. 5-21-98, cert. ef. 6-1-98; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 2-2004, f. 2-17-04, cert. ef. 6-1-04; OLCC 15-2006, f. 10-19-06, cert. ef. 11-1-06; OLCC 26-2007, f. 12-17-07, cert. ef. 1-1-08

845-015-0165

Supplier Rebates on Distilled Spirits

(1) The Commission allows suppliers to give consumer rebates on distilled spirits. Progressive-type coupons which provide a larger rebate when progressively more alcohol is purchased are permitted. An example of this would be a rebate that offers \$5 for the purchase of one bottle but \$12 for two.

(2) Suppliers will distribute distilled spirits rebate coupons only through retail liquor stores or by publishing them in newspapers or magazines. Any newspaper or magazine advertising associated with rebate coupons must comply with OAR 845-015-0175, 845-015-0177, and any other applicable state and federal regulations.

(3) All rebate coupons offered in the State of Oregon must meet the following requirements:

- (a) Rebate coupons must be redeemable only by mail;
- (b) Rebate coupon offers must bear an expiration date;

(c) The supplier must require proof of purchase;
(d) Rebate coupons must be valid only for adults of legal drinking age. The Commission may require withdrawal of the rebate coupon if the supplier does not comply with the conditions of the rebate coupon or Commission rules.

(4) The supplier must furnish rebate coupons to all retail liquor stores carrying the product. Any advertising materials such as posters, signs, banners, or display racks the supplier provides to promote rebate coupons in a retail liquor store must comply with OAR 845-015-0175, 845-015-0177, and any other applicable state and federal regulations.

(5) The supplier is responsible for the redemption of rebate coupons. The supplier and the retail customer are responsible for settling any disagreement about the supplier's coupon.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.750(1)
Hist.: LCC 2-1983, f. 3-8-83, ef. 7-1-83; LCC 2-1985, f. 2-28-85, ef. 4-1-85; OLCC 19-1991, f. 10-31-91, cert. ef. 11-1-91; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0055; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03; OLCC 3-2006, f. 2-22-06, cert. ef. 3-1-06; OLCC 26-2007, f. 12-17-07, cert. ef. 1-1-08

Oregon State Marine Board Chapter 250

Rule Caption: Establish a "Slow No Wake" zone on Siltcoos Lake near Camp Baker.

Adm. Order No.: OSMB 1-2008

Filed with Sec. of State: 1-15-2008

Certified to be Effective: 1-15-08

Notice Publication Date: 11-1-2007

Rules Amended: 250-020-0221

Subject: This rules establishes a "Slow No Wake" zone on Siltcoos Lake near Camp Baker.

Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0221

Boat Operations on Certain Waters in Lane County

(1) No person shall operate a motorboat in excess of 5 MPH ("Slow No Wake") in the following areas:

(a) Triangle Lake: Within 200 feet of a marked swimming area or a designated public launching ramp;

(b) Fern Ridge Lake:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) In the Coyote Creek Channel;

(C) Between shore and buoy line which extends southerly from the north shore to a point approximately 200 feet of the northern most Eugene Yacht Club mooring dock thence generally south and west approximately 200 feet of the docks to a point approximately 200 feet south of the Tri Pass Club mooring dock thence generally west to the southern tip of the Tri Pass Club dock as buoyed except for the buoyed corridor immediately south of the Eugene Yacht Club southernmost dock;

(D) South of the buoy line which extends easterly from a point approximately 100 yards north of the Perkins Boat Ramp to the adjacent shoreline;

(E) In the Main Long Tom River Channel.

(c) Dexter Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) Within 50 feet of the causeway crossing the reservoir.

(d) Lookout Point Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) East of the Southern Pacific Railroad bridge.

(e) Dorena Dam Reservoir

(A) Within 200 feet of a marked swimming area or a designated public launching ramp.

(B) Southeast of a line between markers on Humphrey Point and the northeast shore.

(f) Cottage Grove Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) South of a line between a marker on the east shore, near the Wilson Creek area, and on the west shore near Cedar Creek.

(g) Hills Creek Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) On Packard Creek arm west of Rigdon Road (USFS Road #21);

(C) On Hills Creek south of the Hills Creek Crossing Bridge;

ADMINISTRATIVE RULES

Oregon State Treasury Chapter 170

(D) On the Middle Fork, Willamette River south of the Rigdon Road (USFS #21) (Upper Crossing) Bridge;

(E) No person shall operate a motorboat for any purpose on Larison Creek arm west of Rigdon Road (USFS Road #21).

(h) Collard Lakes;

(i) Picket Lake;

(j) Munsel Lake: West of the line of marker buoys;

(k) Fall Creek Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) On Fall Creek upriver from the buoys located approximately 200 feet downstream of the Big Fall Creek Road;

(C) On Winberry Creek upriver from the buoys located approximately 1800 feet downstream of the Winberry Creek Road Bridge.

(l) Siltcoos Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) Between shore and buoy line at the mouth of Kiechle Arm beginning at a point at the east shoreline of Arrowhead Point and extending northerly approximately 900 yards to a point approximately 100 yards off shore of Camp Baker during the period of June 1 through September 30.

(2) No person shall operate a motorboat in excess of 5 MPH on Leaburg Reservoir and the McKenzie River from the dam upstream to Good Pasture Bridge.

(3) No person shall operate a motorboat in excess of a "Slow-No Wake" speed within 300 feet of a boat launching ramp or a boat moorage on the following bodies of water (for purpose of this regulation, "Slow-No Wake" speed means the speed of a boat shall not exceed 5 MPH):

(a) Waldo Lake;

(b) Cougar Reservoir;

(c) Blue River Reservoir;

(d) Siuslaw River — between the river entrance and the highway bridge at Mapleton.

(4) No person shall operate a motorboat for any purpose on the following lakes: Scott, Melakwa, Hidden, Blair, Upper Erma Bell, Middle Erma Bell, Lower Erma Bell, Torrey, Whig, Wahanna, Rigdon, Lower Rigdon, Kiwa, Upper Eddeleo, Round, Betty, and Alameda.

(5) No person shall operate a motorboat for any purpose in excess of 10 MPH on Munsel Lake east of the line of marker buoys, except from June 1 through September 30, between the hours of 10 a.m. and 5 p.m.

(6) No person shall operate a motorboat on the McKenzie River above Good Pasture Bridge, except a representative of the Oregon State Police or the County Sheriff's Office pursuant to a criminal investigation or search and rescue operation.

(7) No person shall operate a motorboat, except with an electric motor:

(a) In the Old Long Tom River Channel;

(b) On Fern Ridge Reservoir south of State Highway 126;

(c) On Hult Reservoir.

(8) No person shall operate a propeller-driven airboat or non-displacement hull type hovercraft in the following areas on Fern Ridge Reservoir where there is emergent vegetation present:

(a) Coyote Creek area — east of a line beginning at the West Coyote Creek bridge at Highway 126 extending north approximately one mile to a point near the mouth of Coyote Creek, then extending north approximately 1.4 miles to a point located approximately 100 yards off shore of the north-west corner of Gibson Island;

(b) Amazon Bay area — east of a line beginning at a point located approximately 100 yards off shore of the northwest corner of Gibson Island extending northeast approximately one mile to the Shore Lane access;

(c) South Marsh area — west of a line extending from a point on the shoreline at the southern boundary of Zumwalt Park near the end of Vista Drive extending southeast approximately one mile to a point on the shoreline at the tip of Perkins Peninsula;

(d) Long Tom Area — southwest of a line beginning at a point on the shore line at the end of Moyer Lane extending southeast approximately 0.9 miles to a point on the west shoreline of the Jeans Peninsula at the north end of Winter Lane.

(9) No person shall operate a motorboat north and east of a line across the entrance of Bannister Cove on Lookout Point Reservoir, as marked.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.175

Hist.: MB 21, f. 8-23-63; MB 27, f. 6-3-65; MB 31, f. 6-20-66; MB 42, f. 12-3-68; MB 44, f. 8-21-69; MB 48, f. 6-28-71, ef. 7-25-71; MB 49, f. 8-14-72, ef. 9-1-72; MB 3-1979(Temp), f. & ef. 6-22-79; MB 5-1979, f. 7-31-79, ef. 8-1-79; Renumbered from 250-020-0131; MB 8-1981, f. & ef. 11-16-81; MB 5-1982, f. & ef. 6-1-82; MB 6-1982, f. & ef. 6-1-82; MB 15-1984, f. 11-30-84, ef. 12-1-84; MB 6-1995, f. & cert. ef. 7-14-95; MB 9-1996, f. & cert. ef. 5-29-96; OSMB 2-2000, f. & cert. ef. 7-14-00; OSMB 2-2001, f. & cert. ef. 1-25-01; OSMB 1-2008, f. & cert. ef. 1-15-08

Rule Caption: Election to Issue Bonds Under Laws Prior to 2008.

Adm. Order No.: OST 3-2007

Filed with Sec. of State: 12-27-2007

Certified to be Effective: 12-27-07

Notice Publication Date: 12-1-2007

Rules Adopted: 170-061-0200

Subject: A state agency may request that the State Treasurer elect, or other public body may itself elect, to issue bonds under laws prior to 2008 (Prior Laws), and without regard to the provisions of HB 3265, if it demonstrates any of the following:

(a) an approving opinion of bond counsel cannot be provided under HB 3265 but may be provided under the Prior Laws;

(b) the bonds may be issued at a substantially lower cost under the Prior Laws than under HB 3265;

(c) a credit enhancement or other financing mechanism that would substantially improve the overall financing structure of the bond sale may be used under the Prior Laws but not under HB 3265; or

(d) any other reason that would result in the bonds being issued at a substantially lower cost or under a structure or terms that are substantially better if the bonds are issued under the Prior Laws rather than HB 3265.

Rules Coordinator: Sally Furze—(503) 378-4990

170-061-0200

Election to Issue Bonds Under Laws Prior to 2008

DEFINITIONS:

(1) Bond(s) has the meaning set forth in section 2(2) of Chapter 783 Oregon Laws 2007 for an election by state agencies and the meaning set forth in section 42(3) of Chapter 783 Oregon Laws 2007 for an election by a public body under this rule. Prior Laws means the statutes of the State of Oregon in effect prior to January 1, 2008.

(2) Public body has the meaning set forth in section 42(13) of Chapter 783 Oregon Laws 2007 (HB 3265).

ELECTION FOR STATE AGENCIES:

(3) A state agency may request that the State Treasurer elect to issue bonds on behalf of the agency under the Prior Laws, without regard to House Bill 3265, by submitting a written request for the election to the State Treasurer on or before the date that is forty-five (45) days before the scheduled sale date for the bonds.

(4) The request shall demonstrate the need for the election by describing why the agency's bonds cannot or should not be issued under the provisions of HB 3265, including a description of the problem, if any, in HB 3265 that led to the agency's request. The State Treasurer may elect to issue bonds under the Prior Laws if the state agency demonstrates that:

(a) An approving opinion of bond counsel cannot be provided under HB 3265 but may be provided under the Prior Laws;

(b) The agency's bonds may be issued at a substantially lower cost under the Prior Laws than under HB 3265;

(c) A credit enhancement or other financing mechanism that would substantially improve the overall financing structure of the bond sale may be used under the Prior Laws but not under HB 3265; or

(d) Any other reason that would result in the agency's bonds being issued at a substantially lower cost or under a structure or terms that are substantially better for the agency or the State of Oregon if the bonds are issued under the Prior Laws rather than HB 3265. An agency shall promptly provide such additional information or documentation as the Treasurer may request to assist the State Treasurer in making a determination as to whether an election should be made. The Treasurer will determine whether to make the election on or before thirty (30) days after receipt of the request for an election from a state agency. If the Treasurer fails to make a determination within that time, the agency's request will be deemed to be denied.

PUBLIC BODY ELECTION:

(5) A Public Body may elect in writing to issue bonds under the Prior Laws, without regard to House Bill 3265, on or before the date that is fifteen (15) days before the scheduled sale date for the bonds. The public body shall promptly provide the Office of the State Treasurer with a copy of the written election. The written election shall include a description of the problem, if any, in HB 3265 that led to the Public Body's request and demonstrate the need for the election because the Public Body finds that one or more of the following circumstances exists:

ADMINISTRATIVE RULES

(a) An approving opinion of bond counsel cannot be provided under HB 3265 but may be provided under the Prior Laws;

(b) The Public Body's bonds may be issued at a substantially lower cost under the Prior Laws than under HB 3265;

(c) A credit enhancement or other financing mechanism that would substantially improve the overall financing structure of the bond sale may be used under the Prior Laws but not under HB 3265; or

(d) Another reason or circumstance exists that would result in the Public Body's bonds being issued at a substantially lower cost, or under a structure or terms that are substantially better for the Public Body, if the bonds are issued under the Prior Laws rather than HB 3265. When determining whether to make the election authorized under this rule, the Public Body shall confer with the Office of the State Treasurer. A Public Body shall promptly provide such additional information or documentation as the State Treasurer may request with respect to an election made under this rule.

Stat. Auth.: Ch. 783 OL 2007 (HB 3265)
Stats. Implemented:
Hist.: OST 3-2007, f. & cert. ef. 12-27-07

Oregon Student Assistance Commission
Chapter 575

Rule Caption: To establish the Oregon Student Child Care Grant Program at the Oregon Student Assistance Commission.

Adm. Order No.: OSAC 1-2008

Filed with Sec. of State: 1-9-2008

Certified to be Effective: 1-9-08

Notice Publication Date: 12-1-2007

Rules Adopted: 575-095-0005, 575-095-0010, 575-095-0015, 575-095-0020, 575-095-0025, 575-095-0030, 575-095-0035, 575-095-0040, 575-095-0045

Subject: This rule establishes the guidelines for administration of the Oregon Student Child Care Grant Program at the Oregon Student Assistance Commission.

Rules Coordinator: Susanne D. Ney—(541) 687-7394

575-095-0005

Definitions

For the purposes of the Oregon Student Child Care Grant Program the following definitions shall be used:

(1) "Commission" means the Oregon Student Assistance Commission.

(2) "Oregon Resident" means resident of the State of Oregon as defined in OAR 575-030-0005.

(3) To be eligible, a student must be a citizen or eligible noncitizen of the United States. "Eligible noncitizens" are those defined by federal regulations under Title IV, Part B of the Higher Education Act of 1965, as amended.

(4) "Student" means an individual who is a resident of Oregon and enrolled at an eligible postsecondary institution.

(5) "Child" is defined as a legal dependent of the student age 12 and under, and does not include unborn. An otherwise eligible child who is a qualifying individual under the Americans with Disabilities Act will be exempt from the age limit.

(6) "Postsecondary institution" means any Oregon-based postsecondary institution eligible for federal Title IV financial aid programs.

(7) "Satisfactory Performance" means satisfactory academic progress as determined by the institution attended.

(8) "Resident In-state Tuition" means tuition cost of an Oregon postsecondary institution.

(9) "Financial need" means the difference between the family contribution, derived from a system of need analysis annually approved by the Commission, and the cost of education.

(10) "Full-time Enrollment" means registration and payment of required fees as a full-time student, at an eligible institution or combination of eligible institutions, as defined by the institution disbursing funds. A concurrently enrolled is a student who attends more than one eligible institution under a written consortium agreement or concurrent enrollment program. The student's "home" institution determines the student's eligibility for federal and state financial aid, disburses funds to the student, and is responsible for reporting enrollment and disbursement information to the Commission.

(11) "Half-time Enrollment" means registration and payment of required fees as a half-time student, at an eligible institution or combination of eligible institutions, based on 6 to 11 credit-hours per academic term.

(12) "Child care provider" means a child care provider who receives payment for care of the child and who is listed with the Oregon Department of Human Services, or, registered or certified with the Oregon Child Care Division.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 3-2007(Temp), f. & cert. ef. 10-12-07 thru 12-31-07; OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0010

Administration

(1) The Commission shall administer the Oregon Student Child Care Grant Program.

(2) The Commission shall make such rules as are required for the administration of the program.

(3) The program will be accessible throughout the state, and provide students with a convenient and efficient means to apply.

(4) The Commission shall implement an Advisory Group with representation such as students, postsecondary financial aid offices, and the Oregon Department of Human Services, to provide input on policies and procedures.

Stat. Auth.: ORS 348,
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 3-2007(Temp), f. & cert. ef. 10-12-07 thru 12-31-07; OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0015

Purpose

(1) The intent of the Student Child Care Grant Program is to assist parents or legal guardians enrolled in post-secondary education obtain safe, dependable care that supports their children's development while allowing completion of academic programs.

(2) The Oregon Student Child Care Grant Program will disburse a payment for student child care for eligible recipients on a term/semester basis provided the student maintains satisfactory academic progress and has a child. The recipient must utilize paid child care. Disbursements will be made directly to post-secondary institutions.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 3-2007(Temp), f. & cert. ef. 10-12-07 thru 12-31-07; OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0020

Student Eligibility Criteria

To receive financial aid from this program an applicant must:

(1) Be an Oregon resident with a child;

(2) Be a citizen or eligible noncitizen of the United States;

(3) Be enrolled or accepted for enrollment as an undergraduate at an Oregon postsecondary institution;

(4) Maintain satisfactory academic progress; and

(5) Not be in default on any federal Title IV loan or owing a refund on federal Title IV funds previously disbursed.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0025

Application Process

(1) All applicants will complete an application that is specified by the Commission.

(2) All applicants must complete the Free Application for Federal Student Aid (FAFSA).

(3) The Commission will process all applications and appoint a committee to recommend awardees annually.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0030

Priority in Awarding

Among applicants who meet the eligibility criteria of this program, priority in the selection process shall be given in the following rank order:

(1) A prior recipient of benefits of the Student Child Care Grant previously administered by the Oregon Department of Human Services or subsequently by the Commission, with continuing financial need.

(2) A student with continuing financial need, who was verified as having been on the waiting list kept by the Oregon Department of Human Services during its administration of the Student Child Care Grant.

(3) Financial need Students' credits earned toward a Certificate, Associates Degree, or first Bachelor's Degree. Use of child care providers who are listed with the Oregon Department of Human Services, or, registered or certified with the Oregon Child Care Division.

ADMINISTRATIVE RULES

Students enrolled full-time.
Students enrolled half-time.
Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0035

Award Amounts

Student Child Care Grant award amounts for the next academic year will be determined by the Commission before March 1 and made publicly available. The following criteria will also be used:

- (1) Published guidelines from the Oregon Department of Human Services Child Care Market Rate Survey.
- (2) Number and age of qualifying legal dependents in need of paid child care.
- (3) Geographic location where child care is provided.
- (4) Type of child care required, such as infant care, toddler care, after-school care, or special-needs care.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0040

Maximum Term of Award

(1) Students in an academic program must be enrolled at least half-time and are required to complete at least 36-quarter hours for credit, or the equivalent in semester hours, on a yearly basis.

(2) Participation in the award is limited to total of six years.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 1-2008, f. & cert. ef. 1-9-08

575-095-0045

Renewal of Award

Awards made under this program are renewable provided that:

- (1) The awardee continues to be enrolled as at least a half-time student in an approved program at an eligible institution;
- (2) The awardee is making satisfactory academic progress, as defined by the institution;
- (3) The awardee arranges for the Commission to receive a transcript of the academic work completed in the prior year of award; and
- (4) Each awardee's child used to determine eligibility must continue to qualify under 575-095-0005(5).

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 1-2008, f. & cert. ef. 1-9-08

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Oregon University System Chapter 580

Rule Caption: To establish 2008 summer session tuition and fee rates, including room and board.

Adm. Order No.: OSSHE 1-2008

Filed with Sec. of State: 1-14-2008

Certified to be Effective: 1-14-08

Notice Publication Date: 12-1-2007

Rules Amended: 580-040-0035

Subject: To establish tuition and fees for the summer session 2008, including room and board rates.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-040-0035

Summer Session Fee Book

The document entitled "Summer Session Fee Book" dated January 04, 2008, is hereby amended by reference as a permanent rule. All prior adoptions of summer session fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03; OSSHE 2-2005, f. & cert. ef. 2-15-05; OSSHE 2-2007, f. & cert. ef. 1-11-07; OSSHE 1-2008, f. & cert. ef. 1-14-08

Rule Caption: To meet the legislative goal of maximizing contributions to technology development.

Adm. Order No.: OSSHE 2-2008

Filed with Sec. of State: 1-14-2008

Certified to be Effective: 1-14-08

Notice Publication Date: 12-1-2007

Rules Adopted: 580-043-0100

Rules Amended: 580-043-0060, 580-043-0065, 580-043-0070, 580-043-0075, 580-043-0085, 580-043-0090, 580-043-0095

Subject: Chapter 580, Division 43, authorizes each OUS institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of an institution's Fund shall be to provide qualified grant applicants with moneys to facilitate the commercialization of the institution's research and development. These rules are needed for OUS to meet the legislative goal of maximizing contributions to technology development. Subsequent to the establishment of the rules in 2006, these rules have been modified to include the legislative reporting requirements and other minor edits.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-043-0060

Purpose; Definitions

(1) Purpose. Chapter 580, division 043, authorizes each Institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of an Institution's Fund shall be to provide qualified grant applicants with moneys to facilitate the commercialization of the Institution's research and development. Within the scope of this purpose and subject to these administrative rules, an Institution may use moneys in its Fund to provide:

- (a) Capital for university entrepreneurial programs;
- (b) Opportunities for students to gain experience in applying research to commercial activities;
- (c) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services; and
- (d) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state.

Contributors to an Institution's Fund are eligible for Oregon income tax credits to the extent set forth in the Act and these rules.

(2) Definitions:

(a) Act: Oregon Laws 2005, ch. 592, as amended by Senate Bill 582 (2007).

(b) Entity: any governmental body or agency, association, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.

(c) Person: a natural person or sole proprietorship.

(d) Venture Development Fund or Fund: A fund authorized by the Act.

(e) Venture Grant Program or Program: A grant program authorized by the Act.

(f) Institution: An institution of the Oregon University System.

(g) Department of Revenue: the Oregon Department of Revenue.

(h) General Fund: the general fund of the State of Oregon.

(i) Remain in Oregon: maintaining the Entity headquarters in Oregon; or employing a majority of employees (on a full-time equivalent, headcount, or payroll basis) in Oregon.

(j) State Board of Higher Education or Board: the Board created by ORS 351.010.

(k) Tax Credit Certificate: a certificate authorized by the Act and in a form designated by the Board that evidences a contribution to a Venture Development Fund.

(L) Donor: a person or entity that makes a contribution to a Fund authorized by the Act and these rules.

(m) Taxpayer: a person or entity that makes a contribution to a Fund authorized by the Act and these rules and that applies for a tax credit certificate authorized by the Act and these rules.

(n) Gross Royalty Income: cash realized by the Board from royalties, milestone and license fee payments and from the sale of equity as a result of grants made under the Program.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist.: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

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580-043-0065

Establishment of a Venture Development Fund by an Institution

(1) An institution may establish a Fund in accordance with the Act and these rules.

(2) Each Institution that establishes a Fund shall:

(a) Notify the Board and the Department of Revenue of the establishment of the Fund;

(b) Either directly or through its affiliated foundation solicit contributions to the Fund and receive, manage, and disburse any such contributions and the earnings thereon;

(c) Subject to the Act and these rules, issue tax credit certificates to contributors to the Fund;

(d) Establish a grant program that meets the requirements for a Venture Grant Program under the Act and these rules;

(e) Subject to available moneys from the Fund, provide qualified grant applicants with moneys for the purpose of facilitating the commercialization of university research and development; and

(f) Report to the Department of Revenue the amounts of tax credit certificates issued by the Institution and maintain records of licensing and royalty revenue received by the Institution as the result of grants made from the Fund and records of amounts paid to the General Fund under the Act.

(3) An Institution may deposit moneys received for its Fund in the Higher Education Donation Fund established under ORS 351.130. Interest earned by such moneys shall be credited to the Fund. The State Treasurer, as payment for expenses, may deduct a fee pursuant to ORS 293.718 from a Fund administered by an Institution.

(4) The use of moneys donated under these rules may not be directed by a Donor. Rather, all moneys shall be available for the purposes set forth in the Act and these rules without regard to specific Donor instructions, except that an Institution or its affiliated foundation may charge its customary administrative assessment to manage the Fund as permitted by the Act. Except as authorized by law, no other fees or indirect costs may be charged against the Fund or any associated grants or other disbursements from the Fund.

(5) At the election of an Institution, moneys in a Fund may be held in the form of an endowment. An Institution may discontinue endowment treatment at any time.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0070

Allocation of Authority to Institutions to Raise Funds and Issue Tax Credits

(1) The Board will not allocate fundraising or tax credit certificate issuance authority to an Institution until the Institution has established a Venture Development Fund in accordance with the Act and these rules.

(2) Oregon State University, Portland State University, and University of Oregon: The Board allocates fundraising authority and commensurate authority to issue tax credit certificates among Oregon State University, Portland State University, and the University of Oregon as follows:

(a) Portland State University: \$88 million;

(b) Oregon State University: \$5.35 million;

(c) University of Oregon: \$3.27 million.

Such authority shall be contingent on the establishment of a Fund in accordance with the Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(3) Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University: The Board by order or resolution shall allocate \$500,000 in fundraising authority and commensurate authority to issue tax credit certificates among Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University. An allocation of authority shall be contingent on the establishment of a Fund in accordance with the Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(4) Notwithstanding sections (2) and (3) of this rule, immediately upon deposit into the General Fund of amounts transferred by an Institution in repayment of tax credits previously issued, the Institution may issue new tax credits in an amount not to exceed the transferred amount.

(5) The amount owed to the General Fund by the Institutions, collectively, may not exceed \$6 million at any one time.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0075

Redistribution of Authority to Raise Funds and Issue Tax Credits

No earlier than two years from the effective date of this rule, the Board, by order or resolution, may, to further the purposes of the Act, reallocate unused fundraising authority and commensurate authority to issue tax credit certificates from one Institution to another. An Institution may receive additional authority only if it has exhausted its existing authority or can demonstrate that it would likely do so. Reallocation of authority shall not require amendment of section 0070.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0085

Issuance of Tax Credit Certificates

(1) Taxpayers making a contribution to an Institution's Fund and wishing to receive a tax credit certificate evidencing that contribution must submit the contribution, together with an application for tax credit certificate, in a form designated by the Institution, to the Institution or, if directed by the Institution, to its affiliated foundation.

(2) An Institution or its affiliated foundation may begin accepting contributions and applications after the Institution's Fund has been established in accordance with the Act and these rules.

(3) An Institution shall consider applications for tax credit certificates in the chronological order in which the applications were received.

(4) An Institution shall act on an application for a tax credit certificate within 60 days of its receipt unless unanticipated or extraordinary circumstances reasonably prevent the Institution from acting within that timeframe, in which case the Institution shall act on the application as soon as reasonably possible thereafter.

(5) Subject to section 6 of this rule, an Institution shall approve an application for a tax credit certificate if the application is complete and the Institution has verified receipt of the contribution. Within 45 days of application approval, an Institution shall issue to the Taxpayer a tax credit certificate that specifies the amount of the contribution.

(6) An Institution shall deny an application for a tax credit certificate and may not issue a tax credit certificate to the Taxpayer if:

(a) The Taxpayer's contribution to the Fund, together with the amounts specified on all tax credit certificates previously issued by the Institution less amounts transferred into the General Fund, exceeds the Institution's then-current tax credit certificate issuance authority;

(b) The Taxpayer's application is incomplete; or

(c) The Institution cannot verify receipt of the Taxpayer's contribution.

(7) If an Institution denies a Taxpayer's application for a tax credit certificate, the Institution shall notify the Taxpayer in writing within 45 days of the denial.

(8) A Taxpayer who receives a notice of denial of an application for a tax credit certificate may request, in writing and within 90 days after the receipt of the denial, a refund of its contribution to the extent the contribution was actually received. The Institution shall ensure that the refund is issued within 60 days after its receipt of the request for the refund.

(9) Eligibility for a tax credit (as distinguished from the receipt of a tax credit certificate from an Institution) shall be subject to the Act, the rules of the Department of Revenue, and other applicable law.

Stat. Auth.: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0090

Tax Credit Certificate and Grant Record-Keeping and Reporting

(1) Each Institution shall retain copies of all tax credit certificates that it issues. Upon every issuance of a tax credit certificate by the Institution, upon transfer of moneys into the General Fund, and promptly after Board adoption of an order or resolution establishing or modifying the Institution's allocation of tax credit certificate issuance authority, the Institution shall calculate and record in its records the amount, if any, of its fundraising and tax credit certificate issuance authority then remaining unused.

(2) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing its fundraising activity, amounts transferred to the General Fund, and issuance of tax credit certificates since its most recent report to the Board under this section and specifying its fundraising tax credit certificate issuance authority and the amount of that authority remaining unused as of the date of the report. The report shall include the number of tax credit cer-

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tificates issued, the amount of funds raised by the Institution, and the amounts transferred to the General Fund since its most recent prior report to the Board under this section.

(3) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing the grants made by the Institution under its Program and how they serve the goals of the Act and these rules.

Stat. Auth.: OL 2005, ch. 592, sec. 2.
Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.
Hist.: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0095

Recoupment of Tax Credits

An Institution that has established a Fund and has made grants under a Program shall monitor the use of such grants and identify sources of Gross Royalty Income received by the Institution as the result of the use of the grants. Gross Royalty Income results from the use of a grant when it is traceable to the grant. The Institution shall cause the transfer of 20 percent of such Gross Royalty Income to the General Fund but not to exceed the amount of the tax credits issued by the Institution as a result of contributions to the Fund. This does not preclude transfers from other sources. Immediately upon deposit of the transferred amount into the General Fund, the Institution may issue new tax credits in an amount not to exceed the transferred amount. The Institution shall maintain records of all transfers to the General Fund.

Stat. Auth.: OL 2005, ch. 592, sec. 2.
Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.
Hist.: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0100

Reports to the Legislative Assembly

An Institution that has established a Fund shall report annually to the Legislative Assembly or, if the Legislative Assembly is not in session, to the interim legislative committees on revenue. The report shall be at the end of the fiscal year of the Institution or of its affiliated foundation and provide information for that fiscal year. The Institution shall include in the report the following information pertaining to its Fund:

- (1) The amount of donations received for the Fund;
- (2) The amount of income received from the Fund;
- (3) The amount of disbursements and grants paid from the Fund;
- (4) The amount of income and royalties received from disbursements from the Fund; and
- (5) The amount of moneys transferred from the Fund to the General Fund.

Stat. Auth.: OL 2005, ch. 592, sec. 2.
Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.
Hist.: OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

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**Oregon University System,
Portland State University
Chapter 577**

Rule Caption: Procedure for Seeking Amendment of Education Record.

Adm. Order No.: PSU 4-2007(Temp)

Filed with Sec. of State: 12-26-2007

Certified to be Effective: 1-1-08 thru 6-27-08

Notice Publication Date:

Rules Amended: 577-030-0035

Subject: This rule provides a hearing process for students of Portland State University to challenge the content of an education record on the grounds that the record is inaccurate, misleading, or in violation of the privacy rights of the student, as required by the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended. The provisions of the rule mirror federal requirements found in 34 CFR 99.22.

Rules Coordinator: Tanja Dill—(503) 725-3701

577-030-0035

Student's Right to Challenge Information Contained in Education Records

(1) If a student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the unit custodian of the student

record or the university custodian of student records, whichever custodian is in possession of the record, to amend the record. Such a request shall be submitted to the appropriate record custodian in writing and shall include at a minimum the following:

- (a) If available, a copy of the record the student is seeking to amend;
- (b) The specific amendment sought;
- (c) The reasons why the student is seeking the amendment; and
- (d) All evidence the student wishes the University to consider.

(2) The University shall decide whether to amend the record within a reasonable time after it receives the request. If the University decides not to amend the record as requested, it will inform the student of its decision and of his or her right to a hearing.

(3) A hearing requested by the student will be informal but must meet the requirements of the federal Family Educational Rights and Privacy Act of 1974 as amended and 34 CFR 99.22. The hearing must be held within a reasonable period of time after the University has received the request for the hearing. The student must be given notice of the date, time and place reasonably in advance of the hearing. The hearing must be conducted by a person who does not have a direct interest in the outcome of the hearing. The student shall be provided with a full and fair opportunity to present evidence relevant to the student's request to amend the record. The student may, at his or her own request, be assisted at the hearing by one or more individuals of his or her own choice, including an attorney. The University shall make its decision in writing within a reasonable period of time after the hearing. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(4) If, as a result of the hearing, the University decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall amend the record accordingly and inform the eligible student of the amendment in writing. If the University decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the student of the right to place a statement in the record commenting on the contested information or stating why he or she disagrees with the University's decision, or both. Any such statement will be maintained with the contested part of the record for as long as the record is maintained and disclosed whenever the relevant portion of the record is disclosed.

Stat. Auth.: ORS 351.070 & 352
Stats. Implemented: ORS 351.070
Hist.: PSU 14, f. & ef. 4-26-77; PSU 4-2007(Temp) f. 12-26-07, cert. ef. 1-1-08 thru 6-27-08

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**Public Utility Commission
Chapter 860**

Rule Caption: In the Matter of a Rulemaking to Implement SB 838 Relating to Renewable Portfolio Standard.

Adm. Order No.: PUC 13-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 11-1-2007

Rules Amended: 860-038-0005, 860-038-0480

Subject: The amendments to 860-038-0005 and 860-038-0480 address the effects of the Senate Bill 838, Section 27, amendments to ORS 757.612(2)(a) and (3)(b)(B) which go into effect on January 1, 2008. Section 27 of SB 838 provides that the new renewable energy portion of the public purpose charge must be spent exclusively on projects 20 megawatts or less in size and provides for the extension of the sunset date to January 1, 2026. The rule amendments further clarify that funds spent under this portion of the public purpose statutes must be spent on specific renewable energy projects.

Rules Coordinator: Diane Davis—(503) 378-4372

860-038-0005

Definitions for Direct Access Regulation

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:

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- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.

(5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Common costs" means costs that cannot be directly assigned to a particular function.

(8) "Competitive operations" means any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:

(a) Energy efficiency audits and programs;

(b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and

(c) Energy management services, including those services related to electricity metering and billing.

Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.

(9) "Constructing and operating," as used in ORS 757.612(3)(b)(B), means constructing, or operating, or both.

(a) As used in ORS 757.612(3)(b)(B), "constructing" includes the following activities:

(A) Pre-development project studies, activities or costs that are related to the planned development of a new renewable energy resource that a developer or owner would reasonably expect to incur; and

(B) Activities or costs directly related to the building of a new renewable energy resource.

(b) As used in ORS 757.612(3)(b)(B), "operating" includes the activities and costs necessary for a new renewable energy resource to function and to be maintained in good working order.

(10) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.

(11) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.

(12) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(13) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(14) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(15) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(16) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(17) "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.

(18) "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(19) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(20) "Electric company operational information" means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as "competitive operations." Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company's transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company's transmission or distribution system, processes, operations, or plans or strategies for expansion.

(21) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(22) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(23) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(24) "Electricity services" means electricity distribution, transmission, generation, or generation-related services.

(25) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(26) "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.

(27) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(28) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.

(29) "Joint marketing" means the offering (including marketing, promotion, or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.

(30) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(31) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(32) "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(33) "Low-income weatherization" means repairs, weatherization, and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(34) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(35) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(36) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(37) "Net system power mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.

(38) "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(39) "New renewable energy resource," as used in ORS 757.612(3)(b)(B), has the meaning provided in ORS 757.600(21) and references a specifically identified project that has, or is planned to have after construction, a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less.

(40) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

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(41) "Nonresidential consumer" means a retail electricity consumer who is not a residential consumer.

(42) "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(43) "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(44) "One average megawatt" means 8,760,000 kilowatt-hours (8,784,000 in a leap year) of electricity per twelve consecutive month period.

(45) "Oregon affiliate" means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.

(46) "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(47) "People's utility district" has the meaning given that term in ORS 261.010.

(48) "Portfolio" means a set of product and pricing options for electricity.

(49) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(50) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(51) "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission's Consumer Services Section but is not the subject of a formal complaint.

(52) "Regulated charges" means charges for services subject to the jurisdiction of the Commission.

(53) "Regulatory assets" means assets that result from rate actions of regulatory agencies.

(54) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(55) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(56) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.

(57) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for

expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(58) "Serious injury to person" has the meaning given in OAR 860-024-0050.

(59) "Serious injury to property" has the meaning given in OAR 860-024-0050.

(60) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(61) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.

(62) "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(63) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.

(64) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.

(65) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.

(66) "Transition benefits" means the value of the below-market costs of an economic utility investment.

(67) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(68) "Transition costs" means the value of the above-market costs of an uneconomic utility investment.

(69) "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(70) "Transmission grid" means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(71) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.

(72) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 23-2001, f. & cert. ef. 10-1-01; PUC 5-2002, f. & cert. ef. 2-8-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 6-2006, f. & cert. ef. 5-11-06; PUC 13-2007, f. & cert. ef. 12-31-07

860-038-0480 Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers until January 1, 2026.

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(2) Except as provided in section (6) of this rule, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution, ancillary services, metering and billing, transition charges, and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year.

(6) A retail electricity consumer, including an aluminum plant as described in section (5) of this rule, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer are met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year; and

(b) The consumer has received final certification from the Oregon Department of Energy for expenditures for new energy conservation and/or new renewable energy resources.

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(c) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(8) The Oregon Department of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer's expenditures.

(9) The electric company will apply the self-direction credit, determined by the Oregon Department of Energy, toward the consumer's public purpose obligation.

(10) Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

(a) Energy conservation in schools;

(b) New cost-effective local energy conservation and new market transformation;

(c) Above-market costs of new renewable energy resources;

(d) New low-income weatherization; and

(e) Construction and rehabilitation of low-income housing.

(11) Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and consumers to the five public purpose accounts as follows:

(a) Energy conservation in schools — 10.0 percent;

(b) Local and market transformation conservation — 56.7 percent;

(c) Above market costs of new renewable energy resources — 17.1 percent;

(d) Low-income weatherization — 11.7 percent; and

(e) Low-income housing — 4.5 percent.

(12) Each electric company will adjust the accounts for the credits returned to self-directing customers for conservation or renewable resource expenditures certified by the Oregon Department of Energy.

(13) Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

(a) The funds for conservation in schools to the education service districts located in its service territory;

(b) The funds for local and market transformation conservation as directed by the Commission;

(c) The funds for renewable energy resources as directed by the Commission;

(d) The funds for low-income weatherization to the Housing and Community Services Department; and

(e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

(14) Each electric company will determine by January 1 of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

(a) From the Department of Education, collect current total weighted average daily membership (ADMw) as defined in ORS 327.013 and average daily membership (ADM) for each Education Service District that contains schools served by the electric company;

(b) For each of the Education Service Districts, compute the ratio of ADM in schools served by the electric company to total ADM;

(c) For each Education Service District, multiply its total ADMw by the ratio of ADM in schools served by the electric company to total ADM. The result is an estimate of ADMw in schools served by the electric company;

(d) Add the estimates of ADMw for each Education Service District; and

(e) Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

(15) The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

(16) The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

(A) The amount of funds received;

(B) The amount of funds spent;

(C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized, and low-income homes built/rehabilitated.

Stat. Authority: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 1-2001, f. & cert. ef. 1-5-01; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2007, f. & cert. ef. 5-15-07; PUC 13-2007, f. & cert. ef. 12-31-07

**Secretary of State,
Corporation Division
Chapter 160**

Rule Caption: Updating the Oregon Central Filing System for Farm Products rules to conform with 2007 HB 2090.

ADMINISTRATIVE RULES

Adm. Order No.: CORP 1-2008

Filed with Sec. of State: 1-15-2008

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Rules Adopted: 160-050-0215

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Subject: These rules are updated to conform citations to the new chapter statutes for the CFS system, ORS Ch. 80, and to meet new requirements under 2007 HB 2090.

Rules Coordinator: Tom Wrosch—(503) 986-2371

160-050-0180

Oregon Farm Products Central Filing System

(1) Oregon Farm Products Central Filing System is a statewide filing system that permits the registering of a security interest in farm products by filing an effective financing statement (EFS) with the Office of the Secretary of State.

(2) Within the context of the Oregon Farm Products Central Filing System, farm products means an agricultural commodity including but not limited to wheat, corn, soybeans, or a species of fish or livestock such as cattle, hogs, sheep, horses, or poultry used or produced in farming operations, or a product of such crop, fish or livestock in its unmanufactured state, including but not limited to wool clip, milk and eggs, that is in the possession of a person engaged in farming operations.

(3) In Oregon, the effective financing statement does not create a security interest in the farm products. It is not the same as a financing statement or security agreement filed under the Uniform Commercial Code laws. The effective financing statement is a document that meets the requirements of Section 1324 of Public Law 99-198.

(4) The secured party must submit a UCC filing under ORS Chapter 79 to perfect a security interest in farm products.

Stat. Auth.: ORS 79.6020(4), 79.6020(5) & 79.6030
Stats. Implemented: ORS 79.6030

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; SOS 24-1987, f. 11-5-87, ef. 11-15-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0010; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0190

Definitions and Abbreviations

(1) Where terms used in this rule are not explicitly or completely defined in ORS 80.100 or herein, definitions and usage of terms from the references are applicable.

(2) "EFS": An effective financing statement relating to farm products.

(3) "Debtor": For purposes of this rule, the term "debtor" shall mean any person subjecting farm products to security interests, even if such person does not owe a debt to the secured party but is subjecting farm products to a security interest for the debt of another.

Stat. Auth.: ORS 79.6020 - 79.7010

Stats. Implemented: ORS 79.6030

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0020; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0200

EFS Requirements

(1) An EFS must be filed on a form prescribed and approved by the Secretary of State. The form shall be designated "EFS-1."

(2) The information on the Form EFS-1 should meet the following requirements:

(a) Name, address and telephone number of the secured party:

(A) The name and address of the secured party are required;

(B) The secured party name or names must be entered completely and precisely;

(C) The name of an individual must be entered in order of last name (surname), first name, and, if any, middle initial or name;

(D) Assumed business names and business entity names must appear beginning with first word or character that is not an article or punctuation mark;

(E) The address of the secured party must be the address where information pertaining to the security interest may be obtained;

(F) The telephone number of the secured party is requested.

(b) Name and address of each debtor:

(A) The name and address of each debtor is required;

(B) The name of each debtor must be entered completely and precisely;

(C) The name of an individual must be entered in order of last name (surname), first name, and, if any, middle initial or name;

(D) Assumed business names and business entity names must be entered beginning with the first word or character that is not an article or punctuation mark;

(E) The address of the debtor is the mailing address of such person;

(c) Farm Product name or code:

(A) Each farm product that is produced in Oregon is assigned a four-digit numerical code. The codes are located on the back side of the Form EFS-1;

(B) The farm product code is required;

(C) Each filing party is responsible for listing the appropriate farm product code for a farm product on which the EFS or notice of security interest is being filed;

(D) The four-digit product code for each farm product subject to the security interest must be entered. A table of product codes appears on the back of the Form EFS-1;

(E) If the space provided on the Form EFS-1 for farm product codes is not adequate, Form EFS-5 should be used to submit additional codes.

(d) Crop year:

(A) The crop year, for crops grown in soil, is the calendar year in which it is harvested or to be harvested;

(B) For animals, the crop year is the calendar year in which they are born or acquired;

(C) For poultry or eggs, the crop year is the calendar year in which they are sold or to be sold;

(D) If an EFS does not show a crop year, it will be regarded as applicable to the crop or farm product in question for every year the EFS is effective;

(E) The crop year is a two-digit or four-digit code representing the actual year;

(F) The crop year must be shown on the Form EFS-1, unless every year of the farm product in question, for the duration of the EFS, is subject to the particular security interest.

(e) County Code:

(A) Each county in Oregon is assigned a two-digit numerical code. The county code represents the county in which the farm product is produced or is to be produced. The county codes are located on the back side of the Form EFS-1;

(B) The county code is required;

(C) Below is a list of the county codes for Oregon:

(i) Baker — 01;

(ii) Benton — 02;

(iii) Clackamas — 03;

(iv) Clatsop — 04;

(v) Columbia — 05;

(vi) Coos — 06;

(vii) Crook — 07;

(viii) Curry — 08;

(ix) Deschutes — 09;

(x) Douglas — 10;

(xi) Gilliam — 11;

(xii) Grant — 12;

(xiii) Harney — 13;

(xiv) Hood River — 14;

(xv) Jackson — 15;

(xvi) Jefferson — 16;

(xvii) Josephine — 17;

(xviii) Klamath — 18;

(xix) Lake — 19;

(xx) Lane — 20;

(xxi) Lincoln — 21;

(xxii) Linn — 22;

(xxiii) Malheur — 23;

(xxiv) Marion — 24;

(xxv) Morrow — 25;

(xxvi) Multnomah — 26;

(xxvii) Polk — 27;

(xxviii) Sherman — 28;

(xxix) Tillamook — 29;

(xxx) Umatilla — 30;

(xxxi) Union — 31;

(xxxii) Wallowa — 32;

(xxxiii) Wasco — 33;

(xxxiv) Washington — 34;

(xxxv) Wheeler — 35;

(xxxvi) Yamhill — 36.

(D) The county code(s) must be listed for each product code shown.

(f) Amount of farm product (where applicable):

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(A) The amount of farm product may or may not be shown on every EFS and master list entry;

(B) The need to supply this additional information arises only where some of the debtor's farm product is subject to the security interest and some is not;

(C) If the EFS does not show an amount, this constitutes a representation that all of such product owned by the debtor is subject to the security interest in question;

(D) The amount shown must be sufficient to enable a reader of the information to identify what part of the debtor's farm product owned by the debtor is subject to the security interest, and what is not;

(E) Twenty characters have been allotted on the master list for providing information on the amount of farm product. The description of the amount should not be more than 20 characters.

(g) Brief Description of farm product:

(A) A brief description of the farm product maybe shown on the EFS and master list entry.

(B) The need to supply this additional information arises only where some of the debtor's farm product is subject to the security interest and some is not.

(C) Seventy-five characters have been allotted on the master list for providing information on the description of the farm product. The farm product description should not be more than 75 characters.

(h) Signature of the debtor, unless the debtor has executed a security agreement granting a security interest in the farm products to the secured party.

(3) The EFS will be rejected if it does not contain the name and address of the debtor, name and address of the secured party, farm product code, county code, or if it is not accompanied by the EFS filing fee.

(4) For the purposes of filing an effective financing statement, an electronically submitted document shall be considered an original document under ORS 80.115.

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 1-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0030; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 2-2006, f. & cert. ef. 2-6-06; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0210

Amendment, Continuation, Assignment and Lapse of EFS

(1) An EFS may be amended, assigned, continued or lapsed by the secured party of record. An amendment, assignment, continuation or lapse must be filed on a form prescribed and approved by the Secretary of State. The form shall be designated "Form EFS-3."

(2) The EFS-3 must include the document number assigned by the Secretary of State to the original effective financing statement.

(3) A Secured Party must sign, authorize or otherwise authenticate an EFS-3 that declares the lapse of an EFS.

(4) Unless the Debtor has executed a security agreement granting a security interest in the farm products to the secured party, the Debtor must sign, authorize or otherwise authenticate the EFS-3.

(5) For the purposes of uniformity, "lapse" will be considered synonymous with "termination" under ORS 79.0513 and this chapter. The EFS-3 form may refer to a "termination," instead of a "lapse."

(6) The EFS remains effective for a period of five years from the date of filing. Its effectiveness may be extended by an additional five years by filing a continuation statement within six months before the expiration of the current five-year period.

(7) Under the conditions described in ORS 80.115(4), if there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value under the security interest, the secured party should file a statement of termination or lapse.

(8) Upon the expiration of the effective period of an EFS, the EFS lapses, unless effectively extended pursuant to ORS 80.115 and OAR 160-050-0210.

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 7-1987(Temp), f. & ef. 5-13-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0040; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 2-2006, f. & cert. ef. 2-6-06; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0215

Filing fees

(1) The fee for filing a Form EFS-1 is \$10 for the first debtor name. Additional debtors may be added at no charge. The filing fee is required to be submitted with the EFS.

(2) If the Form EFS-3 is not accompanied by the filing fee, it will be rejected;

(3) The filing fees of Form EFS-3 transactions are set out in paragraphs (a) through (d) of this subsection as follows:

(a) Amendments: The filing fee for an amendment is \$10 for the first debtor name. Additional debtors may be added at no charge.

(b) Assignment: The filing fee for an assignment is \$10 for the first debtor name. Additional debtors may be added at no charge.

(c) Continuation: The filing fee for a continuation is \$10 for the first debtor name. Additional debtors may be added at no charge.

(d) Termination: There is no filing fee for filing a termination/lapse statement.

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Hist.: CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0220

Farm Products

(1) The list of Oregon farm products and codes is as follows:

(a) **Grains:**

(A) Barley — 0101;

(B) Corn for grain — 0102;

(C) Oats — 0103;

(D) Rye — 0104;

(E) Triticale — 0105;

(F) Wheat — 0106.

(b) **Hay and Forage:**

(A) Alfalfa — 0201;

(B) Ensilage — 0202;

(C) Grass and Grain Straw — 0203;

(D) Hay — 0204;

(E) Sorghum — 0205.

(c) **Grass and Legume Seeds:**

(A) Alfalfa Seed — 0301;

(B) Bentgrass — 0302;

(C) Bluegrass — 0303;

(D) Brome — 0304;

(E) Clover — 0305;

(F) Fescue — 0306;

(G) Field Peas — 0307;

(H) Orchardgrass — 0308;

(I) Rape Seed — 0309;

(J) Ryegrass — 0310;

(K) Timothy — 0311;

(L) Vetch — 0312;

(M) Wheat Grass — 0313;

(N) Other Grass Seed — 0314;

(O) Other Legume Seed — 0315;

(d) **Field Crops:**

(A) Herbs — 0401;

(B) Hops — 0402;

(C) Mint — 0403;

(D) Oil Seed — 0404;

(E) Potatoes — 0405;

(F) Sugarbeet — 0406;

(G) Vegetable and Flower Seeds — 0407;

(H) Canola — 0408.

(e) **Fruits:**

(A) Apples — 0501;

(B) Apricots — 0502;

(C) Cantaloupes — 0503;

(D) Cherries — 0504;

(E) Grapes — 0505;

(F) Peaches — 0506;

(G) Pears — 0507;

(H) Plums — 0508;

(I) Prunes — 0509;

(J) Watermelons — 0510;

(K) Kiwi — 0511.

(f) **Nuts:**

(A) Filberts — 0601;

(B) Walnuts — 0602.

(g) **Berries:**

(A) Blackberries — 0701;

(B) Blueberries — 0702;

(C) Boysen and Youngberries — 0703;

(D) Other Caneberries — 0704;

(E) Cranberries — 0705;

(F) Currants — 0706;

(G) Elderberries — 0707;

(H) Gooseberries — 0708;

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- (I) Loganberries — 0709;
- (J) Marionberries — 0710;
- (K) Raspberries — 0711;
- (L) Strawberries — 0712.

(h) **Vegetables:**

- (A) Artichokes — 0801;
- (B) Asparagus — 0802;
- (C) Beans — 0803;
- (D) Beets — 0804;
- (E) Broccoli — 0805;
- (F) Brussel Sprouts — 0806;
- (G) Cabbage — 0807;
- (H) Carrots — 0808;
- (I) Cauliflower — 0809;
- (J) Celery — 0810;
- (K) Corn — 0811;
- (L) Cucumbers — 0812;
- (M) Eggplant — 0813;
- (N) Garlic — 0814;
- (O) Kohlrabi — 0815;
- (P) Lettuce — 0816;
- (Q) Mushrooms — 0817;
- (R) Onions — 0818;
- (S) Peas — 0819;
- (T) Peppers — 0820;
- (U) Pumpkins — 0821;
- (V) Radishes — 0822;
- (W) Rhubarb — 0823;
- (X) Rutabagas — 0824;
- (Y) Spinach — 0825;
- (Z) Squash — 0826;
- (AA) Tomatoes — 0827;
- (BB) Turnips — 0828.

(i) **Specialty Products:**

- (A) Bees — 0901;
- (B) Bees Wax — 0902;
- (C) Bulbs — 0903;
- (D) Greenhouse Stock — 0904;
- (E) Honey — 0905;
- (F) Logs — 0906;
- (G) Nursery Stock — 0907;
- (H) Standing Timber — 0908;
- (I) Trees (Except Standing Timber) — 0909;
- (J) Turf Sod — 0910;
- (K) Worms — 0911.

(j) **Livestock:**

- (A) Cattle and Calves — 1001;
- (B) Goats — 1002;
- (C) Hogs and Pigs — 1003;
- (D) Horses — 1004;
- (E) Llamas — 1005;
- (F) Milk — 1006;
- (G) Mink — 1007;
- (H) Mules — 1008;
- (I) Rabbits — 1009;
- (J) Sheep and Lamb — 1010;
- (K) Wool — 1011;
- (L) Buffaloes — 1012;
- (M) Alpaca — 1013;
- (N) Reindeer — 1014.

(k) **Poultry:**

- (A) Broilers — 1101;
- (B) Chickens — 1102;
- (C) Ducks — 1103;
- (D) Eggs — 1104;
- (E) Geese — 1105;
- (F) Turkeys — 1106;
- (G) Ostriches — 1107;
- (H) Emu — 1108;
- (I) Rhea — 1109.

(l) **Fish and Shellfish:** Fish and Shellfish — 1201.

(2) Pursuant to the Administrative Procedures Act, the Secretary of State may add, modify or delete farm products and codes.

(3) Buyers, commission merchants, selling agents, farmers or any interested person may suggest changes to the farm product list. These suggestions must be submitted in writing.

Stat. Auth.: ORS 79.6020, 79.6030 & 79.6070(1)
Stats. Implemented: ORS 79.6070

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0050; CORP 2-1995, f. 7-31-95, cert. ef. 8-1-96; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0230

Master List and Portions of Master List

(1) The master list shall contain all the information submitted on EFSs filed in the Secretary of State's Office. It contains the name and address of the debtor, name and address of secured party, farm product code, farm product name, description of farm product, description of location, amount of farm product, crop year, county, date of filing, time of filing, and file number of EFS. This information shall be compiled and entered into a computerized record for farm products in the system.

(2) The Secretary of State may produce a monthly master list on paper. The master list will be organized alphabetically by debtor name and farm product, and shall be made available for all counties and crop years, or selected counties and crop years.

(3) Portions of the master list may be provided according to the requests of the subscribing registrants of the system. Each portion of the master list includes data from all EFSs which cover a particular farm product. Within each portion of the master list, EFS data is organized in the same manner as the master list.

(4) After data entry is complete at the end of the month, the master list will be provided on available media. It will include all filings as of the last business day of the month.

Stat. Auth.: ORS 79.6070
Stats. Implemented: ORS 79.6070

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; SOS 24-1987, f. 11-5-87, ef. 11-15-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0060; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0240

Registration of Buyers, Commission Merchants and Selling Agents; Subscription to Master Lists or Portions of Master Lists

(1) The proper place to register as a buyer, commission merchant or selling agent of farm products is in the Secretary of State's Office. The registration or renewal of registration must be submitted on a form prescribed and approved by the Secretary of State. The form shall be designated "Form EFS-4". The registration fee is part of the subscription fee.

(2) Registration is part of the process to subscribe for master lists or portions of master lists. Each registrant will be assigned a permanent registration number by the Secretary of State. A copy of the administrative rules on registration is available upon request at no charge. The master list or portion of master list will be distributed to registrants monthly.

(3) Registration is effective for a period of 12 calendar months. Renewal of registration may be filed at any time after 90 days prior to expiration of a current registration period. The registrant must indicate the registration number on the renewal registration form.

(4) The registration may be amended by filing an amended registration. If the amended registration is to amend a name or address, there is no fee. If the amended registration is to add or change products, the amended registration fee is \$10 per product.

(5) The Secretary of State shall maintain a list of all buyers of farm products, commission merchants and selling agents who register with the Secretary of State.

(6) Subscriptions for master lists or portion(s) of master lists are made at the time of registration or at any time during the period for which the registrant is registered, provided no subscription for a master list or portion of the master list will run beyond the month in which the registration will expire.

(7) Subscriptions made other than at the time of registration must be made on Form EFS-4, prescribed and approved by the Secretary of State.

(8) A subscription for any master list or portion of the master list will be for the period of the registration.

(9) The person registering with the Secretary of State must provide the following information on the Form EFS-4:

(a) Name and mailing address of the registrant. The registrant must identify the registration as being for a buyer, commission merchant or selling agent;

(b) Telephone number;

(c) Number of farm product(s) included in the registration;

(d) Farm product code(s);

(e) Crop year or years for which master list or portion of master list is to be sent;

(f) Indication of the type of master list or portion of master list requested;

(g) Signature of the registrant;

(h) Registration/Subscription fee;

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- (i) Original registration number, if renewal or amended registration.
- (10) Lists will be mailed to registrant within seven working days from the end of the month.
- (11) The subscription fees for the master list or portions of master list are as follows:

- (a) Standard paper reports — \$500 per year per product;
 - (b) CD-ROM — \$50 per year.
- Stat. Auth.: ORS 79.6070 & 79.7010
Stats. Implemented: ORS 79.6070 & 79.7010
Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0070; CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0250

Forms Used in Oregon Farm Products Central Filing System

The Secretary of State prescribes and approves the list of forms below for use in the Oregon Farm Products Central Filing System:

- (1) Form EFS-1 — Farm Products Effective Financing Statement;
- (2) Form EFS-3 — Farm Products — Statement of Continuation, Amendment, Assignment and Lapse;
- (3) Form EFS-4 — Buyer, Commission Merchant, Selling Agent

Registration/ Subscription.

- Stat. Auth.: ORS 79.6030
Stats. Implemented: ORS 79.6030
Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 2-1987(Temp), f. & ef. 1-9-87; SOS 4-1987, f. & ef. 2-24-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0080; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 1-2008, f. & cert. ef. 1-15-08

160-050-0280

EFS Search Fees

- (1) The Effective Financing Statement search fees are:
 - (a) UCC-11 information search, Standard form — \$10 per name (each distinct debtor name to be searched);
 - (b) Requested copies of EFS documents — \$5 per name searched.
- (2) Copy fee will be levied per request, whether or not any copies are found.

- EXAMPLES:
The copy fee for EFS documents found on a search for *John Doe* is:
For information search, \$10;
Plus, for requested copies, \$5;
Total, \$15.
The copy fee for EFS documents found on a search for *John and Jane Doe* is:
For information search (\$10 per name x 2 =), \$20;
Plus, for requested copies, (\$5 per name x 2 =), \$10;
Total, \$30.

- (a) State Seal Certificate — \$10 per certificate; plus, for requested copies — \$5 per name searched;
 - (b) Copy(ies) of a EFS (filing number provided) — \$5.
- Stat. Auth.: ORS 79.6030
Stats. Implemented: ORS 79.6080
Hist.: CORP 1-1995, f. 2-8-95, cert. ef. 9-1-95; CORP 1-2008, f. & cert. ef. 1-15-08

**Secretary of State,
Elections Division
Chapter 165**

Rule Caption: Schedule and fees for providing statewide and less than statewide voter lists.

Adm. Order No.: ELECT 8-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-002-0020

Subject: This rule sets forth the schedule and fees for providing statewide and less than statewide voter lists. This rule is amended to update the fees for special formatting of less than statewide voter lists and to incorporate changes to election law made by the 2007 Legislative Assembly.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-002-0020

Schedule and Fees for Providing Statewide and Less Than Statewide Voter List

- (1) Any person may obtain an electronic copy of a statewide or less than statewide voter list from the Office of the Secretary of State, Elections Division, or any county elections official. The following fees for providing a list electronically will apply:

- (a) \$25.00 fee for staff and processing time, and media used;
- (b) \$.025 per 100 voters;
- (c) The maximum charge excluding the fee assessed under paragraph 2 of this rule will be \$500.00.

(2) For any special formatting requests, an hourly fee of \$35.00 per hour will be assessed. The minimum fee assessed under this paragraph will be \$35.00 and the maximum \$100.00. Special formatting requests do not include providing the electronic copy of a statewide or less than statewide voter list in an alternate electronic format such as an Excel or Access file, rather than a tab delimited text file.

(3) In accordance with ORS 247.945(4) the charge for a statewide voter list is \$500.00. No special formatting requests will be permitted for a statewide voter list.

(3) A request for a hardcopy of a less than statewide voter list, labels, or other non-electronic formats must be made with the county elections official of each county in which voters to be listed reside.

(4) In accordance with ORS 192.440(3)(a) a county may establish fees reasonably calculated to reimburse the county for the actual cost of making the list available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request.

(5) All requests for a statewide or less than statewide voter list will be accompanied by a completed SEL 510, Customer Request Form for Statewide or Less Than Statewide Voter List.

(6) The voter list must not be used for commercial purposes. Under ORS 247.955 a person will not be considered to use the voter list for commercial purposes if the person obtains the list of electors for the purpose of resale to candidates or political committees for political purposes only.

- Stat. Auth.: ORS 192.440, 246.150
Stats. Implemented: ORS 192.440
Hist.: ELECT 12-2006, f. & cert. ef. 8-23-06; ELECT 8-2007 f. & cert. ef. 12-31-07

Rule Caption: Prescribes when a residence address disclosure exemption may be granted by the County Elections Official.

Adm. Order No.: ELECT 9-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-005-0130

Subject: This rule is revised to incorporate procedure for county elections officials to process residence address disclosure exemptions from district attorneys, deputy district attorneys or assistant attorneys general, as provided in sections 1 and 2, Chapter 687 Oregon Laws 2007.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-005-0130

Residence Address Disclosure Exemption

(1) The purpose of this rule is to define when a county elections official may exempt the residence address of an elector from disclosure as a public record.

(2) The terms used in this rule shall have the same meaning as defined in ORS Chapters 246 through 260, commonly referred to as "Oregon Election Laws".

(3) An elector may request that a county elections official not disclose the residence address of the elector. If the elector demonstrates to the satisfaction of the county elections official that the personal safety of the elector, or the personal safety of a family member residing with the elector, is in danger if the residence address remains available for public inspection, the county elections official shall not disclose that information except in compliance with a court order, a request by a law enforcement agency, or with the consent of the elector.

(4) An exemption from disclosure granted under this rule shall include the residence address on the elector's voter registration record, registration lists produced in accordance with ORS 247.940 and 247.945, poll books, and any other material produced or maintained by the county elections official which is available for public inspection that may reveal the requestor's residence address. The elector's mailing address may be used in place of the exempt residence address.

(5) A request under section (3) of this rule shall be submitted to the county elections official. The exemption request shall be submitted on form SEL 550 Application to Exempt Residence Address from Disclosure. The request shall be in writing, signed by the elector, and shall include:

- (a) The name of the elector requesting exemption;
- (b) A non-exempt mailing address for the elector; and
- (c) Evidence sufficient to establish to the satisfaction of the county elections official that disclosure of the elector's residence address would

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constitute a danger to the personal safety of the elector, or of a family member residing with the elector. Such evidence may include copies of the following documents:

(A) An affidavit, medical records, police reports or court records showing that the elector, or a family member residing with the elector, has been a victim of domestic violence;

(B) A citation or an order issued under ORS 133.055 for the protection of the elector, or a family member residing with the elector;

(C) An affidavit or police report showing that a law enforcement officer has been contacted concerning domestic violence, other physical abuse, or threatening or harassing letters or telephone calls directed at the elector, or a family member residing with the elector;

(D) A temporary restraining order or other no-contact order to protect the elector, or a family member residing with the elector, from future physical abuse;

(E) Court records showing that criminal or civil legal proceedings have been filed regarding physical protection for the elector, or a family member residing with the elector;

(F) A citation or a court's stalking protective order pursuant to ORS 163.735 or 163.738, obtained for the protection of the elector, or a family member residing with the elector;

(G) An affidavit or police report showing that the elector, or a family member residing with the elector, has been a victim of a person convicted of the crime of stalking or of violating a court's stalking protective order;

(H) A conditional release agreement issued under ORS 135.250–135.260 providing protection for the elector, or a family member residing with the elector;

(I) A protective order issued pursuant to ORS 135.873 or 135.970 protecting the identity or place of residence of the elector, or a family member residing with the elector;

(J) An affidavit from a district attorney, or deputy district attorney, stating that the elector, or a family member residing with the elector, is scheduled to testify or has testified as a witness at a criminal trial, grand jury hearing or preliminary hearing, and that such testimony places the personal safety of the witness in danger;

(K) A court order stating that the elector, or a family member residing with the elector, is or has been a party, juror, judge, attorney or involved in some other capacity in a trial, grand jury proceeding or other court proceeding, and that such involvement places the personal safety of that elector in danger; or

(L) Such other documentary evidence that establishes to the satisfaction of the county elections official that disclosure of the elector's residence address would constitute a danger to the personal safety of the elector, or a family member residing with the elector.

(6) The county elections official receiving a request under this rule will promptly review the request and notify the elector, in writing, whether the evidence submitted is sufficient to demonstrate to the satisfaction of the county elections official that the personal safety of the elector, or a family member residing with the elector, would be in danger if the residence address remains available for public inspection. The county elections official may request that the elector submit additional information concerning the request.

(7) If a county elections official grants the request to exempt the residence address of an elector from disclosure as a public record, the county elections official must include a statement in its notice to the elector that: the exemption will remain effective until the elector requests termination of the exemption or the elector is required to update the elector's voter registration.

(8) If the elector is required to update the elector's voter registration, the elector may apply for another exemption from disclosure. At the time of updating if no SEL 550 Application To Exempt Residence Address From Disclosure As A Public Record accompanies the voter registration card or is incomplete, the county elections official must send notice, by certified mail return receipt requested, to the elector that states:

(a) Currently the elector's address is non-disclosed; and

(b) If an updated SEL 550 Application To Exempt Residence Address From Disclosure As A Public Record is not received within 10 business days of receipt of the notice, the elector's residence address will not be exempt from disclosure as a public record.

(9) An elector who has requested that a county elections official not disclose his or her residence address may revoke the request by notifying, in writing, the county elections official to which the request was made that disclosure no longer constitutes a danger to personal safety. The notification must be signed by the person who submitted the original request for nondisclosure of the residence address.

(10.) Form SEL 550 may be used by a public safety officer, district attorney, deputy district attorney or assistant attorney general to request that the person's home address, home telephone number and electronic mail

address be exempted from disclosure pursuant to ORS 192.501. A public safety officer, district attorney, deputy district attorney or assistant attorney general making such a request is not required to provide information described in paragraph (5)(c).

(11) Form SEL 550 shall be used by a participant or parent or guardian of a participant in the Address Confidentiality Program to request that the elector's residence address be exempted from disclosure pursuant to ORS 192.842. The form shall be completed by the participant and include:

(a) The name of the elector requesting exemption;

(b) The substitute address provided by the Address Confidentiality Program; and

(c) A copy of the Address Confidentiality Program Authorization Card.

(12) A request under section (11) of this rule is not required to be signed and a copy of the Address Confidentiality Program Authorization Card is the only evidentiary documentation required.

(13) If a participant or parent or guardian of a participant in the Address Confidentiality Program is required to update the elector's voter registration due to a change in residence address, only an updated voter registration card is required to be completed.

(14) If a participant or parent or guardian of a participant in the Address Confidentiality Program is required to update the elector's voter registration due to a name change section (8) of this rule applies. If an updated SEL 550 is received in response to the notice in section (8) of this rule it must be accompanied by a copy of the Address Confidentiality Program Authorization Card.

(15) Pursuant to ORS 192.842 the county elections official may not disclose the elector's residence address, and the county elections official shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under ORS 254.470.

Stat. Auth.: ORS 246.150 & 247.969

Stats. Implemented: ORS 247.965 & 192.501

Hist.: ELECT 3-1994, f. & cert. ef. 2-4-94; ELECT 13-2001, f. & cert. ef. 6-15-01; ELECT 8-2003, f. & cert. ef. 9-3-03; ELECT 4-2006, f. & cert. ef. 4-18-06; ELECT 18-2006, f. 12-29-06, cert. ef. 1-1-07; ELECT 9-2007 f. & cert. ef. 12-31-07

Rule Caption: Remove reference to the 1998 Election Board Manual.

Adm. Order No.: ELECT 10-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-007-0030

Subject: The 1998 Election Board manual and associated forms were adopted in the event an election were to be conducted at a polling place. The 2007 Legislative Assembly repealed all statutes authorizing an election to be conducted at polling places. Therefore references in this rule to this manual can be deleted.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0030

Designating the Vote By Mail Manual

The Secretary of State designates the Vote By Mail Manual and associated forms, as the procedures for conducting all vote by mail elections. All vote by mail elections shall be conducted following the requirements of ORS Chapter 254 and the Vote By Mail Manual.

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

Stat. Auth.: ORS 246.150, 254.465 & 254.470

Stats. Implemented: ORS 247 & 254

Hist.: ELECT 5-1989, f. & cert. ef. 8-16-89; ELECT 9-2003, f. & cert. ef. 9-3-03; ELECT 26-2003, f. & cert. ef. 12-31-03; ELECT 10-2007 f. & cert. ef. 12-31-07

Rule Caption: Adopts the 2008 State Candidates Manuals, County Candidates Manual and Forms.

Adm. Order No.: ELECT 11-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-010-0005

Subject: This rule amendment designates the 2008 State Candidates Manual: Major Political Party; 2008 State Candidates Manual: Nonpartisan; 2008 State Candidates Manual: Minor Political Party; 2008 State Candidates Manual: Assembly of Electors; 2008 State Candidates Manual: Individual Electors; 2008 County Candidates Manual and associated forms as the procedures and the forms used

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by candidates filing and running for elected office. In addition this rule designates the *2008 State Candidates Manual: Minor Political Party* to be used for the formation of a Minor Party.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-010-0005

Designating the State Candidates Manuals, County Candidate's Manual and Forms

(1) The Secretary of State designates the 2008 State Candidate's Manual: Major Political Party and associated forms as the procedures and forms to be used by major political party candidates filing and running for state elective office.

(2) The Secretary of State designates the 2008 State Candidate's Manual: Nonpartisan and associated forms as the procedures and forms to be used by nonpartisan candidates filing and running for state elective office.

(3) The Secretary of State designates the 2008 State Candidate's Manual: Minor Political Party and associated forms as the procedures and forms to be used to form a Minor Political Party and by minor political party candidates filing and running for state elective office.

(4) The Secretary of State designates the 2008 State Candidate's Manual: Assembly of Electors and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by assembly of electors for state elective office.

(5) The Secretary of State designates the 2008 State Candidate's Manual: Individual Electors and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by individual electors for state elective office.

(6) The Secretary of State designates the 2008 County Candidate's Manual and associated forms as the procedures and forms to be used by county office candidates and precinct committee person candidates filing and running for elective office.

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

Stat. Auth.: ORS 246.120, 246.150 & 249.009

Stats. Implemented: ORS 246.120, 246.150 & 249.009

Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04; Administrative correction 10-22-04; ELECT 9-2005, f. & cert. ef. 12-14-05; ELECT 11-2007, f. & cert. ef. 12-31-07

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Rule Caption: Adopts forms for major party nominees to indicate willingness to serve.

Adm. Order No.: ELECT 12-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Adopted: 165-010-0085

Subject: This rule designates the SEL 145a, Democratic Nominee's Willingness to Serve form, and the SEL 45b republican nominee's Willingness to Serve form, as the forms to be used by a Democrat or Republican nominee to a legislative vacancy to indicate their willingness to serve if appointed to fill the vacancy.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-010-0085

Democratic Nominee's Willingness to Serve (SEL 145a) and Republican Nominee's Willingness to Serve (145b)

The Secretary of State hereby adopts by reference and designates the SEL 145a as the form to be used by a Democratic nominee to indicate their willingness to serve if appointed to fill a legislative vacancy. The SEL 145b is adopted by reference as the form to be used by a Republican nominee to indicate their willingness to serve if appointed to fill a legislative vacancy. Both forms shall contain:

- (1) Nominee's name;
- (2) Office and district number, if any, for which candidate would accept appointment;
- (3) Candidate's residence address;
- (4) Candidate's home and work telephone numbers;
- (5) Mailing address where all correspondence will be sent;
- (6) Statement that candidate will accept appointment; and
- (7) Candidate's signature and date signed.

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

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 171.060

Hist.: ELECT 12-2007, f. & cert. ef. 12-31-07

Rule Caption: Adoption of the 2008 Campaign Finance Manual.

Adm. Order No.: ELECT 13-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-012-0005

Subject: This rule amendment designates the *2008 Campaign Finance Manual* and associated forms as the procedures and forms used for the compliance with campaign finance regulation.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0005

Designating the Campaign Finance Manual and Forms;

Pursuant to ORS 260.156, the Secretary of State designates the 2008 Campaign Finance Manual and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

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

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

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. ef. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. ef. 12-31-07

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Rule Caption: Penalty matrix for other campaign finance violations.

Adm. Order No.: ELECT 14-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-013-0010

Subject: This rule amendment incorporates into the Penalty Matrix for Campaign Finance Civil Penalty Election Law Violations, civil penalties for chief petitioner committees failing to file a statement of organization within three business days of first receiving a contribution or making an expenditure. The penalty for violating ORS 260.054 was incorporated into the penalty for ORS 260.039(1) and ORS 260.042(1) to remove redundant references.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010

Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2)(a) Spot Check Review. The Secretary of State, Elections Division, will hold exempt from disclosure as a public record any bank account number(s), credit card number(s) or social security number(s) received as required documentation in response to a request for documentation necessary to perform a spot check review in accordance with ORS 260.215(4).

(b) If a principal campaign committee fails to provide documentation or provides insufficient documentation in response to a request for documentation necessary to perform a spot check review, each omitted or insufficient item is a violation of ORS 260.055(1).

(c) Omitted or insufficient information submitted after the deadline provided for in the notice of spot check review, but prior to the deadline for a candidate or treasurer to request a hearing may result in a 50% per item reduction of the penalty, if the candidate or treasurer also submits a written statement explaining why it was not possible through the exercise of reasonable diligence to provide the information on or before the deadline provided for in the notice of spot check review. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% per item reduction of the assessed penalty if the candidate or treasurer establishes at the hearing it was not possible through the exercise of

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reasonable diligence to provide the information on or before the deadline provided for in the notice of spot check review.

(d) The candidate or treasurer who filed the last report for the committee relating to the election, along with the candidate is responsible for submitting all requested documentation for all reports encompassed by the spot check review.

(3) Mitigating Circumstances. Except as specifically provided in paragraph (2)(c), the only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight); or

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax).

(4)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) The penalty amount for a violation will be calculated against the same candidate or treasurer for a period based on the number of violations by the candidate or treasurer of the same offense in the two years preceding the date the violation occurs.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

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

Stat. Auth.: ORS 246.150, 260.200

Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995

Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03;

ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 10-

2006(Temp), f. & cert. ef. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. ef. 12-29-06;

ELECT 14-2007, f. & cert. ef. 12-31-07

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Rule Caption: Update the penalty matrix for non-campaign finance civil penalty election law violations.

Adm. Order No.: ELECT 15-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-013-0020

Subject: This rule describes the penalty matrix and mitigating circumstances for non-campaign finance election law violations. The amendments incorporate the changes made by the 2007 Legislative Assembly.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0020

Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

(1)(a) This penalty matrix applies to civil penalties for violations of election laws that are not covered by the penalty matrices in the Campaign Finance Manual (late and insufficient campaign finance reports and new transactions to campaign finance reports), or other campaign finance violations as outlined in 165-013-0010.

(b) The penalty amount will be calculated against the same person, candidate or entity as described below for a period of four years from the date the violation occurs, for any election law violation, other than campaign finance violations covered in the penalty matrices in the Campaign Finance Manual and other campaign finance violations as outlined in 165-

013-0010. In determining whether the offense is to be considered against the same person, candidate or entity, the following factors are to be considered:

(A) A person is considered the same candidate, regardless of the office(s) for which the person runs within this state, or whether there is a lapse in time between candidacies.

(B) A political committee is considered the same, regardless of who the treasurer is, or if the political committee has changed names but is established by the same group of persons.

(C) The same individual.

(D) One occurrence is considered one violation.

(E) Notwithstanding (F) or (G), if a violation is the first on record for the person, and multiple occurrences of the same statutory provision are described in an election law complaint, the occurrences will be combined (to be considered as one violation) and considered a first violation of the statutory provision, except in such cases where specific circumstances warrant separating the occurrences to impose fines for each violation. This would be appropriate when different persons were affected by the election law offense. Each subsequent occurrence of violation of the same statutory provision after the issuance of a notification letter or a determination of election law violation, within the four-year cycle, may be considered as separate violations.

(F) Violations of Article IV, Section 1(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section 1(b) as a single occurrence with a minimum civil penalty of \$100.

(G) Violations of ORS 260.569, will be calculated by deeming each individual signature sheet that contains a signature a violation of ORS 260.569 or each signed voter registration card in violation of ORS 260.569 as a single occurrence with a minimum civil penalty of \$100.

(2) Mitigating Circumstances: The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(d) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the governing body's legal counsel before its distribution. The legal counsel must have advised the governing body in writing that the publication as distributed was impartial information that the governing body could legally produce and distribute, and was not in violation of election law;

(e) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the Secretary of State's office, Elections Division, in consultation with legal counsel from the Attorney General's office, before its publication. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing body could legally produce and distribute or for which suggestions were provided towards the goal of assuring the publication was impartial information regarding the ballot measure. If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, this mitigating factor may be disallowed, even if such an advice letter was issued, if a complaint and investigation indicates sufficient evidence that the public body presented inaccurate or unbalanced information, not within the purview of this office to have knowledge of prior to the complaint, which has the effect of promoting or opposing the adoption of the measure;

(f) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated ORS 260.432(2); or

(g) The violation of ORS 260.432(2) occurred when a supervisor asked the public employee to perform the prohibited campaign activity,

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consisting of clerical tasks, as a part of the public employee's job duties during work time. A "request" made by a supervisor is considered a command or requirement within the meaning of ORS 260.432(1). If the violation involves a written document, the public employee performed clerical tasks only and is not the author of the material.

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply. [Appendix not included. See ED, NOTE.]

[ED, NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.995
Hist.: ELECT 14-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 15-2007, f. cert. ef. 12-31-07

Rule Caption: Adopts the 2008 State and County Initiative, Referendum, and Recall Manuals and Referral Manual.

Adm. Order No.: ELECT 16-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-014-0005

Subject: This amendment designates the *2008 State and Initiative and Referendum Manual*; and the *2008 County Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the initiative, referendum and recall processes. In addition this proposed rule amendment designates the *2008 County, City and District Referral Manual* to be used for the local referral process.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0005

Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the 2008 State Initiative and Referendum Manual and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the 2008 Recall Manual and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the 2008 County Initiative and Referendum Manual and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

(4) The Secretary of State designates the 2008 County, City and District Referral Manual and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 264.120, 246.150 & 250.015
Stats. Implemented: ORS 246.120, 246.150 & 250.015
Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993(Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03; ELECT 10-2005, f. & cert. ef. 12-14-05; ELECT 3-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; Administrative correction 11-17-07; ELECT 16-2007, f. & cert. ef. 12-31-07

Rule Caption: Repeals the draft ballot title process rule; contents are included in Initiative and Referendum Manuals.

Adm. Order No.: ELECT 17-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Repealed: 165-014-0027

Subject: This rule designated the process for enrolling in the Secretary of State's Initiative, Referendum and Referral subscription service. Additionally, the rule set forth the timelines for when the notice of receipt of ballot title must be sent by, as well as how com-

ments were to be received. This rule is no longer necessary as all of the information is wholly contained within the *State Initiative and Referendum Manual* and the *County, City and District Referral Manual*.

Rules Coordinator: Brenda Bayes—(503) 986-1518

Rule Caption: Updating the Statistical sampling procedures for state and local initiative, referendum and recall petitions.

Adm. Order No.: ELECT 18-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-014-0030, 165-014-0110

Subject: These rules are amended to modify the criteria for which the Secretary of State's staff or local elections officials will remove cover and signature sheets prior to signature verification. Technical updates are proposed to the rule to allow for the use of Oregon Centralized Voter Registration System.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0030

Statistical Sampling Procedures for State Petition

This rule is adopted to implement ORS 250.105(4) and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition as a ballot measure. (If additional signatures are submitted prior to the deadline but after verification has occurred, an additional sample will be verified pursuant to (15)). The sampling formula referred to in this rule is contained in Appendix 1, which is incorporated into this rule by reference.

(1) The chief petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory or constitutional requirements. The petition is then accepted for signature verification. If the chief petitioners cannot certify that the petition contains enough unverified signatures to meet the statutory or constitutional requirements, the petition is not accepted.

(2) The chief petitioners must separate all signature sheets by circulator. The chief petitioners must then sequentially number the sheets prior to submission to the Secretary of State.

(3) The Secretary of State's staff will first review, and remove prior to verification, each cover and signature sheet that does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(c) All information included in the optional information fields about the petition signers, such as their printed name, address and date signed, complies with the requirements of ORS 260.567.

(d) The cover and signature sheet submitted is produced on pastel colored paper stock when the petition is not using paid circulators.

(e) Any electronic template that is produced on pastel colored paper stock.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(a) Any individual signature line that is not certified by the circulator's certification date will not be included in the sample.

(b) Any individual signature line on which the printed name, residence address or date appears not to comply with ORS 260.567 will not be included in the sample.

(5) The size of the first sample of signatures will be fixed at 1,000. The size of the second sample of signatures will be specified such that the total number of signatures for the combined first and second sample will be at least five percent of the total number of signatures submitted for verification.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. However, in all cases the first sample will be 1,000 signatures. A "second" sample list will be produced by using the remainder of the random numbers. The combined number of signatures to be used in the first and second samples will be at least five percent of the total number of signatures submitted for verification.

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(b) The "first" and "second" sample list will show the petition identification number, petition signature sheet number and petition sheet line number of each signature selected for verification.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the stacks.

(7) The random sampling selection list and the selected petition signature sheets are sent to:

- (a) County elections officials for verification; or
- (b) The Secretary of State may also verify sampled signatures.

(8) The Oregon Centralized Voter Registration System (OCVR) will be used to conduct signature verification.

(9) Upon receipt of the selected petition signature sheet(s) the county elections official will immediately begin verifying the signatures of the "first" sample against the voter's current registration card. If the selected signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified. These changes must be noted on the signature sheet. As soon as all the signatures of the "first" sample are verified, the county elections official will immediately notify the Secretary of State.

(10) The Secretary of State will immediately consolidate and tabulate the verification data, generated from the OCVR, for the "first" sample.

(11) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample the Secretary of State will immediately notify the county elections officials that no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, a "second" larger sample will be verified.

(12) Upon notification by the Secretary of State, the county elections official will immediately begin verifying the signatures of the "second" sample against the voter's current registration card, if the petition is not accepted as a result of the "first" sample. If the selected signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified. These changes must be noted on the signature sheet. As soon as all the signatures of the "second" sample are verified the county elections official will immediately notify the Secretary of State.

(13) The Secretary of State will immediately consolidate and tabulate the verification data, generated from OCVR, for the "second" sample. The statistical formula will be applied to combined data from the "first" and "second" sample to determine its acceptance or rejection.

(14) As soon as notified by the Secretary of State the clerk will return the original sampled petition signature sheets to the Secretary of State within ten business days. If notified by the Secretary of State, the county elections official may terminate signature verification before all signatures included in a sample have been checked.

(15) If the results of the "first" sample do not qualify the petition the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(16) In the event additional signatures are filed pursuant to ORS 250.105(3), an additional sample will be selected solely from the second submittal of signatures.

(a) The sample size of the second submittal will be taken as the larger of 250 and that value which is directly proportional to the size of the combined "first" and "second" samples from the first submittal.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to the second submission of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of the second submission will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

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

Stat. Auth.: ORS 246.150 & 250.105

Stats. Implemented: ORS 250.105

Hist.: SD 4-1978(Temp), f. & ef. 7-6-78; SD 2-1979, f. & ef. 4-23-79; SD 20-1986, f. & ef. 5-23-86; ELECT 12-1994, f. & cert. ef. 6-23-94; ELECT 8-1999, f. & cert. ef. 9-3-99; ELECT 9-2000, f. & cert. ef. 6-6-00; ELECT 3-2004, f. & cert. ef. 4-15-04; ELECT 3-2005, f. & cert. ef. 3-22-05; ELECT 18-2007, f. & cert. ef. 12-31-07

165-014-0110

Statistical Sampling Procedures for Local Petitions

This rule is adopted to implement ORS 249.875, 250.105, 250.215, 250.315, and 255.175 and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. The rule designates a sampling formula to be used

in determining whether a county, city or district initiative or referendum petition, or any recall petition contains the required number of signatures of electors. The sampling formula must be used for petitions requiring a number of signatures exceeding 4,500. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition to the ballot. The sampling formula referred to in this rule is contained in Appendix 2, which is incorporated into this rule by reference.

(1) The petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory requirements. The petition is then accepted for signature verification. If the chief petitioners cannot certify that the petition contains enough unverified signatures to meet the statutory requirements, the petition is not accepted

(2) The chief petitioners must sequentially number the sheets within each county prior to submission.

(3) Prior to verification, each petition cover and signature sheet is first reviewed, and subsequently removed, if it does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(c) All information included in the optional information fields about the petition signers, such as their printed name, address and date signed, complies with the requirements of ORS 260.567.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(a) Any individual signature line that is not certified by the circulator's certification date will not be included in the sample.

(b) Any individual signature line on which the printed name, residence address or date appears not to comply with ORS 260.567 will not be included in the sample.

(5) The sample size of the first sample of signatures will be 10% of the total signatures submitted for verification. The size of the second sample of signatures will be the same number used in the first sample, plus at least one additional signature.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. A "second" sample list will be produced by using the remainder of the random numbers.

(b) The "first" and "second" sample list will show the petition identification number, petition signature sheet number and petition sheet line number of each signature selected for verification.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the stacks.

(7) The Oregon Centralized Voter Registration System (OCVR) will be used to conduct signature verification.

(8) Upon completion of the procedures required in sections (1) through (7) of this rule, the county elections official will immediately begin verifying the signatures of the "first" sample against the voter's current registration card. If the selected signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified. These changes must be noted on the signature sheet.

(9) The county elections official will immediately consolidate and tabulate all "first" sample data generated from OCVR.

(10) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample, no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, the "second" larger sample will be verified.

(11) The county elections official will immediately begin verifying the signatures of the "second" sample against the voter's current registration card, if the petition is not accepted as a result of the "first" sample. If the selected signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified. These changes must be noted on the signature sheet.

(12) The county elections official will immediately consolidate and tabulate all "second" sample data generated from OCVR.

(13) If the results of the "first" sample do not qualify the petition, the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

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(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(14) In the event additional signatures are filed pursuant to ORS 250.165(7), 250.265(7), or 255.135(7), the county elections official has the option to either verify all additional signatures or to continue to use the sampling process described in this rule. If the county elections official chooses to verify additional signatures using the sampling process, samples will be selected solely from each additional submittal(s) of signatures.

(a) The sample size of any additional submittal(s) will be directly proportional to the combined "first" and "second" samples from the first submittal or 100 whichever is greater.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to any additional submittal of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of any additional submittal will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

[ED. NOTE: Appendix referenced is available from the agency.]

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

Stats. Implemented: ORS 249.875, 250.105, 250.215, 250.315 & 255.175

Hist.: ELECT 19-1991(Temp), f. & cert. ef. 12-20-91; ELECT 13-1993, f. & cert. ef. 4-16-93; ELECT 7-2000, f. & cert. ef. 4-5-00; ELECT 3-2004, f. & cert. ef. 4-15-04; ELECT 3-2005, f. & cert. ef. 3-22-05; ELECT 10-2005, f. & cert. ef. 12-14-05; ELECT 18-2007, f. & cert. ef. 12-31-07

Rule Caption: Adopting Signature Verification procedures for petitions submitted under Section 33a Chapter 848 Oregon Laws 2007.

Adm. Order No.: ELECT 19-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Adopted: 165-014-0031

Subject: This rule is adopted to allow for the processing of signatures submitted in accordance with Section 33a, Chapter 848 Oregon Laws 2007. For petitions that are being circulated prior to January 1, 2008, the chief petitioners must submit signatures collected to date no later than January 4, 2008. This rule adopts the procedures used for verifying these petitions, including statistical sampling and circulator certification.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0031

Signature Verification Procedures for Petitions Submitted No Later Than January 4, 2008

This rule is adopted to implement Section 33a of Chapter 848 Oregon Laws 2007 and apply to signatures submitted on or before January 4, 2008, for petitions being circulated prior to January 1, 2008, for inclusion on the ballot for the November 4, 2008, General Election. The sampling formula referred to in this rule is contained in Appendix 1, which is incorporated into this rule by reference. The chief petitioners must certify upon submission of signatures the number of signatures that the petition purports to have. If upon submission the petition contains enough unverified signatures to meet the statutory or constitutional requirements the Elections Division will proceed with signature verification. If the petition does not contain enough unverified signatures to meet the statutory or constitutional requirements the chief petitioners may submit additional signatures no later than July 3, 2008. Additional signatures submitted after January 4, 2008, must be submitted in accordance with OAR 165-014-0030. The following procedure will be used for those petitions submitted under this rule:

(1) The chief petitioners must separate all signature sheets by county. The chief petitioners must then sequentially number the sheets within each county prior to submission to the Secretary of State.

(2) The Secretary of State's staff will first review, and remove prior to verification, each cover and signature sheet that does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(2) A petition signature sheet will be rejected for insufficient circulator certification if:

(a) No signature whatsoever appears below the certification;

(b) No date appears next to circulator's signature or the date is crossed out;

(c) The date of the circulator certification is earlier than the date of the electors' signatures, unless the circulator and the only signer are the same person;

(d) Original date is crossed out, and a new date is provided, but the circulator failed to re-sign;

(e) Any part of the original date is overwritten with a different date;

(f) Date information is insufficient or ambiguous. Date must be provided in month, day, year order if written in all numeric characters;

(g) The original signature of a circulator has been crossed out, and a different circulator's signature is inserted;

(h) Two individuals sign and date as circulator, unless the only signers and the circulators are the same people;

(i) White out appears on the signature or date line;

(j) The circulator has signed using only initials, unless the circulator's use of initials as a signature is verified by exemplar under paragraph (5) of this rule;

(k) The circulator has signed using a signature stamp, unless use of a signature stamp has been approved under ORS 246.025;

(l) Circulator's signature is photocopied, carbon-copied, or otherwise appears on the face of the document to be a replicated and not original signature except as provided for in ORS 250.043;

(m) Signature, printed name, and address are all illegible;

(n) Signature alone is illegible, unless the circulator's use of the apparently illegible signature is verified by exemplar under paragraph (5) of this rule;

(o) Circulator's signature is in printed script rather than cursive script, unless the circulator's use of a printed signature is verified by exemplar under paragraph (5) of this rule;

(p) If for any other reason, from the face of the signature sheet, the circulator's identity cannot be determined or it otherwise cannot be determined that the circulator executed the certification after witnessing the electors' signatures.

(3) If a petition signature sheet contains elector signatures dated both on or before the date of the circulator's effective certification and after the date of the circulator's effective certification, the signature sheet will be accepted with regard to the elector signatures dated on or before the date of the certification, but elector signatures dated after the date of the certification will not be accepted.

(4) The following defects in the circulator certification will not result in rejection of the signature sheet:

(a) The circulator's signature appears on the printed name line instead of on the signature line;

(b) Signature consists of full last name and at least the first name initial;

(c) The circulator has signed and dated the certification, but has not provided an address or printed name; or

(d) The circulator has re-signed and re-dated the certification and the circulator's original signature has not been crossed out.

(5) If a preliminary determination is made under paragraph (2)(j), (n) or (o) of this rule that a certification is insufficient, the certification signature may be verified by exemplar in the following manner:

(a) The Elections Division will first compare the certification signature to the circulator's current Oregon voter registration card signature, if available. If the certification signature matches the voter registration signature, the petition signature sheet will be accepted. If the certification signature does not match the voter registration signature, the petition signature sheet will be rejected for insufficient certification.

(b) If an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, the Elections Division will compare the certification signature to an alternative exemplar filed with the Elections Division or retained on file by the Elections Division under section (6) of this rule. If the certification signature does not match the alternative exemplar provided or retained under section (6) and (7) of this rule, the petition signature sheet will be rejected for insufficient certification.

(c) If an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, and an alternative exemplar has not been filed with or retained on file by the Elections Division under section (6) and (7) of this rule, the Elections Division will notify the chief petitioner or the chief petitioner's designee by telephone and electronic mail, if available, and provide the chief petitioner or designee an opportunity to submit an alternative exemplar of the circulator's signature.

(A) If an alternative exemplar is requested by the Elections Division not later than the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 2 days of notification for the alternative exemplar to be considered.

(B) If an alternative exemplar is requested by the Elections Division after the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 1 day of notification for the alternative exemplar to be considered.

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(C) The alternative exemplar must be a signature on an official government-issued document such as a driver's license or passport, and must have been executed before the date of the attempted certification of the petition signature sheet. If the certification signature matches the alternative exemplar, the petition signature sheet will be accepted. If the certification signature does not match the alternative exemplar, the petition signature sheet will be rejected for insufficient certification.

(D) The alternative exemplar may be physically delivered to the Elections Division or may be delivered by facsimile transmission or electronic mail. If delivered by electronic mail, the document must be reproduced in .gif or pdf format. The alternative exemplar must be received at the office of the Secretary of State not later than 5 p.m. of the day it is due.

(6) Chief petitioners may submit alternative exemplars of petition circulators' signatures at the same time they submit petition signature sheets for signature verification. The alternative exemplar must comply with the requirements of paragraph (5)(c)(C) of this rule. When submitting alternative exemplars, chief petitioners must provide a list of circulators for whom they are submitting alternative exemplars. If no list accompanies the alternative exemplars submitted under this section, those alternative exemplars will not be accepted or used to compare the circulator's signature to the certification. If an alternative exemplar is omitted from the list, that alternative exemplar will not be accepted or used to compare the circulator's signature to the certification. Chief petitioners may still be offered the opportunity to submit alternative exemplars under paragraph (5)(c).

(7) Alternative exemplars received and accepted by the Elections Division under paragraphs (5) and (6) of this rule, will be retained on file for two years from the date of receipt.

(8) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process. The Oregon Centralized Voter Registration System (OCVR) will be used to conduct signature verification.

(9) The size of the first sample of signatures will be fixed at 1,000. The size of the second sample of signatures will be specified such that the total number of signatures for the combined first and second sample will be at least five percent of the total number of signatures submitted for verification.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. However, in all cases the first sample will be 1,000 signatures. A "second" sample list will be produced by using the remainder of the random numbers. The combined number of signatures to be used in the first and second samples will be at least five percent of the total number of signatures submitted for verification.

(b) The "first" and "second" sample list will show the petition identification number, county number, petition signature sheet number and petition sheet line number of each signature selected for verification.

(10) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the county stacks.

(11) The random sampling selection list and the selected petition signature sheets are sent to county elections officials for verification.

(12) Upon receipt of the selected petition signature sheet(s) the county elections official will immediately begin verifying the signatures of the "first" sample against the voter's current registration card. If the selected signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified. These changes must be noted on the signature sheet. As soon as all the signatures of the "first" sample are verified, the county elections official will immediately notify the Secretary of State.

(13) The Secretary of State will immediately consolidate and tabulate the verification data, generated from the OCVR, for the "first" sample.

(14) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample the Secretary of State will immediately notify the county elections officials that no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, a "second" larger sample will be verified.

(15) Upon notification by the Secretary of State, the county elections official will immediately begin verifying the signatures of the "second" sample against the voter's current registration card, if the petition is not accepted as a result of the "first" sample. If the selected signature line is a blank or crossed out line, the next available line below will be verified. If there are no lines below, the line above will be verified. These changes must be noted on the signature sheet. As soon as all the signatures of the "second" sample are verified the county elections official will immediately notify the Secretary of State.

(16) The Secretary of State will immediately consolidate and tabulate the verification data, generated from OCVR, for the "second" sample. The statistical formula will be applied to combined data from the "first" and "second" sample to determine its acceptance or rejection.

(17) As soon as notified by the Secretary of State the clerk will return the original sampled petition signature sheets to the Secretary of State within ten business days. If notified by the Secretary of State, the county elections official may terminate signature verification before all signatures included in a sample have been checked.

(18) If the results of the "first" sample do not qualify the petition the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(19) In the event additional signatures are filed pursuant to ORS 250.105(3), an additional sample will be selected solely from the second submittal of signatures.

(a) The sample size of the second submittal will be taken as the larger of 250 and that value which is directly proportional to the size of the combined "first" and "second" samples from the first submittal.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to the second submission of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of the second submission will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

Stat. Auth.: ORS 246.150, 250.105

Stats. Implemented: ORS 250.045, 250.105, Ch. 848 OL 2007

Hist.: ELECT 19-2007, f. & cert. ef. 12-31-07

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Rule Caption: Adopting signature verification procedures for sponsorship signatures.

Adm. Order No.: ELECT 20-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Adopted: 165-014-0032

Subject: This rule is adopted to allow for the processing of sponsorship signatures for a state prospective initiative petition intended for the 2010 General Election or any election thereafter submitted on or after January 1, 2008. Sponsorship signatures will be processed using the statistical sampling formula set forth in Appendix 3.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0032

Statistical Sampling Procedures for State Petition Sponsorship Signatures

This rule is adopted to implement ORS 250.045(1). 250.045(1) requires that to file a prospective state initiative petition intended for the 2010 General Election or any election thereafter, that a statement of sponsorship must be signed by at least 1,000 electors.

(1) The statement of sponsorship containing signatures of at least 1,000 electors must be submitted for verification to the Elections Division. No more than 2,000 sponsorship signatures will be accepted for verification at any one time.

(a) SEL 317 Statement of Sponsorship for State Initiative Petition Signature Sheet is designated as the form to gather 1,000 sponsorship when no circulators are being paid.

(b) SEL 318 Statement of Sponsorship for State Initiative Petition Signature Sheet is designated as the form to gather 1,000 sponsorship when some circulators are being paid.

(c) Form SEL 317 or SEL 318 will be circulated using white paper when a volunteer is gathering sponsorship signatures, and will be circulated on pastel colored paper when a paid circulator is gathering sponsorship signatures.

(d) The text of the prospective initiative petition must either be copied onto the back of or stapled to the Statement of Sponsorship for State Initiative Petition Signature Sheet (SEL 317 or SEL 318) for circulation.

(2) Two signature samples may be taken in order to determine if the petition contains the required number of sponsorship signatures. The sampling formula referred to in this rule is contained in Appendix 3, which is incorporated into this rule by reference.

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(3) The Secretary of State's staff will first review, and remove prior to verification, each cover and signature sheet that does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(c) All information included in the optional information fields about the petition signers, such as their printed name, address and date signed, complies with the requirements of ORS 260.567.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(a) Any individual signature line that is not certified by the circulator's certification date will not be included in the sample.

(b) Any individual signature line on which the printed name, residence address or date appears not to comply with ORS 260.567 will not be included in the sample.

(5) The size of the first sample of signatures will be determined by the number of signatures submitted for verification. The sample size is contained in Appendix 3. If upon completion of the first sample, it can not be determined with confidence that the petition contains signatures of at least 1,000 electors, signature verification will continue on all remaining signatures.

(6) The Oregon Centralized Voter Registration System (OCVR) will be used to conduct signature verification.

(7) Using the "first" random sampling selection lists, the appropriate petition signature lines are verified against the voter's current registration card.

(8) The Secretary of State will immediately consolidate and tabulate the verification data, generated from OCVR, for the "first" sample.

(9) The sampling formula to determine acceptance or rejection will be applied to the data from the "first" sample. If the petition is accepted as a result of the "first" sample the Secretary of State will immediately notify the chief petitioners of their ability to complete the prospective petition filing with the Statement One or More/No Petition Circulators Will be Paid (SEL 301) and Prospective Petition for State Initiative Measure (SEL 310). If the petition is not accepted as a result of the "first" sample, the remaining signatures will be verified.

(10) If the results of the "first" sample do not qualify the petition the remaining signature data will be added to the "first" sample data and the combined results will show that:

(a) The petition has a sufficient number of valid signatures to qualify for submission of the prospective petition; or

(b) The petition does not have a sufficient number of valid signatures to qualify for submission of the prospective petition.

(11) In the event additional signatures are filed no more than 2,000 additional sponsorship signatures will be accepted for verification. A single sample will be taken. The verification procedures applied to the combined "first" and "second" sample will be applied to the second submission of signatures. If the results of the sample taken from the second submission of signatures do not qualify the prospective petition for submission, the chief petitioners must begin the sponsorship process again.

(12) The Elections Division will notify the chief petitioners of the result of the signature verification:

(a) Not later than 10 business days after receipt of the sponsorship signatures;

(b) Not later than 20 business days after receipt of sponsorship signatures for three or more initiatives received in single day; or

(c) Not later than 20 business days after receipt of sponsorship signatures for which all signatures are required to be verified.

Stat. Auth.: ORS 246.150, 250.045, 250.105
Stats. Implemented: ORS 250.045, 250.105
Hist.: ELECT 20-2007, f. & cert. ef. 12-31-07

Rule Caption: Adopting Schedule of review of specified chief petitioner accounts.

Adm. Order No.: ELECT 21-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Adopted: 165-014-0100

Subject: 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 20.262. This rule is adopted to set forth the schedule of review of chief petitioner accounts.

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.

(4) If the petition has multiple chief petitioners, only one set of copies of the detailed accounts for each petition need 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

Rule Caption: Prohibits paying or receiving money based on number of signatures or voter registration cards obtained.

Adm. Order No.: ELECT 22-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-014-0260

Subject: This rule is amended to interpret Chapter 314 Oregon Laws 2007 and Article IV, Section 1b of the Oregon Constitution, by providing guidance about the petitions subject to the measure, describing allowable practices for signature collection and providing for penalties for violations.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0260

Prohibition on Paying or Receipt of Payment based on the Number of Signatures Obtained on an Initiative, Referendum, Candidate Nominating Petition or Voter Registration Cards

(1) The purpose of this rule is to interpret Article IV, section 1b of the Oregon Constitution and Chapter 314 Oregon laws 2007. Article IV, section 1b of the Oregon Constitution provides: "It shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition. Nothing herein prohibits payment for signature gathering which is not based, directly or indirectly, on the number of signatures obtained." Chapter 314 Oregon Laws 2007 provides: "A person may not pay or receive money or another thing of value based on the number of: signatures a person obtains for purposes of nominating a candidate for elective public office or signed voter registration cards a person collects."

(2) Section 1b and Chapter 314 Oregon Laws 2007 bans the practice of paying circulators or others involved in an initiative, referendum, candidate nominating petition or voter registration card collection effort if the basis for payment is the number of signatures obtained. This means that payment cannot be made on a per signature basis. Employment relationships that do not base payment on the number of signatures collected are allowed. Allowable practices include: paying an hourly wage or salary, establishing either express or implied minimum signature or voter registration card requirements, terminating those who do not meet the productivity requirements, adjusting salaries prospectively relative to productivity, and paying discretionary bonuses based on reliability, longevity and productivity, provided no payments are made on a per signature basis.

(3) If a circulator is carrying a petition subject to Section 1b or Chapter 314 Oregon Laws 2007 and another petition not subject to Section 1b or Chapter 314 Oregon Laws 2007 (for example, a state initiative peti-

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tion and a local recall petition), the circulator may be paid by the signature only for signatures collected on the petition not subject to Section 1b or Chapter 314 Oregon Laws 2007. Any payment for collecting signatures on the petition subject to Section 1b or Chapter 314 Oregon Laws 2007 must comply with Section 1b or Chapter 314 Oregon Laws 2007.

(4) The phrase "directly or indirectly" in Section 1b means that the chief petitioners who are responsible for the circulation and submission of the initiative or referendum petition cannot directly pay for signature gathering based on the number of signatures obtained, and cannot contract or delegate to another person or entity to obtain signatures and allow the third party to pay circulators on the basis of the number of signatures obtained. However, chief petitioners may contract with a person or entity to manage the signature gathering, and pay the person or entity for services, including the service of qualifying the petition for the ballot, so long as the individuals who actually circulate the petition are not paid based on the number of signatures obtained. The chief petitioners are responsible for insuring that agents of the chief petitioner (anyone who is delegated the task of obtaining signatures on the initiative or referendum petition) do not violate Section 1b.

(5) Violations of Section 1b or Chapter 314 Oregon Laws 2007 will be processed under ORS 260.995 as civil penalties. Penalties may be assessed against chief petitioners or any other persons who either directly or indirectly pay based on the number of signatures or voter registration cards obtained. Liability may be imposed on chief petitioners as provided in ORS 260.561. Violations of Section 1b or Chapter 314 Oregon Laws 2007 will be calculated by deeming each individual signature sheet or voter registration card that contains signatures that were collected in violation of Section 1b or Chapter 314 Oregon Laws 2007 as a single occurrence with a minimum civil penalty of \$100. Violations of Section 1b or Chapter 314 Oregon Laws 2007 shall not be combined under OAR 165-013-0020(1)(b)(E).

Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 250.045 & 260.995
Hist.: ELECT 15-2003, f. & cert. ef. 10-15-03; ELECT 22-2007, f. & cert. ef. 12-31-07

Rule Caption: Revises rule on insufficient and sufficient circulator certifications.

Adm. Order No.: ELECT 23-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-014-0270

Subject: This rule amendment updates the source of the primary exemplar for a person who is required to be registered under Section 2 of Chapter 848 Oregon Laws 2007 from the Oregon Voter Registration Card to the signature provided on the Circulator registration (SEL 308) on file at the time the signature sheet was circulated. The signature provided on the Circulator Registration will be the only exemplar for persons required to be registered. For a person who is not required to be registered under Section 2 of Chapter 848 Oregon Laws 2007 the primary source for an exemplar remains the Oregon voter Registration Card and the chief petitioners have the opportunity to provide an alternate exemplar for those circulators not registered to vote.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0270

Circulator Certification

(1) The purpose of this rule is to incorporate into administrative law previously enforced standards on what constitutes a sufficient circulator certification on Initiative, Referendum, Recall, and Candidate Nominating petitions.

(2) A petition signature sheet will be rejected for insufficient circulator certification if:

(a) No signature whatsoever appears below the certification;

(b) No date appears next to circulator's signature or the date is crossed out;

(c) The date of the circulator certification is earlier than the date of the electors' signatures, unless the circulator and the only signer are the same person;

(d) Original date is crossed out, and a new date is provided, but the circulator failed to re-sign;

(e) Any part of the original date is overwritten with a different date;

(f) Date information is insufficient or ambiguous. Date must be provided in month, day, year order if written in all numeric characters;

(g) The original signature of a circulator has been crossed out, and a different circulator's signature is inserted;

(h) Two individuals sign and date as circulator, unless the only signers and the circulators are the same people;

(i) White out appears on the signature or date line;

(j) The circulator has signed using only initials, unless the circulator's use of initials as a signature is verified by exemplar under paragraph (5) of this rule;

(k) The circulator has signed using a signature stamp, unless use of a signature stamp has been approved under ORS 246.025;

(l) Circulator's signature is photocopied, carbon-copied, or otherwise appears on the face of the document to be a replicated and not original signature except as provided for in ORS 250.043;

(m) Signature, printed name, and address are all illegible;

(n) Signature alone is illegible, unless the circulator's use of the apparently illegible signature is verified by exemplar under paragraph (5) of this rule;

(o) Circulator's signature is in printed script rather than cursive script, unless the circulator's use of a printed signature is verified by exemplar under paragraph (5) of this rule;

(p) If for any other reason, from the face of the signature sheet, the circulator's identity cannot be determined or it otherwise cannot be determined that the circulator executed the certification after witnessing the electors' signatures.

(3) If a petition signature sheet contains elector signatures dated both on or before the date of the circulator's effective certification and after the date of the circulator's effective certification, the signature sheet will be accepted with regard to the elector signatures dated on or before the date of the certification, but elector signatures dated after the date of the certification will not be accepted.

(4) The following defects in the circulator certification will not result in rejection of the signature sheet:

(a) The circulator's signature appears on the printed name line instead of on the signature line;

(b) Signature consists of full last name and at least the first name initial;

(c) The circulator has signed and dated the certification, but has not provided an address or printed name; or

(d) The circulator has re-signed and re-dated the certification and the circulator's original signature has not been crossed out.

(5) If a preliminary determination is made under paragraph (2)(j), (n) or (o) of this rule that a certification is insufficient, the certification signature may be verified by exemplar in the following manner:

(a) If the circulator is required to be registered under ORS 250.048 Section 2 the Elections Division will compare the certification signature only to the circulator's signature supplied by the circulator on the circulator's SEL 308, Circulator Registration. If the certification signature matches the signature on the SEL 308 that was in effect at the time that the signature sheet was certified, the petition signature sheet will be accepted. If the certification signature does not match the signature on the SEL 308 that was in effect at the time that the signature sheet was certified, the petition signature sheet will be rejected for insufficient certification. A certification signature may consist of a minimum of a first name initial and full last name and still be accepted even if the signature on the circulator's most recent SEL 308 contains a full first name and full last name.

(b) For circulators not required to be registered under ORS 250.048, the Elections Division will compare the certification signature to the circulator's current Oregon voter registration card signature, if available. If the certification signature matches the voter registration signature, the petition signature sheet will be accepted. If the certification signature does not match the voter registration signature, the petition signature sheet will be rejected for insufficient certification.

(c) If the circulator is not required to be registered under ORS 250.048 and an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, the Elections Division will compare the certification signature to an alternative exemplar filed with the Elections Division or retained on file by the Elections Division under section (6) of this rule. If the certification signature does not match the alternative exemplar provided or retained under section (6) and (7) of this rule, the petition signature sheet will be rejected for insufficient certification.

(d) If the circulator is not required to be registered under ORS 250.048 and an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, and an alternative exemplar has not been filed with or retained on file by the Elections Division under section (6) and (7) of this rule, the Elections Division will notify the chief petitioner or the chief petitioner's designee by telephone and electronic mail, if available, and provide the chief petitioner or designee an opportunity to submit an alternative exemplar of the circulator's signature.

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(A) If an alternative exemplar is requested by the Elections Division not later than the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 2 days of notification for the alternative exemplar to be considered.

(B) If an alternative exemplar is requested by the Elections Division after the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 1 day of notification for the alternative exemplar to be considered.

(C) The alternative exemplar must be a signature on an official government-issued document such as a driver's license or passport, and must have been executed before the date of the attempted certification of the petition signature sheet. If the certification signature matches the alternative exemplar, the petition signature sheet will be accepted. If the certification signature does not match the alternative exemplar, the petition signature sheet will be rejected for insufficient certification.

(D) The alternative exemplar may be physically delivered to the Elections Division or may be delivered by facsimile transmission or electronic mail. If delivered by electronic mail, the document must be reproduced in .gif or .pdf format. The alternative exemplar must be received at the office of the Secretary of State not later than 5 p.m. of the day it is due.

(6) Chief petitioners may submit alternative exemplars of petition circulators' signatures at the same time they submit petition signature sheets for signature verification. The alternative exemplar must comply with the requirements of paragraph (5)(c)(C) of this rule. When submitting alternative exemplars, chief petitioners must provide a list of circulators for whom they are submitting alternative exemplars. If no list accompanies the alternative exemplars submitted under this section, those alternative exemplars will not be accepted or used to compare the circulator's signature to the certification. If an alternative exemplar is omitted from the list, that alternative exemplar will not be accepted or used to compare the circulator's signature to the certification. Chief petitioners may still be offered the opportunity to submit alternative exemplars under paragraph (5)(c).

(7) Alternative exemplars received and accepted by the Elections Division under paragraphs (5) and (6) of this rule, will be retained on file for two years from the date of receipt.

Stat. Auth.: ORS 246.150, 249.008, 250.105, 250.215, 250.315 & 255.175
Stats. Implemented: ORS 249.008, 249.061, 249.740, 249.865, 249.875, 250.045, 250.105, 250.215, 250.315 & 255.175
Hist.: ELECT 4-2005, f. & cert. ef. 4-8-05; ELECT 23-2007, f. & cert. ef. 12-31-07

Rule Caption: Completion of optional information on petition sheets.

Adm. Order No.: ELECT 24-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Adopted: 165-014-0275

Subject: This rule adopts specific standards for what an Elections Official will review a petition sheet to determine if there has been a violation of ORS 260.567.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0275

Completion of Optional Information on Petition Sheets

(1) The purpose of this rule is to establish standards governing what an Elections Official will review for in determining if there has been a violation of ORS 260.567 and the petition sheet must be removed prior to verification. This rule applies to all state and local initiative, referendum, recall and candidate nominating petitions.

(2) A petition signature sheet will be rejected for noncompliance with ORS 260.567 if:

(a) The same handwriting appears to have completed the optional information on multiple lines of the petition sheet;

(b) Optional information on multiple lines has been entered, altered, corrected, clarified or obscured in a handwriting that differs from the signature handwriting;

(c) Optional information on multiple lines has been entered, altered, corrected, clarified or obscured by typewriting or other mechanical means;

(d) For any other reason the Elections Official determines from the face of the signature sheet that a person or persons other than the petition signers entered, altered, corrected, clarified or obscured any information about the person who signed the signature sheet, including the optional fields of printed name, residence address and date signed.

(3) Notwithstanding paragraph (2) of this rule, a signature sheet will not be rejected for noncompliance with ORS 260.567 if:

(a) Each entry or change of information was subsequently initiated by the person who signed the signature sheet; or

(b) Each entry or change of information occurred with regard to a signer who is a person with a disability who requested assistance in writing, altering, correcting, clarifying or obscuring on the information sheet any information about the person.

(4) For purposes of this rule, "optional information" means information in the optional fields of printed name, residence address and date signed.

Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.567
Hist.: ELECT 24-2007, f. & cert. ef. 12-31-07

Rule Caption: Adoption of the 2008 City Elections Manual and the 2008 District Elections Manual.

Adm. Order No.: ELECT 25-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-020-0005

Subject: This rule amendment designates the 2008 City Elections Manual and the 2008 District Elections Manual and associated forms as the procedure and forms used for in the city and district election process.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-0005

Designating the City and District Elections Manuals and Forms

(1) The Secretary of State designates the 2008 City Elections Manual and associated forms as the procedures and forms to be used for city elections processes.

(2) The Secretary of State designates the 2008 District Elections Manual and associated forms as the procedures and forms to be used for district elections processes.

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

Stat. Auth.: ORS 246.120 & 246.150
Stats. Implemented: ORS 246.120 & 246.150
Hist.: SD 33-1980, f. & ef. 3-6-80; SD 47-1980, f. & ef. 10-17-80; SD 12-1984, f. & ef. 6-20-84; SD 40-1985, f. & ef. 11-15-85; SD 12-1986, f. & ef. 4-3-86; ELECT 34-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 11-1992(Temp), f. & cert. ef. 4-14-92; ELECT 33-1992, f. & cert. ef. 10-8-92; ELECT 36-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 4-1999, f. & cert. ef. 3-1-99; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 16-2003, f. & cert. ef. 12-5-03; ELECT 11-2005, f. & cert. ef. 12-14-05; ELECT 25-2007, f. & cert. ef. 12-31-07

Rule Caption: Periodic review of division 20 and updates to reflect changes in election law.

Adm. Order No.: ELECT 26-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Adopted: 165-020-0021

Rules Amended: 165-020-0020, 165-020-0035, 165-020-0050, 165-020-0055

Rules Repealed: 165-020-0045

Subject: 165-020-0021 This rule sets forth the procedures used to prepare the notice of election of board members for special districts.

165-020-0020 This rule adopts by reference Form SEL 815, the form used for filing a notice of election of board members for special district elections as well as prescribing the timelines to prepare SEL 815 and deliver to each district elections authority, and how the notice required by ORS 255.075 shall be prepared. OAR 021-0005 and OAR 165-021-0010 have been incorporated into this rule.

165-020-0035 This rule is updated to incorporate the language in OAR 165-020-0045 and to streamline and make clearer the process

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for filing a vacancy that occurs in office of board member of a district.

165-020-0050 and 165-020-0055 are updated to remove a reference to SEL 952PP, Allocated Cost Worksheet for Polling Place Elections.

165-020-0045 is replaced as being wholly incorporated into OAR 165-020-0035.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-0020

Notice of Election of Board Members for Special Districts

(1) The Secretary of State hereby adopts by reference and designates SEL 815, Notice of Election of Board Members for Special Districts to comply with ORS 255.069.

(2) The elections officer shall deliver the SEL 815 to each district elections authority, no later than the dates prescribed in ORS 255.069(1) and (2). The elections officer shall instruct the district elections authority to review the information on the form and make additions and corrections as necessary. If the information supplied by the elections officer to the district elections authority on the SEL 815 is correct, the district elections authority shall so indicate.

(3) The SEL 815 shall contain:

- (a) Name of district;
- (b) Date of election;
- (c) Open board positions;
- (d) Title of office;
- (e) Term of each office;
- (f) Indication that the election will be conducted by mail and that the polls will be open from 7 a.m. to 8 p.m.;

(g) Name of county in which declaration of candidacy or petition of nomination is to be filed;

(h) Deadline for candidate filings;

(i) Designation of newspaper in which legal notice is to be published; and

(j) Signature of authorized district election authority, title and date signed.

(4) The elections officer shall prepare the notice required by ORS 255.075 using the updated SEL 815 submitted by the district elections authority.

(5) In making the designation of a newspaper of general circulation in the district for publication of the district's notices the elections officer shall consider the criteria set forth in ORS 193.020.

(6) In addition to the information required in a publication made pursuant to ORS 255.075, the elections officer shall also include a statement as to where declarations of candidacy and petitions for nomination may be filed.

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

Stat. Auth.: ORS 246.120 & 246.150

Stats. Implemented: ORS 255.075

Hist.: SD 13-1980, f. & ef. 2-1-80; ELECT 29-1993, f. & cert. ef. 7-23-93; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 26-2007, f. & cert. ef. 12-31-07

165-020-0021

Record Retention for Preparation of Notice of Election of Board Members for Special Districts

(1) In accordance with ORS 255.069(4) the election officer shall retain completed SEL 815, Notice of Election of Board Members for Special Districts, filed by the district elections authority in a file maintained for that purpose. All forms shall be kept for a period of at least 4 years after the district election for which the form was completed.

(2) To maintain adequate records for preparation of the SEL 815 by the elections officer, the district elections authority must notify the elections officer of any vacancy as soon as practicable. If the vacancy occurs after the 101st day before the regular district election and on or before the 62nd day before the regular district election, the district elections authority must immediately notify the elections officer, but not later than the next business day.

(3) When a person is appointed to fill a vacancy in a district office, the district elections authority must give written notice to the elections officer within two business days after such appointment is made.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 255.069

Hist.: ELECT 26-2007, f. & cert. ef. 12-31-07

165-020-0035

Nominating Schedule for Filling Vacancy in Office of Board Member of District

(1) The purpose of this rule is to provide a nominating schedule for candidates' names to be printed on the official district election ballot to fill

the remainder of an unexpired term resulting from a vacancy in the office of an elected board member.

(2) This rule shall apply only when a vacancy in the office of an elected board member occurs after the 101st day before the regular district election and on or before the 62nd day before the regular district election.

(3) As soon as practicable after a vacancy in the office of district board member occurs the district elections authority shall deliver written confirmation of the vacancy to the elections officer. The written confirmation shall include the office information, position or zone number and the expiration date of the term.

(4) Upon receipt of the written confirmation of the vacancy the elections officer shall publish in the next available edition of a newspaper of general circulation or mail to each elector of the district an amended notice of district board election. The amended notice shall contain:

(a) All the information contained in the original published notice, including the same filing date and time, for the office(s) originally scheduled for election;

(b) The new office information for the office in which the vacancy exists; and

(c) The filing deadline date and time, as determined by the elections officer, for the office in which the vacancy exists.

(5) Candidates shall file for election in accordance with ORS 255.235(1)(a) and (b).

(6) The elections officer shall accept candidate filings for not fewer than seven calendar days after receipt of written confirmation of vacancy.

(7) The office title only shall be printed on the ballot in those cases when no nominations are received by the election officer.

Stat. Auth.: ORS 246.150 & ORS 255.245

Stats. Implemented: ORS 255.245

Hist.: SD 2-1978(Temp), f. & ef. 2-28-78; SD 1-1979, f. & ef. 1-18-79; SD 2-1984, f. & ef. 1-19-84; ELECT 26-2007, f. & cert. ef. 12-31-07

165-020-0050

Purpose

(1) This rule provides a uniform billing system for state, county, city and special district elections as authorized under ORS 246.179, 254.046, and 255.305:

(a) All chargeable costs incurred by the county election officer for the conduct of an election held for the state on a date other than the primary or general election, shall be paid by the state, if provided by the act calling for the election or pursuant to ORS 246.179;

(b) All chargeable costs incurred by the county election officer for the conduct of an election held for a city on a date other than the primary or general election, shall be paid by the city;

(c) All chargeable costs incurred by the county election officer for the conduct of an election held for a special district shall be paid by the special district.

(2) An "Election Equipment Amortization Worksheet" (SEL 950, SEL 950A, or SEL 950B), "Average Ballots Cast/Average Aggregate Registration Worksheet" (SEL 951), "Allocated Cost Worksheet for Vote By Mail Elections" (SEL 952VBM), and "Local Elections Billing Worksheet" (SEL 953) are adopted by reference and designated for use to detail all costs to be billed to each electoral district holding an election.

(3) Any chargeable cost billed for an election shall be supported by such documentation as copies of payroll registers, invoices, vouchers, sales slips, billings, and receipts. Any cost not specified in this rule, or any unsupported chargeable cost, need not be paid.

(4) Documentation will be provided to the electoral districts upon request.

(5) Any electoral district bills and supporting documentation shall be subject to audit by the secretary of state at any time for the purpose of verifying the accuracy of the chargeable costs.

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

Stat. Auth.: ORS 246.150, 246.179 & 255.305

Stats. Implemented: ORS 246.179, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 11-2000, f. & cert. ef. 6-7-00; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 4-2004, f. & cert. ef. 4-15-04; ELECT 26-2007, f. & cert. ef. 12-31-07

165-020-0055

Definition of Terms

(1) "Adjustment Cost." A value which occurs when the voter registration of a district which did not have an excess credit is multiplied by the adjustment cost per elector.

(2) "Adjustment Cost Per Elector." A unit charge derived by dividing the total excess credit by the adjustment registration.

(3) "Adjustment Registration." The total aggregate registration minus the registration of those districts which have an excess credit.

(4) "Aggregate Registration." The total number of electors from all participating electoral districts within a county.

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(5) "Allocated Cost." The total of all costs on the "Allocated Cost Worksheet for Vote By Mail Elections (SEL 952 VBM) incurred by the county election officer for a given election.

(6) "Allocated Cost Per Elector." A unit charge determined by dividing the allocated cost by the aggregate registration.

(7) "Amortization." The allocation of a cost of an asset over its estimated economic life:

(a) "Estimated Economic Life." The period of time over which the asset will be used. This period of time cannot be longer than the estimated physical life of the asset;

(b) "Hardware." The physical equipment used in an information system;

(c) "Software or Program." The detailed instructions which direct the hardware functions of an information system;

(d) "Hardware Maintenance Agreement." An annual expenditure for the repair or preventative maintenance of the hardware portion of an information system;

(e) "Software License or Royalty." An expenditure for the licensed use of an information system's software.

(8) "Chargeable Cost." A charge directly associated with and incurred by the county election officer to conduct a given election. Chargeable costs include apportioned costs and dedicated expenditures. Costs associated with a county's voters' pamphlet shall be considered chargeable costs for local elections. Chargeable cost does not include costs incurred for a city election held on the date of the primary or general election.

(9) "Apportioned Cost." A value which occurs when the district registration is multiplied by the allocated cost per elector.

(10) "Dedicated Expenditure" Any charge associated with and incurred by the county election officer to conduct a given election but specific to one electoral district and not to be shared or apportioned to any other electoral district; such as notice of ballot title.

(11) "Election Cost." The billing cost for a district election. A value derived by subtracting the adjustment cost from the value in the total chargeable costs minus total revenue column for each district on the "Local Elections Billing Worksheet" (SEL 953).

(12) "Electoral District." A state, county, city, special district, or other municipal corporation for which the county election officer is required to hold an election.

(13) "Excess Credit." A value which occurs when the total revenue from a district exceeds the total cost for that district election.

(14) "Revenue." The deposits placed on account with the county election officer as provided in ORS 198.775, 261.210, and 607.025 and revenues received from submission of candidate statements and arguments for publication of the county voters' pamphlet.

Stat. Auth.: ORS 246.179, 251.365, 254.046 & 255.305

Stats. Implemented: ORS 246.179, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 12-1992(Temp), f. & cert. ef. 5-18-92; ELECT 35-1992, f. & cert. ef. 12-15-92; ELECT 12-2000, f. & cert. ef. 6-7-00; ELECT 26-2007, f. & cert. ef. 12-31-07

Rule Caption: Repeals all rules in Division 21, Publication of Special District Election Notices.

Adm. Order No.: ELECT 27-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Repealed: 165-021-0000, 165-021-0005, 165-021-0010

Subject: The following rules are repealed:

165-021-0000 This rule sets forth the definitions to be used in OAR 165-021-0000 through 165-021-0010. Once the other rules in

the Division are incorporated into other rules, this rule is no longer necessary.

165-021-0005 This rule describes the procedures for maintaining records for preparation of notice of election of special district directors. This rule will be incorporated into OAR 165-020-0020.

165-021-0010 This rule describes the procedure for preparing notices of election for publication in a newspaper. This rule will be incorporated into a new OAR 165-020-0021 and existing OAR 165-020-0020.

Rules Coordinator: Brenda Bayes—(503) 986-1518

Rule Caption: Updating the forms to petition for creation of a city through incorporation or consolidation.

Adm. Order No.: ELECT 28-2007

Filed with Sec. of State: 12-31-2007

Certified to be Effective: 12-31-07

Notice Publication Date: 12-1-2007

Rules Amended: 165-004-0005, 165-004-0020

Subject: 165-004-0005 Adopts the forms to be used to petition for incorporation of a city.

165-004-0020 Adopts the forms to be used to petition for incorporation of a city through consolidation.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-004-0005

Forms to Petition for Incorporation of a City

The Secretary of State hereby adopts by reference and designates the following forms for filing a petition for incorporation of unincorporated territory as a city:

(1) SEL 701, Prospective Petition for Incorporation, which designates not more than three chief petitioners;

(2) SEL 702, Petition for Incorporation of a City Signature Sheet;

(3) SEL 702a, Petition for Incorporation of a City Signature Sheet, to be used when the territory proposed to be incorporated is within the jurisdiction of a local government boundary commission.

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

Stat. Auth.: ORS 221.031 & 246.150

Stats. Implemented: ORS 221.031, 221.040

Hist.: SD 15-1981, f. & ef. 12-1-81; ELECT 15-1993(Temp), f. & cert. ef. 4-23-93; ELECT 21-1993, f. & cert. ef. 6-21-93; ELECT 1-1998, f. & cert. ef. 2-5-98; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 14-1999(Temp) f. & cert. ef. 12-29-99 thru 6-26-00; ELECT 10-2000; ELECT 8-2007 f. & cert. ef. 6-7-00; ELECT 28-2007, f. & cert. ef. 12-31-07

165-004-0020

Forms to Petition for Creation of a City Through Consolidation

The Secretary of State hereby adopts by reference and designates the following forms for filing a petition to create a city by consolidation of adjoining or nonadjoining cities or unincorporated territory:

(1) SEL 705, Prospective Petition to Create a City by Consolidation, which designates not more than three chief petitioners;

(2) SEL 706, Petition for Creation of a City Through Consolidation signature sheet.

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

Stat. Auth.: ORS 222.230, 246.120 & 246.150

Stats. Implemented: ORS 222.210, 222.220, 222.225 & 222.230

Hist.: ELECT 4-2002(Temp), f. & cert. ef. 6-12-02 thru 12-9-02; ELECT 7-2002, f. & cert. ef. 8-1-02; ELECT 28-2007, f. & cert. ef. 12-31-07

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
111-001-0000	1-4-2008	Adopt	2-1-2008	125-145-0030	12-6-2007	Suspend	1-1-2008
111-001-0005	1-4-2008	Adopt	2-1-2008	125-145-0040	12-6-2007	Suspend	1-1-2008
111-002-0005	1-4-2008	Adopt	2-1-2008	125-145-0045	12-6-2007	Suspend	1-1-2008
111-002-0010	1-4-2008	Adopt	2-1-2008	125-145-0060	12-6-2007	Suspend	1-1-2008
111-005-0010	1-4-2008	Adopt	2-1-2008	125-145-0080	12-6-2007	Suspend	1-1-2008
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111-005-0044	1-4-2008	Adopt	2-1-2008	137-020-0020	1-2-2008	Amend	2-1-2008
111-005-0046	1-4-2008	Adopt	2-1-2008	137-020-0040	1-2-2008	Amend	2-1-2008
111-005-0048	1-4-2008	Adopt	2-1-2008	137-020-0050	1-2-2008	Amend	2-1-2008
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115-010-0032	12-26-2007	Amend	2-1-2008	137-045-0050	1-1-2008	Amend	2-1-2008
115-010-0115	12-26-2007	Amend	2-1-2008	137-045-0055	1-1-2008	Amend	2-1-2008
115-025-0000	1-1-2008	Amend	2-1-2008	137-045-0060	1-1-2008	Amend	2-1-2008
115-025-0010	1-1-2008	Amend	2-1-2008	137-045-0070	1-1-2008	Amend	2-1-2008
115-025-0015	1-1-2008	Amend	2-1-2008	137-045-0090	1-1-2008	Amend	2-1-2008
115-025-0020	1-1-2008	Amend	2-1-2008	137-046-0100	1-1-2008	Amend	2-1-2008
115-025-0023	1-1-2008	Amend	2-1-2008	137-046-0110	1-1-2008	Amend	2-1-2008
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115-025-0030	1-1-2008	Amend	2-1-2008	137-047-0000	1-1-2008	Amend	2-1-2008
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115-025-0075	1-1-2008	Adopt	2-1-2008	137-047-0263	1-1-2008	Amend	2-1-2008
115-035-0035	12-26-2007	Amend	2-1-2008	137-047-0275	1-1-2008	Amend	2-1-2008
115-040-0005	12-26-2007	Amend	2-1-2008	137-047-0280	1-1-2008	Amend	2-1-2008
115-040-0030	1-1-2008	Amend	2-1-2008	137-047-0285	1-1-2008	Amend	2-1-2008
115-070-0000	12-26-2007	Amend	2-1-2008	137-047-0310	1-1-2008	Amend	2-1-2008
115-070-0035	12-26-2007	Amend	2-1-2008	137-047-0330	1-1-2008	Amend	2-1-2008
123-001-0050	1-2-2008	Amend	2-1-2008	137-047-0400	1-1-2008	Amend	2-1-2008
123-001-0300	1-2-2008	Amend	2-1-2008	137-047-0410	1-1-2008	Amend	2-1-2008
123-001-0500	1-2-2008	Amend	2-1-2008	137-047-0430	1-1-2008	Amend	2-1-2008
123-001-0520	1-2-2008	Amend	2-1-2008	137-047-0575	1-1-2008	Amend	2-1-2008
123-001-0700	1-2-2008	Amend	2-1-2008	137-047-0610	1-1-2008	Amend	2-1-2008
123-001-0725	1-2-2008	Amend	2-1-2008	137-047-0730	1-1-2008	Amend	2-1-2008
123-001-0750	1-2-2008	Amend	2-1-2008	137-048-0100	1-1-2008	Amend	2-1-2008
123-009-0060	1-2-2008	Amend	2-1-2008	137-048-0130	1-1-2008	Amend	2-1-2008
123-009-0080	1-2-2008	Amend	2-1-2008	137-048-0200	1-1-2008	Amend	2-1-2008
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123-025-0015	12-7-2007	Suspend	1-1-2008	137-048-0300	1-1-2008	Amend	2-1-2008
123-025-0017	12-7-2007	Amend(T)	1-1-2008	137-048-0320	1-1-2008	Amend	2-1-2008
123-025-0021	12-7-2007	Amend(T)	1-1-2008	137-049-0100	1-1-2008	Amend	2-1-2008
123-025-0023	12-7-2007	Amend(T)	1-1-2008	137-049-0140	1-1-2008	Amend	2-1-2008
123-025-0025	12-7-2007	Amend(T)	1-1-2008	137-049-0150	1-1-2008	Amend	2-1-2008
123-025-0030	12-7-2007	Amend(T)	1-1-2008	137-049-0160	1-1-2008	Amend	2-1-2008
125-145-0010	12-6-2007	Suspend	1-1-2008	137-049-0200	1-1-2008	Amend	2-1-2008
125-145-0020	12-6-2007	Suspend	1-1-2008	137-049-0210	1-1-2008	Amend	2-1-2008

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
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137-049-0290	1-1-2008	Amend	2-1-2008	141-085-0421	1-1-2008	Amend	1-1-2008
137-049-0310	1-1-2008	Amend	2-1-2008	141-085-0425	1-1-2008	Amend	1-1-2008
137-049-0390	1-1-2008	Amend	2-1-2008	141-085-0430	1-1-2008	Amend	1-1-2008
137-049-0395	1-1-2008	Amend	2-1-2008	141-089-0100	1-1-2008	Amend	1-1-2008
137-049-0630	1-1-2008	Amend	2-1-2008	141-089-0105	1-1-2008	Amend	1-1-2008
137-049-0645	1-1-2008	Amend	2-1-2008	141-089-0110	1-1-2008	Amend	1-1-2008
137-049-0860	1-1-2008	Amend	2-1-2008	141-089-0115	1-1-2008	Amend	1-1-2008
137-055-3020	1-2-2008	Amend(T)	2-1-2008	141-089-0120	1-1-2008	Amend	1-1-2008
137-055-3060	1-2-2008	Amend(T)	2-1-2008	141-089-0135	1-1-2008	Amend	1-1-2008
137-055-3080	1-2-2008	Amend(T)	2-1-2008	141-089-0140	1-1-2008	Amend	1-1-2008
137-055-3100	1-2-2008	Amend(T)	2-1-2008	141-089-0150	1-1-2008	Amend	1-1-2008
137-055-3140	1-2-2008	Amend(T)	2-1-2008	141-089-0155	1-1-2008	Amend	1-1-2008
137-055-4620	1-2-2008	Amend	2-1-2008	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

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141-090-0025	1-1-2008	Amend	1-1-2008	160-050-0180	1-15-2008	Amend	2-1-2008
141-090-0030	1-1-2008	Amend	1-1-2008	160-050-0190	1-15-2008	Amend	2-1-2008
141-090-0032	1-1-2008	Adopt	1-1-2008	160-050-0200	1-15-2008	Amend	2-1-2008
141-090-0035	1-1-2008	Amend	1-1-2008	160-050-0210	1-15-2008	Amend	2-1-2008
141-090-0040	1-1-2008	Amend	1-1-2008	160-050-0215	1-15-2008	Adopt	2-1-2008
141-090-0045	1-1-2008	Amend	1-1-2008	160-050-0220	1-15-2008	Amend	2-1-2008
141-090-0050	1-1-2008	Amend	1-1-2008	160-050-0230	1-15-2008	Amend	2-1-2008
141-090-0055	1-1-2008	Amend	1-1-2008	160-050-0240	1-15-2008	Amend	2-1-2008
141-102-0000	1-1-2008	Amend	1-1-2008	160-050-0250	1-15-2008	Amend	2-1-2008
141-102-0020	1-1-2008	Amend	1-1-2008	160-050-0280	1-15-2008	Amend	2-1-2008
141-102-0030	1-1-2008	Amend	1-1-2008	160-100-0200	1-15-2008	Amend	1-1-2008
141-102-0045	1-1-2008	Repeal	1-1-2008	165-002-0020	12-31-2007	Amend	2-1-2008
150-118.005	1-1-2008	Repeal	2-1-2008	165-004-0005	12-31-2007	Amend	2-1-2008
150-18.385-(A)	1-1-2008	Amend	2-1-2008	165-004-0020	12-31-2007	Amend	2-1-2008
150-305.145(3)	1-1-2008	Amend	2-1-2008	165-005-0130	12-31-2007	Amend	2-1-2008
150-305.220(2)	1-1-2008	Amend	2-1-2008	165-007-0030	12-31-2007	Amend	2-1-2008
150-305.270(10)	1-1-2008	Amend	2-1-2008	165-010-0005	12-31-2007	Amend	2-1-2008
150-305.270(4)-(A)	1-1-2008	Amend	2-1-2008	165-010-0085	12-31-2007	Adopt	2-1-2008
150-305.992	1-1-2008	Amend	2-1-2008	165-012-0005	12-31-2007	Amend	2-1-2008
150-307.262(2)	1-1-2008	Repeal	2-1-2008	165-013-0010	12-31-2007	Amend	2-1-2008
150-309.115(1)-(A)	1-1-2008	Repeal	2-1-2008	165-013-0020	12-31-2007	Amend	2-1-2008
150-311.676	1-1-2008	Amend	2-1-2008	165-014-0005	12-31-2007	Amend	2-1-2008
150-311.676-(B)	1-1-2008	Repeal	2-1-2008	165-014-0027	12-31-2007	Repeal	2-1-2008
150-311.684	1-1-2008	Amend	2-1-2008	165-014-0030	12-31-2007	Amend	2-1-2008
150-311.689	1-1-2008	Amend	2-1-2008	165-014-0031	12-31-2007	Adopt	2-1-2008
150-311.806-(A)	1-1-2008	Amend	2-1-2008	165-014-0032	12-31-2007	Adopt	2-1-2008
150-314.258	1-1-2008	Adopt	2-1-2008	165-014-0100	12-31-2007	Adopt	2-1-2008
150-314.280-(E)	1-1-2008	Amend	2-1-2008	165-014-0110	12-31-2007	Amend	2-1-2008
150-314.280-(G)	1-1-2008	Amend	2-1-2008	165-014-0260	12-31-2007	Amend	2-1-2008
150-314.280-(H)	1-1-2008	Amend	2-1-2008	165-014-0270	12-31-2007	Amend	2-1-2008
150-314.280-(I)	1-1-2008	Amend	2-1-2008	165-014-0275	12-31-2007	Adopt	2-1-2008
150-314.280-(J)	1-1-2008	Amend	2-1-2008	165-014-0280	12-3-2007	Adopt	1-1-2008
150-314.280-(K)	1-1-2008	Amend	2-1-2008	165-020-0005	12-31-2007	Amend	2-1-2008
150-314.280-(L)	1-1-2008	Amend	2-1-2008	165-020-0020	12-31-2007	Amend	2-1-2008
150-314.308	1-1-2008	Adopt	2-1-2008	165-020-0021	12-31-2007	Adopt	2-1-2008
150-314.415.(7)	1-1-2008	Amend	2-1-2008	165-020-0035	12-31-2007	Amend	2-1-2008
150-314.425-(B)	1-1-2008	Adopt	2-1-2008	165-020-0045	12-31-2007	Repeal	2-1-2008
150-314.615-(D)	1-1-2008	Amend	2-1-2008	165-020-0050	12-31-2007	Amend	2-1-2008
150-314.615-(E)	1-1-2008	Amend	2-1-2008	165-020-0055	12-31-2007	Amend	2-1-2008
150-315.262	1-1-2008	Amend	2-1-2008	165-021-0000	12-31-2007	Repeal	2-1-2008
150-315.354(5)	1-1-2008	Amend	2-1-2008	165-021-0005	12-31-2007	Repeal	2-1-2008
150-315.521	1-1-2008	Adopt	2-1-2008	165-021-0010	12-31-2007	Repeal	2-1-2008
150-316.127-(E)	1-1-2008	Amend	2-1-2008	166-500-0015	11-29-2007	Amend	1-1-2008
150-316.127(10)	1-1-2008	Adopt	2-1-2008	170-061-0200	12-27-2007	Adopt	2-1-2008
150-317.092	1-1-2008	Adopt	2-1-2008	170-071-0005	11-20-2007	Amend(T)	1-1-2008
150-317.705(3)(a)	1-1-2008	Amend	2-1-2008	199-010-0068	1-2-2008	Adopt(T)	2-1-2008
150-317.705(3)(b)	1-1-2008	Amend	2-1-2008	213-001-0010	4-12-2008	Adopt	2-1-2008
150-321.307(4)	1-1-2008	Repeal	2-1-2008	213-003-0001	1-1-2008	Amend	2-1-2008
150-321.485(4)	1-1-2008	Repeal	2-1-2008	213-017-0002	1-1-2008	Amend	2-1-2008
151-001-0005	12-13-2007	Amend(T)	1-1-2008	213-017-0003	1-1-2008	Amend	2-1-2008
151-001-0010	12-13-2007	Amend(T)	1-1-2008	213-017-0004	1-1-2008	Amend	2-1-2008
151-020-0045	12-13-2007	Amend(T)	1-1-2008	213-017-0006	1-1-2008	Amend	2-1-2008
160-010-0600	1-1-2008	Adopt	1-1-2008	213-017-0007	1-1-2008	Amend	2-1-2008
160-010-0610	1-1-2008	Adopt	1-1-2008	213-017-0008	1-1-2008	Amend	2-1-2008
160-010-0620	1-1-2008	Adopt	1-1-2008	213-017-0009	1-1-2008	Amend	2-1-2008

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213-018-0050	1-1-2008	Amend	2-1-2008	291-069-0060	12-1-2007	Suspend	1-1-2008
213-018-0068	1-1-2008	Adopt	2-1-2008	291-069-0070	12-1-2007	Suspend	1-1-2008
250-010-0075	12-10-2007	Adopt(T)	1-1-2008	291-069-0090	12-1-2007	Suspend	1-1-2008
250-020-0221	1-15-2008	Amend	2-1-2008	291-069-0100	12-1-2007	Suspend	1-1-2008
255-060-0011	1-11-2008	Amend	2-1-2008	291-069-0200	12-1-2007	Adopt(T)	1-1-2008
259-008-0010	1-15-2008	Amend(T)	2-1-2008	291-069-0210	12-1-2007	Adopt(T)	1-1-2008
259-008-0010(T)	1-15-2008	Suspend	2-1-2008	291-069-0220	12-1-2007	Adopt(T)	1-1-2008
259-008-0060	1-15-2008	Amend	2-1-2008	291-069-0230	12-1-2007	Adopt(T)	1-1-2008
259-009-0070	1-15-2008	Amend	2-1-2008	291-069-0240	12-1-2007	Adopt(T)	1-1-2008
274-012-0001	1-7-2008	Amend(T)	2-1-2008	291-069-0250	12-1-2007	Adopt(T)	1-1-2008
274-012-0100	1-7-2008	Amend(T)	2-1-2008	291-069-0260	12-1-2007	Adopt(T)	1-1-2008
274-012-0120	1-7-2008	Amend(T)	2-1-2008	291-069-0270	12-1-2007	Adopt(T)	1-1-2008
274-030-0500	1-1-2008	Amend	2-1-2008	291-069-0280	12-1-2007	Adopt(T)	1-1-2008
274-030-0500(T)	1-1-2008	Repeal	2-1-2008	309-011-0100	12-5-2007	Adopt(T)	1-1-2008
274-030-0505	1-1-2008	Amend	2-1-2008	309-031-0215	12-1-2007	Amend(T)	1-1-2008
274-030-0505(T)	1-1-2008	Repeal	2-1-2008	309-032-0455	12-11-2007	Amend	1-1-2008
274-030-0506	1-1-2008	Amend	2-1-2008	309-032-1190	1-1-2008	Amend(T)	2-1-2008
274-030-0506(T)	1-1-2008	Repeal	2-1-2008	309-033-0735	1-1-2008	Adopt(T)	2-1-2008
274-030-0510	1-1-2008	Amend	2-1-2008	309-114-0000	12-1-2007	Amend(T)	1-1-2008
274-030-0510(T)	1-1-2008	Repeal	2-1-2008	309-114-0005	12-1-2007	Amend(T)	1-1-2008
274-030-0515	1-1-2008	Amend	2-1-2008	309-114-0010	12-1-2007	Amend(T)	1-1-2008
274-030-0520	1-1-2008	Amend	2-1-2008	309-114-0015	12-1-2007	Amend(T)	1-1-2008
274-030-0520(T)	1-1-2008	Repeal	2-1-2008	309-114-0020	12-1-2007	Amend(T)	1-1-2008
274-030-0535	1-1-2008	Amend	2-1-2008	309-114-0025	12-1-2007	Amend(T)	1-1-2008
274-030-0545	1-1-2008	Amend	2-1-2008	309-118-0015	12-1-2007	Amend(T)	1-1-2008
274-030-0545(T)	1-1-2008	Repeal	2-1-2008	330-070-0048	12-1-2007	Amend	1-1-2008
274-030-0550	1-1-2008	Amend	2-1-2008	330-007-0200	12-13-2007	Adopt	1-1-2008
274-030-0550(T)	1-1-2008	Repeal	2-1-2008	330-007-0210	12-13-2007	Adopt	1-1-2008
274-030-0555	1-1-2008	Amend	2-1-2008	330-007-0220	12-13-2007	Adopt	1-1-2008
274-030-0555(T)	1-1-2008	Repeal	2-1-2008	330-007-0230	12-13-2007	Adopt	1-1-2008
274-030-0560	1-1-2008	Amend	2-1-2008	330-007-0240	12-13-2007	Adopt	1-1-2008
274-030-0560(T)	1-1-2008	Repeal	2-1-2008	330-007-0250	12-13-2007	Adopt	1-1-2008
274-030-0565	1-1-2008	Amend	2-1-2008	330-007-0260	12-13-2007	Adopt	1-1-2008
274-030-0565(T)	1-1-2008	Repeal	2-1-2008	330-007-0270	12-13-2007	Adopt	1-1-2008
274-030-0570	1-1-2008	Amend	2-1-2008	330-007-0280	12-13-2007	Adopt	1-1-2008
274-030-0570(T)	1-1-2008	Repeal	2-1-2008	330-007-0290	12-13-2007	Adopt	1-1-2008
274-030-0575	1-1-2008	Amend	2-1-2008	330-007-0300	12-13-2007	Adopt	1-1-2008
274-030-0575(T)	1-1-2008	Repeal	2-1-2008	330-007-0310	12-13-2007	Adopt	1-1-2008
274-030-0600	1-1-2008	Amend	2-1-2008	330-007-0320	12-13-2007	Adopt	1-1-2008
274-030-0600(T)	1-1-2008	Repeal	2-1-2008	330-007-0330	12-13-2007	Adopt	1-1-2008
274-030-0602	1-1-2008	Adopt	2-1-2008	330-070-0013	12-1-2007	Amend	1-1-2008
274-030-0602(T)	1-1-2008	Repeal	2-1-2008	330-070-0010	12-1-2007	Amend	1-1-2008
274-030-0605	1-1-2008	Repeal	2-1-2008	330-070-0014	12-1-2007	Amend	1-1-2008
274-030-0610	1-1-2008	Amend	2-1-2008	330-070-0021	12-1-2007	Amend	1-1-2008
274-030-0610(T)	1-1-2008	Repeal	2-1-2008	330-070-0022	12-1-2007	Amend	1-1-2008
274-030-0620	1-1-2008	Amend	2-1-2008	330-070-0025	12-1-2007	Amend	1-1-2008
274-030-0620(T)	1-1-2008	Repeal	2-1-2008	330-070-0026	12-1-2007	Amend	1-1-2008
274-030-0630	1-1-2008	Amend	2-1-2008	330-070-0059	12-1-2007	Amend	1-1-2008
274-030-0630(T)	1-1-2008	Repeal	2-1-2008	330-070-0060	12-1-2007	Amend	1-1-2008
274-030-0640	1-1-2008	Amend	2-1-2008	330-070-0064	12-1-2007	Amend	1-1-2008
274-030-0640(T)	1-1-2008	Repeal	2-1-2008	330-070-0073	12-1-2007	Amend	1-1-2008
291-069-0010	12-1-2007	Suspend	1-1-2008	330-070-0089	12-1-2007	Amend	1-1-2008
291-069-0020	12-1-2007	Suspend	1-1-2008	330-070-0091	12-1-2007	Amend	1-1-2008
291-069-0031	12-1-2007	Suspend	1-1-2008	330-070-0097	12-1-2007	Amend	1-1-2008
291-069-0040	12-1-2007	Suspend	1-1-2008	330-090-0105	12-1-2007	Amend	1-1-2008

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330-090-0120	12-1-2007	Amend	1-1-2008	407-014-0310	1-1-2008	Adopt	2-1-2008
330-090-0130	12-1-2007	Amend	1-1-2008	407-014-0315	1-1-2008	Adopt	2-1-2008
330-090-0135	12-1-2007	Amend	1-1-2008	407-014-0320	1-1-2008	Adopt	2-1-2008
330-090-0140	12-1-2007	Amend	1-1-2008	407-045-0800	12-3-2007	Adopt(T)	1-1-2008
330-090-0150	12-1-2007	Amend	1-1-2008	407-045-0810	12-3-2007	Adopt(T)	1-1-2008
330-135-0010	1-2-2008	Adopt	2-1-2008	407-045-0820	12-3-2007	Adopt(T)	1-1-2008
330-135-0015	1-2-2008	Adopt	2-1-2008	407-045-0830	12-3-2007	Adopt(T)	1-1-2008
330-135-0020	1-2-2008	Adopt	2-1-2008	407-045-0840	12-3-2007	Adopt(T)	1-1-2008
330-135-0025	1-2-2008	Adopt	2-1-2008	407-045-0850	12-3-2007	Adopt(T)	1-1-2008
330-135-0030	1-2-2008	Adopt	2-1-2008	407-045-0860	12-3-2007	Adopt(T)	1-1-2008
330-135-0035	1-2-2008	Adopt	2-1-2008	407-045-0870	12-3-2007	Adopt(T)	1-1-2008
330-135-0040	1-2-2008	Adopt	2-1-2008	407-045-0880	12-3-2007	Adopt(T)	1-1-2008
330-135-0045	1-2-2008	Adopt	2-1-2008	407-045-0890	12-3-2007	Adopt(T)	1-1-2008
330-135-0050	1-2-2008	Adopt	2-1-2008	407-045-0900	12-3-2007	Adopt(T)	1-1-2008
330-135-0055	1-2-2008	Adopt	2-1-2008	407-045-0910	12-3-2007	Adopt(T)	1-1-2008
333-008-0000	1-1-2008	Amend	2-1-2008	407-045-0920	12-3-2007	Adopt(T)	1-1-2008
333-008-0010	1-1-2008	Amend	2-1-2008	407-045-0930	12-3-2007	Adopt(T)	1-1-2008
333-008-0020	1-1-2008	Amend	2-1-2008	407-045-0940	12-3-2007	Adopt(T)	1-1-2008
333-008-0025	1-1-2008	Amend	2-1-2008	407-045-0950	12-3-2007	Adopt(T)	1-1-2008
333-008-0030	1-1-2008	Amend	2-1-2008	407-045-0960	12-3-2007	Adopt(T)	1-1-2008
333-008-0040	1-1-2008	Amend	2-1-2008	407-045-0970	12-3-2007	Adopt(T)	1-1-2008
333-008-0050	1-1-2008	Amend	2-1-2008	407-045-0980	12-3-2007	Adopt(T)	1-1-2008
333-008-0060	1-1-2008	Amend	2-1-2008	407-120-0112	1-1-2008	Adopt(T)	2-1-2008
333-008-0070	1-1-2008	Amend	2-1-2008	407-120-0114	1-1-2008	Adopt(T)	2-1-2008
333-008-0080	1-1-2008	Amend	2-1-2008	407-120-0116	1-1-2008	Adopt(T)	2-1-2008
333-008-0090	1-1-2008	Amend	2-1-2008	407-120-0118	1-1-2008	Adopt(T)	2-1-2008
333-008-0110	1-1-2008	Amend	2-1-2008	407-120-0165	1-1-2008	Adopt(T)	2-1-2008
333-008-0120	1-1-2008	Amend	2-1-2008	407-120-0300	1-1-2008	Adopt	2-1-2008
333-050-0020	1-8-2008	Amend(T)	2-1-2008	407-120-0310	1-1-2008	Adopt	2-1-2008
333-050-0050	1-8-2008	Amend(T)	2-1-2008	407-120-0320	1-1-2008	Adopt	2-1-2008
333-050-0120	1-8-2008	Amend(T)	2-1-2008	407-120-0330	1-1-2008	Adopt	2-1-2008
333-536-0005	1-1-2008	Amend	2-1-2008	407-120-0340	1-1-2008	Adopt	2-1-2008
333-536-0010	1-1-2008	Amend	2-1-2008	407-120-0350	1-1-2008	Adopt	2-1-2008
333-536-0015	1-1-2008	Amend	2-1-2008	407-120-0360	1-1-2008	Adopt	2-1-2008
333-536-0020	1-1-2008	Amend	2-1-2008	407-120-0370	1-1-2008	Adopt	2-1-2008
333-536-0030	1-1-2008	Amend	2-1-2008	407-120-0380	1-1-2008	Adopt	2-1-2008
333-536-0040	1-1-2008	Amend	2-1-2008	410-001-0100	1-1-2008	Amend(T)	2-1-2008
333-536-0050	1-1-2008	Amend	2-1-2008	410-001-0110	1-1-2008	Amend(T)	2-1-2008
333-536-0070	1-1-2008	Amend	2-1-2008	410-001-0120	1-1-2008	Amend(T)	2-1-2008
333-536-0075	1-1-2008	Amend	2-1-2008	410-001-0130	1-1-2008	Amend(T)	2-1-2008
333-536-0080	1-1-2008	Amend	2-1-2008	410-001-0140	1-1-2008	Amend(T)	2-1-2008
333-536-0085	1-1-2008	Amend	2-1-2008	410-001-0150	1-1-2008	Amend(T)	2-1-2008
333-536-0090	1-1-2008	Amend	2-1-2008	410-001-0160	1-1-2008	Amend(T)	2-1-2008
333-536-0095	1-1-2008	Amend	2-1-2008	410-001-0170	1-1-2008	Amend(T)	2-1-2008
333-536-0100	1-1-2008	Repeal	2-1-2008	410-001-0180	1-1-2008	Amend(T)	2-1-2008
333-536-0105	1-1-2008	Adopt	2-1-2008	410-001-0190	1-1-2008	Amend(T)	2-1-2008
333-536-0115	1-1-2008	Adopt	2-1-2008	410-001-0200	1-1-2008	Amend(T)	2-1-2008
340-248-0260	11-30-2007	Amend	1-1-2008	410-050-0861	1-1-2008	Amend	2-1-2008
407-005-0110	12-1-2007	Amend	1-1-2008	410-120-0000	1-1-2008	Amend	1-1-2008
407-012-0005	12-1-2007	Adopt	1-1-2008	410-120-0010	12-5-2007	Adopt(T)	1-1-2008
407-012-0010	12-1-2007	Adopt	1-1-2008	410-120-1200	1-1-2008	Amend	1-1-2008
407-012-0015	12-1-2007	Adopt	1-1-2008	410-120-1295	1-1-2008	Amend	1-1-2008
407-012-0020	12-1-2007	Adopt	1-1-2008	410-120-1320	1-1-2008	Amend	1-1-2008
407-012-0025	12-1-2007	Adopt	1-1-2008	410-120-1340	1-1-2008	Amend	1-1-2008
407-014-0300	1-1-2008	Adopt	2-1-2008	410-120-1397	1-1-2008	Amend	1-1-2008

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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	411-330-0020	12-28-2007	Amend	2-1-2008
410-122-0325	1-1-2008	Amend	1-1-2008	411-330-0020(T)	12-28-2007	Repeal	2-1-2008
410-122-0330	1-1-2008	Amend	1-1-2008	411-330-0030	12-28-2007	Amend	2-1-2008
410-122-0380	1-1-2008	Amend	1-1-2008	411-330-0030(T)	12-28-2007	Repeal	2-1-2008
410-122-0662	1-1-2008	Adopt	1-1-2008	411-340-0020	1-1-2008	Amend(T)	2-1-2008
410-122-0678	1-1-2008	Amend	1-1-2008	411-340-0060	1-1-2008	Amend(T)	2-1-2008
410-122-0720	1-1-2008	Amend	1-1-2008	411-340-0070	1-1-2008	Amend(T)	2-1-2008
410-123-1000	1-1-2008	Amend	1-1-2008	411-340-0130	1-1-2008	Amend(T)	2-1-2008
410-123-1040	1-1-2008	Repeal	1-1-2008	411-340-0150	1-1-2008	Amend(T)	2-1-2008
410-123-1060	1-1-2008	Amend	1-1-2008	411-340-0170	1-1-2008	Amend(T)	2-1-2008
410-123-1100	1-1-2008	Amend	1-1-2008	413-010-0400	12-1-2007	Amend	1-1-2008
410-123-1160	1-1-2008	Amend	1-1-2008	413-010-0410	12-1-2007	Amend	1-1-2008
410-123-1200	1-1-2008	Amend	1-1-2008	413-010-0420	12-1-2007	Amend	1-1-2008
410-123-1220	1-1-2008	Amend	1-1-2008	413-010-0430	12-1-2007	Amend	1-1-2008
410-123-1240	1-1-2008	Amend	1-1-2008	413-010-0440	12-1-2007	Amend	1-1-2008
410-123-1260	1-1-2008	Amend	1-1-2008	413-010-0450	12-1-2007	Repeal	1-1-2008
410-123-1490	1-1-2008	Amend	1-1-2008	413-010-0460	12-1-2007	Repeal	1-1-2008
410-123-1620	1-1-2008	Amend	1-1-2008	413-010-0470	12-1-2007	Repeal	1-1-2008
410-123-1670	1-1-2008	Amend	1-1-2008	413-010-0480	12-1-2007	Amend	1-1-2008
410-125-0080	12-20-2007	Amend(T)	2-1-2008	413-010-0490	12-1-2007	Repeal	1-1-2008
410-127-0060	1-1-2008	Amend	1-1-2008	413-015-0100	12-3-2007	Amend(T)	1-1-2008
410-129-0070	1-1-2008	Amend	1-1-2008	413-015-0115	12-3-2007	Amend(T)	1-1-2008
410-129-0200	1-1-2008	Amend	1-1-2008	413-015-0115	1-1-2008	Amend(T)	2-1-2008
410-130-0200	12-20-2007	Amend(T)	2-1-2008	413-015-0115(T)	12-3-2007	Suspend	1-1-2008
410-130-0580	12-20-2007	Amend(T)	2-1-2008	413-015-0115(T)	1-1-2008	Suspend	2-1-2008
410-141-0180	1-1-2008	Amend	1-1-2008	413-015-0205	12-3-2007	Amend(T)	1-1-2008
410-141-0480	1-1-2008	Amend	1-1-2008	413-015-0205	1-1-2008	Amend(T)	2-1-2008
410-141-0520	12-20-2007	Amend(T)	2-1-2008	413-015-0205(T)	1-1-2008	Suspend	2-1-2008
410-141-0520(T)	12-20-2007	Suspend	2-1-2008	413-015-0210	1-1-2008	Amend(T)	2-1-2008
410-142-0020	1-1-2008	Amend	1-1-2008	413-015-0211	1-1-2008	Amend(T)	2-1-2008
410-146-0000	1-1-2008	Amend	1-1-2008	413-015-0212	1-1-2008	Amend(T)	2-1-2008
410-146-0020	1-1-2008	Amend	1-1-2008	413-015-0215	1-1-2008	Amend(T)	2-1-2008
410-146-0021	1-1-2008	Amend	1-1-2008	413-015-0220	1-1-2008	Amend(T)	2-1-2008
410-146-0025	1-1-2008	Repeal	1-1-2008	413-015-0405	1-1-2008	Amend(T)	2-1-2008
410-146-0040	1-1-2008	Amend	1-1-2008	413-015-0415	1-1-2008	Amend(T)	2-1-2008
410-146-0060	1-1-2008	Amend	1-1-2008	413-015-0415(T)	1-1-2008	Suspend	2-1-2008
410-146-0075	1-1-2008	Amend	1-1-2008	413-015-0520	1-1-2008	Adopt(T)	2-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008	413-015-0525	1-1-2008	Adopt(T)	2-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008	413-015-0530	1-1-2008	Adopt(T)	2-1-2008
410-146-0080	1-1-2008	Amend	1-1-2008	413-015-0535	1-1-2008	Adopt(T)	2-1-2008
410-146-0100	1-1-2008	Amend	1-1-2008	413-015-0540	1-1-2008	Adopt(T)	2-1-2008
410-146-0120	1-1-2008	Amend	1-1-2008	413-015-0545	1-1-2008	Adopt(T)	2-1-2008
410-146-0130	1-1-2008	Amend	1-1-2008	413-015-0550	1-1-2008	Adopt(T)	2-1-2008

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413-015-0560	1-1-2008	Adopt(T)	2-1-2008	438-005-0050	1-1-2008	Amend	1-1-2008
413-015-0565	1-1-2008	Adopt(T)	2-1-2008	438-005-0055	1-1-2008	Amend	1-1-2008
413-015-1000	1-1-2008	Amend(T)	2-1-2008	438-006-0020	1-1-2008	Amend	1-1-2008
413-070-0600	1-1-2008	Amend(T)	2-1-2008	438-006-0100	1-1-2008	Amend	1-1-2008
413-070-0620	1-1-2008	Amend(T)	2-1-2008	438-009-0005	1-1-2008	Amend	1-1-2008
413-070-0625	1-1-2008	Amend(T)	2-1-2008	438-009-0010	1-1-2008	Amend	1-1-2008
413-070-0640	1-1-2008	Amend(T)	2-1-2008	438-009-0020	1-1-2008	Amend	1-1-2008
413-070-0810	1-1-2008	Amend(T)	2-1-2008	438-009-0022	1-1-2008	Amend	1-1-2008
413-070-0860	1-1-2008	Amend(T)	2-1-2008	438-009-0025	1-1-2008	Amend	1-1-2008
413-070-0880	1-1-2008	Amend(T)	2-1-2008	438-009-0028	1-1-2008	Amend	1-1-2008
413-090-0010	1-1-2008	Amend(T)	2-1-2008	438-009-0030	1-1-2008	Amend	1-1-2008
413-100-0040	1-1-2008	Suspend	2-1-2008	438-009-0035	1-1-2008	Amend	1-1-2008
413-100-0900	1-1-2008	Adopt(T)	2-1-2008	438-011-0020	1-1-2008	Amend	1-1-2008
413-100-0905	1-1-2008	Adopt(T)	2-1-2008	438-012-0035	1-1-2008	Amend	1-1-2008
413-100-0910	1-1-2008	Adopt(T)	2-1-2008	438-015-0005	1-1-2008	Amend	1-1-2008
413-100-0915	1-1-2008	Adopt(T)	2-1-2008	438-015-0019	1-1-2008	Adopt	1-1-2008
413-100-0920	1-1-2008	Adopt(T)	2-1-2008	438-015-0022	1-1-2008	Adopt	1-1-2008
413-100-0925	1-1-2008	Adopt(T)	2-1-2008	438-015-0080	1-1-2008	Amend	1-1-2008
413-100-0930	1-1-2008	Adopt(T)	2-1-2008	438-019-0030	1-1-2008	Amend	1-1-2008
413-100-0935	1-1-2008	Adopt(T)	2-1-2008	441-730-0000	12-27-2007	Amend	1-1-2008
413-100-0940	1-1-2008	Adopt(T)	2-1-2008	441-730-0010	12-27-2007	Amend	1-1-2008
413-120-0060	12-12-2007	Amend(T)	1-1-2008	441-730-0015	12-27-2007	Amend	1-1-2008
413-120-0400	1-1-2008	Amend(T)	2-1-2008	441-730-0270	12-27-2007	Amend	1-1-2008
413-120-0410	1-1-2008	Amend(T)	2-1-2008	441-730-0275	12-27-2007	Amend	1-1-2008
413-120-0420	1-1-2008	Amend(T)	2-1-2008	441-730-0310	12-27-2007	Amend	1-1-2008
413-120-0430	1-1-2008	Suspend	2-1-2008	441-755-0000	11-30-2007	Adopt	1-1-2008
413-120-0440	1-1-2008	Amend(T)	2-1-2008	441-755-0010	11-30-2007	Adopt	1-1-2008
413-120-0450	1-1-2008	Amend(T)	2-1-2008	441-755-0100	11-30-2007	Adopt	1-1-2008
413-120-0455	1-1-2008	Amend(T)	2-1-2008	441-755-0110	11-30-2007	Adopt	1-1-2008
413-120-0460	1-1-2008	Amend(T)	2-1-2008	441-755-0120	11-30-2007	Adopt	1-1-2008
413-120-0470	1-1-2008	Amend(T)	2-1-2008	441-755-0130	11-30-2007	Adopt	1-1-2008
413-200-0210	1-1-2008	Amend(T)	2-1-2008	441-755-0140	11-30-2007	Adopt	1-1-2008
413-200-0220	1-1-2008	Amend(T)	2-1-2008	441-755-0150	11-30-2007	Adopt	1-1-2008
413-200-0404	1-1-2008	Adopt(T)	2-1-2008	441-755-0160	11-30-2007	Adopt	1-1-2008
413-200-0409	1-1-2008	Adopt(T)	2-1-2008	441-755-0170	11-30-2007	Adopt	1-1-2008
413-200-0414	1-1-2008	Adopt(T)	2-1-2008	441-755-0200	11-30-2007	Adopt	1-1-2008
413-200-0419	1-1-2008	Adopt(T)	2-1-2008	441-755-0210	11-30-2007	Adopt	1-1-2008
413-200-0424	1-1-2008	Adopt(T)	2-1-2008	441-755-0220	11-30-2007	Adopt	1-1-2008
415-010-0005	12-5-2007	Adopt(T)	1-1-2008	441-755-0300	11-30-2007	Adopt	1-1-2008
415-051-0045	12-11-2007	Amend	1-1-2008	441-755-0310	11-30-2007	Adopt	1-1-2008
436-010-0210	1-2-2008	Amend(T)	1-1-2008	443-002-0010	1-2-2008	Amend	2-1-2008
436-010-0220	1-2-2008	Amend(T)	1-1-2008	443-002-0030	1-2-2008	Amend(T)	2-1-2008
436-010-0280	1-2-2008	Amend(T)	1-1-2008	443-002-0060	1-2-2008	Amend	2-1-2008
436-035-0500	12-28-2007	Amend(T)	2-1-2008	443-002-0070	1-2-2008	Amend	2-1-2008
437-001-0205	1-1-2008	Amend	1-1-2008	443-002-0095	1-2-2008	Repeal	2-1-2008
437-001-0215	1-1-2008	Amend	1-1-2008	443-002-0100	1-2-2008	Amend	2-1-2008
437-001-0220	1-1-2008	Amend	1-1-2008	459-007-0110	11-23-2007	Amend	1-1-2008
437-001-0240	1-1-2008	Amend	1-1-2008	459-007-0160	11-23-2007	Adopt	1-1-2008
437-001-0255	1-1-2008	Amend	1-1-2008	459-007-0290	11-23-2007	Amend	1-1-2008
437-001-0295	12-3-2007	Amend	1-1-2008	459-007-0530	11-23-2007	Amend	1-1-2008
437-001-0700	1-1-2008	Amend	2-1-2008	459-009-0084	11-23-2007	Amend	1-1-2008
437-001-0706	1-1-2008	Adopt	2-1-2008	459-009-0085	11-23-2007	Amend	1-1-2008
437-001-0740	1-1-2008	Amend	2-1-2008	459-009-0090	11-23-2007	Amend	1-1-2008
437-002-0100	12-3-2007	Amend	1-1-2008	459-010-0003	11-23-2007	Amend	1-1-2008
437-002-0122	12-3-2007	Adopt	1-1-2008	459-010-0014	11-23-2007	Amend	1-1-2008

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459-010-0055	11-23-2007	Amend	1-1-2008	461-195-0551	1-1-2008	Amend(T)	2-1-2008
459-011-0050	11-23-2007	Amend	1-1-2008	461-195-0551(T)	1-1-2008	Repeal	2-1-2008
459-013-0110	11-23-2007	Amend	1-1-2008	462-160-0110	11-28-2007	Amend(T)	1-1-2008
459-017-0060	11-23-2007	Amend	1-1-2008	462-160-0120	11-28-2007	Amend(T)	1-1-2008
459-045-0030	11-23-2007	Amend	1-1-2008	462-160-0130	11-28-2007	Amend(T)	1-1-2008
459-050-0080	11-23-2007	Amend	1-1-2008	462-200-0630	12-6-2007	Repeal	1-1-2008
459-050-0220	11-23-2007	Amend	1-1-2008	471-010-0050	1-7-2008	Suspend	2-1-2008
459-070-0001	11-23-2007	Amend	1-1-2008	471-010-0051	1-7-2008	Suspend	2-1-2008
459-075-0010	11-23-2007	Amend	1-1-2008	471-010-0052	1-7-2008	Suspend	2-1-2008
459-075-0020	11-23-2007	Adopt	1-1-2008	471-010-0054	1-7-2008	Suspend	2-1-2008
459-075-0150	11-23-2007	Amend	1-1-2008	471-010-0055	1-7-2008	Suspend	2-1-2008
459-080-0020	11-23-2007	Adopt	1-1-2008	471-010-0057	1-7-2008	Suspend	2-1-2008
459-080-0250	11-23-2007	Amend	1-1-2008	471-030-0050	12-3-2007	Amend	1-1-2008
461-001-0000	1-1-2008	Amend	2-1-2008	471-041-0060	1-8-2008	Amend	2-1-2008
461-001-0000	1-1-2008	Amend(T)	2-1-2008	575-095-0005	1-9-2008	Adopt	2-1-2008
461-001-0000(T)	1-1-2008	Repeal	2-1-2008	575-095-0010	1-9-2008	Adopt	2-1-2008
461-001-0035	1-1-2008	Amend	2-1-2008	575-095-0015	1-9-2008	Adopt	2-1-2008
461-025-0350	1-1-2008	Amend(T)	2-1-2008	575-095-0020	1-9-2008	Adopt	2-1-2008
461-115-0700	1-1-2008	Amend	2-1-2008	575-095-0025	1-9-2008	Adopt	2-1-2008
461-120-0310	12-1-2007	Amend(T)	1-1-2008	575-095-0030	1-9-2008	Adopt	2-1-2008
461-120-0310(T)	12-1-2007	Suspend	1-1-2008	575-095-0035	1-9-2008	Adopt	2-1-2008
461-135-0493	12-17-2007	Amend(T)	2-1-2008	575-095-0040	1-9-2008	Adopt	2-1-2008
461-135-0725	1-1-2008	Amend	2-1-2008	575-095-0045	1-9-2008	Adopt	2-1-2008
461-135-0780	1-1-2008	Amend	2-1-2008	577-030-0035	1-1-2008	Amend(T)	2-1-2008
461-135-0835	1-1-2008	Amend	2-1-2008	580-040-0035	1-14-2008	Amend	2-1-2008
461-140-0220	1-1-2008	Amend	2-1-2008	580-043-0060	1-14-2008	Amend	2-1-2008
461-145-0030	1-1-2008	Amend	2-1-2008	580-043-0065	1-14-2008	Amend	2-1-2008
461-145-0108	1-1-2008	Amend	2-1-2008	580-043-0070	1-14-2008	Amend	2-1-2008
461-145-0180	1-1-2008	Repeal	2-1-2008	580-043-0075	1-14-2008	Amend	2-1-2008
461-145-0220	1-1-2008	Amend	2-1-2008	580-043-0080	1-14-2008	Amend	2-1-2008
461-145-0580	1-1-2008	Amend	2-1-2008	580-043-0085	1-14-2008	Amend	2-1-2008
461-150-0047	1-1-2008	Amend	2-1-2008	580-043-0090	1-14-2008	Amend	2-1-2008
461-155-0250	1-1-2008	Amend	2-1-2008	580-043-0095	1-14-2008	Amend	2-1-2008
461-155-0270	1-1-2008	Amend	2-1-2008	580-043-0100	1-14-2008	Adopt	2-1-2008
461-155-0300	1-1-2008	Amend	2-1-2008	581-015-2570	12-12-2007	Amend	1-1-2008
461-155-0320	1-1-2008	Amend(T)	2-1-2008	581-015-2595	12-12-2007	Amend	1-1-2008
461-160-0040	1-1-2008	Amend	2-1-2008	581-020-0250	12-12-2007	Adopt	1-1-2008
461-160-0055	1-1-2008	Amend	2-1-2008	581-022-1661	12-12-2007	Adopt	1-1-2008
461-160-0410	1-1-2008	Amend	2-1-2008	581-022-1940	12-12-2007	Amend	1-1-2008
461-160-0415	1-1-2008	Amend	2-1-2008	581-022-1941	12-12-2007	Adopt	1-1-2008
461-160-0550	1-1-2008	Amend	2-1-2008	581-023-0104	12-12-2007	Amend	1-1-2008
461-160-0580	1-1-2008	Amend	2-1-2008	581-024-0285	12-12-2007	Amend	1-1-2008
461-160-0620	1-1-2008	Amend	2-1-2008	584-017-0351	12-14-2007	Adopt	1-1-2008
461-160-0855	1-1-2008	Adopt	2-1-2008	584-019-0002	12-14-2007	Amend	1-1-2008
461-170-0130	1-1-2008	Amend	2-1-2008	584-019-0003	12-14-2007	Amend	1-1-2008
461-175-0200	1-1-2008	Amend(T)	2-1-2008	584-019-0020	12-14-2007	Repeal	1-1-2008
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461-175-0340	1-1-2008	Amend(T)	2-1-2008	584-019-0035	12-14-2007	Amend	1-1-2008
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461-195-0501	1-1-2008	Amend	2-1-2008	584-020-0005	12-14-2007	Amend	1-1-2008
461-195-0501	1-1-2008	Amend(T)	2-1-2008	584-020-0010	12-14-2007	Amend	1-1-2008
461-195-0501(T)	1-1-2008	Repeal	2-1-2008	584-020-0015	12-14-2007	Amend	1-1-2008
461-195-0511	1-1-2008	Amend	2-1-2008	584-020-0020	12-14-2007	Amend	1-1-2008
461-195-0521	1-1-2008	Amend	2-1-2008	584-020-0025	12-14-2007	Amend	1-1-2008

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584-020-0040	12-14-2007	Amend	1-1-2008	629-048-0100	1-1-2008	Adopt	2-1-2008
584-020-0041	12-14-2007	Amend	1-1-2008	629-048-0110	1-1-2008	Adopt	2-1-2008
584-023-0005	12-14-2007	Amend	1-1-2008	629-048-0120	1-1-2008	Adopt	2-1-2008
584-023-0015	12-14-2007	Amend	1-1-2008	629-048-0130	1-1-2008	Adopt	2-1-2008
584-023-0025	12-14-2007	Amend	1-1-2008	629-048-0140	1-1-2008	Adopt	2-1-2008
584-038-0080	12-14-2007	Amend	1-1-2008	629-048-0150	1-1-2008	Adopt	2-1-2008
584-038-0335	12-14-2007	Amend	1-1-2008	629-048-0160	1-1-2008	Adopt	2-1-2008
584-038-0336	12-14-2007	Amend	1-1-2008	629-048-0200	1-1-2008	Adopt	2-1-2008
584-040-0080	12-14-2007	Amend	1-1-2008	629-048-0210	1-1-2008	Adopt	2-1-2008
584-040-0310	12-14-2007	Amend	1-1-2008	629-048-0220	1-1-2008	Adopt	2-1-2008
584-040-0315	12-14-2007	Amend	1-1-2008	629-048-0230	1-1-2008	Adopt	2-1-2008
584-050-0002	12-14-2007	Amend	1-1-2008	629-048-0300	1-1-2008	Adopt	2-1-2008
584-050-0005	12-14-2007	Amend	1-1-2008	629-048-0310	1-1-2008	Adopt	2-1-2008
584-050-0006	12-14-2007	Amend	1-1-2008	629-048-0320	1-1-2008	Adopt	2-1-2008
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584-050-0012	12-14-2007	Amend	1-1-2008	629-048-0400	1-1-2008	Adopt	2-1-2008
584-050-0015	12-14-2007	Amend	1-1-2008	629-048-0450	1-1-2008	Adopt	2-1-2008
584-050-0016	12-14-2007	Amend	1-1-2008	629-048-0500	1-1-2008	Adopt	2-1-2008
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584-050-0019	12-14-2007	Amend	1-1-2008	635-004-0018	1-1-2008	Amend	1-1-2008
584-050-0020	12-14-2007	Amend	1-1-2008	635-004-0019	11-28-2007	Amend(T)	1-1-2008
584-050-0035	12-14-2007	Amend	1-1-2008	635-004-0019	12-11-2007	Amend(T)	1-1-2008
584-050-0040	12-14-2007	Amend	1-1-2008	635-004-0019(T)	11-28-2007	Suspend	1-1-2008
584-050-0042	12-14-2007	Amend	1-1-2008	635-004-0027	1-1-2008	Amend(T)	2-1-2008
584-050-0065	12-14-2007	Amend	1-1-2008	635-004-0033	11-28-2007	Amend(T)	1-1-2008
584-050-0066	12-14-2007	Amend	1-1-2008	635-004-0033	1-1-2008	Amend	1-1-2008
584-050-0067	12-14-2007	Amend	1-1-2008	635-004-0033(T)	11-28-2007	Suspend	1-1-2008
584-050-0070	12-14-2007	Amend	1-1-2008	635-004-0170	11-28-2007	Amend(T)	1-1-2008
584-052-0032	12-14-2007	Amend	1-1-2008	635-004-0170	1-1-2008	Amend	1-1-2008
584-060-0012	12-14-2007	Amend	1-1-2008	635-005-0055	12-11-2007	Amend(T)	1-1-2008
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584-070-0014	12-14-2007	Amend	1-1-2008	635-005-0055	12-14-2007	Suspend	1-1-2008
584-070-0021	12-14-2007	Repeal	1-1-2008	635-006-0232	1-15-2008	Amend	2-1-2008
603-011-0610	11-28-2007	Amend	1-1-2008	635-006-0850	1-1-2008	Amend(T)	2-1-2008
603-011-0620	11-28-2007	Amend	1-1-2008	635-006-1015	1-15-2008	Amend	2-1-2008
603-027-0420	11-29-2007	Amend(T)	1-1-2008	635-006-1065	1-15-2008	Amend	2-1-2008
603-027-0420(T)	11-29-2007	Suspend	1-1-2008	635-006-1075	1-15-2008	Amend	2-1-2008
603-027-0430	11-29-2007	Amend(T)	1-1-2008	635-011-0100	1-1-2008	Amend	2-1-2008
603-027-0430(T)	11-29-2007	Suspend	1-1-2008	635-013-0003	1-1-2008	Amend	2-1-2008
603-052-0347	1-11-2008	Amend	2-1-2008	635-013-0004	1-1-2008	Amend	2-1-2008
603-052-0880	1-7-2008	Amend	2-1-2008	635-014-0080	1-1-2008	Amend	2-1-2008
603-052-1240	1-7-2008	Amend	2-1-2008	635-014-0090	1-1-2008	Amend	2-1-2008
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603-054-0017	1-7-2008	Amend	2-1-2008	635-016-0090	1-1-2008	Amend	2-1-2008
603-054-0018	1-7-2008	Amend	2-1-2008	635-016-0090	1-1-2008	Amend	2-1-2008
603-054-0024	1-7-2008	Amend	2-1-2008	635-017-0080	1-1-2008	Amend	2-1-2008
623-040-0005	12-3-2007	Adopt	1-1-2008	635-017-0090	1-1-2008	Amend	2-1-2008
623-040-0010	12-3-2007	Adopt	1-1-2008	635-017-0090	1-1-2008	Amend	2-1-2008
623-040-0015	12-3-2007	Adopt	1-1-2008	635-017-0090	1-9-2008	Amend(T)	2-1-2008
629-043-0040	1-1-2008	Amend	2-1-2008	635-017-0095	1-1-2008	Amend	2-1-2008
629-043-0041	1-1-2008	Repeal	2-1-2008	635-017-0095	1-1-2008	Amend(T)	2-1-2008
629-043-0043	1-1-2008	Repeal	2-1-2008	635-017-0095(T)	1-1-2008	Suspend	2-1-2008
629-048-0001	1-1-2008	Adopt	2-1-2008	635-018-0080	1-1-2008	Amend	2-1-2008
629-048-0005	1-1-2008	Adopt	2-1-2008	635-018-0090	1-1-2008	Amend	2-1-2008

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635-019-0090	1-1-2008	Amend	2-1-2008	735-032-0020	1-1-2008	Amend(T)	2-1-2008
635-021-0080	1-1-2008	Amend	2-1-2008	735-032-0050	1-1-2008	Amend	2-1-2008
635-021-0090	1-1-2008	Amend	2-1-2008	735-040-0040	1-1-2008	Amend(T)	2-1-2008
635-023-0080	1-1-2008	Amend	2-1-2008	735-040-0050	1-1-2008	Amend(T)	2-1-2008
635-023-0090	1-1-2008	Amend	2-1-2008	735-040-0080	1-1-2008	Amend(T)	2-1-2008
635-023-0095	1-1-2008	Amend	2-1-2008	735-040-0090	1-1-2008	Amend(T)	2-1-2008
635-023-0095	1-1-2008	Amend(T)	2-1-2008	735-040-0100	1-1-2008	Amend(T)	2-1-2008
635-023-0095(T)	1-1-2008	Suspend	2-1-2008	735-046-0010	1-1-2008	Amend(T)	2-1-2008
635-023-0125	1-1-2008	Amend	2-1-2008	735-046-0050	1-1-2008	Amend(T)	2-1-2008
635-023-0128	1-1-2008	Amend	2-1-2008	735-060-0120	1-1-2008	Amend	2-1-2008
635-023-0130	1-1-2008	Amend	2-1-2008	735-062-0000	1-1-2008	Amend	2-1-2008
635-039-0080	1-1-2008	Amend	2-1-2008	735-062-0050	1-1-2008	Amend	2-1-2008
635-039-0090	1-1-2008	Amend	2-1-2008	735-062-0073	1-1-2008	Amend	2-1-2008
635-042-0130	12-1-2007	Amend(T)	1-1-2008	735-062-0090	1-1-2008	Amend	2-1-2008
635-042-0130	1-1-2008	Amend(T)	2-1-2008	735-062-0200	1-1-2008	Amend	2-1-2008
635-042-0130(T)	1-1-2008	Suspend	2-1-2008	735-062-0320	1-1-2008	Amend	2-1-2008
635-042-0135	1-1-2008	Amend(T)	2-1-2008	735-062-0330	1-1-2008	Amend	2-1-2008
635-048-0005	1-1-2008	Amend	2-1-2008	735-062-0380	1-1-2008	Amend	2-1-2008
635-048-0010	1-1-2008	Amend	2-1-2008	735-062-0390	1-1-2008	Adopt	2-1-2008
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635-056-0020	11-19-2007	Amend	1-1-2008	735-064-0220	1-1-2008	Amend	2-1-2008
635-057-0000	11-19-2007	Adopt	1-1-2008	735-070-0080	1-1-2008	Amend	1-1-2008
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660-002-0015	12-10-2007	Amend(T)	1-1-2008	735-074-0140	1-1-2008	Amend	2-1-2008
660-041-0000	12-10-2007	Amend(T)	1-1-2008	735-074-0180	1-1-2008	Amend	2-1-2008
660-041-0010	12-10-2007	Amend(T)	1-1-2008	735-074-0260	1-1-2008	Am. & Ren.	2-1-2008
660-041-0030	12-10-2007	Amend(T)	1-1-2008	735-074-0270	1-1-2008	Am. & Ren.	2-1-2008
660-041-0040	12-10-2007	Amend(T)	1-1-2008	735-074-0280	1-1-2008	Am. & Ren.	2-1-2008
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660-041-0070	12-10-2007	Adopt(T)	1-1-2008	735-076-0007	1-1-2008	Amend	2-1-2008
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660-041-0520	12-10-2007	Adopt(T)	1-1-2008	735-076-0035	1-1-2008	Amend	2-1-2008
660-041-0530	12-10-2007	Adopt(T)	1-1-2008	735-080-0010	1-1-2008	Repeal	2-1-2008
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678-030-0030	1-11-2008	Adopt	2-1-2008	735-080-0080	1-1-2008	Amend	2-1-2008
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800-010-0041	2-1-2008	Amend	2-1-2008	808-003-0060	1-1-2008	Amend	2-1-2008
800-015-0005	2-1-2008	Amend	2-1-2008	808-003-0090	1-1-2008	Amend	2-1-2008
800-015-0010	2-1-2008	Amend	2-1-2008	808-003-0095	1-1-2008	Amend	2-1-2008
800-015-0015	2-1-2008	Adopt	2-1-2008	808-003-0100	1-1-2008	Amend	2-1-2008
800-015-0030	2-1-2008	Amend	2-1-2008	808-003-0105	1-1-2008	Amend	2-1-2008
800-020-0015	2-1-2008	Amend	2-1-2008	808-003-0110	1-1-2008	Amend	2-1-2008
800-020-0020	2-1-2008	Amend	2-1-2008	808-003-0112	1-1-2008	Amend	2-1-2008
800-020-0022	2-1-2008	Amend	2-1-2008	808-003-0125	1-1-2008	Amend	2-1-2008
800-020-0025	2-1-2008	Amend	2-1-2008	808-003-0130	1-1-2008	Amend	2-1-2008
800-020-0026	2-1-2008	Amend	2-1-2008	808-003-0130	1-1-2008	Amend	2-1-2008
800-020-0030	2-1-2008	Amend	2-1-2008	808-003-0135	1-1-2008	Amend	2-1-2008
800-020-0031	2-1-2008	Amend	2-1-2008	808-003-018	1-1-2008	Amend	2-1-2008
800-020-0035	2-1-2008	Amend	2-1-2008	808-003-0200	1-1-2008	Amend	2-1-2008
800-025-0020	2-1-2008	Amend	2-1-2008	808-003-0220	1-1-2008	Amend	2-1-2008
800-025-0023	2-1-2008	Amend	2-1-2008	808-003-0225	1-1-2008	Amend	2-1-2008
800-025-0025	2-1-2008	Amend	2-1-2008	808-003-0230	1-1-2008	Amend	2-1-2008
800-025-0030	2-1-2008	Amend	2-1-2008	808-003-0230	1-1-2008	Amend	2-1-2008
800-025-0060	2-1-2008	Amend	2-1-2008	808-003-0235	1-1-2008	Amend	2-1-2008
800-025-0070	2-1-2008	Amend	2-1-2008	808-003-0255	1-1-2008	Amend	2-1-2008
800-030-0025	2-1-2008	Amend	2-1-2008	808-003-0440	1-1-2008	Amend	2-1-2008
800-030-0050	2-1-2008	Amend	2-1-2008	808-004-0120	1-1-2008	Amend	2-1-2008
801-001-0035	1-1-2008	Amend	2-1-2008	808-004-0250	1-1-2008	Amend	2-1-2008
801-010-0340	1-1-2008	Amend	2-1-2008	808-004-0320	1-1-2008	Amend	2-1-2008
801-030-0010	1-1-2008	Amend	2-1-2008	808-004-0340	1-1-2008	Amend	2-1-2008
801-030-0015	1-1-2008	Amend	2-1-2008	808-004-0340	1-1-2008	Amend	2-1-2008
801-030-0020	1-1-2008	Amend	2-1-2008	808-004-0400	1-1-2008	Amend	2-1-2008
801-040-0030	1-1-2008	Amend	2-1-2008	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	808-030-0010	1-1-2008	Adopt	2-1-2008
808-002-0325	1-1-2008	Amend	2-1-2008	808-030-0020	1-1-2008	Adopt	2-1-2008
808-002-0328	1-1-2008	Amend	2-1-2008	808-030-0030	1-1-2008	Adopt	2-1-2008
808-002-0330	1-1-2008	Amend	2-1-2008	808-030-0040	1-1-2008	Adopt	2-1-2008
808-002-0500	1-1-2008	Amend	2-1-2008	808-030-0050	1-1-2008	Adopt	2-1-2008
808-002-0540	1-1-2008	Amend	2-1-2008	808-030-0060	1-1-2008	Adopt	2-1-2008
808-002-0590	1-1-2008	Adopt	2-1-2008	808-030-0070	1-1-2008	Adopt	2-1-2008
808-002-0625	1-1-2008	Adopt	2-1-2008	808-040-0010	1-1-2008	Adopt	2-1-2008
808-002-0665	1-1-2008	Amend	2-1-2008	808-040-0020	1-1-2008	Adopt	2-1-2008
808-002-0870	1-1-2008	Amend	2-1-2008	808-040-0025	1-1-2008	Adopt	2-1-2008
808-002-0900	1-1-2008	Amend	2-1-2008	808-040-0030	1-1-2008	Adopt	2-1-2008
808-002-0920	1-1-2008	Amend	2-1-2008	808-040-0040	1-1-2008	Adopt	2-1-2008
808-003-0010	1-1-2008	Amend	2-1-2008	808-040-0050	1-1-2008	Adopt	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008	808-040-0060	1-1-2008	Adopt	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008	808-040-0070	1-1-2008	Adopt	2-1-2008
808-003-0020	1-1-2008	Amend	2-1-2008	808-040-0080	1-1-2008	Adopt	2-1-2008
808-003-0030	1-1-2008	Amend	2-1-2008	811-001-0005	1-31-2008	Amend	1-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008	811-010-0085	11-30-2007	Amend	1-1-2008
808-003-0035	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
808-003-0040	1-1-2008	Amend	2-1-2008	811-010-0093	11-30-2007	Amend	1-1-2008

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811-015-0025	11-30-2007	Amend	1-1-2008	813-140-0090	12-18-2007	Amend(T)	2-1-2008
811-021-0005	11-30-2007	Amend	1-1-2008	813-140-0095	12-18-2007	Adopt(T)	2-1-2008
812-001-0200	1-1-2008	Amend	1-1-2008	818-001-0087	11-30-2007	Amend	1-1-2008
812-001-0200	1-2-2008	Amend(T)	2-1-2008	818-012-0030	11-30-2007	Amend	1-1-2008
812-002-0140	1-1-2008	Amend	1-1-2008	818-021-0060	11-30-2007	Amend	1-1-2008
812-002-0143	1-1-2008	Amend	1-1-2008	818-021-0070	11-30-2007	Amend	1-1-2008
812-002-0170	1-1-2008	Adopt	1-1-2008	818-035-0030	11-30-2007	Amend	1-1-2008
812-002-0265	1-1-2008	Adopt	1-1-2008	818-035-0040	11-30-2007	Amend	1-1-2008
812-002-0420	1-1-2008	Amend	1-1-2008	818-035-0065	11-30-2007	Amend	1-1-2008
812-002-0580	1-1-2008	Amend	1-1-2008	818-042-0040	11-30-2007	Amend	1-1-2008
812-002-0630	1-1-2008	Adopt	1-1-2008	818-042-0060	11-30-2007	Amend	1-1-2008
812-002-0635	1-1-2008	Adopt	1-1-2008	818-042-0095	11-30-2007	Adopt	1-1-2008
812-002-0640	1-1-2008	Amend	1-1-2008	836-009-0007	12-11-2007	Amend(T)	1-1-2008
812-002-0760	1-1-2008	Amend	1-1-2008	836-052-0500	1-1-2008	Amend	1-1-2008
812-002-0840	1-1-2008	Repeal	1-1-2008	836-052-0508	1-1-2008	Adopt	1-1-2008
812-003-0140	1-10-2008	Amend(T)	2-1-2008	836-052-0516	1-1-2008	Amend	1-1-2008
812-003-0150	1-1-2008	Amend	1-1-2008	836-052-0526	1-1-2008	Amend	1-1-2008
812-003-0155	1-1-2008	Adopt	1-1-2008	836-052-0531	1-1-2008	Adopt	1-1-2008
812-003-0160	1-1-2008	Amend	1-1-2008	836-052-0546	1-1-2008	Amend	1-1-2008
812-003-0170	1-1-2008	Amend	1-1-2008	836-052-0556	1-1-2008	Amend	1-1-2008
812-003-0175	1-1-2008	Amend	1-1-2008	836-052-0566	1-1-2008	Amend	1-1-2008
812-003-0180	1-1-2008	Amend	1-1-2008	836-052-0576	1-1-2008	Amend	1-1-2008
812-003-0190	1-1-2008	Amend	1-1-2008	836-052-0616	1-1-2008	Amend	1-1-2008
812-003-0200	1-1-2008	Amend	1-1-2008	836-052-0626	1-1-2008	Amend	1-1-2008
812-003-0240	1-1-2008	Amend	1-1-2008	836-052-0636	1-1-2008	Amend	1-1-2008
812-003-0250	1-1-2008	Amend	1-1-2008	836-052-0639	1-1-2008	Adopt	1-1-2008
812-003-0260	1-1-2008	Amend	1-1-2008	836-052-0656	1-1-2008	Amend	1-1-2008
812-003-0270	1-10-2008	Amend(T)	2-1-2008	836-052-0666	1-1-2008	Amend	1-1-2008
812-003-0280	1-1-2008	Amend	1-1-2008	836-052-0676	1-1-2008	Amend	1-1-2008
812-003-0290	1-1-2008	Amend	1-1-2008	836-052-0696	1-1-2008	Amend	1-1-2008
812-003-0300	1-1-2008	Amend	1-1-2008	836-052-0700	1-1-2008	Am. & Ren.	1-1-2008
812-003-0310	1-1-2008	Amend	1-1-2008	836-052-0706	1-1-2008	Amend	1-1-2008
812-003-0380	1-1-2008	Amend	1-1-2008	836-052-0726	1-1-2008	Amend	1-1-2008
812-003-0400	1-1-2008	Amend	1-1-2008	836-052-0736	1-1-2008	Amend	1-1-2008
812-004-0240	1-1-2008	Amend	1-1-2008	836-052-0738	1-1-2008	Adopt	1-1-2008
812-004-0250	1-1-2008	Amend	1-1-2008	836-052-0740	1-1-2008	Adopt	1-1-2008
812-004-0260	1-1-2008	Amend	1-1-2008	836-052-0746	1-1-2008	Amend	1-1-2008
812-004-0560	1-1-2008	Amend	1-1-2008	836-052-0756	1-1-2008	Amend	1-1-2008
812-004-0590	1-1-2008	Amend	1-1-2008	836-052-0766	1-1-2008	Amend	1-1-2008
812-004-0600	1-1-2008	Amend	1-1-2008	836-052-0776	1-1-2008	Amend	1-1-2008
812-005-0200	1-1-2008	Amend	1-1-2008	836-052-0786	1-1-2008	Amend	1-1-2008
812-005-0210	1-1-2008	Amend	1-1-2008	836-052-1000	1-1-2008	Adopt	2-1-2008
812-005-0250	1-1-2008	Amend	1-1-2008	836-053-0910	12-21-2007	Amend(T)	2-1-2008
812-005-0270	1-1-2008	Adopt	1-1-2008	836-071-0130	12-11-2007	Amend(T)	1-1-2008
812-005-0800	1-2-2008	Amend(T)	2-1-2008	836-071-0135	12-11-2007	Amend(T)	1-1-2008
812-008-0040	1-1-2008	Amend	1-1-2008	836-071-0145	12-11-2007	Amend(T)	1-1-2008
812-008-0060	1-1-2008	Amend	1-1-2008	837-020-0035	11-30-2007	Amend(T)	1-1-2008
812-008-0070	1-1-2008	Amend	1-1-2008	837-020-0115	11-30-2007	Amend(T)	1-1-2008
812-008-0110	1-1-2008	Amend	1-1-2008	837-035-0000	11-16-2007	Adopt	1-1-2008
812-009-0140	1-1-2008	Amend	1-1-2008	837-035-0020	11-16-2007	Adopt	1-1-2008
812-010-0420	1-1-2008	Amend	1-1-2008	837-035-0040	11-16-2007	Adopt	1-1-2008
812-010-0470	1-1-2008	Amend	1-1-2008	837-035-0060	11-16-2007	Adopt	1-1-2008
812-012-0110	1-1-2008	Adopt	1-1-2008	837-035-0080	11-16-2007	Adopt	1-1-2008
812-012-0130	1-1-2008	Adopt	1-1-2008	837-035-0100	11-16-2007	Adopt	1-1-2008
813-140-0010	12-18-2007	Amend(T)	2-1-2008	837-035-0120	11-16-2007	Adopt	1-1-2008

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837-035-0160	11-16-2007	Adopt	1-1-2008	839-005-0205	1-1-2008	Adopt	2-1-2008
837-035-0180	11-16-2007	Adopt	1-1-2008	839-005-0210	1-1-2008	Adopt	2-1-2008
837-035-0200	11-16-2007	Adopt	1-1-2008	839-005-0215	1-1-2008	Adopt	2-1-2008
837-035-0220	11-16-2007	Adopt	1-1-2008	839-005-0220	1-1-2008	Adopt	2-1-2008
837-035-0240	11-16-2007	Adopt	1-1-2008	839-006-0105	1-1-2008	Amend	2-1-2008
837-035-0260	11-16-2007	Adopt	1-1-2008	839-006-0130	1-1-2008	Amend	2-1-2008
837-035-0280	11-16-2007	Adopt	1-1-2008	839-006-0131	1-1-2008	Amend	2-1-2008
837-035-0300	11-16-2007	Adopt	1-1-2008	839-006-0135	1-1-2008	Amend	2-1-2008
837-035-0320	11-16-2007	Adopt	1-1-2008	839-006-0136	1-1-2008	Amend	2-1-2008
837-035-0340	11-16-2007	Adopt	1-1-2008	839-006-0150	1-1-2008	Amend	2-1-2008
839-001-0150	1-1-2008	Amend	2-1-2008	839-006-0400	1-1-2008	Repeal	2-1-2008
839-001-0153	1-1-2008	Amend	2-1-2008	839-006-0405	1-1-2008	Repeal	2-1-2008
839-001-0157	1-1-2008	Repeal	2-1-2008	839-006-0410	1-1-2008	Repeal	2-1-2008
839-001-0160	1-1-2008	Amend	2-1-2008	839-006-0415	1-1-2008	Repeal	2-1-2008
839-001-0495	1-1-2008	Adopt	2-1-2008	839-006-0425	1-1-2008	Repeal	2-1-2008
839-001-0496	1-1-2008	Adopt	2-1-2008	839-007-0075	1-1-2008	Adopt	2-1-2008
839-001-0740	1-1-2008	Amend	2-1-2008	839-009-0210	1-1-2008	Amend	2-1-2008
839-001-0760	1-1-2008	Amend	2-1-2008	839-009-0240	1-1-2008	Amend	2-1-2008
839-002-0015	1-1-2008	Adopt	2-1-2008	839-009-0250	1-1-2008	Amend	2-1-2008
839-002-0020	1-1-2008	Adopt	2-1-2008	839-009-0260	1-1-2008	Amend	2-1-2008
839-002-0025	1-1-2008	Adopt	2-1-2008	839-009-0280	1-1-2008	Amend	2-1-2008
839-002-0030	1-1-2008	Adopt	2-1-2008	839-009-0320	1-1-2008	Amend	2-1-2008
839-002-0035	1-1-2008	Adopt	2-1-2008	839-009-0325	1-1-2008	Adopt	2-1-2008
839-002-0040	1-1-2008	Adopt	2-1-2008	839-009-0330	1-1-2008	Adopt	2-1-2008
839-002-0045	1-1-2008	Adopt	2-1-2008	839-009-0335	1-1-2008	Adopt	2-1-2008
839-002-0050	1-1-2008	Adopt	2-1-2008	839-009-0340	1-1-2008	Adopt	2-1-2008
839-002-0055	1-1-2008	Adopt	2-1-2008	839-009-0345	1-1-2008	Adopt	2-1-2008
839-002-0060	1-1-2008	Adopt	2-1-2008	839-009-0350	1-1-2008	Adopt	2-1-2008
839-002-0065	1-1-2008	Adopt	2-1-2008	839-009-0355	1-1-2008	Adopt	2-1-2008
839-002-0070	1-1-2008	Adopt	2-1-2008	839-009-0360	1-1-2008	Adopt	2-1-2008
839-002-0080	1-1-2008	Adopt	2-1-2008	839-009-0362	1-1-2008	Adopt	2-1-2008
839-003-0005	1-1-2008	Amend	2-1-2008	839-009-0363	1-1-2008	Adopt	2-1-2008
839-003-0020	1-1-2008	Amend	2-1-2008	839-009-0365	1-1-2008	Adopt	2-1-2008
839-003-0055	1-1-2008	Amend	2-1-2008	839-010-0000	1-1-2008	Amend	2-1-2008
839-003-0060	1-1-2008	Amend	2-1-2008	839-010-0010	1-1-2008	Amend	2-1-2008
839-003-0080	1-1-2008	Amend	2-1-2008	839-010-0020	1-1-2008	Amend	2-1-2008
839-003-0090	1-1-2008	Amend	2-1-2008	839-010-0040	1-1-2008	Amend	2-1-2008
839-003-0200	1-1-2008	Adopt	2-1-2008	839-010-0100	1-1-2008	Amend	2-1-2008
839-003-0205	1-1-2008	Adopt	2-1-2008	839-010-0110	1-1-2008	Repeal	2-1-2008
839-003-0210	1-1-2008	Adopt	2-1-2008	839-015-0140	1-1-2008	Amend	2-1-2008
839-003-0215	1-1-2008	Adopt	2-1-2008	839-015-0508	1-1-2008	Amend	2-1-2008
839-003-0220	1-1-2008	Adopt	2-1-2008	839-015-0509	1-1-2008	Adopt	2-1-2008
839-003-0225	1-1-2008	Adopt	2-1-2008	839-020-0012	1-1-2008	Amend	2-1-2008
839-003-0230	1-1-2008	Adopt	2-1-2008	839-020-0015	1-1-2008	Amend	2-1-2008
839-003-0235	1-1-2008	Adopt	2-1-2008	839-020-0050	1-1-2008	Amend	2-1-2008
839-003-0240	1-1-2008	Adopt	2-1-2008	839-020-0051	1-1-2008	Adopt	2-1-2008
839-003-0245	1-1-2008	Adopt	2-1-2008	839-020-0080	1-1-2008	Amend	2-1-2008
839-005-0000	1-1-2008	Amend	2-1-2008	839-020-0260	1-1-2008	Amend	2-1-2008
839-005-0003	1-1-2008	Amend	2-1-2008	839-020-1010	1-1-2008	Amend	2-1-2008
839-005-0010	1-1-2008	Amend	2-1-2008	839-025-0004	1-1-2008	Amend	2-1-2008
839-005-0016	1-1-2008	Adopt	2-1-2008	839-025-0005	1-1-2008	Adopt	2-1-2008
839-005-0021	1-1-2008	Amend	2-1-2008	839-025-0007	1-1-2008	Amend	2-1-2008
839-005-0026	1-1-2008	Amend	2-1-2008	839-025-0008	1-1-2008	Amend	2-1-2008
839-005-0030	1-1-2008	Amend	2-1-2008	839-025-0010	1-1-2008	Amend	2-1-2008
839-005-0195	1-1-2008	Adopt	2-1-2008	839-025-0013	1-1-2008	Amend	2-1-2008

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839-025-0025	1-1-2008	Amend	2-1-2008	845-006-0401	1-1-2008	Adopt(T)	1-1-2008
839-025-0035	1-1-2008	Amend	2-1-2008	845-007-0015	1-1-2008	Amend	2-1-2008
839-025-0037	1-1-2008	Amend	2-1-2008	845-015-0141	1-1-2008	Adopt(T)	1-1-2008
839-025-0080	1-1-2008	Amend	2-1-2008	845-015-0165	1-1-2008	Amend	2-1-2008
839-025-0085	1-1-2008	Amend	2-1-2008	851-045-0015	11-21-2007	Amend	1-1-2008
839-025-0090	1-1-2008	Amend	2-1-2008	851-056-0012	11-21-2007	Amend	1-1-2008
839-025-0095	1-1-2008	Amend	2-1-2008	852-001-0001	12-7-2007	Amend	1-1-2008
839-025-0100	1-1-2008	Amend	2-1-2008	852-001-0002	12-7-2007	Amend	1-1-2008
839-025-0150	1-1-2008	Amend	2-1-2008	852-050-0006	12-7-2007	Amend	1-1-2008
839-025-0200	1-1-2008	Amend	2-1-2008	852-080-0030	1-1-2008	Amend	1-1-2008
839-025-0210	1-1-2008	Amend	2-1-2008	860-038-0005	12-31-2007	Amend	2-1-2008
839-025-0220	1-1-2008	Amend	2-1-2008	860-038-0480	12-31-2007	Amend	2-1-2008
839-025-0230	1-1-2008	Amend	2-1-2008	918-020-0094	1-1-2008	Adopt	2-1-2008
839-025-0310	1-1-2008	Amend	2-1-2008	918-020-0094(T)	1-1-2008	Repeal	2-1-2008
839-025-0315	1-1-2008	Adopt	2-1-2008	918-030-0045	1-3-2008	Adopt(T)	2-1-2008
839-025-0340	1-1-2008	Amend	2-1-2008	918-030-0200	1-1-2008	Amend	2-1-2008
839-025-0500	1-1-2008	Amend	2-1-2008	918-030-0220	1-1-2008	Amend	2-1-2008
839-025-0520	1-1-2008	Amend	2-1-2008	918-030-0230	1-1-2008	Amend	2-1-2008
839-025-0530	1-1-2008	Amend	2-1-2008	918-098-1012	1-1-2008	Amend	2-1-2008
839-025-0540	1-1-2008	Amend	2-1-2008	918-098-1015	1-1-2008	Amend	2-1-2008
839-025-0700	11-23-2007	Amend	1-1-2008	918-225-0240	1-1-2008	Amend	2-1-2008
839-025-0700	1-1-2008	Amend	2-1-2008	918-225-0345	1-1-2008	Adopt	2-1-2008
839-025-0700	1-4-2008	Amend	2-1-2008	918-225-0600	1-1-2008	Amend	2-1-2008
839-025-0700	1-11-2008	Amend	2-1-2008	918-225-0610	1-1-2008	Amend	2-1-2008
845-005-0416	1-1-2008	Adopt(T)	1-1-2008	918-225-0640	1-1-2008	Amend	2-1-2008
845-005-0417	1-1-2008	Adopt(T)	1-1-2008	918-282-0130	1-1-2008	Amend	2-1-2008
845-005-0420	1-1-2008	Amend(T)	1-1-2008	918-282-0210	1-1-2008	Repeal	2-1-2008
845-005-0422	1-1-2008	Suspend	1-1-2008	918-282-0220	1-1-2008	Amend	2-1-2008
845-005-0423	1-1-2008	Suspend	1-1-2008	918-282-0240	1-1-2008	Amend	2-1-2008
845-005-0424	1-1-2008	Amend(T)	1-1-2008	918-282-0300	1-1-2008	Repeal	2-1-2008
845-005-0425	1-1-2008	Adopt(T)	1-1-2008	918-282-0310	1-1-2008	Repeal	2-1-2008
845-005-0426	1-1-2008	Adopt(T)	1-1-2008	918-282-0355	1-1-2008	Amend	2-1-2008
845-005-0440	1-1-2008	Amend	2-1-2008	918-400-0280	1-1-2008	Amend	2-1-2008
845-006-0340	1-1-2008	Amend	2-1-2008	918-400-0333	1-1-2008	Amend	2-1-2008
845-006-0391	1-1-2008	Adopt(T)	1-1-2008	918-400-0340	1-1-2008	Amend	2-1-2008
845-006-0392	1-1-2008	Adopt(T)	1-1-2008	918-400-0380	1-1-2008	Amend	2-1-2008
845-006-0395	1-1-2008	Suspend	1-1-2008	918-400-0800	1-1-2008	Amend	2-1-2008
845-006-0396	1-1-2008	Amend(T)	1-1-2008	918-780-0030	1-1-2008	Amend	2-1-2008
845-006-0398	1-1-2008	Suspend	1-1-2008				

