OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

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For November 16, 2007–December 14, 2007

Published by
BILL BRADBURY
Secretary of State

INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2007–2008 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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EXECUTIVE ORDER NO. 07 - 21

GOVERNOR'S TASK FORCE ON FEDERAL FOREST PAYMENTS AND COUNTY SERVICES

Oregon counties face severe financial challenges as the federal government reconsiders its long-standing financial support for counties with federal forest lands.

This support, in the form of "federal forest payments" for schools, roads and general government services, totaled $230 million in 2006–07. But, despite determined efforts by Oregon's Congressional delegation and strong advocacy by Oregon counties and the State, Congress has yet to reauthorize these payments for the federal fiscal year that began October 1.

Even with reauthorization of these payments, funding levels are likely to decline in the future. Further, any delay in reauthorization, as we are now experiencing, will destabilize already-shaky budgets and force continued retrenchment of services in counties with large expanses of federal forest lands.

At some point, the diminishing ability of certain counties to maintain essential services will pose a problem for all of Oregon. We confronted that reality earlier this year, when reauthorization of federal forest payments was delayed until nine months into the federal fiscal year. One county asked the State for a declaration of emergency. Another announced that it will turn back to the State the responsibility for providing mental health and alcohol and drug treatment services. Others scaled back Sheriff's patrols, reduced court services and closed libraries.

Another delay or reduction of federal funding will cause more damage to county services, threaten the protection of health and safety and heighten the urgency of appeals for assistance from the State. This is why state and county leaders must come to agreement on their respective roles and responsibilities to deal with the delay or reduction of federal forest payments to our counties.

County leaders and legislators have begun to seek solutions that can work for our counties and the State. The Association of Oregon Counties (AOC) has worked with the legislature to prepare an inventory and assessment of services whose funding and delivery are shared by state and county governments. More recently, AOC President and Lane County Commissioner Bobby Green called for a joint county-state effort "to forge permanent solutions to the public finance disorder that has been exposed" by the potential loss of federal forest payments and to use this crisis as an opportunity to strengthen the partnership among counties, the State and the federal government.

The Office of the Governor and the executive agencies of the State of Oregon are committed to assisting Oregon's counties in identifying and implementing actions that can stabilize and improve the provision of services at the county level and in working with the counties and the legislature to forge permanent solutions to the public finance crisis caused by the delay and potential reduction of federal forest payments to county governments.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The "Governor's Task Force on Federal Forest Payments and County Services" (the "Task Force") is established.

2. The Task Force shall consist of eighteen members as follows:

a. Tim Nesbitt, Deputy Chief of Staff to the Governor, who shall serve as chair;

b. Max Williams, Director of the Department of Corrections;

c. Karen Gregory, the property tax division administrator for the Department of Revenue;

d. Bob Repine, Director of the Economic and Community Development Department;

e. Marvin Brown, Director of the Department of Forestry;

f. Clyde Saiki, Deputy Director of Operations of the Department of Human Services;

g. Matt Garrett, Director of the Department of Transportation;

h. Bob Jester, Director of the Oregon Youth Authority;

i. Tim McLain, Superintendent of the Oregon State Police;

j. Mike McArthur, Executive Director of the Association of Oregon Counties;

k. Lane County Commissioner Bobby Green;

l. Crook County Judge Scott Cooper;

m. Jackson County Commissioner C.W. Smith;

n. Tillamook County Commissioner Mark Labhart;

o. Two members designated by the Speaker of the House of Representatives; and

p. Two members designated by the President of the Senate.

3. The Governor's Director of Inter-Governmental Relations, Director of Federal Affairs and General Counsel shall provide staff support to the Task Force. The Governor's policy advisors shall provide additional support as requested by the chair.

4. The Directors of the Department of Administrative Services and the Department's Budget and Management Division shall provide technical assistance to the Task Force. If the Task Force requests assistance from any other executive branch agency of the State, that agency shall provide such assistance.

5. The chair shall establish an agenda for the Task Force and provide leadership and direction for the Task Force. The chair may appoint and approve the creation of subcommittees of the Task Force. The chair may, on behalf of the Governor, request the participation of representatives of County Sheriffs, District Attorneys, County Assessors and other county officials or associations of local government officials.

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

7. The Task Force shall compile and review research on the impact on services provided by counties and the State from any delay or reduction in federal forest payments. The Task Force shall develop recommendations regarding administrative, budgetary, statutory and, if necessary, constitutional changes needed to provide stable and adequate funding for the provision of essential services at the county level. In fulfilling its charge, the Task Force shall:

a. Compile an assessment of likely service impacts in each affected county from a reduction or termination of federal forest payments and a comparison of each county's ability to provide essential services within their statutory and constitutional taxing authorities;

b. Prepare projections of future timber revenues under current and proposed policies for managing timber harvests from federal lands;

c. Identify services for which the State provides funding, partners with the counties or relies on the counties for service delivery;

d. Gather suggestions from the counties and state agencies for organizational and policy changes that can yield more cost-effective delivery of services at the county level;

e. Develop recommendations for executive and legislative action; and

f. Support efforts to secure the continuation of federal forest payments.

8. The Task Force shall direct its recommendations to:

a. The Governor;

b. The Task Force on Comprehensive Revenue Restructuring established by House Bill 2530;

c. The Speaker of the House of Representatives; and

d. The President of the Senate.

9. Council members are not entitled to reimbursement of expenses or the per diem provided in ORS 292.495.

10. This Order shall remain in effect until rescinded.

Done at Salem, Oregon this 13th day of November, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07 - 22

STANDARDS FOR ISSUANCE OF OREGON DRIVER LICENSES AND IDENTIFICATION CARDS

Driving on Oregon's roads and highways is a privilege. That privilege is conferred through a system of licensing of drivers that is managed by the Driver and Motor Services Division (DMV) of the Oregon Department of Transportation and by similar government agencies throughout the United States.

State-issued driver licenses and identification cards are the most commonly used identification documents in the U.S. Such cards are routinely accepted as identification by the public and private sectors in financial and credit transactions and are used to board airplanes, to enter secure buildings, to purchase alcohol and other restricted products and for a myriad of other purposes. It is essential that public and private entities be able to rely on the legitimacy of driver licenses and identification cards issued by each of the states and territories of the U.S. as establishing the holder's true identity.

Oregon's documentation requirements to prove identity are among the most permissive in the country. At a minimum, most states verify Social Security numbers for all applicants with a Social Security number, require valid passports with current immigration documentation for non-citizens and, except for Canadian-issued birth certificates, do not accept foreign birth certificates. However, Oregon's current administrative rules do not contain these restrictions. This fact, coupled with Oregon's relatively long eight-year license term, appear to have made Oregon a magnet for persons from out of state to come here to unlawfully obtain identification documents for which they are not eligible either in this state or in the state in which they actually reside.

Although the magnitude of these activities is not yet fully known, it appears that criminal organizations both inside and outside Oregon are using Oregon's permissive standards in order to assist persons to illegally obtain driver licenses and identification cards from DMV. These services are being advertised in foreign language newspapers in states with more stringent standards. It appears that these organizations transport individuals into Oregon for a fee and provide them with false residency documents solely for the purpose of illegally obtaining an Oregon driver license or identification card. Investigations into these activities are ongoing.

The issuance of driver licenses and identification cards is a core function of state government. It is essential that our system for issuing licenses and identification cards be secure and reliable. This is particularly important in the battle against identity fraud and identity theft and to protect our national security. Because of these concerns, it is clear that Oregon must tighten its standards for obtaining driver licenses and identification cards in order to more effectively prevent fraud and criminal activity.

Oregon law provides DMV with considerable latitude to define by administrative rule the types of documentation that DMV will accept to establish identity and to establish procedures to verify identity prior to issuance of a driver license or identification card. Although legislative consideration of these issues is desirable, some changes can be made immediately and without action by the Legislature.

The American Association of Motor Vehicle Administrators (AAMVA) is a non-profit association representing motor vehicle agency administrators and senior law enforcement officials from throughout the U.S. and Canada. AAMVA's mission is to represent its membership by working collaboratively to support and improve motor vehicle administration, safety, identification security and law enforcement. AAMVA has developed policies and guidelines that encourage uniformity, reciprocity and sharing of best practices among states, provinces, federal government officials and the private sector, including guidelines for the issuance of driver licenses, that have been adopted by most U.S. and Canadian jurisdictions.

NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

1. DMV shall, as soon as practicable, prepare emergency administrative rules to revise and tighten the requirements for issuance of driver licenses, driver permits and identification cards and shall present such emergency rules to the Oregon Transportation Commission for adoption and implementation.

2. The administrative rules for issuance of driver licenses, driver permits and identification cards shall generally adhere to the standards recommended by AAMVA regarding use and verification of Social Security numbers and acceptable documentation to prove name and date of birth.

3. The administrative rules shall require any applicant for an original, renewal or replacement driver license, driver permit or identification card to provide DMV with a valid Social Security number or a written statement that the applicant has not been issued a Social Security number. DMV shall verify with the Social Security Administration the accuracy of Social Security numbers provided. Except as provided in (4)(b), DMV shall deny or cancel driving privileges and identification cards if the applicant does not provide his or her

Social Security number or if the Social Security number provided by the applicant cannot be verified to the satisfaction of DMV.

4. The administrative rules shall require any applicant for an original, renewal, or replacement driver license, driver permit or identification card to provide to DMV primary identity document(s) that establishes the applicant's identity to the satisfaction of DMV.

a. For applicants who provide a verifiable Social Security number, an applicant must provide at least one primary document which includes, but is not necessarily limited to:

i. A United States, Canadian or U.S. territorial government-issued birth certificate;

ii. United States Military ID or other U.S. military documentation determined by rule by DMV to be acceptable;

iii. A valid United States passport;

iv. A valid foreign passport with valid United States Citizen and Immigration Service (USCIS) documentation that has not expired;

v. Other valid USCIS documents that have not expired and are determined by rule by DMV to be acceptable, such as, but not necessarily limited to, a Temporary Resident ID card, Resident Alien Card or Permanent Resident Card;

vi. An Oregon driver license, driver permit or identification card that is valid or expired for less than one year;

vii.A driver license, driver permit or identification card issued by another state of the United States or by a Canadian province that is valid or expired for less than 60 days; or

viii.A valid Confederated Tribes of Oregon tribal identification card, as approved by DMV.

b. For applicants who are unable to provide a verifiable Social Security number, DMV shall require the applicant to provide additional identity documents. DMV shall determine by administrative rule the number and type of identity documents that must be provided. If the applicant presents an identity document issued by a foreign government, the applicant must provide one of the following:

i. A valid foreign passport with valid United States Citizen and Immigration Service (USCIS) documentation that has not expired; or

ii. Other valid USCIS documents that have not expired and are determined by rule by DMV to be acceptable, such as, but not necessarily limited to, a Temporary Resident ID card, Resident Alien Card or Permanent Resident Card.

5. The new standards in these emergency administrative rules shall be effective as of a date to be set by DMV in the rules. Such implementation is to be accomplished in as expeditious a manner as is possible following adoption of the rules by the Oregon Transportation Commission.

6. Within one year of full implementation of these emergency rules, DMV shall report to the Governor as to the effectiveness of these measures in reducing fraud in the process of issuing driver licenses, driver permits and identification cards, on the difficulties that these new requirements may have imposed on DMV customers and staff, and any other consequences of these new requirements that have been experienced by DMV.

Done at Salem, Oregon, this 16th day of November, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07 - 23

SEARCH AND RESCUE POLICY COMMISSION

Pursuant to my authority as Governor of the State of Oregon, I find that:

Earlier this year, I created the Search and Rescue Task Force by Executive Order 07-01 to conduct a close examination of Oregon's search and rescue system and make recommendations as to how to improve that system. The Task Force presented to me a report of their findings and recommendations in March, 2007. Several of the Task Force recommendations were enacted into law through Senate Bill 1002 in the 2007 Legislative session. Among the non-legislative recommendations made by the Task Force was a recommendation to create a state-wide search and rescue policy commission. The Task Force found that a commission is necessary to continue policy analysis and make ongoing recommendations for improvement and increased coordination and communication among search and rescue stakeholders at all levels of government and in the volunteer community, the private sector and the public.

The work of the Task Force was an excellent start, but it is incumbent upon us to be vigilant and continue our efforts to ensure that Oregon's search and rescue system allows for and encourages effective and timely communication, coordination, and the pooling of all available and necessary resources. To that end, the Search and Rescue Policy Commission should take up where the Search and Rescue Task Force left off, and work to reach resolution on the issues that the Task Force did not have time to resolve. The Commission should also stand ready to address new issues as they develop and make future recommendations about improving Oregon's search and rescue system. The Commission will also facilitate communication between the search and rescue community, the legislature and the Governor's Office regarding search and rescue policy, legislative issues and needed resources.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Search and Rescue Policy Commission (the "Commission") is established.

2. The Commission shall consider search and rescue issues that are state-wide in scope and make recommendations as to any changes to the laws, administrative rules and related policies of the State of Oregon that are necessary to ensure proper coordination and communications between federal, state and local authorities in search and rescue operations.

3. In the course of its work, the Commission shall review the report of the Search and Rescue Task Force and work to reach resolution on the issues that the Task Force identified but was unable to resolve due to limited time and resources.

4. The Commission shall consist of 14–17 members to be appointed by the Governor. The Commission membership shall include:

a. At least one representative of the Oregon State Police;

b. At least one representative of the Oregon Military Department who is not employed by the Office of Emergency Management;

c. The Oregon Office of Emergency Management Search and Rescue Coordinator;

d. The Director of the Oregon Office of Emergency Management;

e. A representative of the Oregon State Sheriffs' Association who is not the chair of the OSSA Search and Rescue Committee;

f. The Chair of the Oregon State Sheriffs' Association Search and Rescue Committee;

g. A representative of the Oregon Association of Chiefs of Police;

h. A representative of the Civil Air Patrol;

i. A representative of the United States Bureau of Land Management;

j. A representative of the United States Forest Service;

k. A representative of the United States Coast Guard;

l. At least two certified search and rescue volunteers;

m. A representative of each of Oregon's Regional Search and Rescue Councils that are recognized by the Oregon State Sheriff's Association and the Oregon Office of Emergency Management

n. At least one member of the Oregon House of Representatives;

o. At least one member of the Oregon Senate; and

p. At least one member of the general public.

5. The Oregon Office of Emergency Management shall provide staff support to the Commission. Other state agencies shall assist the Council upon request.

6. The Commission shall submit a report summarizing its findings and conclusions to the Governor annually, beginning June 1, 2007.

7. Members of the Commission shall not receive compensation for their activities as members of the Commission, but may be reimbursed for travel expenses incurred in the attending Commission business pursuant to ORS 292.495(2) and subject to availability of funds.

8. This Order expires on January 31, 2010.

Done at Salem, Oregon, this 29 day of November, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07 - 24

DETERMINATION OF STATE OF EMERGENCY IN OREGON DUE TO A SEVERE WINTER STORM THAT INCLUDES HIGH WINDS, FLOODING, AND LANDSLIDES

Pursuant to ORS 401.055, I find that a threat to life, safety and property exists due to a severe winter storm that has caused a natural disaster throughout the State of Oregon. Beginning December 1, 2007, and continuing, this severe storm has caused high winds, flooding, landslides, and erosion at various locations throughout the State, resulting in power and communications outages and evacuations.

IT IS ORDERED AND DIRECTED:

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. OEM shall coordinate all essential protective measures in support of all affected areas in the State.

The Oregon National Guard, Oregon State Police, Oregon Public Utility Commission and Oregon Department of Transportation shall provide any assistance that is deemed necessary to assist in the response to this emergency and to provide all necessary support to all affected areas in the State. All other state agencies shall be prepared to assist as requested.

This order was initially made by verbal proclamation at 3:52 p.m. on this 3rd day of December, 2007, and confirmed in writing by this Executive Order on the same day.

Done at Salem, Oregon, this 3rd day of December, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07 - 25

DECLARATION OF ABNORMAL DISRUPTION OF THE MARKET IN CLATSOP, COLUMBIA AND TILLAMOOK COUNTIES DUE TO SEVERE WINTER STORM, WINDS AND FLOODING

On December 3, 2007, I declared a State of Emergency in all areas of the State that were affected by the severe winter storm that struck Northwestern Oregon in the preceding days. The storm caused high winds, flooding and erosion throughout the affected areas and resulted in prolonged power and communications outages and evacuations. The recovery from the damages caused by the storm is in its initial stages. Many people remain displaced and in need of basic services.

Oregon Laws 2007, chapter 223, provides that upon a declaration of an abnormal disruption in the market that threatens to limit the availability of essential consumer goods and services, merchants and wholesalers are prohibited from charging unconscionably excessive prices for essential consumer goods and services. The law gives the Attorney General the responsibility for regulating the prohibited conduct as an unlawful trade practice.

Pursuant to Oregon Laws 2007, chapter 223, section 3, I find that the severe winter storm that struck Clatsop, Columbia and Tillamook Counties December 1–3, 2007, resulting in my declaration of a state of emergency at approximately 3:52 p.m. on December 3, caused, and threatens to continue to cause, some essential consumer goods or services to be not readily available in those parts of the state.

NOW THEREFORE I HEREBY DECLARE:

1. An abnormal disruption of the market for essential consumer goods or services in Clatsop, Columbia and Tillamook Counties is declared for purposes of Oregon Laws 2007, chapter 223.

2. This declaration will terminate 30 days after its execution unless:

a. I extend this declaration for one or more additional 30-day periods by subsequent declarations that abnormal disruption of the market continues to exist; or

b. The Legislative Assembly or I terminate this declaration of an abnormal disruption of the market before 30 days from the date of execution of this declaration.

Done at Salem, Oregon this 10th day of December, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. O7 - 26

AMENDMENT TO EXECUTIVE ORDER 07 - 21

On November 13, 2007, I issued Executive Order No. 07 - 21, establishing the Governor's Task Force on Federal Forest Payments and County Services.

NOW THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

Executive Order No. 07 - 21 is amended to increase the membership of the Task Force to 19 members and appoint Anne Ballew, Springfield City Councilor, as a member of the Task Force.

Done at Salem, Oregon this 18th day of December, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07 - 27

REGULATORY EXTENSIONS AND WAIVERS FOR THOSE AFFECTED BY THE STATE OF EMERGENCY, STORM AND FLOOD

On December 3, 2007, I declared a State of Emergency in all areas of the State that were affected by the severe winter storm that struck Northwestern Oregon in the preceding days. The storm caused high winds, flooding and erosion throughout the affected areas and resulted in prolonged power and communications outages and evacuations. Many Oregonians were displaced by the storm. Many residents and businesses located in areas affected by the storm are still experiencing disruptions of their normal activities, including inability to access business or personal records, delays in receiving mail and cash flow challenges.

These disruptions may inhibit individuals and/or businesses from timely compliance with some regulatory timelines, deadlines and due dates for payments owed. Pursuant to ORS 401.065(2) and 401.095(1), upon a Governor's declaration of a state of emergency, the Governor has the authority to suspend rules if strict compliance with such rules will prevent, hinder or delay mitigation of the effects of the emergency.

NOW THEREFORE I HEREBY DECLARE:

1. All State agencies shall develop and implement procedures to provide reasonable waivers or extensions of timelines and deadlines and waivers of penalties or fees associated with missed timelines or deadlines for persons and businesses located in areas affected by the storm.

2. Waivers and extensions shall be for a period of 30–60 days. Extensions may apply retroactively to deadlines or timelines that have already passed, if the Agency is reasonably satisfied that the failure to comply resulted from disruption caused by the storm.

3. Pursuant to ORS 401.065(2) and 401.095(1), this order supersedes any inconsistent rules and orders. This order does not supersede federal law.

4. Agencies shall submit a report or any actions taken in compliance with this order to the Office of Regulatory Streamlining in the Department of Consumer and Business Services no later than January 31, 2008.

Done at Salem, Oregon this 18th day of December, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY SEEKING PUBLIC COMMENT ON A PROPOSED SEDIMENT REMOVAL AT THE FORMER GLENBROOK NICKEL FACILITY

WRITTEN COMMENTS DUE: January 31, 2008
PROJECT LOCATION: Former Glenbrook Nickel Facility, 63776 Mullen Street, Coos Bay, Oregon
PROPOSAL: The Department of Environmental Quality (DEQ) invites public comment on the proposed approach for cleaning up contaminated sediments at the former Glenbrook Nickel facility in Coos Bay, Oregon. The proposal includes removing nickel-contaminated sediments at low tide ("in the dry") using land-based excavation equipment. This sediment cleanup is being conducted independently of any proposed future industrial developments at the site. Before such development could occur, there would be separate state and local permitting processes unrelated to what DEQ is proposing in this notice.
HIGHLIGHTS: Glenbrook Nickel Company, an affiliate of Teck Cominco American Incorporated, used the site for off-loading, storage, and distribution of nickel ore. The ore was dried, crushed, and shipped from the site to the Glenbrook's Nickel smelting facility in Riddle, Oregon. A number of sediment sampling efforts confirmed that nickel was present in sediments in the near-shore environment at concentrations exceeding background. Elevated nickel concentrations are found between the inside face of the dock and the shore, beneath a portion of the dock closest to shore, beneath the dock driveways, and along part of Coal Bank Slough.

DEQ recommends a remedial action using land-based excavation techniques to remove surface sediments with nickel concentrations above background to the maximum extent practicable. Excavated areas will be backfilled with material designed to resist erosion and restore the habitat to its pre-existing condition. The excavations will be sequenced such that they can be backfilled prior to tidal inundation. Additional details regarding the recommended remedial action are posted at: http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=3408&SourceIdType=11
HOW TO COMMENT: Written comments on the proposed remedial action may be submitted to Bill Mason at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene, OR 97401. Comments must be received by January 31, 2008. The Administrative File for this facility is archived in DEQ's Eugene office, but will be made available for review in DEQ's Coos Bay office. Questions may be directed to Bill Mason by calling him at (800) 844-8467 x7427, or by e-mailing him at mason.bill@deq.state.or.us

A public meeting to answer questions and receive comments on the proposed remedial action will be held if there is significant public interest.

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 prior to making a final decision.

A CHANCE TO COMMENT ON A PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE FORMER CIRCLE 9 DRY CLEANERS PROPERTY IN CORVALLIS, OREGON

COMMENTS DUE: January 31, 2008
PROJECT LOCATION: 960 NW Circle Boulevard, Corvallis, Oregon.
PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with Circle-Spruce, LLC for certain tax lots located at 960 NW Circle Boulevard, Corvallis, Oregon. The PPA will address tax lots 00300, 00304, 00306, and 00307 as described on Map No. 1105 26 AC, T 11 S, R 5 W, Section 26 (the "Property".)
HIGHLIGHTS: Circle-Spruce, LLC is acquiring the Property and adjacent properties to allow Circle-Spruce, LLC to address environmental contamination and provide beneficial redevelopment of the Property and adjacent properties. The Property was used historically as a dry cleaner from around 1978 to around 1990. During historic dry cleaner operations at the Property, hazardous substances were released at and from the Property. DEQ has been working with the current owner of the Property to develop removal and/or remedial measures to address the contamination.

The Consent Judgment will require Circle-Spruce, LLC to implement removal and/or remedial measures to address releases of hazardous substances at the site. These measures will include preparing and implementing a cleanup plan for demolishing the eastern portion of the former dry cleaner building and excavating contaminated soil. In the interim and as necessary, Circle-Spruce, LLC will property operate HVAC systems to protect against contaminated vapor intrusion into impacted portions of buildings on the Property. Circle-Spruce, LLC will also agree to provide access to the Property for any additional investigation and removal or remedial actions that may be required, and to implement any institutional or engineering controls that may be necessary.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool that facilitates the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a property with existing contamination. DEQ has approved more than 90 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide Circle-Spruce, LLC with a release from liability for claims by the State of Oregon under ORS §465.255 relating to any historical releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide Circle-Spruce, LLC with protection from potential contribution actions by third parties for recovery of remedial action costs associated with any historical releases at or from the Property. DEQ retains all existing rights it may have as to all other parties potentially liable for any releases.
HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm January 31, 2007. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Property may be reviewed at DEQ's Western Region office in Eugene by contacting Geoff Brown at (541) 686-7819. Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments on the proposed Consent Judgment.
THE NEXT STEP: DEQ will consider all public comments. A final decision concerning the proposed Consent Judgment will be made after consideration of public comments.

PUBLIC NOTICE PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION, OLE TURNBOW EXXON & AVIATION FUELING FACILITY (FORMER) CHRISTMAS VALLEY, OREGON

COMMENTS DUE: January 31, 2008
PROJECT LOCATION: 87634 Christmas Valley Highway, Christmas Valley, Oregon
PROPOSAL: Based on the remedial actions performed to date, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action determination for the former Ole Turnbow Exxon and Aviation Fueling Facility located at 87634 Christmas Valley Highway in Christmas Valley.

Highlights: Remedial actions performed to date consist of the in-situ treatment of soil and groundwater impacted by historic releases of petroleum products. Institutional controls in the form of an Easement and Equitable Servitudes were recorded on the service station property (tax lot 700) as well as on the adjacent properties (tax lot 600, parcels I, II, & III). The site will remain listed on the DEQ's Confirmed Release List and Inventory of Hazardous Substances. DEQ will consider all public comments received before making a final decision on the proposed Conditional No Further Action determination.

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. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620 or by email at robertson.katie@deq.state.or.us. Written comments should be sent by 5 p.m. on January 31, 2008 to Katie Robertson, Project Manager, at the address listed above.

Significant portions of the project file are also located at the Christmas Valley Library in a file entitled the "Christmas Valley Airport Enhancement Project".

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

NO FURTHER ACTION DETERMINATION
HIGHWAY 58 SPILL
CRESCENT LAKE, OREGON

COMMENT PERIOD: January 1-30, 2008

PROJECT LOCATION: Milepost 75, Highway 58, Crescent Lake, OR

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Department of Environmental Quality (DEQ) has determined that no further cleanup action is required at the site of the July 2007 spill on Highway 58 near Crescent Lake at Milepost 74 in Klamath County.

HIGHLIGHTS: On the morning of July 26, 2007, a Harris Transport Company, LLC tanker truck carrying 10,300 gallons of gasoline burst into flames and exploded near Crescent Lake in a remote area of Klamath County. While the amount of the release at the time was unknown, it was estimated that between 3,000 to 4,000 gallons may have been released to onsite soils. No fuel was recovered.

Subsequently, 3,000 cubic yards of contaminated soils were removed from an excavation along the side of Highway 58 and shipped to the Crook County landfill. The excavation reached 30 feet in depth and took place in and around three major fiber optic cables that supply data around the state. Traffic control and one lane traffic flow was maintained around the clock for eight days following the incident.

Sampling demonstrated the fuel did not migrate through or under the road fill eliminating the necessity of any removal and replacement of the pavement. Sampling also indicates that the site meets DEQ's residential human health and ecological risk based cleanup goals.

The file, including project documents, is available for review during office hours, 8 a.m. to noon and 1 to 5 p.m., at DEQ's Bend office, 300 SE Reed Market Road. To schedule an appointment to review the file, contact the DEQ Bend office toll-free at (800) 863-6668 or (541) 388-6146, ext. 258.

Questions, concerns or comments regarding DEQ's decision should be addressed to David Anderson, DEQ project manager, at 541-388-6146 x258 or via e-mail at anderson.david@deq.state.or.us. Written comments must be received at the DEQ Bend office by 5 p.m. Thursday, January 31, 2008.

REQUEST FOR COMMENTS
PROPOSED NO FURTHER ACTION AT THE
FORMER MAR COM NORTH SITE

COMMENTS DUE: January 31, 2008

PROJECT LOCATION: 8970 North Bradford Street, Portland, Oregon

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on remedial action completed at former Mar Com North Site and DEQ's proposal to issue a no further action (NFA) determination for the site.

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

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

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

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

People with hearing impairments may call DEQ's TTY number, 503-229-6993.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Naturopathic Examiners
Chapter 850

Rule Caption: Amends areas in rule regarding reinstatement and lapsed status and goes to annual renewal fee.
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.100, 685.010, 685.020
Proposed Amendments: 850-030-0020, 850-030-0035, 850-030-0090, 850-030-0195
Last Date for Comment: 1-20-08
Summary: Amendments will bring rules into line with ORS 685 regarding the status of a license that has not been renewed.

Fees will remain the same, but will be due annually ($275 annually, $550 biennially).
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Rule Caption: Add terms which are illegal to use by person not lawfully licensed by the Board.
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.010, 685.020
Proposed Amendments: 850-050-0120
Last Date for Comment: 1-20-08
Summary: Clarify that it is illegal to use certain terms unless the person is licensed in Oregon as a Naturopathic physician.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Rule Caption: Lists substances on Formulary Compendium for Naturopathic Physicians.
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Proposed Amendments: 850-060-0225, 850-060-0226
Last Date for Comment: 1-20-08
Summary: Add to 850-060-0225 and 850-060-0226 the following that can be prescribed: Piperazine Citrate, Eszopiclone, Ranolazine, Sildenafil Citrate, Trimetazidine, Valproic Acid, Vardenafil HCL, Trazodone.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Board of Nursing
Chapter 851

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

Date:	Time:	Location:
2-14-08	9 a.m.	17938 S.W. 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: 2-12-08, 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 rule review.
Rules Coordinator: KC Cotton
Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

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

Date:	Time:	Location:
2-14-08	9 a.m.	17938 S.W. Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President
Stat. Auth.: ORS 678.440, 678.442
Stats. Implemented: ORS 678.440, 678.442, 678.444
Proposed Amendments: 851-061-0020, 851-061-0030, 851-061-0080, 851-061-0090, 851-061-0120
Last Date for Comment: 2-12-08, 5 p.m.
Summary: These rules cover the standards for training programs for Nursing Assistants and Medication Aides. These amendments address the current very specific "classroom" requirements and add standards related specifically for on-line programs.
Rules Coordinator: KC Cotton
Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

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Rule Caption: Advanced Practice Formulary Updated.

Date:	Time:	Location:
2-14-08	9 a.m.	17938 S.W. Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President
Stat. Auth.: ORS 678.385, 678.390
Stats. Implemented: 678.370, 678.372, 678.375, 678.380, 678.385, 678.390
Proposed Amendments: 851-056-0012
Last Date for Comment: 2-12-08, 5 p.m.

Summary: The Board is authorized by ORS 678.385 and 678.390 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner or clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II,III, III N, IV and V. This amendment adds the December 2007 and January and February 2008 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.
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 Pharmacy
Chapter 855

Rule Caption: Establishes definitions for Tamper Resistant Prescription Forms to facilitate implementation of the Federal Medicaid requirement.
Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.205
Proposed Adoptions: 855-006-0015, 855-041-0061
Last Date for Comment: 1-30-08, 12 p.m.
Summary: On August 17, 2007, the US department of health and Human Services, Center for Medicaid and State Operations issued a letter of guidance to State Medicaid agencies on section 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, regarding use of tamper-resistant prescription pads, which was signed into law May 25, 2007.

This section amends the Social Security Act that effects payment reimbursement on Medicaid prescriptions that do not meet the new federal requirement for tamper-resistant prescriptions. On August 21, 2007 the Board adopted a temporary rule to establish definitions.

On Wednesday, December 5, 2007, during a public meeting, the Oregon Board of Pharmacy approved to adopt a permanent rule which establishes definitions for the "electronically transmitted prescriptions" and "tamper-resistant prescription."
Rules Coordinator: Karen MacLean
Address: Board of Pharmacy, 800 NE Oregon St., # 150, Portland, OR 97232
Telephone: (971) 673-0001

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Department of Administrative Services
Chapter 125

Rule Caption: Permanent Repeal of all Measure 37 Administrative Rules.
Stat. Auth.: ORS 250, 251, 254
Other Auth.: Ch. 424 OL 2007 (2007 Measure 49) & Enrolled HB 2640
Stats. Implemented: ORS 250, 251, 254, Ch. 424 OL 2007
Proposed Repeals: 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0060, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105
Last Date for Comment: 1-22-08, 5p.m.
Summary: On November 6, 2007, the voters approved Ballot Measure 49. Ballot Measure 49 modifies Ballot Measure 37 (2004) and became effective on December 6,2007. Under Ballot measure 49, the authority for acting on claims made to the State of Oregon is transferred from the Department of Administrative Services to the Oregon Department of Land Conservation and Development. All Measure 37 Administrative Rules of the Department of Administrative Services were temporarily suspended on December 6, 2007. This permanent rule repeal makes the temporary suspension permanent.
Rules Coordinator: Yvonne Hanna
Address: Department of Administrative Services, 155 Cottage St. NE, Salem, OR 97301
Telephone: (503) 378-2349, ext. 325

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Department of Administrative Services,
Oregon Educators Benefit Board
Chapter 111

Rule Caption: Establishes eligibility coverage under the Oregon Educators Benefit Board benefits program.

Date:	Time:	Location:
1-23-08	8 a.m.	Basement Hearing Rm. Agriculture Bldg. 635 Capitol St. N.E. Salem, OR 97301

Hearing Officer: Denise Hall
Stat. Auth.: Ch. 00007, OL 2007
Stats. Implemented: Sec. 1, Ch. 00007, OL 2007
Proposed Adoptions: 111-015-0001
Last Date for Comment: 1-31-08
Summary: Establishes eligibility coverage under the Oregon Educators Benefit Board benefits 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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Department of Agriculture
Chapter 603

Rule Caption: HB 2210 RFS Implementation of Blending Gasoline with Ethanol and Motor Fuel Quality Amendments.

Date:	Time:	Location:
1-24-08	10 a.m.–12 p.m.	Dept. of Agriculture 635 Capitol St. NE Salem, OR 97301-2532

Hearing Officer: Staff
Stat. Auth.: ORS 646.957, Enrolled HB 2210
Stats. Implemented: ORS 646.957, Enrolled HB 2210
Proposed Amendments: 603-027-0410 – 603-027-0440, 603-027-0470, 603-027-0490
Last Date for Comment: 1-31-08, 5 p.m.
Summary: Implement Enrolled HB 2210 Renewable Fuel Standards (RFS) mandating that Oregon's gasoline be blended with 10% by volume ethanol and specify gasoline additive restrictions. To amend and update Oregon's motor fuel quality regulations and bring them current with ASTM International standards, and labeling requirements for gasoline-ethanol blends and E85 Fuel Ethanol.
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: Raises Christmas Tree Growers License fees for growers with more than forty acres.

Date:	Time:	Location:
1-24-08	1:30 p.m.	North Willamette Research Ctr. 15210 NE Miley Rd. Aurora, OR 97002

Hearing Officer: Chris Kirby
Stat. Auth.: ORS 571.530
Stats. Implemented: ORS 571.530
Proposed Amendments: 603-054-0035
Last Date for Comment: 1-31-08
Summary: The proposed amendment would gradually raise fees for Christmas Tree grower licenses for operations larger than 40 acres. The goal would be to maintain program funds at a sustainable levels through incremental adjustments averaging 3% per year, through 2012.
Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Department of Agriculture,
Oregon Fryer Commission
Chapter 620

Rule Caption: Sets per diem and reimbursement for a substitute rate for commissioners that correspond with ORS 292.495.
Stat. Auth.: ORS 576.304
Other Auth.: Motion made by Commission at March 21, 2007 meeting.
Stats. Implemented: ORS 292.495, ORS 576.206(7), ORS 576.265
Proposed Adoptions: 620-020-0010, 620-020-0020, 620-020-0030
Last Date for Comment: 1-22-08, Close of Business
Summary: Sets per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for Commissioners.

Per diem and reimbursement for hiring a substitute correspond with limit set in ORS 292.495.
Rules Coordinator: Julie Schiele
Address: 2008 Willamette Falls Dr., Suite 100B, West Linn, OR 97068
Telephone: (503) 557-0224

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Department of Agriculture,
Oregon Processed Vegetable Commission
Chapter 647

Rule Caption: Adopt rules related to per diem compensation, reimbursement for hiring a substitute and travel reimbursement.
Stat. Auth.: ORS 292.495, 576.051–576.595
Stats. Implemented: ORS 292.495, 576.051–576.595
Proposed Adoptions: 647-040-0000, 647-040-0010, 647-040-0020
Last Date for Comment: 2-21-08, 1:30 p.m.
Summary: The proposed rules establish per diem compensation for commissioners, payment of travel reimbursement and reimbursement for hiring a substitute in an emergency.
Rules Coordinator: John McCulley
Address: Department of Agriculture, Processed Vegetable Commission, 3415 Commercial St. SE, Salem, OR 97302
Telephone: (503) 370-7019

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Department of Agriculture,
Oregon Ryegrass Growers Seed Commission
Chapter 657

Rule Caption: Sets per diem and reimbursement for a substitute rate for commissioners that correspond with ORS 292.495.
Stat. Auth.: ORS 576.304
Other Auth.: Motion made by Commission at September 11th, 2007 Meeting.
Stats. Implemented: ORS 292.495, 576.206(7), 576.265
Proposed Adoptions: 657-020-0010, 657-020-0020, 657-020-0030
Last Date for Comment: 1-31-08, 12 p.m.,
Summary: Sets per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for commissioners. Per diem and reimbursement for hiring a substitute correspond with limits set in ORS 292.495.
Rules Coordinator: Lisa Ostlund
Address: Department of Agriculture, Ryegrass Seed Commission, 4093 -12th St. Cutoff SE, Salem, OR 97302
Telephone: (503) 364-2944

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

Rule Caption: Requires consistent forms and fee methodologies for use in all municipal building inspection programs.

Date:	Time:	Location:
1-16-08	10:30 a.m.	1535 Edgewater Street NW Conference Rm. A Salem, OR

Hearing Officer: Richard Y. Blackwell
Stat. Auth.: ORS 455.048
Other Auth.: 2007 OL Ch. 549 sec 2 (HB 2478)
Stats. Implemented: ORS 455.046
Proposed Amendments: Rules in 918-050
Last Date for Comment: 1-18-08, 5 p.m.
Summary: This proposed rule requires all municipal building inspection programs to calculate permit fees using the same calculation methodologies and use consistent permit forms.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

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Rule Caption: Amends minimum math qualifications for acceptance to limited residential electrician apprenticeships.

Date:	Time:	Location:
1-16-08	11:30 a.m.	1535 Edgewater Street NW Conference Rm. A Salem, OR

Hearing Officer: Aeron Teverbaugh
Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Proposed Amendments: Rules in 918-282
Last Date for Comment: 1-18-08, 5 p.m.
Summary: The proposed rule amends existing minimum mathematical qualifications for acceptance to limited residential electrician apprenticeships. It allows an applicant for the limited residential electrician apprenticeship who has not completed high-school algebra to be provisionally accepted to the apprenticeship, contingent upon successful completion of an algebra course as part of the apprenticeship curriculum. The rule also clarifies that completion of the algebra course as part of the limited residential electrician apprenticeship does not preclude advancement to the general journeyman apprenticeship.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

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Rule Caption: Adopts the 2008 Oregon Electrical Specialty Code (OESC) for non low-rise construction.

Date:	Time:	Location:
1-15-08	1:30 p.m.	1535 Edgewater St. NW Salem, OR

Hearing Officer: Dennis L. Clements
Stat. Auth.: ORS 455.030 & 479.730
Stats. Implemented: ORS 455.030 & 479.730
Proposed Amendments: Rules in 918-305
Last Date for Comment: 1-18-08, 5 p.m.
Summary: The proposed rules adopt the 2008 edition of the National Electrical Code (NEC) with amendments and will be known as the Oregon Electrical Specialty Code (OESC) for non low-rise construction.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

Rule Caption: Adopts the electrical provisions of the 2008 Oregon Residential Specialty Code.

Date:	Time:	Location:
1-15-08	2:30 p.m.	1535 Edgewater St. NW Salem, OR

Hearing Officer: Dennis L. Clements
Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.380 & 455.525
Stats. Implemented: ORS 455.610
Proposed Amendments: Rules in 918-480
Last Date for Comment: 1-18-08, 5 p.m.
Summary: The proposed rules adopt the electrical provisions of the 2008 Oregon Residential Specialty Code.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

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Rule Caption: Adopts the plumbing provisions of the 2008 Oregon Residential Specialty Code.

Date:	Time:	Location:
1-15-08	10:30 a.m.	1535 Edgewater St.NW Salem, OR

Hearing Officer: Terry Swisher
Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.380 & 455.525
Stats. Implemented: ORS 455.610
Proposed Amendments: Rules in 918-480
Last Date for Comment: 1-18-08, 5 p.m.
Summary: The proposed rules adopt the plumbing provisions of the 2008 Oregon Residential Specialty Code.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

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Rule Caption: Adopts 2008 Oregon Plumbing Specialty Code (OPSC) for non low-rise construction.

Date:	Time:	Location:
1-15-08	9:30 a.m.	1535 Edgewater St. NW Salem, OR

Hearing Officer: Terry Swisher
Stat. Auth.: ORS 447.020, 455.020, 455.030 & 455.110
Stats. Implemented: ORS 447.020, 455.020, 455.030 & 455.110
Proposed Amendments: 918-750-0110
Last Date for Comment: 1-18-08, 5 p.m.
Summary: The proposed rule adopts the 2006 edition of the Uniform Plumbing Code (UPC), Chapters 2-11, 13, 14, 15 and 16, Appendices A, B, D, E and I with amendments and will be known as the 2008 Oregon Plumbing Specialty Code (OPSC) for non low-rise construction.
Rules Coordinator: Nicole Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 378-4130

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

Rule Caption: Proposes changes to Division 1, with House Bill 2223, new definition of successor employer.

Date:	Time:	Location:
1-31-08	9 a.m.	Labor & Industries Bldg. 350 Winter St NE 2nd Flr. Conf. Rm. 260 Salem, OR 97301

Hearing Officer: Sue Joye
Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Amendments: 437-001-0015
Last Date for Comment: 2-19-08
Summary: Some Oregon employers change their business status in a successful effort to avoid responsibility for prior and future enforcement actions. The solution was to modify the statute to enable OR-OSHA to hold successor employers responsible for prior OR-OSHA issued violations for purposes of classifying a current violation as a repeat or for attributing knowledge of prior OR-OSHA issued violations to the current employer.

This rulemaking is a result of House Bill 2223 passed into law by the 2007 Oregon Legislature. Oregon OSHA amends the definition in Division 1, General Administrative Rules, to establish criteria that determines who is the successor employer. This replaces a temporary rule that expires February 29, 2008.

Please visit our website www.orosha.org

Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted and final rules.
Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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

Date:	Time:	Location:
1-23-08	12 p.m.	Deschutes Public Library Brooks Rm. 601 NW Wall St. Bend, OR 97701
2-4-08	10 a.m.	Assoc. General Contractors (AGC) 9450 SW Commerce Circle Suite 200 Wilsonville, OR 97070
2-6-08	9:30 a.m.	Labor & Industries Bldg. 2nd Flr., Rm. 206 350 Winter St. NE Salem, OR 97301
2-8-08	1 p.m.	Roxy Ann Grange 1850 Spring St. Medford, OR 97504

Hearing Officer: OR-OSHA Staff, Sue Joye
Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Amendments: 437-001-0765
Last Date for Comment: 2-19-08
Summary: Oregon OSHA proposes to amend Oregon Administrative Rules for Workplace Safety Committees. The proposed rule change will require every public and private employer subject to OR-OSHA jurisdiction to establish and administer a safety committee or conduct safety meetings. The changes will apply to Division 1 General Administrative Rules OAR 437-001-0765 Rules for the Workplace Safety Committees. The changes are required as a result of the passing of House Bill 2222 by the 2007 regular Session. House Bill 2222 also amended ORS 654.176 and 654.182.

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

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

ORS 654.182 was amended in the following areas:

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

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

These legislative changes remove the specific and detailed requirements for the formation and conduct of safety committees and

authorize Oregon OSHA to develop rules that provide options for small employers. These proposed rules maintain most of the existing safety committee requirements for larger employers. For employers with 10 or fewer employers, mobile work sites, or with primarily office environments, they will now have the option to hold safety meetings with a significant reduction in paperwork burden.

Please visit our website www.orosha.org

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

Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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Rule Caption: Proposed changes to Agricultural labor Housing (ALH).

Date:	Time:	Location:
1-22-08	9:30 a.m.	Woodburn Grange 891 Settlemier (Hwy 214 @ Settlemier) Woodburn, OR 97071
1-29-08	11 a.m.	Rockford Grange 4250 Barrett Dr. Hood River, OR 97031
1-30-08	9:30 a.m.	White Eagle Grange 43828 White Eagle Rd./Hwy. 395 Pendleton, OR
2-8-08	11 a.m.	Roxy Ann Grange 1850 Spring St. Medford, OR 97504

Hearing Officer: Sue Joye, OR-OSHA Staff
Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Amendments: 437-004-1120
Proposed Repeals: 437-002-0142
Last Date for Comment: 2-19-08
Summary: Oregon OSHA began this process to satisfy concerns from Federal OSHA that parts of our rules were not as effective as theirs as required by our State Plan Agreement. Some other rules were amended to provide clarity or update references.

OR-OSHA deleted reference to tents. Tents will only be labor housing when they meet all the requirements of the standard just like other structures.

We clarified several rules to apply only common use facilities.

The rule about keeping livestock or poultry near Agricultural Labor Housing (ALH) changes to prohibit confined livestock within 500' of ALH but exempts operations where the occupant employees are the same people who tend the animals.

We removed the requirement that wiring comply with the Oregon Building Code because subdivision 4/S already covers the issue.

The lowest point of wooden floor must be at least 15 p.s.i.

The rule on availability of drinking water was clarified.

Common use facilities must have heaters to keep them at least 68 degrees.

The new rule will require one shower head for every 10 occupants of part thereof. The old number was 15.

Handwashing facilities now require one sink for every 6 occupants of part thereof. The old number was 15.

Laundry facilities must be in the ratio of one for every 30 occupants or part thereof. The old number was 25. The option to use local public facilities instead of providing camp facilities is no longer allowed.

The new rule requires operators to clean common use toilet facilities daily or more often when needed.

The new rule prohibits obstruction to the path to toilet rooms.

The new rule requires that privies be no closer that 100 feet to the living or cooking areas. The old number was between 50 and 200 feet.

The new rule will require operators to empty garbage dumpsters or bins before they become a health hazard or become full enough to prevent full closing of the lid.

The new rule will require emptying of garbage cans and portable containers for each unit when full or twice weekly.

The new rule requires heating capable of keeping living areas at 68 degrees. It also sets standards for the types of acceptable heaters.

The new rule requires the sleeping surface of beds or bunks to be at least 12 inches off the floor. It also prohibits putting mattresses on the floor.

The new rule establishes 100 square feet as the minimum for living areas beginning on January 1, 2018. It also requires all ceiling heights to be at least 7' by that date.

The new rule requires windows or skylights totaling at least 10% of required floor space. Half that required space must be openable to the outside. It limits skylights to one-half the required window space.

Rules on cooking facilities will be divided into one for common use and one for private use.

The new rule prohibits a direct connection (entry/exit) between a common use kitchen and any living or sleeping area.

Common use cooking facilities must comply with FDA publication, "FDA Food Code" – 2005.

For both common use and private use kitchens that ratio of burners to occupants changes to two for every 10 persons, 2 families or part thereof. Also, refrigerators must now be capable of holding at least 41 degrees in stead of 45.

Camp operators will have to comply with OAR 333-018-0000 regarding reporting of specific communicable diseases in the camp or among users of the kitchen.

Please visit our website www.orosha.org

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

Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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Rule Caption: Proposes changes to Division 7, Forest Activities/ Climbing.

Date:	Time:	Location:
1-31-08	9 a.m.	Labor & Industries Bldg. 350 Winter St NE 2nd Flr. Conf. Rm. 260 Salem, OR 97301

Hearing Officer: Sue Joye
Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Adoptions: 437-007-1500, 437-007-1505, 437-007-1510, 437-007-1520, 437-007-1530, 437-007-1535
Proposed Amendments: 437-007-0010, 437-007-0025
Proposed Repeals: 437-007-0685
Last Date for Comment: 2-19-08
Summary: Oregon OSHA proposes to repeal Division 7, Forest Activities, OAR 437-007-0685, Climbing Equipment and Climbing, and replace it with a series of rules and notes contained in Division 7, Forest Activities Subdivision P which will:

1. Make rules more clear and concise for users;
2. Update rules to include current technology;
3. Eliminate outdate/obsolete rules;
4. Provide uniformity between Forest Activities rules and other rules; and
5. Provide for the development of a climber rescue plan.

The Worker Protection Standard (WPS) rule, OAR 437-007-0010, is amended to clarify that the WPS in it's entirety is a part of Division 7, and Definitions, 437-007-0025, is also amended.

Please visit our website www.orosha.org

Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted and final rules.
Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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Rule Caption: Proposes changes to Division 7, Forest Activities/ Machine Protective Structures.

Date:	Time:	Location:
1-31-08	9 a.m.	Labor & Industries Bldg. 350 Winter St NE 2nd Flr. Conf. Rm. 260 Salem, OR 97301

Hearing Officer: Sue Joye
Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Amendments: 437-007-0775, 437-007-0780
Last Date for Comment: 2-19-08
Summary: Oregon OSHA proposes to make revisions to Division 7, Forest Activities, Subdivision H, Machines Used in Forest Activities, rules OAR 437-007-0775 and 437-007-0780, which will:

1. Extend the implementation date from July 1, 2009 to July 1, 2014 for excavator based machine protective structures required by OAR 437-007-0780.

2. Develop a new rule, OAR 437-007-0775(15) exempting construction excavator based machines from protective structure requirement if they only perform road construction activities.

Please visit our website www.orosha.org

Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted and final rules.
Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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Department of Corrections
Chapter 291

Rule Caption: Management of Inmates That Present an Elevated Security Threat Risk to Department Facilities.
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-069-0200, 291-069-0210, 291-069-0220, 291-069-230, 291-069-0240, 291-069-0250, 291-069-0260, 291-069-0270, 291-069-0280
Proposed Repeals: 291-069-0010, 291-069-0020, 291-069-0031, 291-069-0040, 291-069-0050, 291-069-0060, 291-069-0070, 291-069-0090, 291-069-0100
Last Date for Comment: 1-31-08
Summary: These rule amendments are necessary to immediately establish department policy and procedures for the identification and management of individual inmates that in the judgment of the department present an elevated security threat risk based their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Rule Caption: Management of Inmate and Officer Records.
Stat. Auth.: ORS 179.040, 423.020 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-070-0115 – 291-070-0140
Proposed Repeals: 291-070-0015 – 291-070-0080
Proposed Ren. & Amends: 291-070-005 to 291-070-0100, 291-070-0010 to 291-070-0110
Last Date for Comment: 1-31-08
Summary: These rule modifications are necessary to update and clarify standards for the control, maintenance and disposition of inmate and offender records within the Department of Corrections.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Environmental Quality
Chapter 340

Rule Caption: Amendments to LRAPA open burning rules will result in revision to Oregon State Implementation Plan.

Date:	Time:	Location:
2-12-08	12:15 p.m.	LRAPA Meeting Rm. 1010 Main St. Springfield, OR

Hearing Officer: Merlyn Hough
Stat. Auth.: ORS 183 & 468.A
Other Auth.: LRAPA Titles 13 & 14
Stats. Implemented: ORS 183 & 468.A
Proposed Amendments: 340-200-0040 (LRAPA Title 47)
Last Date for Comment: 1-28-08
Summary: Under the proposed amendments, LRAPA would provide for additional control of open burning activities in Lane County to address the need to reduce particulate emissions. The proposed changes include the following: prohibit open burning within the Eugene/Springfield Urban Growth Boundary during the months of November through February; address small recreational fires, such as patio fireplaces, providing for how and when they can be used; provide clarification of several definitions and add definitions for "nuisance" and "recreational fire"; correct the LRAPA name change; provide for the end time of daily burning advisories to be set prior to sunset; add Hazeldell and Siuslaw RFPDs to the list of fire districts in the special control area; and restrict the open burning season in the outlying areas of Lane County to the October 1 through June 15 period. LRAPA Title 47 is included in Oregon's State Implementation Plan (SIP). If adopted by the LRAPA Board of Directors, the amended rule will be forwarded to DEQ for adoption by the Oregon Environmental Quality Commission (EQC). If the EQC adopts the rule, it will be submitted by DEQ to the U. S. Environmental Protection Agency (EPA) as a revision to the SIP.
Rules Coordinator: Merrie Dinteman (LRAPA); Shelley Matthews (DEQ)
Address: 1010 Main St., Springfield, OR 97477 (LRAPA); 811 SW Sixth Ave., Portland, OR 97204 (DEQ)
Telephone: (541) 736-1056, ext. 225 (LRAPA); (803) 229-6459 (DEQ)

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Amendment of Rules for the Issuance and Management of Developmental Fishery Permits.

Date:	Time:	Location:
1-11-08	8 a.m.	Oxford Suites 12226 N. Jantzen Drive Portland, OR 97217

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.146, 506.036, 506.109 & 506.119
Stats. Implemented: ORS 506.036, 506.109, 506.119, 506.129, 506.450-506.465
Proposed Adoptions: Rules in 635-005, 635-006
Proposed Amendments: Rules in 635-005, 635-006
Proposed Repeals: Rules in 635-005, 635-006
Last Date for Comment: 1-11-08

Summary: Adopt and amend rules as determined necessary to establish the developmental fishery species list; make changes to reflect Senate Bill 241 amendments; and for the developmental crab fisheries.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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Rule Caption: Special Northern Pikeminnow Sport Reward Fishery Rule Changes.

Date:	Time:	Location:
2-8-08	8 a.m.	3406 Cherry Ave NE Salem, OR 97303-4924

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Proposed Adoptions: Rules in 635-011

Proposed Amendments: Rules in 635-011

Proposed Repeals: Rules in635-011

Last Date for Comment: 2-8-08

Summary: Adopt and amend rules as determined necessary to modify rules related to the Special Northern Pikeminnow Sport Reward Fishery administered by the Pacific States marine Fisheries Commission (PSMFC).

Housekeeping and technical correction may occur to ensure rule consistency.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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Rule Caption: 2008 Columbia River Commercial and Recreational Fishing Seasons and Miscellaneous Regulations.

Date:	Time:	Location:
2-8-08	8 a.m.	3406 Cherry Ave NE Salem, OR 97303-4924

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 183.325, 496.138, 496.146, 506.109, 506.119, 507.030, 508.025, 508.035, 508.235, 508.260

Stats. Implemented: ORS 496.162, 506.129, 507.030, 508.025, 508.035, 508.235, 508.260

Proposed Adoptions: Rules in 635-006, 635-017, 635-023, 635-041, 635-042

Proposed Amendments: Rules in 635-006, 635-017, 635-023, 635-041, 635-042

Proposed Repeals: Rules in 635-006, 635-017, 635-023, 635-041, 635-042

Last Date for Comment: 2-8-08

Summary: Consider amendment of rules related to: 1. commercial fishing in the Columbia River below Bonneville Dam and Select areas; 2. treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; and 3. sport fishing in the main stem Columbia River.

Housekeeping and technical corrections may occur to ensure rule consistency.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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Rule Caption: Amend Rules to Allow capture of Peregrine falcons for use in Falconry.

Date:	Time:	Location:
2-8-08	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.012, 496.112, 496.146, 496.162, 498.002

Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146, 496.162, 496.002

Proposed Amendments: Rules in 635-055

Last Date for Comment: 2-8-08

Summary: Amends rules to allow the capture of Peregrine Falcons to be used in the practice of Falconry.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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

Rule Caption: Electronic Date Transmission (EDT) Rule Move, Amendment, and Adoption.

Date:	Time:	Location:
1-24-08	1:30–2:30 p.m.	Human Services Bldg. Rm. 137-B 500 Summer St. NE Salem, OR

Hearing Officer: Jennifer Bittel

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Proposed Adoptions: 407-120-0112, 407-120-0114, 407-120-0116, 407-120-0118, 407-120-0165

Proposed Ren. & Amends: 410-001-0100 to 407-120-0100; 410-001-0110 to 407-120-0110; 410-001-0120 to 407-120-0120; 410-001-0130 to 407-120-0130; 410-001-0140 to 407-120-0140; 410-001-0150 to 407-120-0150; 410-001-0160 to 407-120-0160; 410-001-0170 to 407-120-0170; 410-001-0180 to 407-120-0180; 410-001-0190 to 407-120-0190; 410-001-0200 to 407-120-0200

Last Date for Comment: 1-28-08, 5 p.m.

Summary: 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. The rules are also being moved to the Department-wide administrative rule chapter because they are Department-wide in nature.

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

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

Rules Coordinator: Jennifer Bittel

Address: Department of Human Services, Administrative Services Division and Director's Office, 500 Summer St. NE, E-03, Salem, OR 97301

Telephone: (503) 947-5250

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
1-22-08	8:30 a.m	Rm. 254 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 181.534, 181.537, 409.050, 418.005

Stats. Implemented: ORS 181.534, 181.537, 409.050, 418.005

Proposed Adoptions: 413-050-0235

Proposed Amendments: 413-050-0200, 413-050-0210, 413-050-0220, 413-050-0230, 413-050-0280

Proposed Repeals: 413-050-0240, 413-050-0250, 413-050-0260, 413-050-0270, 413-050-0290, 413-050-0300
Last Date for Comment: 1-25-08
Summary: The Department is adopting OAR 413-050-0235; amending OAR 413-050-0200, 413-050-0210, 413-050-0220, 413-050-0230, and 413-050-0280; and repealing OAR 413-050-0240, 413-050-0250, 413-050-0260, 413-050-0270, 413-050-0290, and 413-050-0300, which concern the Supportive or Remedial Day Care (SRDC) program in Child Welfare. These changes were originally made by temporary rule on October 1, 2007. The changes to these rules revise the definition of key terms, revise service criteria, and set the Department's policy for rates and provider selection in the SRDC program. In the revised rules, service criteria are more clearly and specifically described; use of SRDC to support employment of a parent or caretaker is specifically prohibited; use of a professional evaluation to determine a child's special needs is required; the length of time SRDC may be provided is revised and reduced; the exception process is revised and now allowed only for the length of time SRDC is provided and for the rate paid; and exceptions must be authorized by the District Manager.

In addition, 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:**
1-23-08	1:30 p.m.	Rm. 252 500 Summer St. NE, Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050, 411.042, 411.060, 411.070, 411.117, 411.660, 411.710, 411.816, 414.042, 414.342, 418.040, 418.042, 418.045, 418.100, 418.131, 418.134, 418.155, 2007 OL Ch. 861
Other Auth.: 7 USC 2014(a); 7 USC 2014(e); 7 USC 2020(s); 42 USC 602(a)(1)(B)(iii) Sec. 408(b)(3) and (4); 42 USC 608(b)(3) and (4); Sec. 402(a)(1)(B)(iii) of the Social Security Act; 7 CFR 273.5(c)(5)(i)(C); 7 CFR 273.9(b)(5); 7 CFR 273.9(d); 7 CFR 273.12(f)(4); 42 CFR 435.510; 42 CFR 435.610; 45 CFR Ch 11; 45 CFR Parts 98 and 99; 45 CFR Parts 261 et al.; Oregon Medicaid/State Children's Health Insurance Program (SCHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration
Stats. Implemented: ORS 18.900, 25.020, 25.245, 409.050, 411.042, 411.060, 411.070, 411.095, 411.105, 411.117, 411.630, 411.635, 411.660, 411.700, 411.703, 411.710, 411.816, 411.825, 411.892, 414.025, 414.042, 414.047, 414.055, 414.342, 414.428, 418.035, 418.040, 418.042, 418.045, 418.070, 418.075, 418.100, 418.125, 418.131, 418.132, 418.134, 418.149, 418.155, 418.160, 418.163; 1999 Or. Laws ch. 859; 2007 Or. Laws ch. 743; HB 2469, 2007 OL Ch. 861; 2007 OL Ch. 878
Proposed Adoptions: 461-115-0715, 461-125-0260, 461-130-0323, 461-135-1195, 461-135-1250, 461-155-0320
Proposed Amendments: 461-001-0000, 461-001-0025, 461-025-0310, 461-101-0010, 461-105-0010, 461-110-0630, 461-115-0030, 461-115-0190, 461-115-0430, 461-120-0310, 461-120-0340, 461-120-0345, 461-125-0130, 461-125-0810, 461-130-0305, 461-130-0310, 461-130-0315, 461-130-0325, 461-130-0327, 461-130-0330, 461-130-0335, 461-135-0010, 461-135-0070, 461-135-0075, 461-135-0085, 461-135-0089, 461-135-0200, 461-135-0475, 461-135-0505, 461-135-0506, 461-145-0080, 461-145-0410, 461-155-0150, 461-155-0670, 461-160-0430, 461-165-0030, 461-170-0020, 461-170-0030, 461-180-0010, 461-180-0020, 461-180-0070, 461-180-0081, 461-190-0151, 461-190-0163, 461-190-0171, 461-190-0211, 461-190-0231, 461-190-0241, 461-195-0501, 461-195-0551, 461-195-0561, 461-195-0601
Proposed Repeals: 461-190-0201
Last Date for Comment: 1-29-08, 5 p.m.
Summary: OAR 461-001-0000 (Definitions for Chapter 461) is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to state how the term "dependent child" is defined for rules about the REF (Refugee Assistance) program, state how the term "minor parent" is defined for rules about the REF and REFM (Refugee Assistance Medical) programs, state how the term "disability" is defined for REF, SFPSS, TA-DVS, and TANF programs, state how the term "family stability" is defined in the , Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs, and state how the term "family stability activity" is defined in the , Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-001-0025 (Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF) is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to revise the definitions of Job Opportunity and Basic Skills (JOBS) components and activities to conform to the interim final regulations issued by the Department of Health and Human Services. This rule classifies all JOBS activities as an activity or component of the JOBS program. Additional definitions are added for new JOBS activities (such as the Community Service Program), new components (such as Job Search and Job Readiness), and new JOBS policies (such as the Fair Labor Standards Act). This rule is also being amended to indicate that the definitions also apply in the Pre Temporary Assistance for Needy Families (Pre-TANF), Temporary Assistance for Needy Families (TANF), and Post Temporary Assistance for Needy Families (Post-TANF) programs.

OAR 461-025-0310 (Hearing Requests) is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to increase the time limit for Temporary Assistance for Needy Families (TANF) and Refugee (REF) clients to request hearings related to disqualifications or penalties. This amendment gives clients the right to request a hearing within 90 days following the effective date of a reduction or termination of benefits as a result of JOBS disqualification or a penalty for failure to seek treatment for substance abuse or mental health. Currently, clients have a right to request a hearing within 45 days following the date of the decision notice to reduce or terminate benefits. This rule is also being amended to remove the section that stated that there is no right to a hearing to dispute a program requirement established by law. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-101-0010 (Program Acronyms and Overview) is being amended to add the Post Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), and State Family Pre SSI/SSDI (SFPSS) programs to the rule.

OAR 461-105-0010 (Rights of Clients) is being amended to make permanent a temporary amendment adopted October 1, 2007. This rule is being amended to add a provision that gives State Family Pre-SSI/SSDI (SFPSS), Temporary Assistance for Needy Families (TANF), Pre-TANF, and Refugee (REF) clients the right to be offered screenings or evaluations that identify barriers or disabilities unknown to the program. This rule is also being amended to give the clients in the REF, SFPSS, and TANF programs the right to decline such screenings and evaluations. This rule is being further amended to indicate that its discrimination prohibitions apply to state-funded programs. This rule is also being amended to add cross-references to other rules, Department procedures, and laws.

OAR 461-110-0630 about the individuals considered part of the need group is being amended to make permanent a temporary rule amendment adopted October 1, 2007 and change the requirements that apply to the Oregon Health Plan - Children's Health Insurance Program (CHIP or OHP-CHP) need group. The need group is group is the individuals whose basic and special needs are used in determining eligibility and benefit level. Effective October 1, 2007, CHIP clients will be required to provide or apply for a social security number as part of the eligibility process. CHIP clients who do not provide or apply for a social security number will not be part of the CHIP need group. Individuals excluded from the need group for medical program benefits are not considered when determining eligibility. This rule is also being amended to make permanent the temporary rule effective October 1, 2007 to state that a Temporary Assistance for Needy Families (TANF) program client cannot be in the need group when the client has exceeded the 60-month time limitation and does not meet any of the time limit exceptions.

OAR 461-115-0030 about the date of request is being amended to make permanent the temporary rule amendment adopted October 1, 2007 and add the State Family Pre-SSI/SSDI (SFPSS) program to the rule. The amendment to this rule specifies the date of request in the SFPSS program.

OAR 461-115-0190 about application processing time frames in programs other than food stamps or Pre-Temporary Assistance for Needy Families (Pre-TANF) is being amended to make permanent a temporary amendment filed October 1, 2007 and state when a new application is required to add an individual to a benefit group in the Refugee Assistance (REF) program.

OAR 461-115-0430 about periodic redeterminations in programs other than Emergency Assistance (EA), Employment–Related Day Care (ERDC), Extended Medical Assistance (EXT), Food Stamp (FS), Oregon Health Plan (OHP), Refugee Program (REF), Refugee Program Medical (REFM), or Temporary Assistance to Domestic Violence Survivors (TA-DVS) is being amended to make permanent a temporary amendment filed October 1, 2007, implement HB 2469 (2007 Oregon Laws Chapter 861), and state the eligibility redetermination time frames for the State Family Pre-SSI/SSDI (SFPSS) program.

OAR 461-115-0715 about required verification in the State Family Pre-SSI/SSDI Program (SFPSS) is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Or. Laws ch. 861, and state the verification requirements for eligibility in the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-120-0310 about clients who are required to assign support rights is being amended to include TANF programs who are partially funded by Title IV-A of the Social Security Act. This rule is also is being amended to state that filing groups in the EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), OHP-OPC (Oregon Health Plan coverage for children who qualify under the 100 percent income standard) and OHP-OP6 (Oregon Health Plan coverage for children under age 6 who qualify under the 133 percent income standard) and OSIPM (Oregon Supplemental Income Program Medical) programs must assign to the state their right to receive, from any other person for any Medicaid-eligible child, cash medical support that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid. The filing group consists of the individuals from the household group (individuals who live together) whose circumstances are considered in the eligibility determination process. Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for program medical assistance payments made on behalf of the Medicaid-eligible child in the filing group. Once, yearly the remainder of the amount retained will be paid to the Medicaid-eligible child.

OAR 461-120-0340 (Clients Required to Help Department Obtain Support From Noncustodial Parent in the Temporary Assistance for Needy Families (TANF) program) is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and excuse from this requirement clients who receive benefits from state-only funded programs: Post-TANF, State Family Pre-SSI/SSDI (SFPSS), and two-parent families for which deprivation is based on unemployment or underemployment of both parents. This rule is also being amended to clarify terms and add cross references to other rules and laws.

OAR 461-120-0345 about clients who are required to cooperate in obtaining medical coverage from a non-custodial parent is being amended to state that clients are required to cooperate for obtaining both health coverage and cash medical support from a non-custodial parent. This rule is also being amended to clarify that clients in the OHP-CHP (Oregon Health Plan coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program provision of the 1997 Balanced Budget Act) and TANF programs are exempt from the requirements to assist public agencies in establishing paternity, obtaining an order directing the non-custodial parent to provide health care coverage or cash medical support for that child, and make a good faith effort to obtain available coverage under Medicare. This rule is being further amended to clarify the rule generally, clarify the clients to which the rule applies, and remove clients in the REFM (Refugee Medical) program from employer insurance requirements. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-125-0130, about evidence of deprivation based on continued absence in the Medical Assistance Assumed (MAA), Medical Assistance for Families (MAF), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and to add a provision providing from HB 2469 that there is evidence of deprivation if the absent parent is not living in the same home as the dependent child and the visits of the absent parent with the child in the child's home do not exceed four times per week or a total of 30 hours per week (instead of the current 12 hours per week). This rule is also being amended to add cross-references to other rules and laws.

OAR 461-125-0260 about the impairment criteria in the State Family Pre-SSI/SSDI Program (SFPSS) is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the impairment criteria for eligibility purposes for the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-125-0810 is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement HB 2469, 2007 Oregon Laws Chapter 861, and add the SFPSS (State Family Pre-SSI/SSDI) program to this rule about the use of administrative medical examinations when determining disability for program eligibility.

OAR 461-130-0305 about general provisions for client participation in the employment programs of the Food Stamp (FS), Post-Temporary Assistance for Needy Families (Post-TANF), Pre- Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the requirements for clients in the Pre-TANF and Post-TANF programs to participate in employment programs. This rule is also being amended to state that the necessary information that clients must provide to the Department includes information needed to help the Department assess the client's level of participation in the employment programs. In addition, this rule is being amended to remove unnecessary information and to add cross-references to other laws.

OAR 461-130-0310 about participation classifications in the employment programs of the Food Stamp (FS), Pre-Temporary Assistance for Needy Families (Pre-TANF), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amended October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and revise who is exempt from disqualification from the Job Opportunity and Basic Skills (JOBS) program to conform to new state laws and federal regulations. This amendment extends the exemption of clients with a newborn from three months to six months (for clients 20 years of age or older) and 16 weeks (for clients 19 years of age or younger). This amendment also exempts a parent who is providing care for a family member who has a disability. This rule is also being amended to indicate that the classification descriptions also apply in the Pre-TANF program.

OAR 461-130-0315 about general requirements in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the general requirements for mandatory clients in the Pre-TANF program. This rule is also being amended to clarify that a mandatory client is subject to disqualification only after the re-engagement process has been completed. This rule is being further amended to add cross-references to other rules.

OAR 461-130-0323 about general provisions in the State Family Pre-SSI/SSDI program (SFPSS) is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, state participation requirements in the SFPSS (State Family Pre-SSI/SSDI) program, state the information that an applicant for SFPSS must provide to the Department, and state that SFPSS clients may participate in JOBS activities.

OAR 461-130-0325 about participation requirements in the Food Stamp (FS), Refugee (REF), Temporary Assistance to Needy Families (TANF) programs is being amended to make permanent a temporary amendment adopted October 1, 2007 and change JOBS participation requirements by stating that a client must provide verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours. This rule is also being amended to replace add cross-references to other rules and laws and to follow standard formatting.

OAR 461-130-0327 about good cause is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to state that clients have good cause when participation is likely to cause undue hardship for the child or the client and when the client participates in suitable activities for the number of hours required each month to satisfy federally required participation rates. This rule is also being amended to state that clients have good cause when the client's prospective employer illegally discriminates based on sexual orientation. This rule is being further amended to state the good cause criteria in the Pre-TANF and State Family Pre-SSI/SSDI (SFPSS) programs. In addition, this rule is being reorganized to make it easier to follow and it is being amended to add cross-references to other rules.

OAR 461-130-0330 about disqualifications is being amended to make permanent a temporary rule amended October 1, 2007, implement the provisions of HB 2469, Oregon Laws Chapter 861, make permanent the new statutory disqualification structure (described in HB 2469) for clients in the Temporary Assistance for Needy Families (TANF) and Refugee (REF) programs. This rule is being amended to add new steps required of the Department before a disqualification can be applied, remove the current six-month disqualification structure, and establish a four-month disqualification structure. Under this amendment, the current penalty for the first two months of $50 and loss of cooperation incentive (COI) will be removed. Under this rule as amended, the penalty for the first three months is that the needs of the non-cooperating adult are removed in addition to the COI. The penalty for the fourth month is that the benefit group will receive no cash. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules.

OAR 461-130-0335 about removing disqualifications and the resulting effect on benefits is being amended to make permanent a temporary rule amended October 1, 2007, to implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, incorporate the new statutory disqualification structure (described in HB 2469) for clients in the Temporary Assistance for Needy Families (TANF) and Refugee (REF) programs. Under the new structure, clients in active disqualification status will be required to cooperate for a two-week period before cash benefits can be restored. This rule is also being amended to revise its description of the conditions in which disqualifications can be removed and to replace old terminology with new terms. In addition, this rule is being amended to clarify the rule and make it easier to understand and to add cross-references to other rules.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state that two-parent families for whom deprivation is based on unemployment or underemployment of both parents are not assumed eligible for the Medical Assistance Assumed (MAA) program, which provides medical assistance to people who are eligible for Temporary Assistance for Needy Families (TANF) or Pre-Temporary Assistance for Needy Families (Pre-TANF) programs. The MAA eligibility for these families will be based on the standard eligibility requirements. This rule is also being amended to update program names.

OAR 461-135-0070 about specific requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), and Temporary Assistance for Needy Families (TANF) programs is being amended to implement the new statutory disqualification structure (described in HB 2469, 2007 Oregon Laws Chapter 861) and make permanent a temporary rule amendment adopted October 1, 2007. This amendment removes a provision that allows for children to be disqualified from TANF for failure to comply with the requirements of the Job Opportunity and Basic Skills (JOBS) program or requirements related to mental health and drug and alcohol treatment. In addition, this rule is being amended to align the rule with Siletz Tribes TANF program eligibility and to clarify the situations in which Siletz tribal families are ineligible for TANF through the Department because they are eligible for tribal TANF with the Siletz Tribe.

OAR 461-135-0075 about the eligibility period limitation in the Temporary Assistance for Needy Families (TANF) program is being amended to make permanent a temporary rule amended October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861. This rule is also being amended to add cross-references to other rules.

OAR 461-135-0085 about requirements to seek treatment is being amended to make permanent a temporary rule amendment adopted October 1, 2007 and implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, which contains the new statutory disqualification structure. This rule is also being amended to apply these requirements to clients in the Pre-Temporary Assistance for Needy Families (Pre-TANF) and State Family Pre-SSI/SSDI Program (SFPSS) programs. This rule is also being amended to remove the ability of the Department to require clients in the programs covered by the rule to participate in mental health or substance abuse evaluation. This rule is also being amended to state that clients may be penalized under this rule only after the re-engagement process is complete. In addition, this rule is being amended to add cross-references to other rules.

OAR 461-135-0089 about demonstrating compliance with substance abuse and mental health requirements and restoring cash benefits is being amended to make permanent a temporary rule

amendment adopted October 1, 2007 and implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, which contains the new statutory disqualification structure adopted by the 2007 legislature through HB 2469. This rule is being amended to specify when benefits can be restored at each level of disqualification. In addition, this rule is being amended to follow standard formatting and add cross-references to other rules.

OAR 461-135-0200 about multiple disqualifications is being amended to make permanent a temporary rule amendment adopted October 1, 2007, and be consistent with the new statutory disqualification structure adopted by the 2007 legislature through HB 2469, 2007 Oregon Laws Chapter 861. This rule is also being amended to remove a reference to an adult losing eligibility for medical benefits. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-135-0475 about specific requirements in the Pre-TANF program is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to remove references to the Assessment Program and replace them with Pre-TANF program. This rule is also being amended to revise the description of program purposes. This rule is being further amended to clarify that once the client is found eligible, the client participates in initial screenings to determine the client's employment strengths and any barriers to employment. This rule is also being amended to state that being enrolled in the Post-TANF program is a reason to close the Pre-TANF program. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-135-0505 is being amended to revise the requirements for categorical eligibility in the Food Stamp program, make permanent a temporary rule change adopted October 1, 2007, and respond to the provisions of HB 2469, 2007 Oregon Laws Chapter 861. Categorical eligibility does not assume the person is eligible for benefits but it does allow the Department to simplify the eligibility determination process. The rule is being amended to include in categorical eligibility clients who are authorized to receive cash, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort are categorically eligible for food stamps. Previously, OAR 461-135-0505 stated that clients who are authorized to receive in-kind benefits, or services funded by TANF are categorically eligible for food stamps. This rule is also being amended to replace old terminology with new terminology, to add cross-references to other rules and laws and to follow standard formatting.

OAR 461-135-0506 is being amended to make permanent the temporary rule amendment from October 1, 2007 that changes the TANF cases eligible to receive transitional food benefits. This rule is being amended to state that in order for an individual to receive transitional benefits, the individual must have received cash benefits through a program funded in whole or in part under Title IV-A of the Social Security Act. Under this amendment, clients in state-only funded programs, such as SFPSS (the State Family Pre-SSI/SSDI program) and TANF UN (two-parent households) will not be eligible for higher transitional benefits during the five-month transition period.

OAR 461-135-1195 is being adopted to make permanent a temporary rule adopted October 1, 2007 and outline specific eligibility requirements for the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-135-1250 about specific requirements for the Post - Temporary Assistance for Needy Families (Post-TANF) program is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state specific requirements for the new Post-TANF program. This program provides payments to TANF clients who have become ineligible for the TANF or Pre-TANF programs due to income from employment. This rule sets out the eligibility and reporting requirements for a Post-TANF client to receive a payment.

OAR 461-145-0080 about the treatment of child support payments in the eligibility process for public assistance and the Food Stamp program is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861 and HB 2125, 2007 Oregon Laws Chapter 878, and state how cash medical support is treated. This rule is also being amended to change references to JOBS Plus agreements to TANF JOBS Plus agreements. This rule is also being amended to state how child support payments are treated in the SAC program (Medical Coverage for Children in Substitute or Adoptive Care). This rule is being further amended to add cross-references and follow standard formatting.

OAR 461-145-0410 about how program benefits are treated in Food Stamp and public assistance programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, remove the exclusion in the Oregon Health Plan (OHP) program for administrative error overpayments, and state how TA-DVS program payments are treated. This rule is also being amended to exclude Refugee (REF) program support service payments and count REF program client incentive payments to the extent that Temporary Assistance for Needy Families (TANF) client incentive payments are counted. This rule is being further amended to state that all policies about the treatment of TANF benefits apply to tribal TANF benefits and to state that the current exclusion for JOBS Plus support services payments applies to TANF JOBS Plus support services payments. In addition, the rule is being amended to state that TANF client incentive payments currently counted if received as cash are counted if the payments are not in kind. The rule is also being amended to add the Post-TANF and State Family Pre-SSI/SSDI (SFPSS) programs to the rule and specify how benefits from these programs are counted in other programs. This rule is also being amended to reorder and reorganize its sections, update terminology, add cross-references and follow standard formatting.

OAR 461-155-0150 about child care rates in the Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), JOBS Plus, and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule change made on October 1, 2007 that implemented a legislatively approved increase to restore the Employment Related Day Care (ERDC) program income limit to 185 percent of the federal poverty level (FPL), reduce ERDC copayments by an average of 20 percent, and increase child care reimbursement rates to closer to the 75th percentile of the 2006 Child Care Market Rate Study (bringing state payments into alignment with rates charged by the majority of providers). This amendment will increase reimbursement rates to 88 percent of the 75th percentile for license-exempt providers, 95 percent of the 75th percentile for license-exempt providers who are eligible for the enhanced rate, and the 75th percentile for licensed providers. This amendment sets a minimum co-pay of $25 per month. For families whose income is at or below 50 percent of the 2007 Federal Poverty Level, the co-pay is $25 or 1.5% of monthly income (whichever is greater). The co-pay percentage increases from 1.5 by 0.12 for each 1 percent increase in Federal Poverty Level . This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-155-0320 about the payment standard in the State Family Pre-SSI/SSDI (SFPSS) program is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and adopt the payment standards in the SFPSS program.

OAR 461-155-0670 about special needs and special diet allowances is being amended to make permanent a temporary rule change adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and describe the eligibility of SFPSS (State Family Pre-SSI/SSDI) clients for special dietary allowances.

OAR 461-160-0430 about the income deductions allowed in the eligibility process for the Food Stamp program is being amended to make permanent a temporary rule change adopted October 1, 2007 and clarify that the deduction for payment of court-ordered child support includes cash medical support. A reduction in countable income may result in an increase in Food Stamp benefits for a Food Stamp household.

OAR 461-165-0030 about concurrent and duplicate program benefits is being amended to make permanent a temporary rule change adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and remove a reference to the Assessment Program, replacing it with the Pre-TANF program.

OAR 461-170-0020 about changes that must be reported in public assistance and food stamp programs is being amended to make permanent a temporary rule change adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the changes that clients in the State Family Pre-SSI/SSDI Program (SFPSS), program must report. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-170-0030 about changes that must be reported in certain programs is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and clarify that the reporting requirements in this rule do not apply in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to follow standard formatting.

OAR 461-180-0010 about the effective dates when adding a new person to an open case is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the effective date in the SFPSS (State Family Pre-SSI/SSDI) program for adding a new person to an open SFPSS program case.

OAR 461-180-0020 about the effective date when changes in income or income deductions cause increases in program benefits is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the effective date for changes not reported through the monthly reporting system for clients in the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-180-0070 about effective dates for the initial month cash benefits is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the effective date for the initial month of cash benefits for clients in the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-180-0081 about effective dates for cases receiving Transitional Benefit Alternative (TBA) is being amended to make permanent a temporary rule adopted October 1, 2007, respond to the provisions of HB 2469, 2007 Oregon Laws Chapter 861, revise the effective dates that apply to changes after a household is already receiving transitional food stamp benefits, and clarify when TBA benefits will change based with the revisions to OAR 461-135-0506.

OAR 461-190-0151 about case planning in the Job Opportunity and Basic Skills (JOBS), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee Assistance (REF), State Family Pre-SSI/SSDI Program (SFPSS) and Temporary Assistance for Domestic Violence Survivors (TA-DVS) is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and describe case planning in the Pre-TANF, Refugee (REF), State Family Pre-SSI/SSDI (SFPSS), and Temporary Assistance for Domestic Violence Survivors (TA-DVS) programs. This rule had covered employment planning in the Job Opportunity and Basic Skills (JOBS) program. This rule is also being amended to specify when the case plan is complete and binding in the JOBS program. In addition, this rule is being amended to add cross-references to other rules and follow standard formatting.

OAR 461-190-0163 about restrictions on On-the-Job training, Unpaid Employment, and Work Supplementation in the Job Opportunity and Basic Skills program (JOBS) is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and change the JOBS term "work experience" to "unpaid employment." This change is being made to follow new federal definitions.

OAR 461-190-0171 about education requirements for teen parents in the Job Opportunity and Basic Skills (JOBS) program is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and change the exemption rule for teen parents enrolled in JOBS educational programs. This amendment extends the exemption of a client with a newborn from three months to 16 weeks for clients 19 years of age or younger, except that the teen parent may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activities.

OAR 461-190-0201 about job search in the Job Opportunity and Basic Skills (JOBS) program is being repealed.

OAR 461-190-0211 about standards for support services is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the standards for support service payments for clients in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Post-Temporary Assistance for Needy Families (Post-TANF) and State Family Pre-SSI/SSDI (SFPSS) programs. This rule is also being amended to expand the clients potentially eligible for the payments to include recipients of Supplemental Security Income (SSI) and non-needy caretaker relatives who volunteer. This rule is being further being amended to add tuition for vocational training as a potential payment, state the criteria for making such payments. This rule is being further being amended to clarify that not all support services are related to the Job Opportunity and Basic Skills (JOBS) program, and add cross-references to other rules.

OAR 461-190-0231 about re-engagement is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, change the title of the rule, and describe the re-engagement process for clients in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), State Family Pre-SSI/SSDI (SFPSS), and Temporary Assistance for Domestic Violence Survivors (TA-DVS) programs. This rule is also being amended to provide more detail and clarification about the re-engagement process, incorporating requirements of HB 2469 that also apply to clients in the JOBS program.

OAR 461-190-0241 about transition services in the Job Opportunity and Basic Skills (JOBS) program is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, update program names, and add cross-references to other rules.

OAR 461-195-0501 about definitions related to overpayments in programs covered by Chapter 461 of the Oregon Administrative Rules other than child care programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state how the terms "overpayment" and "client error" are defined in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to remove old terminology and replace it with new terms. This rule is being amended to add cross-references to other rules and laws. This rule is being amended to follow standard formatting.

OAR 461-195-0551 about, methods of recovering overpayments is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state when the Department may reduce current benefits in the SFPSS (State Family Pre-SSI/SSDI,

Temporary Assistance for Needy Families (TANF) and Refugee Assistance (REF) programs to collect an overpayment. This rule is also being amended to remove old terminology and replace it with new terms. This rule is being amended to add cross-references to other rules and laws. This rule is being amended to follow standard formatting.

OAR 461-195-0561 about the compromise of overpayment claims is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the Department policy for the compromise of overpayment claims in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to remove old terminology and replace it with new terms. This rule is being amended to add cross-references to other rules and laws. This rule is being amended to follow standard formatting.

OAR 461-195-0601 about the definition of Intentional Program Violations in the Food Stamp, State Family Pre-SSI/SSDI Program (SFPSS), Temporary Assistance for Domestic Violence Survivors (TA-DVS), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state what constitutes an Intentional Program Violation in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

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

Rules Coordinator: Annette Tesch

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: Rule Amendments for Qualified Personnel, use of Pell grants, client travel rates, vehicle insurance and vehicle modification exceptions.

Date:	Time:	Location:
1-23-08	10 a.m.–12 p.m.	Multnomah Public Library Midland Branch 805 SE 122nd Ave. Portland, OR
1-24-08	8 a.m.–12 p.m.	McKenzie Center, 2885 Chad Dr., Rm. 2 Eugene, OR
1-25-08	8 a.m.–11 p.m.	Dept. of Human Services, 500 Summer St., Rm. 166 Salem, OR

Hearing Officer: Ron Barcikowski

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530(1)

Proposed Amendments: 582-001-0010, 582-070-0020, 582-070-0025, 582-070-0030, 582-030-0005, 582-030-0008

Last Date for Comment: 1-30-08

Summary: 1. Require that substantiation of applicant's disability be made by individuals licensed or certified by the state(s) to make Diagnosis of the individual's impairment.

2. require that travel and lodging for required client travel be based on Federal domestic GSA domestic per diem rates.

3. Require that OVRS can only use client vendors, where there is no known competition to the business or proposed business in the region of the state where the business will or is to be located or the client is a current OVRS vendor and currently receiving OVRS services.

4. Provides a waiver to the publication against certain vehicle modification based in an individual case-by-case basis.

5. Require Pell Grant funds to be used first payment for educational costs before OVRS funds can be expanded for this purpose.

6. The proposed rule would authorize OVRS, through DHS, to establish a fee for copying public records and establish a list of the costs that are to be considered in establishing copying fees. The proposed rule also defines public records, authorizes the director or director's designee to waive fees, and provides an appeals process for those who disagree with the established fees.

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,
Division of Medical Assistance Programs
Chapter 410

Rule Caption: February 2008 Client Co-payment.

Date:	Time:	Location:
1-17-08	10:30 a.m.	HSB Bldg., Rm. 137A 500 Summer St NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 404.110, 414.065

Other Auth.: Title 19 of the Social Security Act; Title 42 Public Health of the Code of Federal Regulations; OAR 410-120; 42USC1396a(b)b); 42USC1396d Ch. 7, Sub Ch. 19; Public Law 93-638; Section 1603 of Title 25

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-120-1230

Last Date for Comment: 1-28-08

Summary: The Pharmaceutical Services program rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP proposes to reduce OHP pharmaceutical co-payments to coordinate drug benefits policies to provide consistent incentives to prescribe, dispense and use preferred drugs as determined by the established evidence review process for the Practitioner-Managed Prescription Drug Plan. It provides a zero co-pay option for many of the essential medications. The co-pay amounts for prescription drugs is being lowered or removed for certain classes of medication. The co-pay for preferred Plan Drug List medications will no longer have a co-pay. Nonpreferred Plan Drug List generic medications and generics that are not on the Plan Drug List, but cost more than $10.00 will have a $1.00 co-pay. The co-pay for brand medications remains $3.00.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Department of Human Services,
Public Health Division
Chapter 333

Rule Caption: Allows some benevolent organizations that provide food to the needy to serve home-prepared foods.

Date:	Time:	Location:
1-31-08	9 a.m.	PSOB, 800 NE Oregon St. Rm. 1C Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 624.035, 624.100

Stats. Implemented: ORS 624.035, 624.100

Proposed Amendments: 333-150-0000

Last Date for Comment: 2-4-08, 5p.m.

Summary: The Oregon Department of Human Services, Public Health Division proposes amendments to OAR 333-150-0000 to

allow some benevolent organizations to serve home-prepared foods to the needy. These rules attempt to balance the need to feed hungry individuals with public health issues surrounding this activity.
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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Department of Justice
Chapter 137

Rule Caption: Amends the administrative rules relating to the screening and selection procedures for legal services.

Date:	Time:	Location:
1-15-08	9 a.m.	1215 State St. NE, 3rd Floor Conference Rm. Salem, OR

Hearing Officer: Sharman Meiners
Stat. Auth.: ORS 180.140(5), 279A.025(2)(j)
Stats. Implemented: ORS 180.140(5), 200.035, 279A.025(2)(j)
Proposed Adoptions: 137-009-0147
Proposed Amendments: 137-009-0130, 137-009-0140, 137-009-0145, 137-009-0150, 137-009-0155
Last Date for Comment: 1-15-08
Summary: The Department may contract for the services of special legal assistance or private counsel to provide legal services otherwise required by law to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to select the individuals or entities to perform such services. The rules are being amended to align them with ORS 200.035 notice to Advocate for Minority, Women and Emerging Small Businesses, and to describe the solicitation procedures to engage a contractor to provide legal services within a Designated Proactive Area. Definitions of terms, including "advocate," "ORPIN" and "self-search" are also being added.
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 947-4700

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Department of State Lands,
South Slough National Estuarine Reserve
Chapter 142

Rule Caption: Regarding fees charged for certain program and services at South Slough national Estuarine Research Reserve.

Date:	Time:	Location:
1-29-08	3–6 p.m.	North Bend Public Library Conference Rm. 1800 Sherman Ave North Bend, OR 97420

Hearing Officer: Jeanette Holman
Stat. Auth.: ORS 273.554
Stats. Implemented: ORS 273.554(2)
Proposed Adoptions: Rules in 142-015
Proposed Amendments: Rules in 142-010
Last Date for Comment: 1-29-08
Summary: This notice is to provide information for a re-scheduled hearing regarding rules to implement fees for certain services and events at the South Slough national Estuarine Research Reserve. The original meeting was scheduled for December 4, 2007, was canceled due to inclement weather. In addition, this notice is to correct an error on the original notice, which had new rules numbered 142-015-0000 through 142-015-0020 left out. A draft of these rules can be accessed on the agency's web site at www.oregonstatelands.us, or by requesting a copy in writing to the address above, or by email at elizabeth.bott@dsl.state.or.us
Rules Coordinator: Elizabeth Bott
Address: Department of State Lands, South Slough National Estuarine Reserve, 775 Summer St. NE, Suite 100, Salem, OR 97301
Telephone: (503) 986-5239

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Land Conservation and Development Department
Chapter 660

Rule Caption: Process and criteria for establishing urban and rural reserves in the Portland Metro region.

Date:	Time:	Location:
1-23-08	1:30 p.m.	1333 NW Eastman Pkwy Gresham, OR 97030

Hearing Officer: LCDC
Stat. Auth.: ORS 197.040, Section 6(6), Ch. 723 OL 2007, Section 11 (2007 SB 1011)
Other Auth.: Statewide planning goals (OAR 660-015), especially Goals 2, 3, 4, 11, & 14.
Stats. Implemented: ORS 195.145, Ch. 723 OL 2007
Proposed Adoptions: 660-027-0005, 660-027-0010, 660-027-0020, 660-027-0030, 660-027-0040, 660-027-0050, 660-027-0060, 660-027-0070, 660-027-0080
Proposed Amendments: 660-004-0040, 660-011-0060, 660-021-0010 – 660-021-0080, 660-025-040
Proposed Repeals: 660-021-0090, 660-021-0100
Last Date for Comment: 1-23-08
Summary: Note: This is a revision of a rulemaking notice issued previously. The proposed new rules, to be codified under a proposed new division 27 of OAR 660, will specify a process and criteria for the designation of urban and rural reserves in the Portland Metropolitan area. These rules are required in order to conform to new state laws enacted by the 2007 Oregon Legislature (SB 1011, which is codified as Ch. 723, OL 2007). Under Section 11 of this legislation, the Land Conservation and Development Commission (LCDC) is required to adopt, by goal or by rule, a process and criteria for designating rural reserves pursuant to section 3 of that 2007 Act, and a process and criteria for designating urban reserves pursuant to amendments to ORS 195.145 enacted by section 6 of that 2007 Act. SB 1011 requires that LCDC adopt these new rules no later than January 31, 2008. The Commission will also consider amendments or repeal of related rules that concern urban reserves. LCDC may amend other related rules based on testimony received.
Rules Coordinator: Sarah Watson
Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301
Telephone: (503) 373-0050, ext. 271

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Landscape Architect Board
Chapter 804

Rule Caption: Consolidating information about aspects of registration and changing continuing education from biennial to annual submission.
Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.345, 671.376, 671.395, 671.415
Proposed Amendments: 804-022-0010, 804-025-0020
Proposed Ren. & Amends: 804-030-0015 to 804-022-0015, 804-030-0035 to 804-022-0020
Last Date for Comment: 1-31-08, Close of Business
Summary: The Continuing Education rule of OAR 025-0020 is being revised so that registrants will confirm annually that they have completed 12 hours of continuing education. The rule was confusing because it was requiring biennial hours when the Board renewals are due annually. The revision will allow each registrant to sign a statement at renewal time that they have completed 12 professional development hours during the past year of registration. In addition, the Board is adding additional opportunities for continuing education credit as listed in (3)(H)(I)(J)(K)(L). A Landscape Architect that has practiced for 25 or more consecutive years is allowed special consideration regarding continuing education per (5).

A new Division 22 is being created to pull together disjointed information dealing with registration issues. By placing all information regarding registration questions in one division, the rules which be much more effective.

Information about reciprocal registration is being pulled from Division 10-0025 and moved to the new Division 22-0010. The Board also agreed that a CLARB Certificate is not mandatory for reciprocal applicants and is setting additional reciprocal application standards in this section when one does not have a CLARB Certificate.

The Board is pulling in registration information from Division 30-0015 and Division 30-0035 which deal with the effective date of registration and reinstating a lapsed registration. New 804-022-0015 and 804-22-020 will complete the new Division 22.

Rules Coordinator: Susanna Knight
Address: 1193 Royvonne Avenue, SE, #19, Salem, OR 97302
Telephone: (503) 589-0093

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Oregon Department of Education
Chapter 581

Rule Caption: Changes rate of calculation for non reimbursable expenses for purposes of school district transportation costs.
Stat. Auth.: ORS 327.013 & 820.100–820.120
Stats. Implemented: ORS 327.013 & 820.100–820.120
Proposed Amendments: 581-023-0040
Last Date for Comment: 1-23-08, 5 p.m.
Summary: Specifies non reimbursable transportation costs for school districts for the 2007–2008 and 2008–2009 school year. Non reimbursable transportation costs are used to calculate the transportation grant that school districts receive from the State School Fund. The costs were adjusted based on the Consumer Price Index for Portland. Specifies that for purposes of computing approved transportation costs depreciation of buses will be allowed only for buses that are used at least 50 percent for reimbursable mileage.
Rules Coordinator: Paula Merritt
Address: 255 Capital St NE, Salem 97310
Telephone: (503) 947-5746

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Rule Caption: Clarifies calculation for State School Fund distribution amounts in response to Secretary of State audit.
Stat. Auth.: ORS 327.125, 336.635
Stats. Implemented: ORS 327.006–327.133, 336.615–336.665
Proposed Amendments: 581-023-0006, 581-023-0008
Last Date for Comment: 1-23-08, 5 p.m.
Summary: Clarifies appropriate use of instructional and other classroom assistants in calculating group size for purposes of funding distribution to alternative education programs. Clarifies what constitutes one-half day for purposes of determining withdrawal status of students.
Rules Coordinator: Paula Merritt
Address: 255 Capital St NE, Salem 97310
Telephone: (503) 947-5746

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Rule Caption: Formula for calculation of funding to be received by a qualified private alternative education program.
Stat. Auth.: ORS 327.125, 336.635 & Section 6, Ch. 846, OL 2007
Stats. Implemented: ORS 336.615–336.665 & Ch. 846, OL 2007
Proposed Adoptions: 581-023-0012
Last Date for Comment: 1-23-08, 5 p.m.
Summary: Provides a formula for the calculation of the amount of funding to be received by a qualified private alternative education program as specified in House Bill 2040 (2007).
Rules Coordinator: Paula Merritt
Address: 255 Capital St NE, Salem 97310
Telephone: (503) 947-5746

Oregon Government Ethics Commission
Chapter 199

Rule Caption: Adopts rules providing gift and honorarium guidelines to public officials.

Date:	Time:	Location:
1-18-08	9:30 a.m.	Conference Rm. Suite 220 3218 Pringle Rd. SE Salem, OR

Hearing Officer: Virginia Lutz
Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.020, 244.025, 244.040, 244.042, 244.100 & 2007 OL, Ch. 877 (SB10)
Proposed Adoptions: 199-005-0005, 199-005-0010, 199-005-0015, 199-005-0020, 199-005-0025, 199-005-0030, 199-005-0035
Last Date for Comment: 1-18-08, Close of Hearing
Summary: Adopts rules interpreting 2007 revisions to ORS Ch. 244. The rules address the following topics: determining the value of items or services received by public officials, ensuring accurate reporting of and compliance with gift and honoraria limits, determining the value of unsolicited tokens or awards, defining terms in the exceptions for receptions, meals or meetings; payments for travel, entertainment and other gift exceptions, and determining the source of gifts. The rules are intended to provide guidelines for compliance through defining terms and clarifying substantive provisions of government ethics law.
Rules Coordinator: Virginia Lutz
Address: 3218 Pringle Rd. SE, Suite 220, Salem, OR 97302-1544
Telephone: (503) 378-5105

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Oregon Housing and Community Services
Chapter 813

Rule Caption: Broadens the Individual Development Account rules to include youth. Clarifies the purpose of the account.

Date:	Time:	Location:
1-24-08	10 a.m.	NMOB, 725 Summer St. NE Rm. 124B Salem, OR

Hearing Officer: Floyd Smith, Janet Byrd
Stat. Auth.: ORS 456.555, 456.625, 458.700
Stats. Implemented: ORS 315.271, 458.670–458.700
Proposed Amendments: 813-300-0010, 813-300-0020, 813-300-0030, 813-300-0060, 813-300-0080, 813-300-0100, 813-300-0120
Proposed Repeals: 813-300-0010(T), 813-300-0020(T), 813-300-0030(T), 813-300-0060(T), 813-300-0080(T), 813-300-0100(T), 813-300-0120(T)
Last Date for Comment: 1-28-08, 5 pm
Summary: 813-300-0010(1) Adds youth age 12 and older as eligible account holders.

813-300-0010 Clarifies the common definitions and terms located within the rules.

813-300-0020(5) Removes the language that application information may be obtained by contacting Oregon Housing and Community Services.

813-300-0030(c) Clarifies that the capacity of the prospective fiduciary organization to provide appropriate support services and general assistance to advance account holder self-reliance will be considered.

813-300-0060 Administrative Changes.

813-300-0080(d) Allows a fiduciary organization to expend a maximum of 5 percent of tax credit contributions for administering and evaluating their program plan unless an exception is granted by the Department. Removes the ability to for a fiduciary organization to expend 5 percent of the supplemental funds without an exception.

813-300-0080(e) Clarifies that the 20 percent of tax credit contributions are to be for program operating and delivery costs. Removes a fiduciary organization's authorization to expend 20 percent of supplemental funds.

813-300-0080(C) Increases the aggregate amount of matching IDA funds that a fiduciary organization may deposit with respect to a specific account holder from $2,000 to $3,000.

813-300-0080(D) Incorporates administrative changes.

813-300-0100(12) Removes the requirement that the annual report will provide collective data for each such yearly class until the last IDA account holder or designated beneficiary of a particular class completes his/her personal development plan and the related IDA expires.

813-300-0120 Adds additional purposes where account holders may withdraw and use IDA deposits.

Rules Coordinator: Sandy McDonnell
Address: North Mall Office Building, 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266
Telephone: (503) 986-2012

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Rule Caption: Changes provisions relating to preservation and manufactured dwelling parks; removes 80% income limitation for parks.

Date:	Time:	Location:
1-29-08	9 a.m.	North Mall Office Bldg. 725 Summer St. NE 124B Salem OR

Hearing Officer: Carol Kowash
Stat. Auth.: ORS 317.97 & 456.515–456.720
Stats. Implemented: ORS 317.097
Proposed Adoptions: 813-110-0013
Proposed Amendments: 813-110-0005, 813-110-0010, 813-110-0015, 813-110-0020, 813-110-0021, 813-110-0022, 813-110-0025, 813-110-0030, 813-110-0035
Proposed Repeals: 813-110-0005(T), 813-110-0010(T), 813-110-0013(T), 813-110-0015(T), 813-110-0020(T), 813-110-0021(T), 813-110-0022(T), 813-110-0025(T), 813-110-0030(T), 813-110-0035(T)
Last Date for Comment: 2-4-08, 5 p.m.
Summary: 813-110-0005 Adds that the provisions of the rules were established by 1995 Legislation and subsequent legislation.

813-110-0010 Updates and clarifies the common definitions and terms found within the rules.

813-110-0013 Establishes the loan requirements for eligibility for tax credits.

813-110-0015 Adds language that the 80 percent income level limitation does not apply to manufactured dwelling parks.

813-110-0020 Updates language to reflect that the Application review will be consistent with the timelines outlined in Department application materials. Adds language that the 80 percent income level limitation does not apply to manufactured dwelling parks or preservation projects awarded after September 27, 2007.

813-110-0021 Requires the Department to be notified of changes in Lending Institutions.

813-110-0022 Allows the Department to set aside a portion of the Cap to meet Department identified goals and removes the requirement that the Department publicize the intent to establish a set-aside prior to initializing the set-aside.

813-110-0025 Adds language that the 80 percent income level limitation does not apply to manufactured dwelling parks.

813-110-0030 Adds that the report provided by the Lending Institution must contain the average annual balance for each loan.

813-110-0035 Administrative changes.

Rules Coordinator: Sandy McDonnell
Address: North Mall Office Building, 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266
Telephone: (503) 986-2012

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Rule Caption: Updates program name; clarifies eligible activities; requires annual report of program activities; sets records retention requirements.

Date:	Time:	Location:
1-22-08	10 a.m.	North Mall Office Bldg., 725 Summer St. NE, 124B Salem OR

Hearing Officer: Mary Gentry
Stat. Auth.: ORS 456.505–458.545
Stats. Implemented: ORS 456.505–458.545
Proposed Amendments: 813-250-0000, 813-250-0010, 813-250-0020, 813-250-0030, 813-250-0040
Last Date for Comment: 2-4-08, 5 p.m.
Summary: 813-250-0000 Updates the program name to General Fund Food Program and clarifies the intent of the program.

813-250-0010 Clarifies the common definitions and terms found within the rules.

813-250-0020 Identifies the Oregon Food Bank (OFB) as the organization that will carry out the activities of the program. Designates the Regional Food Banks to carry out the activities at the local level. Adds additional provisions as part of the contract that RFBs will sign prior to receiving grant funds. Sets forth how the program funds may be used.

813-250-0030 Clarifies the eligible activities for use of the program funds.

813-250-0040 Requires the Oregon Food Bank to provide an annual report to the Department. Requires the Regional Food Banks to provide a quarterly report to the Oregon Food Bank in a specified format. Specifies the records retention requirements for records pertaining to program activities and fiscal transactions.

Rules Coordinator: Sandy McDonnell
Address: North Mall Office Building, 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266
Telephone: (503) 986-2012

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Rule Caption: Updates program name; clarifies eligible activities; requires annual report of program activities; sets records retention requirements.

Date:	Time:	Location:
1-22-08	10 a.m.	North Mall Office Bldg., 725 Summer St. NE, 124B Salem OR

Hearing Officer: Mary Gentry
Stat. Auth.: ORS 456.505–458.545
Stats. Implemented: ORS 456.525–458.530
Proposed Amendments: 813-220-0001, 813-220-0005, 813-220-0010, 813-220-0015, 813-220-0020, 813-220-0030, 813-220-0050, 813-220-0060
Last Date for Comment: 2-4-08, 5 p.m.
Summary: 813-220-0001 Clarifies the intent of the program. Designates the Oregon Food Bank as the agency responsible for administering the Emergency Food Assistance program in Oregon.

813-220-0005 Clarifies and updates the common definitions and terms found within the rules.

813-220-0010 Designates the Oregon Food Bank as the agency responsible for administering the Emergency Food Assistance Program in Oregon. Removes language regarding the receipt of shipments containing damage or spoiled Title II commodities and changes the language to require the Oregon Food Bank and their recipient agencies to comply with all applicable state and federal rules and regulations.

813-220-0015 Designates the Oregon Food Bank and their recipient agencies for the distribution of food commodities and allocation of funds. Stipulates the agreement terms and conditions for the Oregon Food Bank and their recipient agencies. Establishes the retention period and accessibility for records generated in the performance of the program. Sets out the responsibilities of the Oregon Food Bank and their recipients in the event of a loss of USDA commodities. Disallows the ability of the Oregon Food Bank and their recipients from charging program recipients, in money, materials or services, to participate in the program.

813-220-0020 Clarifies the eligibility criteria for clients participating in the program.

813-220-0030 Incorporates clarification language on the the allowable services. Allows the Oregon Food Bank and recipient agencies to conduct outreach to under-served areas.

813-220-0050 More clearly outlines how the funds may be used by the Oregon Food Bank and their recipients. Stipulates that the Oregon Food Bank will provide the Department with an annual audit of the Program within a specified period of time. Requires that records of program activities be maintained by the Oregon Food Bank and their recipient agencies for a period of three years and be made available to specified organizations. Identifies the allowable administrative costs that may be paid from program funds.

813-220-0060 Requires on-site evaluations be conducted by the Department once per fiscal year for the Oregon Food Bank and their recipients. Sets out the extend of the review process and action to be taken in the event the Oregon Food Bank or their recipient agencies are not in compliance with applicable state or federal regulations.

Rules Coordinator: Sandy McDonnell
Address: North Mall Office Building, 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266
Telephone: (503) 986-2012

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Modifications address review and appeal process for persons and employers to follow in agency disputes.

Date:	Time:	Location:
1-22-08	2 p.m.	Boardroom PERS Headquaters 11410 SW 68th Parkway Tigard OR

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 183.464, 183.600-183.690, 238.650
Stats. Implemented: ORS 183.413–183.470
Proposed Amendments: 459-001-0030, 459-001-0035, 459-001-0040
Last Date for Comment: 1-22-08
Summary: 459-001-0030: Modifies rule to address persons only.

459-001-0035:Clarifies the contested case hearing process.

459-001-0040: Deletes unnecessary language and clarifies Board and staff actions.

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

Public comment may be mailed to the above 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) 603-7713

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Rule Caption: Addresses employer concerns about delayed invoicing for delinquent employee contributions.

Date:	Time:	Location:
1-22-08	2 p.m.	Boardroom, PERS Headquarters 11410 S.W. 68th Parkway Tigard, OR 97223

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.200, 238.705
Proposed Amendments: 459-009-0130
Last Date for Comment: 2-22-08
Summary: Modifications address issues related to the delayed invoicing for prior period employee contributions.

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

Public comment may be mailed to the above 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) 603-7713

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

Date:	Time:	Location:
1-22-08	2 p.m.	Boardroom, PERS Headquarters 11410 S.W. 68th Parkway Tigard, OR 97223

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 237.620, Ch. 622, OL 2007
Proposed Amendments: 459-030-0011, 459-030-0025, 459-030-0030
Last Date for Comment: 2-22-08
Summary: The modification to these rules change the timing of and the standards by which the PERS Board will review the non-PERS sponsored benefit plans of those police officer and firefighters employed by public employers to ensure that they are equal to or better than (ETOB) pension benefits offered by PERS. These changes eliminate the requirement that the Board schedule an ETOB review every two years and 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 new employees were hired.

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

Public comment may be mailed to the above 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) 603-7713

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Rule Caption: Minor Amendments to allow the Emergency Withdrawal appeals Committee to meet sooner than currently allowed.

Date:	Time:	Location:
1-22-08	2–4 p.m.	PERS Headquaters 11410 S.W. 68th Parkway Tigard, OR 97223

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.401–243.507
Proposed Amendments: 459-050-0040
Last Date for Comment: 3-21-08
Summary: This amendment modifies the rule to allow the Unforeseeable Emergency Withdrawals Appeals Committee to meet upon the call of the Manager of the Deferred Compensation Program no later than 14 calendar days following receipt of an appeal.

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

Public comment may be mailed to the above 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

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Rule Caption: Modification of rule to clarify procedures for purchases available at disability retirement.

Date:	Time:	Location:
1-22-08	2–4 p.m.	Boardroom, PERS Headquarters 11410 SW 68th Pkwy Tigard, OR

Hearing Officer: Carolyn Waterfall

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.435, 238.330
Proposed Amendments: 459-015-0055
Last Date for Comment: 2-22-08
Summary: The rule modifications include Police and Fire Units in the purchases available at disability retirement and clarify procedures for purchases in the event the disability retirement applicant dies prior to approval of the application.

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

Public comment may be mailed to the above 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) 603-7713

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

Date:	Time:	Location:
1-22-08	2 p.m.	Boardroom, PERS Headquarters 11410 68th Pkwy Tigard, OR

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 237.620, Ch. 622, OL 2007
Proposed Amendments: 459-030-0011, 459-030-0025, 459-030-0030
Last Date for Comment: 2-22-08
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. These changes eliminate the requirements that the Board schedule and 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.

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

Public comment may be mailed to the above 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) 603-7713

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Rule Caption: Update to bring rule in line with recent changes in federal law, including expanding definition of unforeseen emergency.

Date:	Time:	Location:
1-22-08	2–4 p.m.	Boardroom, PERS Headquarters 11410 SW 68th Pkwy Tigard, OR

Hearing Officer: Carolyn Waterfall
Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.401–243.507
Proposed Amendments: 459-050-0150
Last Date for Comment: 2-22-08
Summary: Update to bring rule in line with recent changes in federal law, including expanding the definition of unforeseeable emergency and those who are eligible to apply for an unforeseeable emergency withdrawal.

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

Public comment may be mailed to the above 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) 603-7713

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Oregon Student Assistance Commission, Office of Degree Authorization
Chapter 583

Rule Caption: Revises definition of diploma mill.

Date:	Time:	Location:
1-25-08	9:30 a.m.	Student Assistance Commission 1500 Valley River Dr., Suite 100 Eugene, OR 97401

Hearing Officer: Bridget Burns, Commission Chair
Stat. Auth.: ORS 348.609
Other Auth.: SB 198 (2007 Session)
Stats. Implemented: ORS 348.609, SB 198
Proposed Amendments: Rules in 583-050
Last Date for Comment: 1-25-08
Summary: The definition of diploma mill was changed in SB 198 during the 2007 Legislative Session.
Rules Coordinator: Susanne D. Ney
Address: Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401
Telephone: (541) 687-7394

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Oregon University System, Eastern Oregon University
Chapter 579

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

Date:	Time:	Location:
1-21-08	4 p.m.	Hoke Union Bldg., Rm. 301 Easter Oregon University

Hearing Officer: Stephen Jenkins
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 579-030-005, 579-030-0010, 579-030-0015, 579-030-0020
Last Date for Comment: 1-21-08
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 increases in utilities and maintenance costs.
Rules Coordinator: Lara Moore
Address: Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 202, La Grande, OR 97850
Telephone: (541) 962-3368

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Oregon University System, Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general service fees.
Stat. Auth.: ORS 351.070, 351.072
Stats. Implemented: ORS 351.070, 351.072
Proposed Amendments: 574-050-0005
Last Date for Comment: 1-22-08
Summary: Amendments will allow for increases, additions, and revisions of special course fees and general service fees.
Rules Coordinator: Debra L. Charlton
Address: Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8175

Oregon Watershed Enhancement Board
Chapter 695

Rule Caption: Rules describing OWEB implementation of the public records law, ORS 192.410 to 192.505.

Date:	Time:	Location:
1-17-08	11:15 a.m.	Holiday Inn Express 204 West Marine Dr. Astoria, OR
1-23-08	10:30 a.m.	State Lands Bldg., Land Board Rm. 775 Summer St. NE Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 541.396, 192.430, 192.440
Stats. Implemented: ORS 192.410–192.505
Proposed Adoptions: Rules in 695-003
Last Date for Comment: 2-1-08, 5 p.m.
Summary: The proposed new rules in OAR 695-003 establish procedures and fees for the Oregon Watershed Enhancement Board to respond to public records requests. The rules will address requests to inspect or obtain copies of public records, fees for inspections or copies of public records, and fee waivers and reductions. Public comment will be accepted on the proposed rules from January 7, 2008 through 5 p.m. on Friday, February 1, 2008. Copies of the proposed rules will be available by January 7, 2008 on OWEB's website www.oregon.gov/OWEB
Rules Coordinator: Melissa Leoni
Address: Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301
Telephone: (503) 986-0179

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Parks and Recreation Department
Chapter 736

Rule Caption: Designation of Oregon Scenic Bikeways.

Date:	Time:	Location:
1-21-08	6–8 p.m.	Central Library, Adams Rm. 205 South Central Ave. Medford, OR
1-23-08	5:30–7:30 p.m.	US Bank Rm. Multnomah Co. Library 801 SW 10th Ave. Portland, OR
1-30-08	6–8 p.m.	Newport Public Library 35 NW Nye St. Newport, OR
2-4-08	6–8 p.m.	Deshutes Co. Library 601 NW Wall St. Bend, OR

Hearing Officer: Iris Riggs
Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.950–390.989
Proposed Adoptions: 736-009-0015
Last Date for Comment: 2-15-08
Summary: This rule will establish criteria and a procedure for the establishment of Oregon Scenic Bikeways. The Oregon Parks and Recreation Department will coordinate the process, hold public hearings and facilitate signing of the Scenic Bikeways.
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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Rule Caption: Amend existing rules to clarify the Historic Cemeteries Grant process.
Stat. Auth.: ORS 390.124, 390.131
Stats. Implemented: ORS 97.780, 97.784
Proposed Amendments: 736-054-0005, 736-054-0010, 736-054-0015, 736-054-0025
Last Date for Comment: 1-30-08
Summary: Amend existing rules to improve and clarify the Historic Cemetery Grants process so it better serves constituent needs; clarifies definitions, removes geographical zones, and removes requirement for above ground features.
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,
Board of Maritime Pilots
Chapter 856

Rule Caption: Proposes to make a temporary fee permanent.

Date:	Time:	Location:
1-22-08	10 a.m.	800 N.E. Oregon St., Rm 1-A Portland, OR 97232

Hearing Officer: Board of Maritime Pilots
Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115 (4)(b), 776.355
Proposed Amendments: 856-010-0016
Last Date for Comment: 1-22-08
Summary: An unexpired temporary rule is to be repealed. Proposes to make the temporary fee increase from $1,500 to $2,500 permanent.
Rules Coordinator: Susan Johnson
Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., #507, Portland, OR 97232
Telephone: (971) 235-1530

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Rule Caption: Amends pilot trainee selection requirements for the Columbia River Bar pilotage ground.

Date:	Time:	Location:
1-22-08	10 a.m.	800 N.E. Oregon St., Rm. 1-A Portland, OR 97232

Hearing Officer: Board of Maritime Pilots
Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115 (4)(c)
Proposed Amendments: 856-010-0018
Last Date for Comment: 1-22-08
Summary: Amends the pilot trainee selection requirements and criteria to qualify as a candidate to train on the Columbia River Bar pilotage ground.
Rules Coordinator: Susan Johnson
Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., #507, Portland, OR 97232
Telephone: (971) 235-1530

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Rule Caption: General housekeeping.
Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115
Proposed Amendments: 856-001-0000, 856-001-005, 856-010-0003, 856-010-0010, 856-010-0012, 856-010-0014, 856-010-0015
Last Date for Comment: 1-21-08
Summary: General housekeeping to update citations to other laws, delete provisions that have sunset, and make language consistent with other provisions.
Rules Coordinator: Susan Johnson
Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., #507, Portland, OR 97232
Telephone: (971) 235-1530

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Rule Caption: Raises the threshold dollar requirement for incident reporting from $10,000 to $25,000.
Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115
Proposed Amendments: 856-010-0020
Last Date for Comment: 1-21-08

Summary: The proposed amendment will increase the threshold dollar amount for required reporting from in excess of $10,000 in excess of $25,000.
Rules Coordinator: Susan Johnson
Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., #507, Portland, OR 97232
Telephone: (971) 235-1530

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Secretary of State,
Archives Division
Chapter 166

Rule Caption: Update and clarify the General Records Retention Schedule for Educational Service Districts and School Districts.

Date:	Time:	Location:
1-29-08	10 a.m.	Archives Bldg. Large Conference Rm., 800 Summer St. NE Salem, OR

Hearing Officer: Michael Matthews
Stat. Auth.: ORS 192 & 357
Other Auth.: Code of Federal Regulations, Title 34
Stats. Implemented: ORS 192 & 357
Proposed Amendments: 166-400-0010
Last Date for Comment: 1-29-08, Close of Hearing
Summary: Updating and revising existing OAR 166-400-0010 which relates to the retention of records generated by Educational Service Districts, School Districts and Schools. Revisions include clarification of language due to a typographical error and also the addition of a records series.
Rules Coordinator: Julie Yamaka
Address: 800 Summer Street NE, Salem, OR 97310
Telephone: (503) 378-5199

Board of Chiropractic Examiners
Chapter 811

Rule Caption: Repeals and/or amends various rules and updates various references.
Adm. Order No.: BCE 1-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 11-30-07
Notice Publication Date: 11-1-2007
Rules Amended: 811-010-0085, 811-010-0086, 811-010-0090, 811-010-0093, 811-015-0010, 811-015-0025, 811-021-0005
Subject: Repeals sunset on January 2005 amendments to clinical justification rule, creates training requirements for use of medical oxygen in emergencies, eliminates CE course evaluation form, changes "limited active" to "senior active", and updates various references.
Rules Coordinator: Dave McTeague—(503) 378-5816

811-010-0085
Application and Examination of Applicants

(1) Applicants shall be examined according to ORS 684.050 or 684.052.

(2) The Board shall issue a Candidate's Guide, which contains all necessary examination information. The Guide shall be mailed to each applicant, along with other examination information for a fee of $10.

(3) Fee and application deadlines are as follows:

(a) Application and $150 fee for chiropractic exams must be postmarked no later than 30 days prior to the first exam day.

(b) Request for retake of any section of the exam must be submitted in writing with a $100 reexamination fee postmarked no later than 30 days prior to the first exam day.

(c) Supporting documentation must be postmarked no later than 30 days prior to the first exam day.

(d) Deadlines may be waived by the Board for good cause.

(e) A complete set of fingerprints obtained from any state or local law enforcement agency, or from any other agency approved by the Board. Applicants shall use forms prescribed by the Board.

(f) Criminal background check fee of $47.25 must be postmarked no later than 30 days prior to the first exam day.

(4) Documents to be submitted prior to approval to take the Oregon Specifics Examinations:

(a) A completed, official application including a recent photograph and fingerprints;

(b) Evidence of the applicant's good moral character on the letterhead stationary of a Chiropractic physician;

(c) A signed affidavit attesting to successful completion of at least two years of liberal arts and sciences study in an accredited college. Original transcripts must be provided if requested by the Board; and

(d) A transcript certified by the registrar, from an approved chiropractic college, including transcripts of coursework as required by OAR 811-020-0006 (minimum Educational Requirements for physiotherapy and minor surgery/ proctology). A transcript of grades is necessary from each chiropractic college attended.

(e) An official transcript of passing grades from the National Board of Chiropractic Examiners on Part I, II and III and physiotherapy.

(5) Documents and fee to be submitted prior to licensure include:

(a) $100 initial license fee.

(b) A diploma or other evidence of graduation certified by the registrar from an approved Chiropractic college.

(c) An official transcript of passing grades from the National Board of Chiropractic Examiners Part IV.

(6) All applicants must take and pass the Oregon Specifics Examination consisting of written examination in ethics and jurisprudence, obstetrics and gynecology, minor surgery and proctology. Applicants who have previously taken and passed obstetrics and gynecology, and/or minor surgery and proctology within the last five years from the date of application as received by the Board are not required to retake these tests, however all applicants must take and pass ethics and jurisprudence.

(7) Oregon Specifics Examination Grades:

(a) The Board shall determine the passing scores. Each section of the examination shall be graded separately using the Angoff Method, a criterion referenced model. Passing scores fluctuate between sections and between examinations. All examinations are designed to test minimal competency to protect the public health and safety.

(b) Examination grades will be released within 30 days of the examination date.

(8) Regrades: any request for regrade must be submitted in writing to the Board no later than 45 days after the date of the examination. A regrade involves a manual tally of points earned for the specific examination requested.

(9) An applicant failing to achieve a passing grade, as determined by the Board for each examination section, may make application to the Board for a re-examination in the failed sections.

(10) An applicant must take at least one of the failed section(s) within 13 months following the date when the applicant took the entire examination. If the applicant fails to re-test on at least one failed section within 13 months of the last examination, the file shall become inactive and the applicant must re-apply and take the entire examination.

(11) An applicant attempting to give aid or accepting aid from another while examinations are in progress shall fail the examination and will not be allowed to take the examination for a period of five (5) years.

(12) Refunds:

(a) The application fee is non-refundable; and

(b) The retake fee can be refunded until 10 days prior to the test date.

(c) The background check fee is non-refundable.

(13) The Board may reject applications for good cause, including evidence of unprofessional behavior.

(14) Effective June 1, 2001 applicants who have completed all requirements for licensure, including passage of all required examinations, must submit the initial license fee to obtain license within one year from the date they completed all the requirements. An applicant's initial license will be valid for a minimum of 180 days. However, if the applicant's next birth date is within the 180 days, the initial license will be valid for an additional 12 months beyond the applicant's birth date.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.050 & 684.052
Hist.: 2CE 3, f. 10-9-59; 2CE 7, f. 7-9-68; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 2-1985, f. 11-13-85, ef. 12-1-85; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 6-1993(Temp), f. 9-29-93, cert. ef. 11-3-93; CE 1-1994, f. & cert. ef. 7-26-94; CE 4-1995, f. & cert. ef. 12-6-95; CE 2-1997, f. & cert. ef. 7-29-97; CE 3-1997(Temp), f. & cert. ef. 9-25-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2001, f. 1-31-01, cert. ef. 2-1-01; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2004, f. & cert. ef. 6-7-04; BCE 2-2006, f. & cert. ef. 2-9-06; BCE 5-2006, f. & cert. ef. 11-24-06l: BCE 1-2007, f. & cert. ef. 11-30-07

811-010-0086
Annual Registration

As of August 1, 2005, the license period for chiropractic physicians in Oregon changes to a period equal to 12 months, expiring on the last day of the licensee's birth date month.

(1) At least 30 days prior to the renewal due date the board shall mail to the last-known professional address of each licensed chiropractor a notice of the requirements of ORS 684.090 and 684.092.

(2) Active licensees must meet the requirements of ORS 684.092 during the 12 months prior to the expiration of the Certificate of Registration and pay to the board the annual $300 registration fee.

(3) Licensees may apply for a $225 senior active license within 45 days prior to the expiration of the Certificate of Registration if the licensee meets all of the following requirements:

(a) Is 60 years of age or older; and

(b) Has held an active chiropractic license for at least 25 years.

(4) Senior active licensees shall fulfill the requirements of ORS 684.090, 684.092 and 684.094 except that:

(a) The annual license fee shall not exceed 75% of the current annual active license fee; and

(b) Continuing chiropractic education shall not be less than 6 hours per year.

(5) Senior active licensees shall show proof at the time of license renewal that the criteria of subsection (3)(a) and (b) of this rule have been met.

(6) Active licensees may apply for a $175 inactive license within 45 days prior to the expiration of the Certificate of Registration if the licensee qualifies because of one of the following:

(a) Military service;

(b) Peace Corps or VISTA service;

(c) Retirement; or

(d) Licensee is not engaged in the practice of chiropractic in Oregon.

(7) Inactive licensees do not have to fulfill the requirements of ORS 684.092.

(8) Inactive licensees who want to reinstate their active license during the same fiscal year shall pay the full active annual registration fee and provide proof of compliance with ORS 684.092.

(9) Inactive licensees who apply for reinstatement after five or more years after the date of transfer to inactive license, or who cannot demon-

strate to the satisfaction of the Board they have been in active practice during the preceding five years, may be required to establish their competency in the practice of chiropractic by

(a) Receiving a passing grade on all or part of an examination required by the Board; or

(b) Submitting a letter showing proof of active practice and any disciplinary actions from the state boards where licensure is maintained.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.090 & 684.092
Hist.: 2CE 9, f. 10-16-70; 2CE 13(Temp), f. & ef. 4-13-76 through 8-10-76; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 1-1986, f. 4-14-86, ef. 5-1-86; Suspended by CE 1-1989(Temp), f. & cert. ef. 7-28-89; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 2-1995, f. & cert. ef. 10-30-95; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2004, f. & cert. ef. 6-7-04; BCE 1-2007, f. & cert. ef. 11-30-07

811-010-0090
Food and Drugs

(1) The Chiropractic Physician is prohibited by law from the administration or dispensation of prescription drugs or the writing of prescription therefor.

(2) The Chiropractic Physician is specifically authorized to issue orders for, or procure anesthetics, and antiseptics; also opaque media for X-ray diagnosis as authorized by section (1) of ORS 684.025; also such other items that may fall within the provisions of the Chiropractic Act.

(3) A person has received training in the administration of emergency use of oxygen if the person has completed a course in emergency medical procedures that includes the use of emergency oxygen at a chiropractic college or otherwise can demonstrate familiarity with the protocols for emergency oxygen use.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.015 & 684.025
Hist.: 2CE 3, f. 10-9-59; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2007, f. & cert. ef. 11-30-07

811-010-0093
Guide to Policy and Practice Questions

The **Board's Guide to Policy and Practice Questions**, originally dated January 14, 1998, and last amended September 28, 2007, is hereby adopted.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.010 & 684.155
Hist.: BCE 3-1998, f. & cert. ef. 8-4-98; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2003, f. & cert. ef. 9-17-03; BCE 3-2006, f. & cert. ef. 3-27-06; BCE 1-2007, f. & cert. ef. 11-30-07

811-015-0010
Clinical Justification

(1) Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures.

(2) Accepted standards mean skills and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances.

(3) All initial examinations and subsequent re-examinations performed by a chiropractor to determine the need for chiropractic treatment of neuro-musculoskeletal conditions shall include a functional chiropractic analysis. Some combination of the following PARTS exam constitutes a functional chiropractic analysis:

P Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;
A Asymmetry of sectional or segmental components identified by static palpation;
R The decrease or loss of specific movements (active, passive, and accessory);
T Tone, texture, and temperature change in specific soft tissues identified through palpation;
S Use of special tests or procedures.

(4) Chiropractic physicians shall treat their patients as often as necessary to insure favorable progress. Evidence based outcomes management shall determine whether the frequency and duration of curative chiropractic treatment is, has been, or continues to be necessary. Outcomes management shall include both subjective or patient-driven information as well as objective provider-driven information. In addition, treatment of neuro-musculoskeletal conditions outside of the Oregon Practices and Utilization Guidelines — NMS Volume I, Chapter 5, may be considered contrary to accepted standards. Chiropractic physicians treating outside of the Practices and Utilization Guidelines — NMS Volume I, Chapter 5, bear the burden of proof to show that the treatment, or lack thereof, is clinically justified.

(5) Copies of any independent examination report must be made available to the patient, the patient's attorney, the treating doctor and the attending physician at the time the report is made available to the initial requesting party.

Stat. Auth.: ORS 684
Stats Implemented: ORS 684.155
Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 1-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2005, f. 1-28-04, cert. ef. 2-1-05; BCE 1-2007, f. & cert. ef. 11-30-07

811-015-0025
Continuing Chiropractic Education

(1) The purpose of continuing chiropractic education (CE) licensure credit is to assist in assuring the competence and skills of Oregon Chiropractic physicians, and to help assure the Oregon public of the continued competence of these physicians within the statutory scope of practice.

(2) In order to renew an active license, each licensee shall submit a signed affidavit on a form provided by the OBCE attesting to successful completion of 20 or more hours of chiropractic continuing education course or activity hours completed during the preceding licensure period. Each licensee shall maintain records as required in section (10) to support the hours reported in the signed affidavit.

(3) Courses or activities determined by licensees to meet the criteria of sections (8) and (9) are presumed to be approved until or unless specifically disapproved by the OBCE. Licensees will be informed of any disapproved courses in a timely manner. The Board will not retroactively disapprove course credits. The Board will maintain a list of disapproved courses available for review by licensees.

(4) The Board may require specific courses as part of a chiropractic physician's annual relicensure hours. Except as provided in sections (5), (6) and (7), the Board shall determine which courses shall be required by May of the year prior to the relicensure year in which the course will be required.

(5) Any Chiropractic physician who is also licensed as a naturopath, osteopath, medical doctor, nurse or nurse practitioner is exempt from the over-the-counter non-prescriptive substances requirements of sections (6) and (7).

(6) Any Chiropractic physician holding an initial license is exempt from continuing education for the first year of licensure, except for four (4) hours relating to over-the-counter non-prescriptive substances and any specific courses required by the Board.

(7) Anyone changing license status from inactive to active or senior active license shall take four (4) hours of the required hours relating to over-the-counter non-prescriptive substances prior to changing license status and any specific courses required by the Board.

(8) Approved continuing chiropractic education shall be obtained from courses or activities which meet the following criteria:

(a) They do not misrepresent or mislead;

(b) They are presented by a Chiropractic physician, licensed here or in another state, other appropriate health care provider, or other qualified person;

(c) They exclude practice-building subjects and the principle purpose of the program may not be to sell or promote a commercial product. However the mere mention of practice building concepts shall not disqualify a program's eligibility for CE credit.

(d) The material covered shall pertain to the practice of chiropractic in Oregon or be related to the doctor's practice;

(e) Continuing education hours for Board activities must assist in assuring the competence and skills of the chiropractic physician, and

(f) Shall be quality courses or activities adequately supported by evidence or rationale as determined by the Board.

(9) The Board may accept credit hours from courses, seminars or other activities. Completion of other activities is chiropractic continuing education defined as follows:

(a) Continuing Medical Education (CME);

(b) Video or audio taped Continuing Education courses or seminars;

(c) Long distance learning courses;

(d) Being an original author of an article, published in a peer reviewed journal, given in the year publication;

(e) Participation in a formal protocol writing process associated with an accredited health care institution or state or government health care agency;

(f) Participation on an OBCE committee and assisting with a National Board of Chiropractic Examiners (NBCE) examination or NBCE test writing committee;

(g) Participation in a research project, approved by the Board, related to chiropractic health care directed by an educational institution or other qualified chiropractic organization;

(h) Teaching courses at an accredited health care institution;

(i) Teaching chiropractic continuing education courses;

(j) CPR courses; and

(k) instruction related to OAR 811-015-0030, minor surgery/proctology rotation;

(l) And any other course or activity specifically authorized by the OBCE.

(10) All licensees are required to keep full, accurate and complete records:

(a) A verification of attendance for all CE courses or activities showing hours claimed for relicensure credit, and or proof of completion signed by the sponsor and licensee.

(b) Video taped or audio taped courses shall be supported through record keeping with a letter, memo or on a form provided by the Board, that includes the dates and times, vendor's or presenter's name/s, total hours claimed for each course, location, and includes the following statement, "I swear or affirm that I viewed or listened to these continuing education courses in their entirety on the dates and times specified in this report."

(c) A copy of a published article including the date of publication;

(d) A written record of hours in clinical protocol development and research projects. The record shall include the names and addresses of the institutions involved, name of supervisors, and their signatures verifying hours.

(e) For licensees claiming CE hours under the provisions of (9)(h), a record of employment by health care institutions, signed by their supervisor, a copy of the course syllabus if applicable, and verification of hours.

(f) For licensees claiming CE hours under the provisions of (9) (i), licensee shall obtain and keep verification of the course taught including, the dates of the course, a syllabus and the sponsoring organization.

(g) For licensees claiming CE hours under the provisions of (9)(f), for participation on an OBCE committee and assisting with a National Board of Chiropractic Examiners; (NBCE) examination or NBCE test writing committee, certification from the OBCE or NBCE.

(h) For licensees claiming CE hours under the provisions of (9)(k), a record of the dates, topics/procedures, and hours.

(11) Each year the OBCE will generate a random computer list of 10% of licensees, who will then have their CE records reviewed to ensure compliance with this rule. Licensees shall respond to this request within 30 days by supplying the OBCE with verification of their CE courses or activities as provided in section 10.

(12) Any licensee who has submitted inadequate, insufficient, or deficient CE records or who otherwise appears to be in noncompliance with the requirements of this rule will be given written notice by the OBCE and will have 30 days from the date of notice to submit additional documentation, information or written explanation to the OBCE establishing the licensee's compliance with this rule.

(13) At its discretion, the Board may audit by attendance the content of any program in order to verify the content thereof. Denial of an audit is grounds for disapproval.

(14) Any chiropractic physician seeking a hardship waiver from their continuing education requirements shall apply to the Board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that year. Specific details of the hardship must be included. The Board must make a finding that a hardship exists.

(15) The Board shall maintain and make available through its WEB page and mailings to licensees a list of disapproved courses, if any. The Board may disapprove a course or CE activity after giving the sponsor and/or licensees the opportunity to provide additional information of compliance with the criteria contained in this rule, and opportunity for contested case hearing under the provisions of ORS 183.341 if requested. Any CE sponsor or licensee may request the Board to review any previously disapproved course at any time.

(16) This rule is effective beginning the 2002-2003 licensure year.

Stat. Auth.: ORS 684.155
Stats. Implemented: ORS 684.092
Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 1-1984, f. 7-16-84, ef. 8-1-84; 2CE 5-1985, f. 11-13-85, ef. 12-1-85; CE 1-1996, f. & cert. ef. 2-28-96; CE 4-1996(Temp), f. & cert. ef. 9-27-96; CE 1-1997, f. & cert. ef. 3-4-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2002, f. & cert. ef. 2-6-02; BCE 1-2007, f. & cert. ef. 11-30-07

811-021-0005
Educational Standards for Chiropractic Colleges

The educational standards for Chiropractic colleges published by the Council on Chiropractic Education, adopted January 2007, is hereby adopted and prescribed.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.155(5)
Hist.: 2CE 8, f. 12-10-68; 2CE 9, f. 10-1-70; CE 5-1997, f. & cert. ef. 12-19-97; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2006, f. & cert. ef. 2-9-06; BCE 1-2007, f. & cert. ef. 11-30-07

Rule Caption: Updates most current references to Attorney General Rules of Procedure.
Adm. Order No.: BCE 2-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 1-31-08
Notice Publication Date: 11-1-2007
Rules Amended: 811-001-0005
Subject: Updates most current references to AG Rules of Procedure.
Rules Coordinator: Dave McTeague—(503) 378-5816

811-001-0005
Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Board of Chiropractic Examiners adopts the **Attorney General's Uniform and Model Rules of Procedure** under the Administrative Procedures Act January 2008, these rules shall be controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Chiropractic Examiners.]
Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.341
Hist.: 2CE 10, f. 2-3-72, ef. 2-15-72; 2CE 12, f. 11-20-73, ef. 12-11-73; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 3-1981, f. & ef. 11-27-81; 2CE 3-1984, f. & ef. 11-26-84; 2CE 4-1986, f. & ef. 7-3-86; CE 2-1988, f. & cert. ef. 7-1-88; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 1-1995, f. & cert. ef. 10-30-95; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2004, f. & cert. ef. 6-7-04; BCE 2-2007, f. 11-30-07, cert. ef. 1-31-08

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Board of Nursing
Chapter 851

Rule Caption: Addition to the Section Conduct Derogatory to the Standards of Nursing Defined.
Adm. Order No.: BN 11-2007
Filed with Sec. of State: 11-21-2007
Certified to be Effective: 11-21-07
Notice Publication Date: 10-1-2007
Rules Amended: 851-045-0015
Subject: These rules cover the standards and scope of practice for the Licensed Practical Nurse and Registered Nurse. This rule amendment specifically makes an addition to the section which covers, "Conduct Derogatory to the Standards of Nursing Defined."
Rules Coordinator: KC Cotton—(971) 673-0638

851-045-0015
Conduct Derogatory to the Standards of Nursing Defined

Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:

(1) Conduct related to the client's safety and integrity:

(a) Developing, modifying, or implementing standards of nursing practice/care which jeopardize patient safety.

(b) Failing to take action to preserve or promote the client's safety based on nursing assessment and judgment.

(c) Failing to implement and/or follow through with the plan of care.

(d) Failing to modify, or failing to attempt to modify the plan of care as needed based on nursing assessment and judgment, either directly or through proper channels.

(e) Assigning persons to perform functions for which they are not prepared or which are beyond their scope of practice/scope of duties.

(f) Improperly delegating tasks of nursing care to unlicensed persons in settings where a registered nurse is not regularly scheduled.

(g) Failing to supervise persons to whom nursing tasks have been assigned.

(h) Failing to teach and supervise unlicensed persons to whom nursing tasks have been delegated.

(i) Leaving a client care assignment during the previously agreed upon work time period without notifying the appropriate supervisory personnel and confirming that nursing care for the client(s) will be continued.

(j) Leaving any nursing assignment, including a supervisory assignment, without notifying the appropriate personnel and confirming that nursing assignment responsibilities will be met.

(k) Failing to report through proper channels facts known regarding the incompetent, unethical, unsafe or illegal practice of any health care provider.

(l) Failing to respect the dignity and rights of clients, regardless of social or economic status, age, race, religion, sex, sexual preference, national origin, nature of health problems or disability.

(m) Engaging in sexual contact with a client.

(2) Conduct related to other federal or state statute/rule violations:

(a) Abusing a client. The definition of abuse includes but is not limited to intentionally causing physical harm or discomfort, striking a client, intimidating, threatening or harassing a client.

(b) Neglecting a client. The definition of neglect includes but is not limited to carelessly allowing a client to be in physical discomfort or be injured.

(c) Engaging in other unacceptable behavior towards or in the presence of a client such as using derogatory names or gestures or profane language.

(d) Failing to report actual or suspected incidents of client abuse through the proper channels in the work place and to the appropriate state agencies.

(e) Unauthorized removal or attempted removal of narcotics, other drugs, supplies, property, or money from clients, the work place, or any person.

(f) Soliciting or borrowing money, materials, or property from clients.

(g) Using the nurse client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for nursing services.

(h) Possessing, obtaining, attempting to obtain, furnishing, or administering prescription or controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

(i) Aiding, abetting, or assisting an individual to violate or circumvent any law, rule or regulation intended to guide the conduct of nurses or other health care providers.(

(j) Failing to conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin, nature of health problems or disability.

(k) Violating the rights of privacy, confidentiality of information, or knowledge concerning the client unless required by law to disclose such information or unless there is a "need to know."

(l) Violating the rights of privacy, confidentiality of information, or knowledge concerning the client by obtaining the information without proper authorization or when there is no "need to know."

(m) Unauthorized removal of client records, client information, facility property, policies or written standards from the work place.

(n) Dispensing or administering Methadone except as permitted under state and federal law.

(3) Conduct related to communication:

(a) Inaccurate recordkeeping in client or agency records.

(b) Incomplete recordkeeping regarding client care; including but not limited to failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given.

(c) Falsifying a client or agency record; including but not limited to filling in someone else's omissions, signing someone else's name, recording care not given, fabricating data/values.

(d) Altering a client or agency record; including but not limited to changing words/letters/numbers from the original document to mislead the reader of the record, adding to the record after the original time/date without indicating a late entry.

(e) Destroying a client or agency record.

(f) Directing another person to falsify, alter or destroy client or agency records.

(g) Failing to maintain client records in a timely manner which accurately reflects management of client care, including failure to make a late entry within a reasonable time period.

(h) Failing to communicate information regarding the client's status to members of the health care team (physician, nurse practitioner, nursing supervisor, nurse co-worker) in an ongoing and timely manner.

(i) Failing to communicate information regarding the client's status to other individuals who need to know; for example, family, facility administrator.

(4) Conduct related to achieving and maintaining clinical competency:

(a) Performing acts beyond the authorized scope or the level of nursing for which the individual is licensed.

(b) Failing to conform to the essential standards of acceptable and prevailing nursing practice. Actual injury need not be established.

(c) Assuming duties and responsibilities within the practice of nursing for direct client care, supervisory, managerial or consulting roles without documented preparation for the duties and responsibilities and when competency has not been established and maintained.

(d) Performing new nursing techniques or procedures without documented education specific to the technique or procedure and clinical preceptored experience to establish competency.

(5) Conduct related to impaired function:

(a) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to physical impairment as evidenced by documented deterioration of functioning in the practice setting and/or by the assessment of a health care provider qualified to diagnose physical condition/status.

(b) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to psychological or mental impairment as evidenced by documented deterioration of functioning in the practice setting and/or by the assessment of a health care provider qualified to diagnose mental condition/status.

(c) Practicing nursing when physical or mental ability to practice is impaired by use of drugs, alcohol or mind-altering substances.

(6) Conduct related to licensure or certification violations:

(a) Practicing nursing without a current Oregon license or certificate.

(b) Practicing as a nurse practitioner or clinical nurse specialist without a current Oregon certificate.

(c) Allowing another person to use one's nursing license or certificate for any purpose.

(d) Using another's nursing license or certificate for any purpose.

(e) Resorting to fraud, misrepresentation, or deceit during the application process for licensure or certification, while taking the examination for licensure or certification, while obtaining initial licensure or certification or renewal of licensure or certification.

(f) Impersonating any applicant or acting as a proxy for the applicant in any nurse licensure or certification examination.

(g) Disclosing the contents of the examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration.

(7) Conduct related to the licensee's relationship with the Board:

(a) Failing to provide the Board with any documents requested by the Board.

(b) Failing to answer truthfully and completely any question asked by the Board on an application for licensure or during the course of an investigation or any other question asked by the Board.

(c) Failing to fully cooperate with the Board during the course of an investigation, including, but not limited to, waiver of confidentiality privileges, except client-attorney privilege.

(d) Violating the terms and conditions of a Board order.

(e) Failing to comply with the terms and conditions of Nurse Monitoring Program agreements.

(8) Conduct related to the client's family:

(a) Failing to respect the rights of the client's family regardless of social or economic status, race, religion or national origin.

(b) Using the nurse client relationship to exploit the family for the nurse's personal gain or for any other reason.

(c) Theft of money, property, services or supplies from the family.

(d) Soliciting or borrowing money, materials or property from the family.

(9) Conduct related to co-workers: Violent, abusive or threatening behavior towards a co-worker which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

Stats. Auth.: ORS 678.111

Stats. Implemented: ORS 678.111

Hist.: NER 1-1986, f. & ef. 4-3-86; NER 2-1986, f. & ef. 4-9-86; NB 1-1989, f. & cert. ef. 1-5-89; NB 6-1994, f. & cert. ef. 9-28-94; NB 1-1995, f. & cert. ef. 1-3-95; NB 9-1996, f. & cert. ef. 12-2-96; BN 6-2001, f. & cert. ef. 4-24-01; BN 8-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; BN 13-2002, f. & cert. ef. 7-17-02; BN 11-2007, f. & cert. ef. 11-21-07

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Rule Caption: Advanced Practice Formulary Updated.
Adm. Order No.: BN 12-2007
Filed with Sec. of State: 11-21-2007
Certified to be Effective: 11-21-07
Notice Publication Date: 10-1-2007
Rules Amended: 851-056-0012
Subject: The Board is authorized by ORS 678.385 and 678.390 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner or clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This

amendment adds the October and November 2007 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion.
Rules Coordinator: KC Cotton—(971) 673-0638

851-056-0012
Formulary for Clinical Nurse Specialists and Nurse Practitioners with Prescriptive Authority

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

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

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurses with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated November 2007, with the exception of certain drugs and drug groups which are listed below.

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

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

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

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

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

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

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

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

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

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

(a) All over-the-counter drugs;

(b) Appliances and devices.

(5) Clinical nurse specialists and nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated November 2007:

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

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

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

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam); and

(C) Dofetilide (Tikosyn).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

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

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

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidates;

(xi) Pentobarbital;

(xii) Secobarbital;

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

(xiv) Levorphanol.

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

(C) Chymopapain is excluded.

(D) Ziconotide (Prialt) is excluded.

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

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

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

(k) Dermatological Agents — all drugs except Psoralens;

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

(A) Punctal plugs;

(B) Collagen Implants;

(C) Indocyanine Green;

(D) Hydroxypropal (Methyl) Cellulose;

(E) Polydimethylsiloxane;

(F) Fomivirsen Sodium (Vitravene);

(G) Verteporfin;

(H) Levobetaxolol HCL (Betaxon);

(I) Travoprost (Travatan);

(J) Bimatoprost (Lumigan);

(K) Unoprostone Isopropyl (Rescula);

(L) Pegaptanib Sodium (Macugen);

(M) Triptan Blue (VisionBlue);

(N) Retisert; and

(O) Ranibizumab (Lucentis).

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;

(B) Samarium Sm53;

(C) Denileukin Diftitox (Ontak);

(D) BCG, Intravesical (Pacis);

(E) Arsenic Trioxide (Trisenox);

(F) Ibritumomab Tiuxetan (Zevalin);

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

(H) Sclerosol; and

(I) Clofarabine (Clolar).

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen);

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

(i) Iopamidol;

(ii) Iohexol; and

(iii) Ioxilan (Oxilan).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 678.385
Stats. Implemented: ORS 678.385, 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 2-2007, f. & cert. ef. 3-13-07; BN 4-2007, f. & cert. ef. 5-2-07; BN 6-2007, f. & cert. ef. 6-26-07; BN 9-2007, f. & cert. ef. 10-1-07; BN 12-2007, f. & cert. ef. 11-21-07

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Board of Optometry
Chapter 852

Rule Caption: Establishes legislative changes to glaucoma treatment protocol.
Adm. Order No.: OPT 2-2007
Filed with Sec. of State: 12-7-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 852-080-0030
Subject: 852-080 - Establishes in administrative rule the provisions of SB 656 for the treatment of glaucoma.
Rules Coordinator: David W. Plunkett—(503) 399-0662, ext 23

852-080-0030
Conditions of Formulary Application

The following conditions apply to the formulary of pharmaceutical agents in 852-80-020 and 852-80-025:

(1) Doctors of optometry certified for Topical and Nontopical Therapeutic Pharmaceutical Agents may use, administer, and prescribe any and all over-the-counter pharmaceutical agents.

(2) Doctors of optometry certified for topical TPA use may use, administer and prescribe topical agents in Categories 1-16.

(3) Doctors of optometry certified for nontopical TPA use may use, administer and prescribe topical and nontopical agents in Categories 1-24 as indicated for procedures that are permitted under OAR Chapter 852, Division 20 — Standards of Optometric Practice.

(4) Doctors of Optometry treating a patient with antiglaucoma medication shall consult with an ophthalmologist if:

(a) The glaucoma progresses despite the use of two glaucoma medications;

(b) More than two medications are required to control the glaucoma;

(c) A secondary glaucoma develops.

(A) Glaucoma shall be considered to be progressing if, in comparison to prior examinations, there is a reproducible worsening of the patient's visual field as measured by standard threshold testing or if there is a worsening of the patient's optic nerve as measured by direct observation or standard imaging technology or by rising eye pressure despite the use of two or more medications.

(B) Glaucoma shall be considered to be under control if target eye pressure, individualized for each patient, is maintained with no abnormal glaucomatous progression.

(C) A combination medication that contains two pharmacologic agents shall be considered one medication.

(5) Doctors of optometry certified for nontopical TPA shall consult with a doctor of medicine or doctor of osteopathy, licensed under chapter 677, prior to extending treatment with nontopical corticosteriods or Schedule III analgesics beyond 7 days. They should be diligent in preventing the diversion of drugs for illegitimate purposes.

(6) Doctors of optometry may not use, administer or prescribe agents classified principally as anti-neoplastics.

(7) Doctors of optometry may use or administer pharmaceutical agents in cases of emergency requiring immediate attention.

(8) Doctors of optometry certified for nontopical TPA with injections (ATI) use, may administer subcutaneous and subconjunctival injections. Sub-Tenon, retrobulbar, intraocular and botulinum toxin injections are excluded.

(9) Doctors of optometry certified for nontopical TPA use, may administer oral pre-medication for light sedation. Conscious sedation, deep sedation or general anesthesia are excluded.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.240, 683.270 & 182.466
Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 4-1998, f. 6-25-98, cert. ef. 7-1-98; OPT 1-2000, f. & cert. ef. 3-15-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 2-2007, f. 12-7-07 & cert. ef. 1-1-08

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Rule Caption: Changes Board address, revises definitions, proposed rule change procedures; sets fee for reinstating lapsed CPR.
Adm. Order No.: OPT 3-2007
Filed with Sec. of State: 12-7-2007
Certified to be Effective: 12-7-07
Notice Publication Date: 11-1-2007
Rules Amended: 852-001-0001, 852-001-0002, 852-050-0006
Subject: 852-001 - Corrects the Boards' address in rule, revises the definition of "Board Administrator," and of the procedure for making notice of proposed rulemaking.

852-050 - Establishes a failure fee for licensees who allow their CPR certification to lapse.
Rules Coordinator: David W. Plunkett—(503) 399-0662, ext 23

852-001-0001
Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any permanent rule, the Board of Optometry shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360, at least twenty-one (21) days prior to the effective date of the rule;

(2) By mailing a copy of the notice to persons on the Board of Optometry's mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date of the rule;

(3) By mailing a copy of the notice to the legislators specified on ORS 183.335(15) at least 49 days before the effective date of the rule; and

(4) By mailing a copy of the notice to the following organizations and publications:

(a) Oregon Optometric Physicians Association;

(b) Capitol Press Room.

(5) By posting the notice of rulemaking along with the proposed administrative rule text on the Board's website.

Stat. Auth.: ORS 182, 183 & 683
Stats. Implemented: ORS 183.341(4) & 182.466
Hist.: OE 24, f. 1-19-76, ef. 1-20-76; OE 3-1982, f. & ef. 3-25-82; OP 3-1994, f. & cert. ef. 10-11-94; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 3-2007, f. & cert. ef. 12-7-08

852-001-0002
Definitions

As used in this division:

(1) "Board" means the Oregon Board of Optometry.

(2) "Board's Office" means the facility located at 1900 Hines Street SE, P.O. Box 13967, Salem, OR 97309-1967.

(3) "Board Administrator" means the Executive Director for the Oregon Board of Optometry.

(4) "Firms" means an individual or firm technically and financially qualified to perform certain types of work classified as personal services.

(5) "Lenses" means pieces of glass or other transparent substances that have two opposite surfaces either both curved or one curved and the other plane that are used singly or in combination to aid the human eye in focusing rays of light. These devices shall not be confused with "contact lenses" which are designed to fit directly on the surface of the eye (cornea).

(6) "Spectacles" means ophthalmic frames and lenses.

(7) "Appurtenances" means an accessory or auxiliary device to ophthalmic frames.

(8) "Prescription" means the signed written prescription which a doctor of optometry shall immediately release to the patient at the time he/she would provide spectacles or contact lenses without additional examination.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 182.466, 683.010 & 683.335
Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 1-1992(Temp), f. & cert. ef. 5-6-92; OP 2-1992, f. & cert. ef. 10-21-92; OP 4-1994, f. & cert. ef. 10-11-94; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 3-2007, f. & cert. ef. 12-7-08

852-050-0006
Annual Renewal of Active License

(1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Check or money order for the correct license renewal fees;

(c) Documentation of completion of the required continuing optometric education.

(d) Documentation of current CPR certification, as required in OAR 852-80-040, if licensed to use Nontopical TPA's.

(4) The Board will, as a courtesy, send license year renewal forms to the licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be $243, plus an additional $20 assessed for continuing education offerings and a $35.00 disciplinary fee.

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of $50 for the first failure; $100 for the second failure; $200 for

each subsequent failure. This late payment fee must be received before the license will be issued.

(9) Any licensee whose CPR certification lapsed at any time during the license renewal period shall be subject to a fee of $50 for the first failure; $100 for the second failure; $200 for each subsequent failure. This fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning July 1, 2007.
Adm. Order No.: BLI 31-2007
Filed with Sec. of State: 11-20-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 10-1-2007
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 July 1, 2007.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0700
Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts* in *Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon* subject to BOTH the state PWR and federal Davis-Bacon Act dated July 1, 2007, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2007, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(b) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 22, 2007).

(c) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 6, 2007).

(d) Amendments/Corrections to July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 13, 2007).

(e) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 7, 2007).

(f) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 17, 2007).

(g) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective August 24, 2007)

(h) Amendments/Corrections to Oregon Determination 2007-02 and July 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective September 7, 2007)

(i) Amendments/Corrections to July 1, 2007 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 September 14, 2007).

(j) Amendments/Corrections to July 1, 2007 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 September 21, 2007).

(k) Amendment to Oregon Determination 2007-02 (effective October 1, 2007).

(l) Amendments/Corrections to July 1, 2007 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 October 1, 2007).

(m) Amendments/Corrections to July 1, 2007 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 November 16, 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 July 1, 2007, 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

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Construction Contractors Board
Chapter 812

Rule Caption: Implement 2007 Legislative Changes and Clarify Language and Adopt or Amend Definitions.
Adm. Order No.: CCB 7-2007
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Adopted: 812-002-0265, 812-002-0170, 812-002-0630, 812-002-0635, 812-003-0155, 812-005-0270, 812-012-0110, 812-012-0130
Rules Amended: 812-001-0200, 812-002-0140, 812-002-0143, 812-002-0420, 812-002-0580, 812-002-0640, 812-002-0760, 812-003-0150, 812-003-0160, 812-003-0170, 812-003-0175, 812-003-0180, 812-003-0190, 812-003-0200, 812-003-0240, 812-003-0250, 812-003-0260, 812-003-0280, 812-003-0290, 812-003-0300, 812-003-0310, 812-003-0380, 812-003-0400, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0560, 812-004-0600, 812-005-0200, 812-005-0210, 812-005-0250, 812-008-0040, 812-008-0060, 812-008-0070, 812-008-0110, 812-009-0140, 812-010-0420, 812-010-0470

Rules Repealed: 812-002-0840

Subject: 812-001-0200 is amended to implement HB 2654: (1) amends the Information Notice to include information about section 5, chapter 648, OL 2007 (HB 2654) which prohibits a lien if a written contract is required and is not used. (2) and (4) are amended to adopt the notices in section 14, chapter 648, OL 2007 (HB 2654). (3) Is amended to adopt the revised form with cite reference corrections made in section 17, chapter 648, OL 2007 (HB 2654), and (6) is amended to revise the cite references.

812-002-0140 is amended to implement chapter 793, OL 2007 (SB 94) that revised the language in ORS 701.139–701.180 to refer to "complaints" rather than "claims." This amendment adjusts CCB rules to reflect this change.

812-002-0143 is amended to implement chapter 793, OL 2007 (SB 94) that revised the language in ORS 701.139–701.180 to refer to "complaints" rather than "claims." This adjusts CCB rules to reflect this change.

812-002-0170 is adopted to define "contractor" as the term is used in new division 12. This term includes both licensed and non-licensed persons or entities.

812-002-0265 is adopted to implement sections 23 & 23a, chapter 648, OL 2007 (HB 2654) that amends ORS 701.005 to define what "exercises management or supervisory authority over the construction activities of the business" means regarding the RMI.

812-002-0420 is amended to clarify when the agency will backdate a license.

812-002-0580 is amended to include an individual who files an employee complaint under ORS 701.140(4), which provides for a complaint "by a person furnishing labor to a contractor" to the definition of "person."

812-002-0630 is adopted to define what "reinstate" a license means.

812-002-0635 is adopted to define what "reissue" a license means.

812-002-0640 is amended to clarify when the agency will backdate a license and to implement chapter 203, OL 2007 (HB 2309) that allows for bond alternatives for nonprofits rehabilitating drug houses (Meth).

812-002-0760 is amended to implement chapter 511, OL 2007 (SB 605) that amends the definition of "contractor" to include cleaning or servicing of chimneys and to implement chapter 541, OL 2007 (HB 2117A) that changes "landscape contractor" to "landscape contracting business."

812-002-0840 is repealed Section 7, chapter 648, OL 2007 (HB 2654) requires the agency to adopt rules defining standard terms of written contracts. This amendment repeals OAR 812-002-0840 so that elements of this definition can be incorporated into new rule OAR 812-012-0100.

812-003-0150, 812-003-0155, 812-003-0160, 812-003-0175, 812-003-0180, 812-003-0190, 812-003-0260, 812-003-0280, 812-003-0290, 812-003-0310, 812-003-0380, 812-003-0400, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0600, 812-005-0200, 812-005-0210, 812-005-0250, 812-010-0420 and 812-010-0470 are amended to implement chapter 203, OL 2007 (HB 2309) that allows for bond alternatives for nonprofit organizations rehabilitating drug houses (Meth). Establishes rules for letters of credit or cash deposits.

812-003-0170 is amended to implement chapter 648, OL 2007 (HB 2309) that allows for bond alternatives for nonprofit organizations rehabilitating drug houses (Meth) and to implement chapter 648, OL 2007 (HB 2654) that increases the bond amounts by $5,000 for initial licenses issued on or after January 1,2008.

812-003-0200 is amended to implement section 19, chapter 648 OL 2007 (HB 2654) requiring liability insurance to have completed operations coverage.

812-003-0240 is amended to implement chapter 541, OL 2007 (HB 2117A) that changes "landscape contractor" to "landscape contracting business."

812-003-0250 is amended to eliminate a conflict between CCB statute and workers' compensation statute. The amendment exempts persons who perform services on a volunteer basis for nonprofit, religious, charitable or relief organizations from workers' compensation insurance requirements.

812-003-0300 is amended to clarify consequences when a licensed is lapsed and to clarify backdating, reissue and reinstatement.

812-004-0560 is amended to comply with section 4(4), chapter 288, OL 2007 (HB 2423), that requires that if an order is issued upon default, the order must be based on a record that consists of all materials submitted by the party the order is adverse to.

812-005-0270 is adopted to implement section 23 & 23a, chapter 648, OL 2007 (HB 2654) that amends ORS 701.005 requiring applicants or licensees to submit evidence that the RMI performs management or supervisory authority over the construction activities of the business.

812-008-0040 is amended to delete certification as a member of a professional home inspector association certified by the agency because the agency does not certify membership criteria.

812-008-0060, 812-008-0070 and 812-008-0110 are amended to implement chapter 222, OL 2007 (SB 95) that amended ORS 701.350 to set a fee for issuance of an initial two-year certificate for home inspector certification.

812-009-0140 is amended to comply with section 4(4), chapter 648, OL 2007 (HB 2423), which requires that if an order is issued upon default, the order must be based on a record that consists of all materials submitted by the party the order is adverse to.

Division 12 (Contractor Duties) is adopted to implement chapter 648, OL 2007 (HB 2654).

812-012-0110 is adopted to implement section 7, chapter 648, OL 2007 (HB 2654) that require the agency to adopt rules defining standard terms of write contracts effective 1/1/08. This rule defines those terms. Section 14, chapter 648, OL 2007 (HB 2654) authorizes the board to adopt rules specifying the time and manner of delivery of the Consumer Notice Form and Notice of Procedure and requiring a contractor to maintain evidence of delivery of these notices. Requiring the contractor to maintain a copy of the contract is part of the evidence of a delivery of these notices.

812-012-0130 is adopted to implement section 7, chapter 648, OL 2007 (HB 2654) regarding delivery and proof of delivery of consumer notice.

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 4, 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 4, 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

812-002-0140
Complaint

"Complaint," as used in ORS chapter 812, means a complaint filed and processed under ORS 701.139—701.180. Complaints are classified by type as follows:

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

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

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

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

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

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

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 87.058, 87.093 & 701
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0143
Complainant

"Complainant" means a person who files a complaint against a contractor under ORS 701.139 to 701.180.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.139-701.180
Hist.: CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0170
Contractor

"Contractor" has the same meaning as that term is given in ORS 701.005. Contractors include persons who are and who are not licensed under ORS chapter 701.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0265
Exercises Management or Supervisory Authority Over the Construction Activities of the Business

"Exercises management or supervisory authority over the construction activities of the business" as used in ORS 701.005 means meaningfully participating in:

(1) The administration of construction contracts performed by the business; or

(2) The administration of the day-to-day operations of the business.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0420
Lapse in License

"Lapse in license" as used in ORS 701.065(2)(b)(A), 701.115(4); OAR 812-006-0020(1)(b), and 812-006-0020(2)(b) commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed, reissued or reinstated by the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.065, 701.115 & 701.225
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2003(Temp), f. & cert. ef. 7-9-03 thru 1-3-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0580
Person

"Person" means:

(1) An individual, including, but not limited to a self-employed individual;

(2) A partnership, joint venture, limited liability partnership, or limited partnership;

(3) A corporation;

(4) A trust;

(5) A limited liability company; or

(6) Other entity.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 87.005, 87.093, 445.080, 656.021, 656.029 & 701
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0630
Reinstate

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0635
Reissue

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

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0640
Renewal

"Renewal" (of license) as used in ORS 701.065, 701.085 and 701.115 includes but is not limited to the act of submitting a replacement bond, a bond rider, or letter of credit or cash deposit, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education. A renewed license is effective from the last date on which the contractor was licensed, either because the renewal application was submitted and approved prior to the expiration date or because the Board, in accordance with ORS 701.115 and OAR 812-003-0290(3)(b), designated the last date on which the contractor was licensed as the effective date of licensure where a lapse in licensure occurred.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 670.410, 701.055, 701.065, 701.075, 701.105, 701.115, 701.125 & 701.130, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-002-0760
Work as a Contractor Includes

"Work as a contractor", as used in ORS 701.055(1) includes, but is not limited to:

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

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

(3) Construction management.

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

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

(6) Inspection of cross connections and testing of backflow prevention devices performed by persons licensed under ORS 448.279 by the Health Division except when performed by a person licensed as a landscape

contracting business as provided under ORS 671.510 through 671.710 or when performed by an employee of a water supplier as defined in ORS 448.115.

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

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

(9) Shoring.

(10) Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 448.279, 448.115, 671.510 - 671.710 & 701.055
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0150
Bonds Generally

(1) A properly executed bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(b) Include the following:

"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond.This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 70l, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation. This bond shall not be valid for purposes of licensing in accordance with ORS chapter 70l unless filed with the Construction Contractors Board within sixty (60) days of the date shown below."

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0155
Letters of Credit or Cash Deposits, Generally

(1) A properly executed letter of credit or cash deposit authorized under section 2, chapter 203 (HB 2309) must:

(a) Be signed by an authorized agent of the issuing financial institution, must bear the financial institution's account number, and must be filed within the time stated on the letter of credit or cash deposit. Additionally, the agency may require the licensee and financial institution to use the most recent revision of the letter of credit or cash deposit form.

(b) Include the following:

"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

"This letter of credit or cash deposit is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

"This letter of credit or cash deposit shall be one continuing obligation, and the liability of the financial institution for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this letter of credit or cash deposit."This letter of credit or cash deposit shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 70l, or until released by the Oregon Construction Contractors Board. The financial institution may be relieved of further liability for work performed on contracts entered into only after the release by the Oregon Construction Contractors Board. Release of the letter of credit or cash deposit shall not limit the responsibility of the financial institutions for final orders relating to work performed during the work period of a contract entered into prior to the release."This letter of credit or cash deposit shall not be valid for purposes of licensing in accordance with ORS chapter 70l unless filed with the Construction Contractors Board within ten (10) days of the date shown below."

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the letter of credit or cash deposit required under ORS 701.085 is in effect, the agency shall provide notice to the financial institution that issued the letter of credit or cash deposit. The financial institution must hold the letter of credit or cash deposit until final disposition of the complaint.

(3) Letters of credit or cash assignment documents received at the agency office from a financial institution via electronic facsimile may be accepted as original documents. The financial institution must provide the original documents to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0170
Bond, Letter of Credit or Cash Deposit

(1) Except as provided in subsection (2) below, a surety bond, letter of credit or cash deposit required under ORS 701.085 must be in one of the following amounts:

(a) For a General Contractor — All Structures: $15,000;
(b) For a General Contractor — Residential: $15,000;
(c) For a Specialty Contractor — All Structures: $10,000;
(d) For a Specialty Contractor — Residential: $10,000;
(e) For a Limited Contractor: $5,000;
(f) For an Inspector: $10,000;
(g) For a Licensed Developer: $15,000.

(2) Effective January 1, 2008, a surety bond, letter of credit or cash deposit required under ORS 701.085 for new license applicants must be in one of the following amounts:

(a) For a General Contractor — All Structures: $20,000;
(b) For a General Contractor — Residential: $20,000;
(c) For a Specialty Contractor — All Structures: $15,000;

(d) For a Specialty Contractor — Residential: $15,000;

(e) For a Limited Contractor: $10,000;

(f) For an Inspector: $15,000;

(g) For a Licensed Developer: $20,000.

(3) A contractor may obtain or maintain a bond, letter of credit or cash deposit in an amount that exceeds the amount required under section (1) of this rule if the bond, letter of credit or cash deposit obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0175
Increased Bond, Letter of Credit or Cash Deposit Requirement, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond, letter of credit or cash deposit in an amount up to five times the amount required for the category of license under OAR 812-003-0170, if:

(a) The business has unpaid debts under a final order or arbitration award of the board;

(b) An owner or officer of the business has unpaid debts under a final order or arbitration award of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order or arbitration award of the board and such debt remains unpaid.

(2) For purposes of this rule, "owner" means an "owner" as defined in ORS 701.077 and OAR 812-002-0537.

(3) For purposes of this rule, "officer" means an "officer" as defined in OAR 812-002-0533.

(4) Debts due under a final order or arbitration award of the board include amounts not paid by a surety or financial institution on complaints.

Stat. Auth.: ORS 670.310, 701.085(8) & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 4-2006(Temp), f. & cert. ef. 3-9-06 thru 9-5-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

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

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

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

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

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

(5) Immediately upon cancellation of the bond, or cancellation without an authorized release by the agency of a letter of credit or cash deposit the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.135(4)(a)(A), informing the contractor that the license has been suspended.

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

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

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085 & 701.135, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

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

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

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

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

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

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

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0200
Insurance Generally

(1) An applicant for a license, renewal or reissue shall certify that the applicant:

(a) Has procured the minimum amount of insurance per occurrence as required by ORS 701.105 and as provided in OAR 812-002-0380 from an insurer transacting insurance in Oregon; and

(b) Will continue to meet those insurance requirements for as long as the applicant is licensed.

(2) Licensees shall provide a certificate of insurance or other evidence of insurance as required by the agency upon request or prior to the expiration date of their insurance.

(3) A certificate of insurance must include:

(a) The name of the insurer;

(b) Policy or binder number;

(c) Effective dates of coverage;

(d) Coverage amount per occurrence;

(e) A statement that products and completed operations coverage is included as required by ORS 701.105(1).

(f) The agent's name, and agent's telephone number; and

(g) The CCB listed as the certificate holder.

(4) If the licensee, in performance of work subject to ORS chapter 701, through failure to comply with this rule, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurer had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to $1,000 in addition to such other action as may be taken under ORS 701.135.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.105
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0240
Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

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

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

(3) Direction and Control Test.

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

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing servic-

es include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

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

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

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

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

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

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

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

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

(E) Construction contractors licensed under ORS chapter 701.

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

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

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

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

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

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

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

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

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

(7) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.075(1)(j).

Stat. Auth.: ORS 670.310, 670.605 & 701.235

Stats. Implemented: ORS 670.600, 670.600, 670.605 & 701.075

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 1-2007, f. 1-25-07, cert. ef. 2-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0250

Exempt and Nonexempt Class of Independent Contractor Licenses

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

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

(a) Sole proprietorships with one or more employees;

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

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

(d) Joint ventures with one or more employees;

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

(f) Limited partnerships with one or more employees;

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

(h) Corporations with one or more employees;

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

(j) Trusts with one or more employees;

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

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

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

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

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

(a) Is in compliance with ORS chapters 316, 656, and 657 and is providing the employees with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt contractor.

(4) Except as provided in section (5) and (6) of this rule, entities shall supply the following employer account numbers as required under ORS 701.075:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities are not required to supply employer account numbers under section (4) of this rule except as follows:

(a) Partnerships, joint ventures, limited liability partnerships, and limited partnerships that have no employees and are not directly involved in construction work may be classed as exempt when the entity certifies that all partners or joint venturers qualify as nonsubject workers under ORS 656.027. Such partnerships or joint ventures must supply the Internal Revenue Service employer identification number or federal identification number.

(b) Corporations qualifying as exempt under ORS 656.027(10) must supply the Oregon Employment Department and Oregon Department of Revenue combined business identification number unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation.

(c) Corporations qualifying as exempt must supply the Internal Revenue Service employer identification number or federal identification number.

(d) Limited liability companies must supply the Internal Revenue Service employer identification number or federal identification number unless the limited liability company has only one member and has no employees.

(6) Nonexempt entities that qualify under ORS 656.027(20) need not supply an Oregon workers' compensation account number or workers' compensation insurance carrier name and policy or binder number.

(7) Out-of-state applicants with no Oregon subject workers as provided in ORS 656.126 and OAR 436-050-0055 must supply their home state account numbers, and need not supply an Oregon workers' compensation account number.

Stat. Auth.: ORS 183.310-183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 701.035 & 701.135

Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0002; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0260
Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name, date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust; or

(G) All members of a limited liability company, and if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees or members of the entity that is a member of the limited liability company that is the subject of this paragraph.

(d) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;

(e) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(f) Category of license requested as required under OAR 812-003-0130;

(g) Name and identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.072 or is otherwise exempt under Division 6 of these rules;

(h) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(i) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(j) Litigation, complaint, and licensing history;

(k) Criminal background;

(l) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee; and

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0150; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.072, 701.075, 701.085, 701.105, & 701.125, sec. 2, ch. 203, OL 2007 (HB 2309)

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0280
Renewal and Reissue of License

(1) Notwithstanding OAR 812-003-0300(3), a license may be renewed or reissued upon:

(a) The applicant's completion of the renewal form or application form prescribed by the agency;

(b) Payment of the fee or fees,

(c) Receipt of the required certification of insurance coverage, and

(d) A non-cancelled bond, letter of credit or cash deposit on file. If it appears to the agency that the required surety bond has been cancelled, the applicant must submit a reinstatement from the surety on the cancelled bond or a new, original, continuous until cancelled surety bond. If it appears to the agency that the required letter of credit or cash deposit has been cancelled, the applicant must submit a new bond, letter of credit or cash deposit.

(2) A licensee may qualify for Limited Contractor license and reduce the bond to $5,000 upon certification that:

(a) The licensee will not enter into contracts that exceed $5,000;

(b) The licensee's gross business sales of work subject to ORS chapter 701 was less than $40,000 in the previous twelve months and is expected to be less than $40,000 during the next twelve months; and

(c) The licensee agrees that if the licensee's gross construction business volume exceeds $40,000 during the coming year the licensee will immediately increase the bond amount to the amount required under OAR 812-003-0170, and increase the insurance coverage if necessary, to meet the requirements of the appropriate license category.

(3) A bond may be reduced under section (2) of this rule by submitting a decrease rider to an existing bond or submitting a new bond. The effective date on either the decrease rider or the new bond must be the license renewal date or after.

(4) The agency may refuse to authorize a reduced bond amount under section (2) of this rule until any pending complaint against the licensee is resolved.

(5) If a licensee provides a decrease rider to an existing bond under section (3) of this rule before the license renewal date, the agency will determine the effective date to be the date of renewal or reissue.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 701.085, 701.105, 701.115, 701.125, Sec. 2, Ch. 203, OL 2007 (HB 2309)

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0290
Effective Dates of Renewal or Reissue of License

(1) Except as provided in section (2) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

(2) The effective date of a license may be prior to the date of receipt of all documents and fees required by law and by these rules if the agency determines that delays in receipt of required documents or fees were caused by agency error.

(3) The effective date of renewal shall be the previous license expiration date when:

(a) All requirements for renewal are met prior to the previous license expiration date; or

(b) All requirements for renewal are met after the previous expiration date, including but not limited to, proof of insurance coverage and bond or letter of credit or cash deposit coverage during the period of lapse, providing the contractor applies for renewal not more than one year after the license lapses.

(4) If the contractor applies for renewal less than one year after the license lapses and does not have proof of insurance coverage and bond or letter of credit or cash deposit coverage during the period of lapse, the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, submission of a renewal form, payment of the fee, a newly issued continuous until canceled bond, or reinstatement of an existing continuous until canceled bond, or letter of credit, or cash deposit, and certification of insurance coverage.

(5) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, submission of a

new application form, payment of the fee, a newly issued continuous until canceled bond, or reinstatement of an existing continuous until canceled bond, or letter of credit, or cash deposit, and certification of insurance coverage.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04, CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0300
Consequence of Lapse in License

(1) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred until the date the license is:

(a) Backdated and renewed;

(b) Reissued; or

(c) Reinstated.

(2) During a period of lapse, the entity shall not perform the work of a contractor.

(3) Except as provided in OAR 812-003-0290(3)(b), a period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse.

(4) A license that has lapsed for 24 months or more must be issued a new identifying license number.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.055, 701.115 & 701.135
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0310
License Cards

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety bond, letter of credit or cash deposit remains in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS 701.105 remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

(3) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(4) If a license becomes invalid, the agency may require the return of the license and pocket card.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115, sec. 2, ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0380
Converting From Inactive Back to Active Status

(1) To convert from an inactive status to an active status, the licensee must:

(a) Submit a request to convert to an active status on forms provided by the agency; and

(b) Comply with section (3), (4) or (5) of this rule as applicable.

(2) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:

(a) Submit the fees required under OAR 812-003-0140;

(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(3) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:

(a) Submit all fees to date as required by OAR 812-003-0140 and 812-003-0320;

(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(d) Comply with all other licensing requirements prescribed by the Board.

(4) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:

(a) Request the conversion within two years from the date of lapse;

(b) Comply with all licensing requirements prescribed by the Board;

(c) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(d) Submit all fees required under OAR 812-003-0140.

(5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.115 & 701.125, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-003-0400
Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Complaint

If a surety company or financial institution pays all or part of a complaint against a licensed contractor from the contractor's surety bond, letter of credit or cash deposit, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond, letter of credit or cash deposit in the amount required under ORS 701.085(2) through (5) unless the agency requires a higher amount under ORS 701.085(7) or (8); or

(2) A certificate from the contractor's surety company or financial institution that the surety company or financial institution remains liable for the full original penal sum of the bond, letter of credit or cash deposit, notwithstanding the payment from the surety bond letter of credit or cash deposit.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0040; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-004-0240
Exhaustion of Surety Bond, Letter of Credit or Cash Deposit

The agency may continue processing a complaint even though the surety bond, letter of credit or cash deposit related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 813.415, 183.460, 701.085, 701.145 & 701.150, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-004-0250
Award of Complaint-Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a complaint that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

(a) Attorney fees;

(b) Court costs;

(c) Interest;

(d) Costs to pursue litigation or the complaint;

(e) Service charges or fees; or

(f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien complaint may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner complaint may include interest expressly allowed as damages under a contract that is the basis of the complaint.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a complaint processing fee paid by the complainant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbitrator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

(A) That was initiated by the respondent; or

(B) That the agency required the complainant to initiate under ORS 701.145 because of the nature or complexity of the complaint.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145 & 701.146, Sec. 2, Ch. 203, OL 2007 (HB 2309)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-004-0260

Order Closing a Complaint

(1) If the agency closes a complaint because the complainant did not act in response to a request from the agency, the closure of the complaint is an order that is not an order in a contested case. An order to close a complaint is subject to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a complaint under this rule only if it complies with the following:

(a) The agency must include notice in its request to the complainant that failure to act as requested may result in closure of the complaint and that closure of the complaint will prevent access to the bond, letter of credit or cash deposit.

(b) The agency may not close the complaint sooner than 14 days after giving the notice required in subsection (2)(a) of this rule.

(c) The agency must notify the parties to the complaint that the complaint is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a complaint closed under this rule if the record of the complaint contains evidence that shows that the reason the complainant did not act as requested by the agency was due to excusable neglect by the complainant. The agency may reopen the complaint:

(a) In response to a motion for reconsideration; or

(b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the complaint.

(4) At the agency's discretion, the agency may refer a complaint to the Office of Administrative Hearings for a contested case hearing on whether closure of the complaint under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a complaint under this rule before seeking judicial review of the order.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.480, 701.140, 701.145, 701.147, Sec. 2, Ch. 203, OL 2007 (HB 2309)

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-004-0560

General Requirements for Proposed Default Order or Referral to Office of Administrative Hearings, Hearing Request

(1) A proposed default order on a complaint issued by the agency must include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for arbitration or a contested case hearing must:

(a) Comply with 812-004-0590, which regulates whether the complaint will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 before the agency's referral of the complaint to the Office of Administrative Hearings.

(3) If the agency refers a complaint to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the complainant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the statement of damages or the Breach of Contract Complaint that limits the amount that the respondent may be ordered to pay the complainant and state the amount that the order is limited to under OAR 812-009-0160 and 812-010-0420.

(b) The agency must serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a complainant under OAR 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new statement of damages under OAR 812-009-0020 and 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date the agency mails a proposed default order.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6) A contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record for purposes of a default order under this rule and for purposes of a contested case hearing or arbitration on the complaint. For purposes of this rule, the agency's file consists of all documents submitted by parties, all agency correspondence with the parties and any other material designated by the agency as part of the record.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147, Sec. 2, Ch. 203, OL 2007 (HB 2309)

Hist.: 1BB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-004-0600

Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency may notify the surety company or financial institution of complaints pending.

(2) The agency must notify the surety company or financial institution of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint.

(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all com-

plaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into.

(5) If the respondent maintains multiple surety bonds, letters of credit or cash deposits, the following apply:

(a) If multiple surety bonds, letters of credit or cash deposits were in effect when the work period began, payment must be made from all surety bonds, letters of credit or cash deposits in effect.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but multiple surety bonds, letters of credit or cash deposits subsequently became effective during the work period of the contract and the effective dates of the surety bonds, letters of credit or cash deposits are substantially the same, payment must be made from multiple surety bonds, letters of credit or cash deposits.

(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond, letter of credit or cash deposit must be in the same proportion that the penal sum of the surety bond, letter of credit or cash deposit bears to the total of the penal sums of the multiple surety bonds, letters of credit or cash deposits.

(6) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (3) of this rule or multiple surety bonds, letters of credit or cash deposits under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, letters of credit or cash deposits payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(7) The full penal sum of a bond, letter of credit or cash deposit must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond, letter of credit or cash deposit amount required under OAR 812-003-0170.

(8) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(9) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(10) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235
Stats. Implemented: ORS 701.150, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-005-0200
Unpaid Final Orders that Exceed the Contractor's Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.085(7), the agency must suspend the license of a licensee if the agency issues a final order on a complaint that exceeds the amount of the bond, letter of credit or cash deposit available to pay the order.

(2) A suspension issued under section (1) of this rule must remain in effect until the unpaid amount of the order is paid or until the license of the licensee expires.

(3) The agency may not reinstate or renew a license suspended under section (1) of this rule until the final order described in section (1) of this rule and any subsequently issued order that is unpaid, is paid, or discharged in bankruptcy.

(4) As a condition of ending a suspension or renewing a license that was suspended under ORS 701.085(7) and section (1) of this rule, the agency may require a licensee to file a bond, letter of credit or cash deposit up to five times as much as the amount required of a licensee under ORS 701.085(2) to (5). The amount of the increased bond, letter or credit or cash deposit required must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.085.

(b) If the sum of the unpaid final orders described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, sec. 2, ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-005-0210
Conditions to Require an Increased Bond, Letter of Credit or Cash Deposit

(1) Under ORS 701.085(8), the agency may require a bond, letter of credit or cash deposit of up to five times the normally required amount, if it determines that a current or previous license of an owner or officer, as those terms are defined in division 2 of these rules, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance.

(b) Five or more breach of contract complaints filed under ORS 701.139 to 701.180 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(2) that exceeds the amount of the bond, letter of credit or cash deposit.

(2) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.085.

(b) If the sum of the unpaid final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.085.

(3) The amount of increased bond, letter of credit or cash deposit the agency may require under subsection (1)(b) of this rule will be based on the number of complaints filed and the time period that the complaints were received as follows:

(a) Two times the bond, letter of credit or cash deposit amount required under ORS 701.085 if five or more complaints are received in any twelve-month period.

(b) Three times the bond, letter of credit or cash deposit amount required under ORS 701.085 if five or more complaints are received in any six-month period.

(c) Five times the bond, letter of credit or cash deposit amount required under ORS 701.085 if five or more complaints are received in any three-month period.

(4) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the bond amount required under ORS 701.085.

(b) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085.

(c) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit five times the bond, letter of credit or cash deposit amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.005, 701.077 & 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(a)-(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06: CCB 7-2006, f. & cert. ef. 6-23-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-005-0250
Repeal of Increased Bond, Letter of Credit or Cash Deposit Requirement

(1) Under ORS 701.085(7) or (8) after two years of operating under the increased bond, letter of credit or cash deposit, an applicant or licensee may submit a written request to the Board appealing the agency's determination requiring an increased bond, letter of credit or cash deposit amount.

(2) A licensee required to file a bond, letter of credit or cash deposit of up to five times the normal amount may petition the agency to be relieved of that obligation after demonstrating to the agency two full years of acceptable business practices while having posted the increased bond, letter of credit or cash deposit.

(3) Petitions for return to normal bond, letter of credit or cash deposit requirements under ORS 701.085 must be made in writing and delivered to the agency. Such petitions must provide a full explanation why the licensee no longer poses an increased risk to the public and should be granted a license at the regular bond, letter of credit or cash deposit amount.

(4) The agency shall consider the following factors while considering the licensee's petition:

(a) After the increased bond, letter of credit or cash deposit requirement, whether the petitioner has:

(A) A history of paying Dispute Resolution Services complaints within ten (10) days of the order becoming final; or

(B) Incurred any unpaid court judgments;

(b) A review of the petitioner's CCB enforcement/discipline history; and

(c) A criminal history background check.

(5) The agency shall notify the licensee or applicant in writing within 30 days of the agency's decision regarding the petition. If the agency proposes to deny the petition, the agency shall notify the licensee or applicant of the basis for its proposed denial and provide notice and an opportunity for hearing, as provided for in ORS 183.415.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2006, f. & cert. ef. 9-5-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-005-0270
Duty to Submit Evidence of Management or Supervisory Authority

Upon request from the agency, a licensee must submit evidence to support compliance with the requirement that a responsible managing individual of the licensee exercises management or supervisory authority over the construction activities of the business as defined under ORS 701.005 and OAR 812-003-0265.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005 & 701.078
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-008-0040
Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

(a) An application on a form provided by the agency;

(b) The fee established in OAR 812-008-0110;

(c) If applicable, CCB number and name of employing licensee;

(d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and

(e) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a General Contractor, Specialty Contractor, or Inspector;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university, (10 points maximum).

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university, (10 points maximum).

(c) One point for each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector, (10 points maximum).

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities, (10 points maximum).

(4) The applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country (16 points maximum).

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (16 points maximum).

(c) One-half point for each letter of recommendation from an Oregon-certified home inspector (4 points maximum).

(d) One point for each building codes certification issued by a government agency (5 points maximum).

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 2-1999, f. & cert. ef. 5-4-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 12-2000(Temp), f. & cert. ef 10-16-00 thru 4-13-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 2-2001, f. & cert. ef 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2001(Temp), f. & cert. ef. 10-31-01 thru 4-29-02; CCB 3-2002, f. & cert. ef. 3-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-008-0060
Certification Issuance

(1) The effective date of the certificate will be the date applicant meets all agency requirements, including but not limited the receipt of the fee required under OAR 812-008-0110(4).

(2) A unique certification number will be assigned to each certificate.

(3) All certificates shall be issued in the name of the individual who passed the test.

(4) An application for certification may be withdrawn upon receipt of a written request to the agency at any time prior to the issuance of the certification.

(5) When granted, the certificate shall be mailed to the applicant.

(6) If denied, the agency shall state, in writing, the reasons for denial.

(7) A certificate shall be non-transferable and shall be effective for two years from date of issue.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-008-0070
Requirements for Renewal of Certification

An Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(1) A properly completed renewal application on an agency form; and

(2) The renewal fee as required under OAR 812-008-0110; and

(3) Copies of completion certificates listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-008-0110
Prescribed Fees

The following prescribed fees are established:

(1) Application to become certified, $50.

(2) Test, first attempt, $50.

(3) Test, each sitting to retake one or more sections, $25.

(4) Initial two-year Certification, $150.

(5) Certification renewal (two years), $150.

(6) Refunds:

(a) 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.

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of $40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of $25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350
Stats. Implemented: ORS 293.445, 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-13-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-009-0140
Failure to Appear

(1) "Order" as used in this rule means a proposed and final order an administrative law judge is authorized to issue under OAR 812-009-0160 or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) If the administrative law judge notified the parties to a complaint of the time and place of a hearing on the complaint and a party did not appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3).

(3) If a complainant does not appear at a hearing, an administrative law judge may dismiss a complaint under section (2) of this rule if the administrative law judge finds that the record does not contain sufficient evidence to support the complaint.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145, 701.147, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-010-0420
Time, Form, and Scope of Award; Limitation on Award

(1) An award must be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award must be in writing and must be signed or otherwise authenticated by the arbitrator.

(4) The award must fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award must contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent statement of damages or amended statement of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Breach of Contract Complaint filed by the party under OAR 812-004-0340, if no statement of damages was filed.

(6) When a complainant makes a complaint against a respondent's surety bond, letter of credit or cash deposit required under ORS 701.085 and the parties to the complaint have not agreed that the arbitration will bind the complainant, only the complainant may assert damages. The arbitrator may award damages to the complainant, but not to the respondent. The respondent may assert amounts owed to it as an offset under section (7) of this rule.

(7) An arbitrator must consider any amounts owed by a party alleging damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party alleging the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a statement of damages as to the offset. If the party asserting the offset did not file a statement of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a complaint or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond, letter of credit or cash deposit required under ORS 701.085 and other amounts that are not payable from the bond, letter of credit or cash deposit under OAR 812-004-0250 or any other law, the award must segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(10) If a limitation on damages under section (4) is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, 701.145 & 701.148
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-010-0470
Payments from Licensee's Bond, Letter of Credit or Cash Deposit

(1) If an award or amended award requires payment by a licensee and the licensee does not pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond, letter of credit or cash deposit to the extent payment is authorized under ORS 701.150. Payment from the bond, letter of credit or cash deposit is subject to the laws in ORS chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.150, Sec. 2, Ch. 203, OL 2007 (HB 2309)
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05, Renumbered from 812-010-0440; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-012-0110
Terms of Written Contract

(1) If a contractor is required to have a written contract under section 7, chapter 648, Oregon Laws 2007 (HB 2654), the written contract or attached addendum to the written contract must contain the following:

(a) A statement that the contractor is licensed by the Construction Contractors Board.

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(c) Effective July 1, 2008, an acknowledgment of a written offer of a warranty, if an offer is required by section 11, chapter 648 Oregon Laws 2007 (HB 2654), and indication of the acceptance or rejection of the offered warranty;

(d) A summary of the notices required under ORS 87.093 or under rules adopted under sections 13 (2) and 14 of chapter 648, Oregon Laws 2007 (HB 2654).

(e) Effective July 1, 2008, acknowledgment of the receipt of the maintenance information required by the board under section 13 of chapter 648, Oregon Laws 2007 (HB 2654);

(f) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

(g) Customer's name and address;

(h) Address where the work is to be performed;

(i) A description of the work to be performed;

(j) Price and payment terms;

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310 & 701.235, Sec. 7, 13 & 14, ch. 648, OL 2007 (HB 2654)
Stats. Implemented: Sec. 7, 13 & 14, ch.r 648, OL 2007 (HB 2654)
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

812-012-0130
Delivery and Proof of Delivery of Consumer Notice

(1) If a contractor is required to have a written contract under section 7, chapter 648, Oregon Laws 2007 (HB 2654), the consumer notices described in OAR 812-001-0200 shall be delivered on or before the date the contact is entered into.

(2) If a contractor agrees to do construction work, but is not required to have a written contract under section 7, chapter 648, Oregon Laws 2007 (HB 2654), the contractor, at the time an agreement to do the work is entered into, must deliver to the property owner contracting for residential repair, remodel or construction work the following:

(a) Consumer Protection Notice; and

(b) Notice of Procedure.

(3) The contractor shall maintain proof of delivery of the Consumer Protection Notice, Notice of Procedure, and the notice required under ORS 87.093, if required, for a period of two years after the contract was entered into. Proof of delivery of the notices shall include, but not be limited to:

(a) A signed copy of the notices;

(b) An unambiguous phrase in the written contract that acknowledges receipt of the notices and that is initialed by the owner; or

(c) Copies of the written contract, if the notices are fully contained in the written contract.

Stat. Auth.: ORS 670.310 & 701.235, Sec. 7, 13 & 14, ch. 648, OL 2007 (HB 2654)
Stats. Implemented: Sec. 7, 13 & 14, ch.r 648, OL 2007 (HB 2654)
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08

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Rule Caption: Allow agency to restrict hearing to contested case without arbitration option.
Adm. Order No.: CCB 8-2007
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 812-004-0590
Subject: 812-004-0590 is amended to allow the agency to refer a complaint to the Office of Administrative Hearings for a contested case without an option for an arbitration where the agency finds that would provide a better resolution to the complaint.
Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-004-0590
Referral of Complaint to Arbitration or Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings conducts a hearing on a complaint:

(a) The hearing must be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing must be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the complaint makes a timely written request under section (4) of this rule that the complaint be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the complaint be heard as a contested case.

(2) Subject to section (3) of this rule, a complaint must be decided in court if:

(a) The complainant files a complaint in court that alleges the elements of the complaint in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the complaint and that allows the complainant to file a response alleging the elements of the complaint.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limit in this rule constitutes waiver of the right to have the complaint decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a complaint be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a complaint to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the complaint be heard as a contested case under subsection (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the complaint.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the complaint being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the complainant in a complaint does not seek $1,000 or more, a hearing on the complaint may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the complaint under ORS 701.139 to 701.180 is at issue;

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the complaint; or

(c) The agency determines, in its discretion, that a contested case hearing is in the interest of one or more of the parties or of the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.145 & 701.147
Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 8-2007, f. 12-13-07, cert. ef. 1-1-08

Department of Administrative Services
Chapter 125

Rule Caption: Suspension of all Measure 37 Administrative Rules.
Adm. Order No.: DAS 4-2007(Temp)
Filed with Sec. of State: 12-6-2007
Certified to be Effective: 12-6-07 thru 6-2-08
Notice Publication Date:
Rules Suspended: 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105
Subject: On November 6, 2007 the voters approved Ballot Measure 49. Ballot Measure 49 modifies Ballot Measure 37 (2004) and will take effect on December 6, 2007. Measure 37 no longer exists. All Measure 37 Administrative Rules are being temporarily suspended, and the process for permanent repeal will begin.
Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-145-0010
Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0020
Definitions

The following definitions apply to this division:

(1) Agency has the meaning provided by ORS 183.310.

(2) Claim means a written demand for compensation under ORS 197.352.

(3) Claimant means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) Department means the Department of Administrative Services.

(5) DLCD Regulation has the meaning provided by OAR 660-041-0010.

(6) Land Use Regulation has the meaning provided in ORS 197.352. An Existing State Land Use Regulation means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency, with an effective date before December 2, 2004. A New State Land Use Regulation means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency, with an effective date on or after December 2, 2004.

(7) Lot means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(8) Measure 37 means ORS 197.352.

(9) Parcel means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and ORS 215.010.

(10) Property means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.

(11) Reduction in Fair Market Value means the decrease (if any) in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.

(12) Registry means the database of information about Claims required by OAR 125-145-0060.

(13) Regulating Entity means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 197.352, 293, 125 - 145
Stats. Implemented: ORS 197.352, 306
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; DAS 7-2006(Temp), f. & cert. ef. 12-6-06 thru 6-4-07; DAS 1-2007, f, 6-1-07, cert. ef. 6-5-07; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0030
Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner. A Claim must contain sufficient information, as described in OAR 125-145-0040, for review of the Claim by the Department or a Regulating Entity and may be submitted on a form available from the Department at the address provided in this rule or from the Department's website.

(2) Claims must be submitted to the Department at:
1225 Ferry Street SE, U160
Salem, OR 97310-4292
Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under section 4 of Measure 37 on the date a Claim is received by the Department.

(4) The Department may send written notice to the person who submitted the Claim noting the date that Claim was received by the Department, the Regulating Entity or Entities reviewing the Claim and the recipients of any notices sent to third parties under OAR 125-145-0080.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0040
Contents of a Claim

A Claim must contain the information described in subsections (1)–(8) of this rule, along with the information described in subsection (9), (10), (11) or (12), whichever is applicable. A Claim should contain the information described in subsections (13) and (14) of this rule. A Claim that does not contain the required information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The location of the Property by reference to:

(a) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(b) The street address of the Property if one has been assigned;

(c) The county the Property is located in; and

(d) If the Property is located within the boundary of a city, the city the Property is located in.

(3) Evidence that the Claimant owns an interest in the Property that includes the legal right to carry out the use of the Property that the Claimant alleges has been restricted, and a copy of the document or documents conveying that interest to the Claimant. In most cases, this will be the deed conveying fee title to the Property to the Claimant, but it may also include a land sale contract or other conveyances.

(4) Evidence of the date the Claimant acquired the ownership interest in the Property and, if the Claim is based on the prior ownership of a family member of the Claimant, the date that the family member acquired an ownership interest in the Property along with evidence of the chain of title from the family member to the Claimant.

(5) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions (CC&Rs), and any other recorded or unrecorded rights applicable to the use of the Property that may affect the Claimant's legal right to carry out the use of the Property that the Claimant alleges has been restricted. This may include a preliminary title report or comparable information from a title company.

(6) The comprehensive land use plan and zoning designation of the Property:

(A) Currently; and

(B) On the date the Claimant acquired the Property.

(7) A description of the Claimant's desired use of the Property that the Claimant alleges is restricted by one or more state Land Use Regulations. If the Claimant has filed a claim with a city or county, the Claim must include a copy of that claim, and a statement as to whether the Claimant's desired use is the same in both claims.

(8)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge." It is a crime under ORS 162.085 to certify the truth of a statement when the person certifying knows the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to $2,500, or both.

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(9) A Claim received by the Department on or before December 4, 2006, must identify the state Land Use Regulation(s) that the Claim is

based on, and include evidence or information that demonstrates the following:

(a) The manner in which the state Land Use Regulation(s) restricts the Claimant's desired use of the Property, compared with how the Claimant (or family member, if applicable) was permitted to use the Property under Land Use Regulations in effect at the time the Claimant (or family member, if applicable) acquired the Property; and

(b) The amount by which the enforcement or enactment of the state Land Use Regulation(s) has caused a Reduction in the Fair Market Value of the Property.

(10) A Claim received by the Department after December 4, 2006 that demands compensation based on one or more Existing State Land Use Regulations must be received by the Department within two years of the date a city, county, Metro, or an Agency applied the Existing State Land Use Regulation as an approval criterion to an application submitted by the owner of the property. These Claims must include evidence or information that demonstrates the amount by which the enactment or enforcement of the state Land Use Regulation has caused a Reduction in the Fair Market Value of the Property, and one or more of the following:

(a) If the Claim is based on a DLCD Regulation, the Claim must include the material required by OAR 660-041-0020(1)(b);

(b) If the Claim is based on an Existing State Land Use Regulation other than a DLCD Regulation, the Claim must include a copy of the final written action by an Agency on a complete application to the Agency, in which Agency determined that the Existing State Land Use Regulation was an approval criterion for the application.

(11) A Claim received by the Department after December 4, 2006 that demands compensation based on one or more New State Land Use Regulations must be received by the Department within two years of the effective date of the New State Land Use Regulation, or within two years of the date the Claimant submitted a complete land use application to a city, a county or Metro in which the New State Land Use Regulation was an approval criterion for the land use application, whichever is later.

(12) If a Claim received by the Department after December 4, 2006 contains a demand for compensation based on both Existing and New State Land Use Regulations, the requirements of both subsections (10) and (11) of this section must be met.

(13) Written permission from the Claimant and all other owners with a right to restrict access to the Property, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it or to verify information necessary to act on the Claim.

(14) Evidence that may be submitted to address the requirements of this section include, but are not limited to, the following: current tax assessor's maps of the Property and the surrounding area; a title report for the Property; an appraisal report for the Property by a certified appraiser; the deed or other instrument conveying the Property to the Claimant; Covenants, Conditions & Restrictions (CC&Rs) relating to the Property; land use applications, staff reports and decisions concerning the Claimant's desired use of the Property; applications for permits, staff reports and decisions concerning the Claimant's desired use of the Property.

Stat. Auth.: ORS 197.352, 293, 125 - 145
Stats. Implemented: ORS 197.352, 306
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; DAS 7-2006(Temp), f. & cert. ef. 12-6-06 thru 6-4-07; DAS 1-2007, f, 6-1-07, cert. ef. 6-5-07; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0045
Additional Information

In addition to the information described in OAR 125-145-0040, the Department and Regulating Entity may consider additional information regardless of its inclusion in a Claim. Such additional information may include but is not limited to the following:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) Information about any Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions related to the Land Use Regulation(s) cited in the claim;

(3) Information about any Land Use Regulation in effect at the time the Claimant, or Claimant's family member if applicable, acquired the property explaining how the use that is now not permitted by any Land Use regulation described in OAR 125-145-0040(7) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

(5) Information about the Property including but not limited to its location, topography, soil types, vegetation or other natural resources or structures located on the property.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0060
Registry of Claims

The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed. Entry of information about a Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Claim as it becomes available:

(1) The name of the Claimant, and the name of the person submitting the Claim, if different;

(2) The location of the Property, including the county and city in which it is located, street address and reference to its township, range, section and tax lot number;

(3) The amount of Reduction in Fair Market Value alleged in the Claim;

(4) The date the Claim was filed;

(5) The date the Claim was entered into the Registry

(6) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or whether the cited Land Use Regulation(s) was modified, removed or not applied;

(7) Additional information deemed appropriate by the Department.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0080
Third Party Participation

(1) The Department shall mail written notice of a Claim to any person or organization that has requested notice, to any person who is an owner of record of real property located within 100 feet of the Property, if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, any neighborhood, or community organization(s) whose boundaries include the site when the city or county in which the site is located provides to the Department or Regulating Entity, contact information for the organization(s).

(2) Any person or organization receiving notice under this rule, or any other person, may submit written comments, evidence and information addressing any aspect of the Claim.

(3) Comments, evidence and information from third parties must be submitted within fifteen (15) days of the date the notice under this rule is sent or information about the Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked on the fifteenth (15th) day or actually delivered to the Department by the close of business on the fifteenth (15th) day.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; DAS 2-2007(Temp), f. 6-11-07, cert. ef. 6-11-07 thru 12-8-07; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0090
Department Review and Decision Process, Forwarding Claim to Regulating Entities

(1) When a Claim is wholly based on Land Use Regulation(s) for which there is no Regulating Entity, the Department shall be the Regulating Entity for purposes of carrying out the process described in OAR 125-145-0100.

(2) Upon receipt of a Claim that is based in whole or in part on Land Use Regulation(s) for which there is a Regulating Entity, the Department shall forward the Claim to the Regulating Entity. When a Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department may consult with one or more Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) with regard to its Land Use Regulation cited in the Claim.

(3) Upon review of the Claim, if the Department or the Regulating Entity determines that it lacks sufficient information to evaluate the Claim, the Department or Regulating Entity may notify in writing the person who submitted the Claim. The written notice shall specify the material or information that would enable the Department or Regulating Entity to evaluate the claim, and shall provide a time certain for Claimant, or the person who submitted the Claim on Claimant's behalf, to submit the material or information. Failure to submit the information requested by the Department or Regulating Entity within the time specified in the notice may result in denial of a Claim.

(4) The Department may issue the final order itself or jointly with the Regulating Entity, or it may authorize a Regulating Entity to issue a final order if, after consulting with the Regulating Entity as required by OAR 125-145-0100(6), the final order modifies, removes or does not apply the Land Use Regulation(s) on which the Claim is based.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0100
Regulating Entity Review and Decision Process

(1) A Regulating Entity that receives a claim from the Department, shall issue a staff report addressing at least the issues listed in subsection (2). The staff report shall be mailed to the Claimant, person who submitted the Claim, if different, and any third parties who submitted comments under OAR 125-145-0080, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(2) The staff report shall address the following issues:

(a) Whether the Claim was timely filed under section 5 of Measure 37;

(b) Whether the Claimant is an owner under section 11(c) of Measure 37;

(c) Whether the Claimant's request for compensation is based on the prior ownership of a family member under section 11(A) of Measure 37;

(d) Whether any of the Land Use Regulations relied on in the Claim are exempt under section 3 of Measure 37;

(e) Whether any of the Land Use Regulations relied on in the Claim restricted the use of the property permitted at the time the owner or family member, if applicable, acquired the Property;

(f) Whether any of the Land Use Regulations relied on in the Claim has the effect of reducing the fair market value of the property and the amount of any such reduction;

(g) Any other issue relevant to evaluation of the Claim, including without limitation the effect of any other land use regulation or other restriction on use of the Property; and

(h) The Regulating Entity's conclusions and recommendation for just compensation or to modify, remove or not apply any of the Land Use Regulation relied on in the Claim to allow a use permitted at the time the owner acquired the property.

(3) The Claimant or the Claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 may submit comments, evidence and information in response to the staff report. Such response must be filed no more than fifteen (15) days after the date the staff report is mailed to the Claimant and any third parties, at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the fifteenth (15th) day, or actually delivered to the Department by the close of business on the fifteenth (15th) day.

(4) The staff of the Regulating Entity shall issue a revised report following receipt of any submissions under subsection (3) of this rule.

(5) The Regulating Entity may recommend approval or denial of a claim based on the revised staff report and any comments, evidence and information submitted to the Department or the Regulating Entity.

(6) The Regulating Entity may issue a final order jointly with the Department, or the Regulating Entity may issue a final order after consultation with the Department if the decision is to modify, remove or not apply Land Use Regulation(s).

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; DAS 2-2007(Temp), f. 6-11-07, cert. ef. 6-11-07 thru 12-8-07; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

125-145-0105
The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Claim shall be based on a written record that includes the following, if available:

(1) The Claim;

(2) The contents of the Registry as to the Claim;

(3) Comments, evidence and information properly submitted by or on behalf of the Claimant or third parties;

(4) Staff reports, evidence and information submitted by the Department and the Regulating Entity;

(5) Response and rebuttal properly submitted by or on behalf of the Claimant or third parties, and;

6) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & OL 2005 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; Suspended by DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; Suspended by DAS 4-2007(Temp), f. & cert. ef. 12-6-07 thru 6-2-08

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Department of Agriculture
Chapter 603

Rule Caption: Require annual testing of all bulls from a Tritrichomonas fetus infected herd.
Adm. Order No.: DOA 19-2007
Filed with Sec. of State: 11-28-2007
Certified to be Effective: 11-28-07
Notice Publication Date: 11-1-2007
Rules Amended: 603-011-0610, 603-011-0620
Subject: Our own Trichomoniasis case studies have revealed that ongoing herd infections are responsible for maintaining the disease from year to year in certain geographical areas. Experience reveals that many test positive herds remain infected in ensuing years often because of an incomplete application of suggested control measures. These rules amend the procedures for treatment of infected herds. It requires them to re-test their bulls each year until all bulls have a negative test result during the same test period. Existing rule requires test-positive bulls to be removed from the herd and sold to slaughter only.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0610
Definitions

(1) "Bovine trichomoniasis" is a sexually transmitted disease of cattle caused by the parasitic protozoan organism Tritrichomonas fetus.

(2) "The Department" is the Oregon Department of Agriculture (ODA).

(3) "Virgin bull" is a sexually intact male bovine less than 12 months of age or a sexually intact male bovine between 12 and 24 months that is certified by the owner/manager as having had no potential breeding contact with females.

(4) "Exposed herds" are cattle herds which have had, within twelve months, direct commingling or cross fence contact with test-positive herd during a time of potential breeding activity.

(5) "Permanent Identification" is a steel alphanumeric ear tag provided as official identification to accredited veterinarians, breed registry tattoos, or other means of identification established by the Department after review by the Trichomoniasis Advisory Panel.

(6) "Herd" is a group of cattle that is managed as a separate unit and not mixed with other cattle under the same ownership.

(7) "Test positive herd" is a defined herd of cattle in which a diagnosis of trichomoniasis has been made by a certified, licensed veterinarian.

(8) "Trich-year" is the time period from September 1st to August 31st of any given year.

Stat. Auth.: ORS 591 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07

603-011-0620
Procedures

(1) The Department shall establish a Bovine Trichomoniasis Advisory Panel, whose membership shall be:

(a) Five voting members who are representatives of the cattle industry, recommended by the Animal Health Committee of the Oregon Cattlemen's Association; and

(b) Four non-voting advisory members who are; the OSU Extension Veterinarian, two practicing veterinarians appointed by the Advisory Panel, and one representative of the office of the ODA State Veterinarian.

(2) Duties of the Advisory Board shall be to:

(a) Advise the Department on management of issues related to the program; and

(b) Advise the Department on preferred policies and processes for resolution of disputes related to the program.

(3) Certified veterinarians, as described in 603-011-0630, must report a positive test result of Tritrichomonas fetus to the Department on a form supplied by the Department within 48 hours of determining the result.

(4) In response to a positive bovine trichomoniasis test the Department shall:

(a) Conduct an investigation to identify herds that were potentially exposed to the infected herd.

(b) Require that any further bovine trichomoniasis testing be performed by a certified person, and accept the results of a retest by a certified person, if the original test was performed by a non-certified person; and

(c) Require permanent identification and testing of all bulls, excepting virgin bulls, in the test-positive herd and exposed herds.

(5) All bulls in herds required to be tested must be withdrawn from breeding contact and tested between 10 and 90 days after withdrawal.

(6) All bulls in test-positive herds must each have two (three are recommended) consecutive negative test results with each test event separated by at least seven days, after initial diagnosis is made. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8).

(7) All bulls from a test-positive herd must be re-tested every trich-year until every remaining bull tests negative during the same test period.

(a) All bulls from a test-positive herd must be re-tested before February 1 of the following year.

(b) All bulls removed or culled from a test-positive herd are to be tested before removal or culling.

(8) Test-positive bulls shall be held under quarantine separate and apart from other cattle or shall comply with one of the following:

(a) Test-positive bulls may be retested and, if found negative on three consecutive tests that are separated by at least seven days, may be considered test-negative and released from quarantine; or

(b) Test-positive bulls moving into feeding channels shall be castrated before moving from the ranch; or

(c) Test-positive bulls moving out of the infected herd into commercial slaughter-marketing channels shall be identified with an "S" brand applied to both sides of the tailhead or a letter "S" ear punch applied to the middle of both ears and shall move only to slaughter under authority of a VS Form 1-27 Permit for Movement of Restricted Animals; or

(9) Failure to comply with the above provisions for response to a positive bovine trichomoniasis test shall result in quarantine of all cattle in the non-compliant herd under provisions of ORS 596.392(4).

(10) The Department may waive the mandatory testing and quarantine provisions of this rule if:

(a) The owner or manager demonstrates that a herd program for control of bovine trichomoniasis which the Department determines, after consultation with the Advisory Panel, to be adequate under the circumstances, is in place and operational at time of diagnosis; or

(b) The owners or managers of the test positive herd and of all exposed herds agree to not test, or agree to pursue a control program of their own design, and the Department determines that such action is adequate under the circumstances.

Stat. Auth.: ORS 591 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07

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Rule Caption: Implement HB 2210 mandate to blend gasoline with 10% by volume ethanol.
Adm. Order No.: DOA 20-2007(Temp)
Filed with Sec. of State: 11-29-2007
Certified to be Effective: 11-29-07 thru 4-11-08
Notice Publication Date:
Rules Amended: 603-027-0420, 603-027-0430
Rules Suspended: 603-027-0420(T), 603-027-0430(T)
Subject: This temporary rule amends Oregon's motor fuel quality specifications and delivery documentation requirements in OAR 603-027-0420 and OAR 603-027-0430 to implement House Bill (HB) 2210's mandate to blend gasoline with 10% by volume ethanol. Based upon the Department of Agriculture's study and monitoring of ethanol production, use, and sales in Oregon, it determined that the capacity of ethanol production facilities in Oregon has reached a level of at least 40 million gallons per year. Failure to act immediately will result in serious prejudice to the public interest. Delay of implement of HB 2210 immediately will result in serious prejudice to the capacity of ethanol production facilities in the State of Oregon.

This temporary rule replaces the temporary rule filed October 15th, 2007 and published in the November 1st, 2007 Oregon Bulletin because a substantial amount of text was lost.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-027-0420
Standard Fuel Specifications

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

(B) The blend shall meet the requirements of ASTM D 4814; or

(C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi.

(c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

(d) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).

(2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(3) Gasoline-Ethanol Blends Required

(a) Consistent with House Bill 2210 Section 17(1), the Oregon Department of Agriculture shall study and monitor ethanol fuel production, use, and sales in Oregon.

(b) As used in House Bill (HB) 2210, unless the context or a specially applicable definition requires otherwise:

(A) "Ethanol facilities production capacity" means the designed and "as-constructed" rated capacity as verified by the Oregon Department of Agriculture, or the ethanol facilities production capacity as determined by

an independent Professional Engineer registered in the State of Oregon that is not the design consultant and as verified by the Oregon Department of Agriculture.

(B) "Production" means the ability of an ethanol production facility to produce ethanol that is in compliance with ASTM International D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasoline for Use as Automotive Spark Ignition Engine Fuel".

(C) "Use" means the historic blending of ethanol in Oregon in areas using ethanol to meet the United States Environmental Protection Agency (EPA) air quality standards, and other information relevant to industry blending of ethanol in gasoline including the infrastructure capacity to blend and distribute ethanol.

(D) "Sales" means volumes of ethanol blended in gasoline, measured in gallons per year, relevant consumer usage, demand, pricing, and other factors affecting sales.

(c) Based upon the Department of Agriculture's study of ethanol production, use, and sales in the State of Oregon, the mandatory use of ethanol as provided in HB 2210 Section 18(1) shall be phased in through three Oregon regions. These regions are defined by counties as follows:

(A) Region 1; Clackamas, Clatsop, Columbia, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties;

(B) Region 2; Benton, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, and Linn Counties; and

(C) Region 3; Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties.

(d) The ethanol facilities production capacity in Oregon has reached a level of at least 40 million gallons per year.

(A) As of January 15, 2008, all retail dealers, nonretail dealers, or wholesale dealers within Region 1 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(B) As of April 15, 2008, all retail dealers, nonretail dealers, or wholesale dealers within Region 2 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(C) As of July 15, 2008, all retail dealers, nonretail dealers, or wholesale dealers within Region 3 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(e) Gasoline-ethanol blends shall contain not less than 9.2 percent by volume of agriculturally derived denatured ethanol, exclusive of denaturants and permitted contaminates, that complies with

(A) OAR 603-027-0420(2) Ethanol ASTM D 4806 standards,

(B) Denatured as specified in 27 C.F.R parts 20 and 21, and

(C) Complies with the volatility requirements specified in 40 C.F.R. part 80.

(f) The ethanol shall be derived from agricultural or woody waste or residue.

(g) The gasoline base stock shall comply with ASTM International specification ASTM D 4814.

(h) It is prohibited to blend with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after it has been sold, transferred, or otherwise removed from a refinery or terminal.

(4) Gasoline Additive Restrictions.

(a) A wholesale dealer, retail dealer, or nonretail dealer may not sell or offer to sell any gasoline blended or mixed with:

(A) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and that complies with ASTM International specification ASTM D 4806;

(B) Metyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or

(C) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of;

(i) Diisopropylether,

(ii) Ethyl tert-butylether,

(iii) Iso-butanol,

(iv) Iso-propanol,

(v) N-butanol,

(vi) N-propanol,

(vii) Sec-butanol,

(viii) Tert-amyl methyl ether,

(ix) Tert-butanol,

(x) Tert-pentanol or tert-amyl alchol, and

(xi) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

(5) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."

(6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and have a cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1 - March 31 of each year.

(7) Premium Diesel Fuel — All diesel fuel products identified on retail and nonretail dispensers, bills of lading, invoices, shipping papers, or other documentation as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and must conform to at least two of the following requirements:

(a) Energy Content — A minimum energy content of 38.65 MJ/L, gross (138,700 BTU/gallon, gross) as measured by ASTM Standard Test Method D 240;

(b) Cetane Number — A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;

(c) Low Temperature Operability — A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1–March 31 of each year;

(d) Thermal Stability — A minimum reflectance measurement of 80 percent as determined by ASTM D 6468 (180 minutes, 150 0C);

(e) Fuel Injector Cleanliness — A Coordinating Research Council (CRC) rating of 10.0 or less and a flow loss of 6.0 percent or less as determined by the Cummins L-10 Injector Deposit Test.

(A) When a fuel uses a detergent additive to meet the requirement, upon the request of the Director, the fuel marketer shall provide test data indicating the additive being used has passed the Cummins L-10 Injector Depositing Test requirements when combined with Caterpillar 1-K (CAT 1-K) reference fuel. The Director may also request records or otherwise audit the amount of additive being used to ensure proper treatment of fuels according to the additive manufacturer's recommended treat rates.

(i) Upon the request of the Director, the fuel marketer shall provide an official "Certificate of Analysis" of the physical properties of the additive.

(ii) Upon the request of the Director, the fuel marketer shall provide a sample of detergent additive in an amount sufficient to be tested with CAT 1-K reference fuel in a Cummins L-10 Injector Depositing Test. If the sample does not meet the requirements of the Cummins L-10 Injector Deposit test, then all costs for sampling, transporting, and testing shall be the responsibility of the fuel supplier. If the sample meets the requirements of the Cummins L-10 Injector Deposit test, then all costs for sampling, transporting, and testing shall be the responsibility of the Department of Agriculture.

(B) When a fuel marketer relies on the inherent cleanliness of the diesel fuel to pass the Cummins L-10 Injector Depositing Test or if the fuel requires a lower detergent additive level than the amount required when the additive is used with the CAT 1-K reference fuel, the fuel marketer shall provide, upon the request of the Director, annual test results from an independent laboratory that confirms the fuel meets the requirements of OAR 603-027-0420(5)(e). The time of the fuel sampling and testing shall be at the Director's discretion. The Director may witness the sampling of the fuel and the sealing of the sample container(s) with security seals. The Director may request confirmation from the testing laboratory that the seals were intact upon receipt by the laboratory. The final test results shall be provided to the Director. All costs for sampling, transporting, and testing shall be the responsibility of the fuel supplier. If the annual test complies, any additional testing at the request of the Director shall be paid for by the Department of Agriculture.

(8) Biodiesel; B100 biodiesel intended for blending with diesel fuel shall meet the requirements of ASTM D 6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels."

(9) Biodiesel Blends; Blends of biodiesel and diesel fuels shall meet the following requirements:

(a) The base diesel fuel shall meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and

(b) The biodiesel blend stock shall meet the requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

(c) Exception; Biodiesel may be blended with diesel fuel whose sulfur or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.

(10) Aviation Gasoline shall meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasoline."

(11) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."

(12) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."

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

Stat. Auth.: ORS 561.190, 646.905 - 646.990, OL 1997, Ch. 310 (SB 414)

Stats. Implemented:ORS 646.905 - 646.990 & 183, OL 1997, Ch. 310 (SB 414)

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA. 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08

603-027-0430

Classification and Method of Sale of Petroleum Products

(1) General Considerations:

(a) Documentation.

(A) When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol: E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; renewable diesel and diesel-renewable diesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or nonretail dealer. This document must identify the:

(i) Quantity,

(ii) The name of the product,

(iii) The particular grade of the product,

(iv) The word "Winter" or "Winterized" diesel if applicable,

(v) The word "Premium" diesel and a declaration of all performance properties that qualifies the fuel as premium diesel as required in OAR 603-027-0420(7) if applicable,

(vi) The volume percent biodiesel and other renewable diesel, if a biodiesel, biodiesel blend, other renewable diesel, or diesel-other renewable diesel blend,

(vii) The applicable automotive fuel rating,

(viii) The name and address of the seller and buyer,

(ix) The date and time of the sale, and

(x) In addition, for gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent.

(B) Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state.

(C) Each biodiesel or other renewable diesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel or other renewable diesel into Oregon for sale in this state shall keep, on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel or other renewable diesel sold or delivered in Oregon.

(D) Each biodiesel producer in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date, and quantity of biodiesel production and sales from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana.

(E) All retail dealers, nonretail dealers, and wholesale dealers in Oregon are required to provide, upon request of the Department, evidence of a certificate of analysis for the biodiesel received.

(F) Each ethanol production facility in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity was attained, quantity of ethanol produced, and sales in Oregon.

(G) Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel and biodiesel blends, diesel fuel, other renewable diesel fuel, and diesel-other renewable diesel fuel blends sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s), the type of product, the particular grade of the product, type of oxygenate contained if applicable, and the applicable automotive fuel rating.

(c) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 "Standard Fuel Specifications".

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by "With a Lead Substitute" (e.g. "Unleaded With a Lead Substitute"). The lettering of the lead substitute declaration shall not be less that 12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1. [Table not included. See ED. NOTE.]

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by "Diesel" and grades "No. 1-D S15", "No. 1-D S500", "No. 1-D S5000", "No. 2-D S15", "No. 2-D S500", "No. 2-D S5000", or "No. 4-D". Each retail or nonretail dispenser of diesel fuel shall be labeled "Diesel" and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in OAR 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Labeling of Premium Diesel. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers identified as premium diesel must display either:

(a) A label that includes all qualifying parameters as specified in OAR 603-027-0420(5) Premium Diesel Fuel affixed to each retail and nonretail dispenser. The label shall include a series of check blocks clearly associated with each parameter. The boxes for the parameters qualifying the fuel must be checked. All other boxes shall remain unchecked. The marketer may check as many blocks as apply (see **Example 1**); or

(b) A label that includes only the parameters selected by a marketer to meet the premium diesel requirements as specified in OAR 603-027-0420(5) Premium Diesel Fuel. In either case, the label must display the following words (see **Example 2**):

(A) "PREMIUM DIESEL FUEL" in a type at least 12 millimeters (1/2 inch) in height by 1.4 millimeters (1/16 inch) stroke (width of type).

(c) When applicable, as determined by the label option and qualifying parameters chosen by the marketer, the label must also display the following information and letter type size:

(A) The words "Energy Content", "Cetane Number", "Low Temperature Operability", "Thermal Stability", and "Fuel Injector Cleanliness" in a type at least 6 millimeters (1/4 inch) in height by 0.75 millimeter (1/32 inch) stroke (width of type).

(B) A declaration of the minimum Energy Content (minimum 38.65 MJ/L gross (138,700 BTU/gallon), if energy content is chosen as a qualify-

ing parameter, in type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) stroke (width of type).

(C) The minimum cetane number guaranteed (at least 47.0) if cetane number is chosen as a qualifying parameter, in type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) in stroke (width of type).

(D) The date range of low temperature operability enhancement, (e.g., October – March) along with the qualifying test method (ASTM D 4539 or ASTM D 2500), if low temperature operability is chosen as a qualifying parameter, in a type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) stroke (width of type).

(E) **Example 1**: [Example not included. See ED. NOTE.]

(F) **Example 2**: [Example not included. See ED. NOTE.]

(d) The label must be conspicuously displayed on the upper-half of the product dispenser front panel in a position that is clear and conspicuous from the driver's position.

(6) Biodiesel:

(a) Identification of Product. Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

(b) Labeling of Retail and Non-Retail Dispensers Containing More than 5% Biodiesel. Each retail and non-retail dispenser of biodiesel or biodiesel blend containing more than 5% biodiesel shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "Biodiesel" or "Biodiesel Blend". (Examples: B100 Biodiesel; B60 Biodiesel Blend; B20 Biodiesel Blend)

(c) Documentation for Dispenser Labeling Purposes. The operator of retail and non-retail dispensers shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

(d) Exemption. Biodiesel blends containing 5% or less biodiesel by volume are exempted from requirements in OAR 603-027-0430(6)(a), (b), and (c).

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline shall be identified by Grade 80, Grade 100, or Grade 100LL.

(8) Fuel Ethanol:

(a) Identification of Fuel Ethanol. Fuel ethanol shall be identified by the capital letter E followed by the numerical value volume percentage of ethanol. (**Example: E85**)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel ethanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (**Example: E85 Ethanol**).

(c) Additional Labeling Requirements. Fuel ethanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (**Example: M85**)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word "methanol." (**Example: M85 Methanol**).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

[ED. NOTE: Tables & Examples referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 646.905 - 646.990, OL 1997, Ch. 310 (SB 414)

Stats. Implemented:ORS 646.905 - 646.990 & 183, OL 1997, Ch. 310 (SB 414)

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA. 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08

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Department of Agriculture, Oregon Hazelnut Commission Chapter 623

Rule Caption: Sets per diem and reimbursement for a substitute rate for commissioners that correspond with ORS 292.495.

Adm. Order No.: HZL 1-2007

Filed with Sec. of State: 12-3-2007

Certified to be Effective: 12-3-07

Notice Publication Date: 11-1-2007

Rules Adopted: 623-040-0005, 623-040-0010, 623-040-0015

Subject: Set per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for commissioners. Per diem and reimbursement for hiring a substitute correspond with limit set in ORS 292.495.

Rules Coordinator: Polly Owen—(503) 678-6823

623-040-0005

Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Hazelnut 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 Hazelnut Commission a written claim for compensation by the 10th day of the calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 576.206 & 576.416.

Stats. Implemented: ORS 292.495, 576.206(7), 576.265

Hist.: HZL 1-2007, f. & cert. ef. 12-3-07

623-040-0010

Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)–(6) of this rule, a member of the Oregon Hazelnut 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 Hazelnut Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 10th day of the calendar month following the month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

(a) Date on which the member incurred the expense; and

(b) Nature of the expense; and

(c) Amount of expense.

(3) An expense that exceeds $200 dollars must be authorized by the Oregon Hazelnut 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.

Stat. Auth.: ORS 292.495, 576.206, 576.265, 576.311, 576.416 & 576.440

Stats. Implemented: ORS 292.495, 576.206(7), 576.265

Hist.: HZL 1-2007, f. & cert. ef. 12-3-07

623-040-0015

Reimbursement for Hiring a Substitute

(1) As used in OAR 623-049-0010, "other expenses" includes expenses incurred by a member of the Oregon Hazelnut Commission in employing a substitute to perform duties, including personal duties, normally performed by the member, which the member is unable to perform because of the performance of official duties and which, by the nature of such duties, cannot be delayed without risk to health or safety.

(2) The amount that a member may be reimbursed for expenses incurred in employing a substitute must not exceed $25 per day, pursuant to ORS 292.495(3).

Stat. Auth.: ORS 292.495

Stats. Implemented: ORS 292.495, 576.206(7)

Hist.: HZL 1-2007, f. & cert. ef. 12-3-07

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

Rule Caption: Adopt rules to implement 2007 legislation requiring licensing and regulation of check-cashers.
Adm. Order No.: FCS 8-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 11-30-07
Notice Publication Date: 10-1-2007
Rules Adopted: 441-755-0000, 441-755-0010, 441-755-0100, 441-755-0110, 441-755-0120, 441-755-0130, 441-755-0140, 441-755-0150, 441-755-0160, 441-755-0170, 441-755-0200, 441-755-0210, 441-755-0220, 441-755-0300, 441-755-0310
Subject: Chapter 358, 2007 Oregon Laws, directs the Director of the Department of Consumer and Business Services to license and regulate check-cashers, with certain exceptions. These rules implement that new program. Specifically, the rules define additional terms, set fees, describe the required contents of a license application, clarify the retail exemption, specify when an application is deemed abandoned, set the process for biennial renewal of licenses, describe the process to change a licensed location, identify material changes that must be brought to the director's attention, identify events that are considered an assignment or transfer of the license, prescribe a process for handling of the license when that license is terminated, identify the documents that must be posted at the licensed location, describe unfair or deceptive practices, clarify that the licensee is held responsible for violations that occur at licensed locations, specify required books and records, and require an annual report.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-755-0000
Definitions

For purposes of Chapter 358, 2007 Oregon Laws and the rules in this Division 755:

(1) "Automated check-cashing machine" means an unstaffed communications terminal that cashes payment instruments and charges a fee.

(2) "Conspicuously post" means to place in plain and unobstructed public view in a location and in a way, including form and size and typeface, that any person seeking the services of a licensee could clearly and easily see and read the contents of the posted notice.

(3) "Control" means:

(a) In the case of a corporation, direct or indirect ownership or the right to control 25% or more of the voting shares of the corporation, or the ability to elect a majority of the directors;

(b) In the case of an entity other than a corporation, the ability to change the principles, policies or practices of the organization, whether through active or passive means.

(4) "Control persons" means the president, vice-president, secretary, treasurer, and directors of a corporation, partners, members, or persons with equivalent titles or duties.

(5) "Director" means the director of the Department of Consumer and Business Services.

(6) "Licensed location" means a staffed or unstaffed place other than the principal place of business where the activity of cashing checks is conducted.

(7) "Mobile unit" means any vehicle or other movable means from which the business of cashing payment instruments is to be conducted.

(8) "Person" means an individual, partnership, company, corporation, association or any other form of legal entity, other than the state or any political subdivision of the state.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0010
Fees Payable to the Director

(1) All fees described in this rule must be payable to the Department of Consumer and Business Services, and submitted to the Director either by mail to the mailing address specified on the application form, in-person delivery to the address specified on the application form, or through online application or renewal when online transactions are available.

(2) An investigation fee in the amount of $150 must accompany every initial application for a check-casher license. An applicant that received a consumer finance or pawnbroker license from the Department of Consumer and Business Services, Division of Finance and Corporate Securities and that license is still valid and in good standing, using the same legal entity name and identifying the same control persons as on the check-casher license application, must pay an investigation fee of $75. The investigation fee is per application regardless of the number of locations being licensed. The investigation fee is nonrefundable.

(3) An initial license fee in the amount of $150 for each location where check-cashing activity will be conducted must also accompany every initial application for a check-casher license. The location where an applicant places or will place an automated check-cashing machine or the use of a mobile unit is a location that must be licensed. This fee must be paid for the principal place of business only if check-cashing activity will be conducted at this location. This initial license fee is nonrefundable.

(4) A renewal license fee in the amount of $150 for each location where check-cashing activity will be conducted must be paid by the licensee in the year the licensee's licenses expire. This fee is nonrefundable.

(5) The investigation fee is a one-time fee paid at the time of initial application. An initial license fee paid during December 2007 covers calendar years 2008 and 2009, if the license is issued. An initial license fee paid on or after January 2, 2008 covers the calendar year from the date the license is issued plus the following full calendar year. The license fee for an additional licensed location covers the remaining period until that licensee's current licenses expire. A renewal fee covers the two year period beginning on the day after the expiration date of the current license.

(6) For any compliance examination conducted by the Director:

(a) The check-cashing business will be billed for time spent preparing for, traveling to the location where the records are maintained, conducting, and completing a report on the examination by the Director's staff at the rate of $75 per hour per staff person, plus actual travel expenses; and

(b) If out-of-state travel is required to conduct the examination, actual travel expenses will include air fare, lodging, food, rental car at destination, and mileage to and from the Oregon airport.

(7) To avoid enforcement action against the licensee, the check-cashing business must pay the billed examination expenses no later than 30 days from the date of the invoice.

(8) By order, the Director may reduce the fees assessed during any specific biennial period, applying the reduction equally to all licensed locations.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0100
Initial Application

In addition to the items specified in Section 4, Chapter 358, 2007 Oregon Laws, an applicant must submit:

(1) Business telephone number and fax number, if any;

(2) Mailing address for the principal place of business, if different than the street address;

(3) Taxpayer identification number;

(4) A statement of current financial condition, including a compiled balance sheet and profit-and-loss statement, or if the applicant is a newly formed entity, the source of funds to be used for check cashing activity;

(5) A resume or other document listing the past five (5) years work experience for control persons, or persons with equivalent duties for the applicant;

(6) Identifying information for control persons sufficient to conduct an investigation to determine the person's financial responsibility;

(7) Disclosures for the applicant and each person identified in section (5) of this rule, including dates and specific details, for any of the following events that occurred in the 10 years before the date the application is submitted:

(a) Felony conviction;

(b) Misdemeanor conviction involving fraud, misuse of money, or theft;

(c) Entry of a money judgment that currently remains entirely or partially unpaid;

(d) Administrative action in any state resulting in civil penalties or action taken against a license held by the person; or

(e) Voluntary or involuntary filing for bankruptcy protection;

(8) A listing of any other business regulated by the Division of Finance and Corporate Securities being conducted or to be conducted at the licensed location; and

(9) A copy of the check-cashing fees to be charged, and if the fee schedule will be different at some licensed locations, what fee schedule applies to which locations.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0110
Licensing Exemptions

(1) A person engaging in the bona fide retail sale of goods or services, cashing checks only from time to time, and not purporting to be a check-cashing business, is exempted from licensing, regulatory fees and record keeping requirements.

(a) A person purports to be a check-cashing business if the person:

(A) Advertises its check-cashing service through radio, television, print media, or the Internet; or

(B) Places signs on the outside or facing outside of its retail location offering its check-cashing service to the public.

(b) A person cashes checks only from time to time when the number of checks cashed in a calendar year does not exceed 3% of the number of retail transactions at that retail location during the previous calendar year.

(2) A money transmitter licensed in Oregon that is conducting check-cashing activity is exempted from licensing and regulatory fees, but must keep records and provide annual reports. The exemption from licensing and regulatory fees extends to any location of the licensed money transmitter where:

(a) The location is listed in filings with the Director;

(b) Revenue and expenses of that location are incorporated into the license money transmitter's annual financial statements; and

(c) The licensed money transmitter owns and operates, through its employees, that location.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0120
When Initial Application Deemed Abandoned

(1) An initial application is deemed deficient when:

(a) Responses to questions on the application form created by the Director are missing or incomplete;

(b) Additional documents or information specified in OAR 441-755-0100 are not submitted;

(c) Questions raised by the Director to clarify information submitted are not answered; or

(d) Fees required by OAR 441-755-0020 are not submitted, or are submitted but not honored by the applicant's financial institution or credit card company.

(2) An initial application for a check-casher license is deemed abandoned if:

(a) The application has been on file for at least three months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within 30 calendar days of the date of warning.

(3) Fees paid in connection with an abandoned registration will not be refunded.

(4) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0130
Renewal of License

(1) A licensee may renew its license or licenses by identifying any principal place of business and licensed locations being renewed, and paying the renewal fees specified in OAR 441-755-0010. New locations may be added during this process.

(2) Renewal fees must be actually received by the Director on or before the last business day in December. Fees submitted but subsequently not honored by the licensee's financial institution or credit card company are considered not received.

(3) If not timely renewed, a license will automatically expire and become void without further action of the Director.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0140
Change of Licensed Location

(1) When a licensee wishes to change the place of business of a licensed location, the licensee must submit to the Director the original license for that location, together with a written notice identifying the new location and the proposed effective date of the change. The proposed effective date may not be prior to the date of notice to the Director. The licensee must make a photocopy of the current license and post it at the licensed location. The photocopied license is valid only until the effective date reflected on the amended license and is then void.

(2) The Director will amend the license to reflect the new location and the effective date of the change and return an amended original license to the licensee.

(3) No fee is required for issuing an amended license.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0150
Material Changes

(1) A licensee must make written notification to the Director if there is a material change to any information the licensee previously filed with the Director.

(2) A material change includes the following:

(a) Change to or a new item required to be disclosed under OAR 441-755-0100(6);

(b) Change in form of ownership not resulting in a change of control;

(c) Change of address of the principal place of business;

(d) Discontinuing check-cashing activity at a licensed location;

(e) Change in fees charged;

(f) Identifying a significant error in the data provided in an annual report;

(g) Moving required records to a new location.

(3) Written notification must include the updated or corrected information, may be made by in-person delivery, mail or fax, and must be made within 30 calendar days of the occurrence of the material change.

(4) There is no fee for providing the written notification required in this rule.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0160
Assignment or Transfer of License Prohibited

(1) The following events will be considered an assignment or transfer of the license, which is prohibited by Section 6, Chapter 358, 2007 Oregon Laws:

(a) A change in control of the licensee;

(b) The sale or assignment of all or substantially all assets of the licensee's business to another person;

(c) The merger of a licensee with another business that is not a licensed check-casher; or

(d) A reorganization of the licensee's form of business entity into another form of business entity, if the reorganization results in a change of control.

(2) On the effective date of any event described in section (1) of this rule, the licensee's license or licenses become void, and the licensee must surrender the license or licenses to the Director within 10 business days of the event.

(3) If the entity that survives the event described in section (1) of this rule desires and intends to engage in a check-cashing business, it may not engage in a check-cashing business under the former entity's license but must apply and qualify for the license as a new applicant. The application may be submitted prior to the effective date of the event described in section (1) of this rule.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0170
Termination of License

(1) A licensee must notify the Director in writing of its decision to cease operations as a check-cashing business within seven days of its decision, and return all licenses to the Director within 30 days after it has voluntarily ceased operations in this state.

(2) A licensee that fails to timely renew or chooses not to renew the license of a licensed location must return that license to the Director within 15 days of the expiration date of the license.

(3) A licensee that has had its license or licenses suspended or revoked by the Director, following opportunity for hearing as provided in Section 13, Chapter 358, 2007 Oregon Laws, must return the suspended or revoked license or licenses within 15 days of being notified of the entry of the Final Order.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0200
Posting of Information

(1) A licensee must conspicuously post the following items at each licensed location:

(a) The license issued for that location by the Director; and

(b) The fees the licensee will charge customers.

(2) For an automated check-cashing machine, the items may be displayed on the terminal screen or permanently affixed to the machine.

(3) For a mobile unit, the items may be displayed in a window of the mobile unit when it is stopped during the check-cashing activity, or affixed to the outside of the mobile unit.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0210
Unfair or Deceptive Practices

It is an unfair or deceptive practice for a licensee to:

(1) Impose fees contrary to posted information at the location where the payment instrument is cashed.

(2) Refuse to accept valid and current government-issued photo identification presented by the customer, resulting in greater fees being charged to the customer.

(3) Charge fees other than the rate most favorable to the consumer when a payment instrument could fit into more than one category described in Section 7, Chapter 358, 2007 Oregon Laws.

(4) Limit the amount of cash provided to a customer or require a customer to receive a payment, in whole or in part, by a method that causes the customer to pay additional or further fees to the licensee or other persons. This section does not apply to a transaction initiated by a customer request for a money order or other alternative forms of payment.

(5) Require a customer to cash separate payment instruments in a manner to avoid the limitations on the fees that may be charged.

(6) Alter or delete any information on a cashed payment instrument.

(7) Charge check-cashing fees on a postdated payment instrument accepted from a customer in a payday loan transaction with a licensee that also holds a short-term lending license.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0220
Responsibility for Actions at Licensed Locations

Regardless of the employment relationship between the licensee and any manager or staff person in a licensed location, the licensee will be held responsible for any check-cashing statute or rule violation that occurs in the licensed location. The licensee may not delegate or assign this responsibility by contract or otherwise.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0300
Required Books and Records

(1) For any payment instrument cashed, the licensee must record the following information:

(a) The transaction date;

(b) The date on the payment instrument;

(c) The payment instrument number;

(d) Name and location or routing number of the payor financial institution;

(e) Name of the drawer of the check;

(f) Amount of the payment instrument;

(g) Method of identification used to identify the person cashing the payment instrument, if any; and

(h) Amount of fee charged.

(2) The information required in section (1) of this rule may be maintained manually or in electronic format.

(3) Records for all licensed locations may be maintained at the licensee's principal place of business.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

441-755-0310
Annual Report

(1) To assist the Director to determine whether examination of a licensee is necessary, each licensee must submit a report on or before April 1 for the previous calendar year's check-cashing activities for each licensed location, including:

(a) The total number of payment instruments cashed, subdivided into the three categories of payment instruments as described in Subsection (1), Section 7, Chapter 358, 2007 Oregon Laws;

(b) The number of payment instruments cashed that had a face value of $1,000 or more;

(c) The total amount of the face values of all payment instruments cashed;

(d) The total amount of fees charged; and

(e) The number of cashed payment instruments dishonored by the payor financial institution.

(2) There is no fee for providing the written report required in this rule.

Stat. Auth.: Sec. 16, Ch. 358, 2007 OL
Stats. Implemented: Sec. 3, 4, 6 ,10, Ch. 358, 2007 OL
Hist.: FCS 8-2007, f. & cert. ef. 11-30-07

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Rule Caption: Make permanent the temporary rules in consumer finance adopted effective 7/1/07 and 8/10/07.
Adm. Order No.: FCS 9-2007
Filed with Sec. of State: 12-6-2007
Certified to be Effective: 12-27-07
Notice Publication Date: 11-1-2007
Rules Amended: 441-730-0000, 441-730-0010, 441-730-0015, 441-730-0270, 441-730-0275, 441-730-0310
Subject: These rules implement new laws effective 7/1/07 by changing incorrect references to the number of rollovers, waiting period for new loans, and refunding. New examples are provided as guidance. References to sections repealed or phrases deleted in the laws effective 7/1/07 are corrected.

These rules eliminate restrictions on use of postdated checks and debit authorizations to ease an unintended consequence not foreseen when the rule was adopted in December 2006.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-730-0000
Statutory Authority; Purpose

(1) OAR 441-730-0000 to 441-730-0320 are adopted pursuant to the rulemaking authority granted the Director by ORS 725.320, and 725.505.

(2) The purpose of the rules is to provide revised consumer finance rules. The rules are considered necessary to assure the proper conduct of the business regulated, to enforce the Consumer Finance Act and to protect the public.

Stat. Auth.: ORS 725.320, 725.505
Stats. Implemented: ORS 725
Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0005; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 9-2007, f. 12-6-07, cert. ef. 12-27-07

441-730-0010
Definitions

(1) "Annual Percentage Rate" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.

(2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Consumer Finance Licensee" means a person issued a license under ORS 725.140 to make loans described in OAR 441-730-0015(1).

(5) "Deferral charges" means the additional charge assessed by a Consumer Finance licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature.

(6) "Director" means the director of the Department of Consumer and Business Services.

(7) "Extension" has the same meaning as "renewal" defined in section (16) of this rule.

(8) "Formalized grading system" means a formula or computer program that determines the creditworthiness of individual borrowers based on information regarding the borrower's financial condition, such as the borrower's income, assets, debts and financial obligations, and the nature and value of any collateral used to secure the loan.

(9) "Fully amortized" means characterized by periodic payments, that if made as scheduled, result in full repayment of the principal and interest owed on a loan by the end of the loan term.

(10) "License" means a Consumer Finance license or a Short-Term Personal Loan license issued under ORS 725.140.

(11) "Licensee" means a person licensed as a Consumer Finance licensee or a Short-Term Personal Loan licensee.

(12) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(13) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a specific borrower, and may be fulfilled through use of a formalized grading system. Loan underwriting may be based on one or more of the following:

(a) Credit information furnished by the borrower, such as employment history, income, and outstanding obligations;

(b) A financial statement that includes income, assets and debts;

(c) Publicly available information concerning the borrower, that may include the borrower's credit report;

(d) The borrower's credit needs and willingness and ability to pay, including the nature and value of any collateral used to secure the loan.

(14) "Periodic Payments" means loan repayments scheduled for monthly or more frequent periods of time.

(15) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.

(16) "Renewal" of a loan means granting a borrower the right to postpone repayment of a Short-Term Personal Loan for a fee.

(17) "Roll-over" has the same meaning as "renewal" defined in section (16) of this rule.

(18) "Same day transaction" means a Short-Term Personal Loan made on the same day that a previous Short-Term Personal loan is paid-off and will be treated as a "renewal" defined in section (16) of this rule.

(19) "Short-Term Personal Loan" means:

(a) A Payday Loan as defined in ORS 725.600;

(b) A Title Loan as defined in ORS 725.600; or

(c) Any other loan made by a person in the business of making Short-Term personal loans designated by rule or order of the director.

(20) "Short-term personal loan licensee" means a person issued a license under ORS 725.140 who engages in the business of making payday loans or title loans as defined in ORS 725.600.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.110, 725.140, 725.340, 725.360, 725.600, 725

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0007; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 9-2007, f. 12-6-07, cert. ef. 12-27-07

441-730-0015

Consumer Finance and Short-Term Personal Loan Licenses

(1) The license issued pursuant to ORS 725.140 to a lender who makes loans secured by personal property, real property or unsecured loans which typically have periodic payments with terms longer than 60 days shall be a Consumer Finance License. Of the total number of loans made by a consumer finance licensee under its consumer finance license during each calendar year commencing January 1, 2007:

(a) 90% or more of the loans must have a term of at least six months;

(b) Loan underwriting must be documented in the borrower's file for 90% or more of the loans. The documented loan underwriting remains valid, at the option of the licensee, for any loan made within 12 months of the initial date of a previous consumer finance loan to that borrower; and

(c) Other than loans made pursuant to ORS 725.345 or 725.347 or that are secured by real estate or interests in farming implements or future farm crops, 90% or more of the loans must be structured to be repaid in fully amortized and substantially equal periodic payments. For purposes of this subsection, a loan will be considered to have substantially equal periodic payments:

(A) Notwithstanding that the first regularly scheduled periodic payment is larger due to any additional interest that accrues because the first regularly scheduled periodic payment is more than 30 days after the date of the loan;

(B) Notwithstanding that the final regularly scheduled periodic payment is larger, as long as the final payment is not more than one and one-half times the amount of the regularly scheduled periodic payment immediately preceding the final payment; and

(C) In the case of adjustable rate loans, as long as the periodic payments resulting from each interest rate adjustment meet the requirements of this subsection (c).

(2) A consumer finance licensee shall not disguise any loan as an open-ended loan authorized under ORS 725.345 or 725.347 as a device or subterfuge to evade the requirements and prohibitions of this rule.

(3)(a) If a consumer finance licensee makes a loan under the consumer finance license secured by an interest in a borrower's vehicle, the licensee may not retain possession of the title to the vehicle unless the licensee is recorded as a lien-holder on the title or has made application or taken other commercially reasonable steps to be added as a security interest holder of a vehicle.

(b) A consumer finance licensee may not require a borrower, as a condition of making a loan under its consumer finance license, to provide a postdated check or debit authorization for one or more future payments. However, if permitted by the lender and at the discretion of the borrower, one or more postdated checks or debit authorizations may be delivered to a consumer finance licensee to facilitate timely future payments.

(4) The license issued pursuant to ORS 725.140 to a lender who makes Payday loans or Title loans shall be a Short-Term Personal Loan license. A Short-Term Personal Loan lender is limited to making payday loans or title loans or both under the short-term personal loan license, as stated on the license.

(5) A person is permitted to apply for, hold, and make appropriate loans under either a consumer finance license or a short-term personal loan license, or both licenses.

(6) No license shall be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the secretary of state.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.110, 725.140(1), 725.330, 725

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; Renumbered from 441-730-0005, FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2007(Temp), f. & cert. ef. 8-10-07 thru 12-27-07; FCS 9-2007, f. 12-6-07, cert. ef. 12-27-07

441-730-0270

Conditions Applicable to Short-Term Personal Loans

(1) The following conditions apply to all Short-Term Personal Loan licensees making Payday loans.

(a) Interest shall not be compounded.

(b) Lenders must calculate daily interest based upon a 365/366 day year pursuant to OAR 441-730-0160(2) and may not calculate daily interest based upon a 360-day year.

(c) Lenders must comply with the Equal Credit Opportunity Act (ECOA), 15 USC 1691, and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. A copy of the notice must be retained in the files. Exceptions to providing notice contained within ECOA are available to the lender under this rule.

(d) The Annual Percentage Rate shall be posted prominently inside the lender's office where customers can easily see it.

(e) The loan agreement shall have the following information displayed prominently in bold print on the first page of the agreement:

(A) The APR;

(B) The amount of the loan;

(C) The amount of interest/finance charge if paid when due;

(D) The total amount due on the due date; and

(E) The due date. Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. et seq., and Regulation Z 12 C.F.R. Part 2226 will satisfy the requirements of this section.

(f) After any payment made, in full or in part, on any loan, the licensee shall:

(A) give to the person making such a payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(B) An electronic receipt, a canceled check, or other written instrument approved by the director may substitute for the receipt requirements of subsection (A).

(g) A Short-Term Personal Loan licensee may not make a payday loan to a applicant without forming a good faith belief that the applicant has the ability to repay the loan. A licensee who meets the provision of section (2) of this rule will be deemed to be in compliance with this section.

(h) If a Short-Term Personal Loan licensee permits a borrower to renew or extend a Payday loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(i) A Short-Term Personal Loan licensee may not renew or extend a Payday loan more than two times. If the borrower is unable to repay the loan after the second renewal or extension, the lender may not assess further charges, but may institute collection efforts to recover the balance of the loan.

(j) A Short-Term Personal Loan licensee may not make a "same day transaction" with a borrower who has renewed or extended the Payday loan two times. The lender must wait seven days from the date an outstanding payday loan expires before making a new Payday loan to that borrower.

Example: A borrower borrows $300 for 31 days on July 3 at 36% interest and a $30 origination fee. Unable to pay off the loan on August 3, the borrower pays the $30 origination fee and $9.17 interest ($300 x 0.36 divided by 365 x 31) and renews the loan with a new due date of September 3. Unable to repay the loan on September 3, the borrower again pays $9.17 interest and renews the loan with a new due date of October 4. If the borrower is unable to repay the loan on October 4, no further renewal is allowed, and no new loan may be made to the borrower until October 11.

(k) If a Short-Term Loan licensee permits a borrower to renew or extend a Payday Loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(L) A Short-Term Loan licensee making Payday Loans may not conduct business at a location at which liquor or lottery tickets are sold or where gambling devices are operated.

(m) If a licensee requests or accepts more than one check or bank draft to secure a single Payday Loan and the borrower defaults, the lender may not charge more than one Non-Sufficient Fund charge, but may recover any cost charged by any non-affiliated financial institution for the checks.

(n) Payday Lenders who do not deliver the note marked "Paid or Renewed" to a borrower in compliance with ORS 725.360(4)(d) must state in the loan agreement that the borrower's canceled check will evidence payment of the loan. The lender must mark the note "Paid" or "Renewed" and retain the note in the file. An electronic transmission may fulfill the requirements of this section if the loan is made using an electronic medium and the consumer has consented to use of electronic transmission.

(o) Payday lenders who do not cash the borrower's check must return the note marked "Paid" and may not rely on subsection (o) of section (1) of this rule. The lender must also mark the check "Void" and return it to the borrower with the note marked "Paid".

(p) Payday lenders must provide consumers, at the time application is made, with a written statement, in a form approved by the Director, which clearly describes the results of any default or late payment.

(2) A Short-Term Personal Loan licensee making a Payday loan will be presumed to have complied with the provisions of subsection (g) of section 1 of this rule if the licensee:

(a) Requires the applicant to evidence a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income;

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which compensation is received by the applicant or on which the applicant receives funds;

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor;

(d) Lends no more than 25% of the consumer's monthly net income to an applicant that earns $60,000 a year or less. This limitation does not apply to loans made to applicants who have a net income in excess of $60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(e) If the licensee has established a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the licensee may rely on that preexisting relationship to form the good faith belief required under Subsection (g) of Section 1 of this rule.

(f) Solicits information on the number, amount and dates of maturity of existing outstanding loans.

(3) A licensee is not required to perform the due diligence in section (2) of this rule for every transaction, but may rely on prior experience, within 12 months, with repeat customers to take advantage of the presumption of compliance and subsection (g) of section (1) of this rule.

(4) A Payday Loan lender may not use a contract evidencing a Payday Loan that contains any of the following provisions:

(a) A hold harmless clause;

(b) A confession of judgment or other waiver of the right to notice and opportunity to be heard in the event of suit or process.

(c) A provision in which the borrower agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course.

(d) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the borrower, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.360
Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 9-2007, f. 12-6-07, cert. ef. 12-27-07

441-730-0275
Conditions Applicable to Short-Term Personal Loans that are Title Loans

(1) Short Term Personal Loan Licensees making Title Loans shall not compound interest.

(2) Short Term Personal Loan Licensees making Title Loans must calculate daily interest based upon a 365/366 day year pursuant to OAR 441-730-0160(2) and may not calculate daily interest based upon a 360-day year.

(3) Short Term Personal Loan Licensees making Title Loans must comply with the Equal Credit Opportunity Act (ECOA), 15 USC 1691, and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. The lender must retain a copy of the notice in the lender's files. Exceptions to providing notice contained within ECOA are available to the lender under this rule.

(4) The Annual Percentage Rate shall be posted prominently inside the Short Term Personal Loan licensee's office where customers can easily see it. (5) The Short Term Personal Loan licensee making Title Loans shall have the following information displayed prominently in bold print on the first page of the Title Loan agreement:

(a) The Annual Percentage Rate;

(b) The amount of the loan;

(c) The amount of interest/finance charge if paid when due;

(d) The total amount due on the due date; and

(e) The due date.

(f) Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. et seq. and Regulation Z 12 C.F.R. Part 226 will satisfy the requirements of this section.

(6) After any payment made, in full or in part, on any loan, the licensee shall:

(a) Give to the person making such a payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(b) An electronic receipt, a canceled check, or other written instrument approved by the director may substitute for the receipt requirements of subsection (a).

(7) If a Short Term Loan licensee permits a borrower to renew or extend a Title Loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(8) The Short Term Personal Loan licensee may not use title loan contracts that provide for the continuation of interest or other charges after repossession.

(9) Before repossessing a vehicle the Short Term Personal Loan licensee shall send written notice of default in a form approved by the Director, by first class mail to the borrower at the address shown on the loan agreement, or last known address 10 days prior to repossession.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower file; and

(c) Repossession may not occur until the 11th day from the date of the notice.

(10) The Short Term Personal Loan licensee must give written notice in a form approved by the Director, to the borrower delivered by first class mail to the address shown on the loan agreement, or the last know address, of intent to sell a repossessed vehicle.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower file; and

(c) The sale may not occur until at least the 16th day from the date of the notice.

(11) The Short Term Personal Loan licensee must obtain at least three bids on a vehicle prior to sale unless the sale is conducted at a public or dealer auction conducted by a licensed auctioneer. The bids must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.

(12) The Short Term Personal Loan licensee may not sell a vehicle to an affiliate, subsidiary or employee of the licensee.

(13) If a vehicle is sold, the Short Term Personal Loan licensee shall deliver to the borrower all proceeds, exceeding the debt and reasonable costs associated with the repossession and sale. Delivery must be made not later than three business days after the licensee receives the proceeds of the sale. If the vehicle was paid for by a check, the licensee may deliver the proceeds within three days after the check has cleared.

(14) If a Short Term Personal Loan licensee stores repossessed vehicles on property owned, leased, or otherwise controlled by the licensee, the licensee may not charge any storage charge regardless of how long the car is held prior to sale.

(15) A Short Term Personal Loan licensee may not repossess a vehicle if the title is held by more than one person, unless the licensee has all persons sign the loan documents.

(16) At the time the Truth In Lending disclosure, required pursuant to 15 U.S.C. et seq., and Regulation Z 12 C.F.R. Part 226, is provided to the borrower by the Short Term Personal Loan licensee, the Short Term Personal Loan licensee must provide:

(a) A statement that clearly describes under what circumstances a vehicle may be repossessed and sold;

(b) A statement that informs the borrower that if a car is sold, the borrower may not receive any proceeds from the sale because of the costs incurred; and

(c) The borrower may be liable to pay additional funds if the proceeds do not equal at least the amount of the debt plus the cost of repossession and sale.

(17) In compliance with ORS 725.605, prior to making a loan, a Short-Term Personal Loan licensee making a Title Loan must form a good faith belief that the applicant has the ability to repay the Title Loan under consideration.

(18) A Short-Term Personal Loan licensee making a Title Loan will be presumed to have complied with section (17) of this rule if the licensee:

(a) Requires the applicant to evidence a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income.

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which compensation is received by the applicant or on which the applicant receives funds

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor.

(d) Lends no more than 25% of the applicant's monthly net income to an applicant that earns $60,000 a year or less. This limitation does not apply to applicants with an income in excess of $60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(19) If the licensee has established a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the licensee may rely on that preexisting relationship to form the good faith belief required under section (17) of this rule.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.505, 725.605 & 725.615
Hist.: FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 9-2007, f. 12-6-07, cert. ef. 12-27-07

441-730-0310
Refund of Unearned Interest and Charges and Prohibition on Prepayment Penalty

(1) If a borrower pays off a Short-Term Personal Loan that is a Payday or Title Loan prior to the due date, the licensees must refund all unearned interest and charges and may not charge a Prepayment Penalty .

(2) For purposes of this rule, the Short-Term Personal Loan licensee who has made a Payday or Title loan shall calculate earned interest and charges by multiplying the loan amount by the interest rate and dividing by 365 to find daily interest then multiply that quotient by the number of days from the date the loan was made to the date of pay-off counting the day after the loan was made as the first day.

Example: A borrower borrows $200 on the 5th day of the month at 36% interest and comes on the 25th of the month to pay off the loan. The interest is calculated as follows: $200 x 0.36 = $72 divided by 365 = $.20 per day x 20 days = $4.00 interest. If the borrower gave you a check on the 5th for the full 31 day term ($206.12), the unearned interest of $2.12 must be refunded. There is no minimum interest amount.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.340 & 725.360
Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 9-2007, f. 12-6-07, cert. ef. 12-27-07

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Long Term Care Insurance.
Adm. Order No.: ID 10-2007
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 9-1-2007
Rules Adopted: 836-052-0508, 836-052-0531, 836-052-0639, 836-052-0738, 836-052-0740
Rules Amended: 836-052-0500, 836-052-0516, 836-052-0526, 836-052-0546, 836-052-0556, 836-052-0566, 836-052-0576, 836-052-0616, 836-052-0626, 836-052-0636, 836-052-0656, 836-052-0666, 836-052-0676, 836-052-0696, 836-052-0706, 836-052-0726, 836-052-0736, 836-052-0746, 836-052-0756, 836-052-0766, 836-052-0776, 836-052-0786
Rules Ren. & Amend: 836-052-0700 to 836-052-0900
Subject: This rulemaking implements recent state legislation, chapter 486, Oregon Laws 2007 (Enrolled SB 191), which amends Oregon statutes governing long term care insurance, and enables Oregon consumers to benefit from federal legislation, the Long Term Care Insurance Partnership Act. The rulemaking makes additional changes to the rules governing long term care insurance as well. This rulemaking also renumbers a rule relating to physician credentialing.
Rules Coordinator: Sue Munson—(503) 947-7272

836-052-0500
Statutory Authority; Applicability

(1) OAR 836-052-0500 to 836-052-0786 are adopted pursuant to the requirements and authority of ORS 731.244,742.003, 742.005, 742.023, 743.013, 743.655, 743.656 and 746.240.

(2) Except as otherwise specifically provided, OAR 836-052-0500 to 836-052-0786 apply to all long term care insurance policies, including qualified long term care contracts and life insurance policies that accelerate benefits for long term care delivered or issued for delivery in this state by insurers, fraternal benefit societies, nonprofit health, hospital and medical service corporations, prepaid health plans, health maintenance organizations and all similar organizations.

(3) OAR 836-052-0500 to 836-052-0786 do not apply to a provision in a life insurance policy, rider or endorsement that provides accelerated death benefits in a single lump-sum upon the occurrence of a single qualifying event as defined in ORS 743.154.

(4) OAR 836-052-0500 to 836-052-0786 apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance if:

(a) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(b) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(c) Benefits under the policy may commence after the policyholder has reached normal retirement age for Social Security unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.685 & 746.240
Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96; ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0508
Definitions

For the purpose of OAR 836-052-0500 to 836-052-0786, the terms "long term care insurance," "qualified long term care insurance," "group

long term care insurance," "applicant," "policy" and "certificate" have the meanings given those terms in ORS 743.652. In addition, the following definitions apply:

(1) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(2) "Similar policy forms" means all of the long term care insurance policies and certificates issued by an insurer in the same long term care benefit classification as the policy form being considered. Certificates of groups that meet the definition of ORS 743.652(3)(a) are not considered similar to certificates or policies otherwise issued as long term care insurance, but are similar to other comparable certificates with the same long term care benefit classifications.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.685 & 746.240, OL 2007 Ch. 9, 9a
Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656
Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0516
Policy Definitions

A long-term care insurance policy delivered or issued for delivery in this state shall not use the terms set forth in this rule unless the terms are defined in the policy according to the definitions in this rule and satisfy the requirements in OAR 836-052-0596:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(2) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.

(3) "Adult day care" means a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Adult foster care" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

(5) "Assisted living" services means services to persons with unique needs, such as, but not limited to, dementia or traumatic brain injury.

(6) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(7) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(8) "Continence" means the ability to maintain control of bowel and bladder function or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(9) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(10) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

(11) "Hands-on assistance" means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

(12) "Home care" services means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(13) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(14) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(15) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(16) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.

(17) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(18) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(19) "Transferring" means moving into or out of a bed, chair or wheelchair.

(20) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care provider," "assisted living facility" and "home care agency," shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0526
Policy Practices and Provisions

(1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of OAR 836-052-0556. In addition:

(a) A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may be used only when the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(a) Preexisting conditions or diseases as allowed in OAR 836-052-0546(4);

(b) Alcoholism and drug addiction;

(c) Illness, treatment or medical condition arising out of:

(A) War or act of war (whether declared or undeclared);

(B) Participation in a felony, riot or insurrection;

(C) Service in the armed forces or units auxiliary thereto;

(D) Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

(E) Aviation (this exclusion applies only to non-fare-paying passengers).

(d) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(e) Expenses for services or items available or paid under another long-term care insurance or health insurance policy;

(f) In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are

reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

(g)(A) This subsection does not prohibit exclusions and limitations by type of provider. However, no long term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:

(i) When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but when the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

(ii) When the state other than the state of policy issue licenses, certifies or registers the provider under another name.

(B) For the purpose of this subsection, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

(h) This section does not prohibit territorial limitations.

(3) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period and all other applicable provisions of the policy.

(4) Continuation or conversion of coverage is governed as follows:

(a) Group long-term care insurance issued in this state on or after September 1, 2005 shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and that is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(c) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy that it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(d) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. When the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(e) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. When the group policy from which conversion is made replaces previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except when:

(A) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(B) The terminating coverage is replaced not later than 31 days after termination by group coverage effective on the day following the termination of coverage:

(i) That provides benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) The premium for which is calculated in a manner consistent with the requirements of subsection (f) of this section.

(h) Notwithstanding any other provision of this rule, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. The provision shall be included in the converted policy only if the converted policy also provides for a premium decrease or refund that reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this rule, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(k) For the purposes of this rule, a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(5) Discontinuance and Replacement. If a group long-term care insurance policy is replaced by another group long-term care insurance policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(6)(a) The premium charged to an insured shall not increase due to either:

(A) The increasing age of the insured at ages beyond 65; or

(B) The duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under, the initial annual premium shall be based on the reduced benefits.

(7) Electronic enrollment for group policies is governed by the following provisions:

(a) In the case of a group defined in ORS 743.652 (3)(a), any requirement that a signature of an insured be obtained by an insurance producer or insurer shall be deemed satisfied if:

(A) The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(B) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(C) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information" as defined by ORS 746.600, is maintained.

(b) The insurer shall make available, upon request of the Director, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

(8) Request for termination of coverage. When the policyholder, insured or beneficiary requests termination of coverage, any unearned premiums for that insured shall be promptly refunded to the payee or beneficiary.

(9) This section applies to rate increases approved by the Director on or after January 1, 2008 for policies that were delivered or issued for delivery in this state before March 1, 2006. An insurer may offer to policyholders affected by a rate increase a contingent benefit on lapse under the terms of OAR 836-052-0746, the right to reduce coverage and lower premiums under the terms of OAR 836-052-0740 or an alternative method approved by the Director for mitigating the rate increase. If the insurer does not offer one or the other option to policyholders:

(a) The Director may not approve the rate increase if the increase is greater than a cumulative total of 40 percent during any three-year period submitted; and

(b) The total amount of any approved rate increase must be spread equally over each of the three years. The Director may waive this restriction if the insurer demonstrates to the Director's satisfaction that the solvency of the plan or insurer is threatened.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0531
Long Term Care Insurance Partnership Program

(1) As used in this rule, "qualified long term care insurance partnership policy" or "partnership policy" means a long term care insurance policy that meets all of the following requirements:

(a) The policy was issued on or after January 1, 2008 or exchanged as provided in section (8) of this rule on or after January 1, 2008, and covers an insured who was a resident of this state or of another state that has entered into a reciprocal agreement with this state when coverage first became effective under the policy.

(b) The policy is a qualified long term care insurance policy.

(c) The policy meets all of the applicable requirements of ORS 743.650 to 743.656 and OAR 836-052-500 to 836-052-0786 and the requirements of the National Association of Insurance Commissioners long term care insurance model act and model regulation as those requirements are set forth in sec. 1917(b)(5)(A) of the Social Security Act (42 USC sec. 1396p(b)(5)(A)).

(d) The policy provides the following inflation protections:

(A) If the policy is sold to an individual who has not attained age 61 as of the date of purchase, the policy shall provide a compound annual inflation protection that is at least equivalent to the option for inflation protection in OAR 836-052-0616(1)(a).

(B) If the policy is sold to an individual who has attained age 61 but has not attained age 76 as of the date of purchase, the policy shall provide an inflation protection that is at least equivalent to an option for inflation protection in OAR 836-052-0616.

(C) If the policy is sold to an individual who has attained age 76 as of the date of purchase, the policy may provide inflation protection, but must at least comply with the provisions for inflation protections in OAR 836-052-0616.

(2) An insurer may use as one means of providing inflation protection under section (1)(d) of this rule a guarantee of automatic benefit increases of not less than an annual percentage change in the Consumer Price Index or an alternative index approved by the Director. If this inflation protection is included in a policy sold to a person who has not attained age 61, the index adjustments must be made on a compounding basis.

(3) An insurer or insurance producer soliciting or offering to sell a policy that is intended to qualify as a partnership policy shall provide to each prospective applicant the notice prescribed in Exhibit 1 to this rule, indicating the requirements and benefits of a partnership policy. The notice shall be provided with the required Outline of Coverage.

(4) A partnership policy or certificate delivered or issued for delivery in this state shall include a Partnership Disclosure Notice prescribed in Exhibit 2 or 3 to this rule as appropriate, explaining the benefits associated with a partnership policy or certificate and indicating that, at the time issued, the policy or certificate is a qualified state long term care insurance partnership policy or certificate.

(5) When an insurer is made aware that a policyholder has initiated action that will result in the loss of partnership status, the insurer shall provide an explanation of how such action impacts the insured in writing. The policyholder shall also be advised how to retain partnership status, if retention is possible. If a partnership policy subsequently loses partnership status, the insurer shall explain to the policyholder in writing the reason for the loss of status.

(6) Each insurer offering a partnership policy shall provide regular reports to the United States Secretary of Health and Human Services in accordance with regulations of the Secretary that include notification of the date benefits were paid, the amount paid, the date the policy terminates, and such other information as the Secretary determines may be appropriate to the administration of partnership policies.

(7) An insurer must file a long term care insurance policy for approval for use as a partnership policy.

(8) A long term care insurance policy that is not a qualified partnership policy may be exchanged for a qualified partnership policy, subject to underwriting criteria and any increased premium, as provided in this section. The qualified policy so exchanged is treated as newly issued and as such is eligible for partnership status. A rider, endorsement or change in schedule page that is made to a policy issued prior to January 1, 2008, but after February 8, 2006 for the purpose of meeting the requirements of this rule may be treated as giving rise to an exchange.

(9) At the request of the insured or an authorized representative of the insured, an insurer shall provide to the insured or representative a copy of the Approved Long Term Care Partnership Program Policy Summary prescribed in **Exhibit 4** to this rule.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 743.650, 743.653, 743.655, 743.656, 746.240
Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0546
Required Policy Provisions

(1) Renewability. Each individual long-term care insurance policy shall contain a renewability provision. The following requirements apply to such a provision:

(a) The provision shall be appropriately captioned, shall appear on the first page of the policy and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision does not apply to a policy that does not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(b) A long-term care insurance policy or certificate, other than one in which the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in a writing that is signed by the insured, unless the increased benefits or coverage is required by law. When a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement.

(3) Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations of preexisting condition shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in ORS 743.655(5) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of Tax Consequences. With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement shall be

prominently displayed on the first page of the policy or rider and any other related documents. This section does not apply to qualified long-term care insurance contracts.

(7) Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care, shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in the same paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this requirement too shall be specified.

(8) A qualified long-term care insurance contract shall include a statement in the policy and in the outline of coverage as contained in OAR 836-052-0776 that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(9) A nonqualified long-term care insurance contract shall include a statement in the policy and in the outline of coverage as contained in OAR 836-052-0776 that the policy is not intended to be a qualified long-term care insurance contract.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0556
Required Disclosure of Rating Practices to Consumers

(1) This rule applies as follows:

(a) Except as provided in subsection (b) of this section, this rule applies to any long term care policy or certificate issued in this state on or after March 1, 2006.

(b) For certificates issued on or after March 1, 2005 under a group long-term care insurance policy as defined in ORS 743.652 (3)(a), which policy was in force on March 1, 2005, the provisions of this rule shall apply on the policy anniversary following March 1, 2006.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the information listed in this section to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, the insurer shall provide all of the information listed in this rule to the applicant not later than at the time of delivery of the policy or certificate. The information is as follows:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions and the policyholder's or certificate holder's option in the event of a premium rate revision.

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.

(d) A general explanation for applying premium rate or rate schedule adjustments, which shall include:

(A) A description of when premium rate or rate schedule adjustments will be effective (e.g. next anniversary date, next billing date, etc.); and

(B) The right to a revised premium rate or rate schedule as provided in subsection (c) of this section if the premium rate or rate schedule is changed.

(e)(A) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that at a minimum identifies

(i) The policy forms for which premium rates have been increased.

(ii) The calendar years when the form was available for purchase; and

(iii) The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(B) The insurer may provide additional explanatory information related to the rate increases.

(C) An insurer shall have the right to exclude from the disclosure premium rate increases that apply only to blocks of business acquired from other nonaffiliated insurers or the long term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(D) If an acquiring insurer files for a rate increase on a long term care insurance policy form acquired from a nonaffiliated insurer or a block of policy forms acquired from a nonaffiliated insurer on or before the later of the effective date of this rule or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. The nonaffiliated selling insurer shall include the disclosure of that rate increase in accordance with paragraph (A) of this subsection.

(E) If the acquiring insurer in paragraph (D) of this subsection files for a subsequent rate increase whether within the 24-month period or later, the acquiring insurer must make all disclosures required by this section, on the same policy form acquired from nonaffiliated insurer or block of policy forms acquired from nonaffiliated insurers referenced in paragraph (D) of this subsection, including disclosure of the earlier rate increase referenced in paragraph (A) of this subsection.

(3) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under subsection (2)(a) and (e) of this section. If owing to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign an acknowledgement no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in Exhibits 1 and 2 to comply with sections (2) and (3) of this rule.

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by section (2) of this rule when the rate increase is implemented.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0566
Initial Rate Filing Requirements

(1) This rule applies to any long-term care insurance policy issued in this state on or after March 1, 2006.

(2) An insurer shall provide the following information to the Director for prior approval before making a long-term care insurance form available for sale:

(a) A copy of the disclosure documents required in OAR 836-052-0556; and

(b) An actuarial certification consisting of at least the following:

(A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;

(C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(iii) A statement that the net valuation premium for renewal years does not increase except for attained-age rating when permitted; and

(iv) A statement that the differences between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations in which this does not occur, as follows:

(I) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(II) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the Director may request a demonstration under section (3) of this rule, based on a standard age distribution; and

(E)(i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(ii) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) An insurer shall provide an actuarial demonstration showing that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claims experience on similar policy

forms adjusted for any premium and benefit differences, or relevant and credible data from other studies, or both.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0576
Prohibition Against Post-Claims Underwriting, Applications

(1) Each application for a long-term care insurance policy, rider or certificate, except those that are guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2) If an application for long-term care insurance contains a question asking whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed;

(3) If the medications listed in the application were known by the insurer, or should have been known by the insurer at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, the policy, rider or certificate shall not be rescinded for that condition.

(4) Except for policies or certificates that are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy, rider or certificate: Caution: If your answers on this application are incorrect or untrue, (insurer) has the right to deny benefits or rescind your policy.

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy, rider or certificate at the time of delivery: Caution: The issuance of this long-term care insurance (policy) (rider) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when your applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address).

(5) Prior to issuance of a long-term care policy, rider or certificate to an applicant age 80 or older, the insurer shall obtain one or more of the following:

(a) A report of physical examination;

(b) An assessment of functional capacity;

(c) An attending physician's statement;

(d) Copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured not later than the time of delivery of the policy, rider or certificate unless it was retained by the applicant at the time of application.

(7) Every insurer or other entity selling long-term care insurance benefits shall maintain a record of all rescissions of policies, riders and certificates, both state- and country-wide, except those that the insured voluntarily effectuated, and shall annually furnish this information to the Director in the format prescribed in **Exhibit 1** or similar form approved by the Director.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.655(10)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0645, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0616
Requirement to Offer Inflation Protection

(1) An insurer may not offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection offered by the insurer, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. An insurer must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than a feature that does one of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than three percent.

(b) Guarantees the insured individual periodically increased benefit levels without having to provide evidence of insurability or health status, unless the policyholder declines a periodic increase. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least three percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made. The insurer shall notify the policyholder, at each periodic increase, that declining an inflation increase under this subsection will imperil the policy's partnership status.

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) When the policy is issued to a group, the required offer in section (1) of this rule shall be made to the group policyholder, except that if the policy is issued to a group defined in ORS 743.652 (3)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

(3) The offer in section (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4)(a) An insurer shall include the following information in or with the outline of coverage:

(A) A graphic comparison of the benefit levels of a policy that increases benefits by three percent compounded over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.

(B) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(5) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in section (1)(a) of this rule shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this section. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans_____, and I reject inflation protection.

(8) The following requirements apply to the inflation protection option described in section (1)(b) of this rule:

(a) The insurer must provide that benefit increases occur automatically unless the insured specifically rejects the option to increase.

(b) The option to increase must be offered every year through at least the insured's attained age 76, and the policy or certificate must guarantee the insured the opportunity to increase benefit levels on an annual basis without providing evidence of insurability or health status.

(c) The policy or certificate must be structured so that benefit levels increase annually and must otherwise satisfy the requirements of the Deficit Reduction Act of 2005. For example, compound inflation protection must be provided under policies purchased when the insured has not yet attained age 61. Benefit increases include, but are not limited to increases at a fixed interest rate or at a rate determined by an index-based formula.

(d) The additional premium for increased benefits may not be higher than the rate based on the insured's attained age at the time of each offer.

(e) All options through age 76 must be accepted to retain partnership policy status. Declination of an option may not operate to prevent the insured from accepting a later option.

(f) An insurer will continue to make offers regardless of the insured's age while the insured is in claim if the claim begins at or before age 76.

(g) The insurer or insurance producer must furnish an applicant a personalized illustration at the point of sale that shows the expected pattern of future premiums and benefits under the option compared to the premiums and benefits for a policy or certificate with automatic inflation protection that qualifies for partnership status.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0626
Requirements for Application Forms and Replacement Coverage

(1) An application form for long-term care insurance shall include the questions set forth in this section designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy, rider or certificate in force or whether a long-term care insurance policy, rider or certificate is intended to replace any other health or long term care insurance policy, rider or certificate currently in force. A supplementary application or other form to be signed by the applicant and insurance producer, except when the coverage is sold without an insurance producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by ORS 743.652(3)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, but only if the certificate holder has been notified of the replacement. The questions are as follows:

(a) Do you have another long-term care insurance policy, rider or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another long-term care insurance policy, rider or certificate in force during the last 12 months?

(A) If so, with which insurer?

(B) If that policy lapsed, when did it lapse?

(C) Are you covered by a state assistance program (Medicaid)?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy, rider or certificate?

(2) An insurance producer shall list any other health insurance policies that the insurance producer has sold to the applicant:

(a) List such policies sold that are still in force, and;

(b) List such policies sold in the past five years that are no longer in force.

(3) Solicitations other than direct response. Upon determining that a sale will involve replacement of long-term care insurance coverage, the insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the form shown in Exhibit 1 to this rule.

(4) Direct Response Solicitations. An insurer using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the form shown in Exhibit 2 to this rule.

(5) When replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Notice shall be sent within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of OAR 836-080-0001 to 836-080-0043. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(7) Sections (1) through (6) do not apply when the application is to the existing insurer that issued the existing policy, certificate or rider when the transaction meets the following:

(a) A contractual change or a conversion privilege is being exercised, or

(b) When the existing policy, certificate or rider is being replaced by the same insurer and unearned premium is credited toward the new coverage.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.010(1), 743.013(3) & 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0615, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0636
Reporting Requirements

(1) Every insurer shall maintain records for each insurance producer of that insurance producer's amount of replacement sales as a percent of the insurance producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.

(2) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(3) Every insurer shall report to the Director annually by June 30 the ten percent of its insurance producers with the greatest percentages of lapses and replacements as measured by section (1) of this rule using **Exhibit 1** to this rule or a similar form and shall also include the following information in the annual report:

(a) The number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(b) The number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(4) Every insurer shall report to the Director annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied using **Exhibit 2** to this rule or a similar form.

(5) As used in this rule:

(a) "Claim" means, subject to subsection (b) of this section, a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(b) "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition;

(c) "Policy" means only long term care insurance; and

(d) "Report" means on a statewide basis.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0639
Training for Insurance Producers

(1) When the provider of a training course notifies an insurance producer that the insurance producer has successfully completed the training course and passed the examination, the insurance producer shall send the notice of completion as verification of the training to each insurer for which the insurance producer transacts or will transact long term care insurance in this state. The insurer shall approve or disapprove the verification as meeting the requirements of section 9, chapter 486, Oregon Laws 2007 and return the verification to the insurance producer.

(2) An insurance producer shall submit the notice of completion of required training to the Director as approved by each insurer under section (2) of this rule when the insurance producer reports to the Director at license renewal regarding compliance with continuing education requirements.

(3) A training course taken online or through self-study in satisfaction of the requirements of section 9, chapter 486, Oregon Laws 2007 (Enrolled SB 191) must include an examination indicating understanding of the topics covered in the course. An insurance producer does not satisfy the training requirement of section 9, chapter 486, Oregon Laws 2007 unless the individual passes the examination for the online or self-study training course with a score of not less than 70 percent.

Stat. Auth.: ORS 731.244
Stats. Implemented: Sec. 9, Ch. 486, OL 2007 (Enrolled SB 191)
Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0656
Reserve Standards

(1)(a) Each insurer shall use the following standards for determining policy reserves for long-term care insurance: When long-term care benefits are provided through the acceleration of benefits under a group or individual life insurance policy or a rider to such a policy, policy reserves for the benefits shall be determined in accordance with ORS 733.322. Claim reserves shall also be established in the case when the policy or rider is in claim status.

(b) Reserves for policies and riders subject to this section shall be based on the multiple decrement model using all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the

reserve is clearly more conservative or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(c) In the development and calculation of reserves for long-term care insurance policies and riders subject to this section, an insurer shall consider the applicable policy and rider provisions, marketing methods, administrative procedures and all other considerations that affect projected claim costs, including but not limited to the following:

(A) Definition of insured events;

(B) Covered long-term care facilities;

(C) Existence of home care and home care coverage. For purposes of this paragraph, "home" has the meaning provided in OAR 836-052-0606;

(D) Definition of facilities;

(E) Existence or absence of barriers to eligibility;

(F) Premium waiver provisions;

(G) Renewability;

(H) Ability to raise premiums;

(I) Marketing methods;

(J) Underwriting procedures;

(K) Claims adjustment procedures;

(L) Waiting periods;

(M) Maximum benefits;

(N) Availability of eligible facilities;

(O) Margins in claim costs;

(P) Optional nature of benefit;

(Q) Delay in eligibility for benefit;

(R) Inflation protection provisions; and

(S) Guaranteed insurability option.

(2) For purposes of section (1) of this rule, an applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a qualified actuary.

(3) When long term care benefits are provided other than as in section (1) of this rule, reserves shall be determined in accordance with OAR 836-031-0200 to 836-031-0300.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96; Renumbered from 836-052-0545, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0666
Loss Ratio

(1) This rule applies to all long-term care insurance policies, certificates and riders except those that are subject to OAR 836-052-0566 and 836-052-0676.

(2) Benefits under long-term care insurance policies and riders shall be deemed reasonable in relation to premiums only if the expected loss ratio is at least 60 percent and is calculated in a manner providing for adequate reserving of the long-term care insurance risk.

(3) In evaluating the expected loss ratio under section (2) of this rule, an insurer shall consider all relevant factors, including:

(a) Statistical credibility of incurred claims experience and earned premiums;

(b) The period for which rates are computed to provide coverage;

(c) Experienced and projected trends;

(d) Concentration of experience within early policy duration;

(e) Expected claim fluctuation;

(f) Experience refunds, adjustments or dividends;

(g) Renewability features;

(h) All appropriate expense factors;

(i) Interest;

(j) Experimental nature of the coverage;

(k) Policy reserves;

(L) The mix of business by risk classification;

(m) Product features, such as long elimination periods, high deductibles and high maximum limits.

(4) The loss ratio requirements under this rule apply with respect to Oregon policyholders. Subject to the approval of the Director, an insurer may use national or regional loss ratio experience to modify the Oregon experience when the experience for Oregon policyholders is small and statistically unreliable. Oregon experience and national or regional experience must be submitted in separate tables and the modification approved by the Director.

(5) The experience under all policy and rider forms insuring a class of insureds with similar benefits and underwriting requirements shall be combined when demonstrating compliance with the requirements of this section.

(6) The effect on loss ratios of all requirements necessary to qualify for benefits shall be included in the calculations required under this rule.

(7) Sections (1) to (6) of this rule do not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of ORS 743.204 or 743.275;

(c) The policy or rider meets the disclosure requirements of ORS 743.655(9) to (11);

(d) Any life policy illustration meets the applicable requirements of OAR 836-051-0500 to 836-051-0600; and

(e) An actuarial memorandum filed with the Director must be submitted by a qualified actuary in good standing with the American Academy of Actuaries. The memorandum must include:

(A) A description of the basis on which the long-term care rates were determined;

(B) A description of the basis for the reserves;

(C) A summary of the type of policy, benefits, renewability, general marketing method and limits on ages of issuance;

(D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(F) The estimated average annual premium per policy and the average issue age;

(G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 742.005 & 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0530, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0676
Premium Rate Schedule Increases

(1) This rule applies as follows:

(a) Except as provided in subsection (b) of this section, this rule applies to any long-term care insurance policy or certificate issued in this state on or after March 1, 2006.

(b) For certificates issued on or after March 1, 2005 under a group long-term care insurance policy as defined in ORS 743.652(3)(a) that was in force on March 1, 2005, this rule applies on the policy anniversary following March 1, 2006.

(2) An insurer shall obtain approval of a premium rate schedule increase from the Director, including an exceptional increase as defined in section (3) of this rule, prior to the notice to the policyholders and shall include the following in the submission to the Director:

(a) Information required by OAR 836-052-0556;

(b) Certification by a qualified actuary that:

(A) If the requested premium rate schedule increase is implemented and the underlying assumptions that reflect moderately adverse conditions are realized, no further premium rate schedule increases are anticipated; and

(B) The premium rate filing is in compliance with this rule.

(c) An actuarial memorandum justifying the rate schedule change request that includes:

(A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale, as follows:

(i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(ii) The projections shall include the development of the lifetime loss ratio according to OAR 836-052-0666, unless the rate increase is an exceptional increase;

(iii) The projections shall demonstrate compliance with section (3) of this rule; and

(iv) For exceptional increases:

(I) The projected experience must be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) In the event the Director determines as provided in OAR 836-052-0508(1)(d) that offsets may exist, the insurer shall use appropriate net projected experience.

(B) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(C) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the insurer have been relied on by the actuary;

(D) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(E) Composite rates reflecting projections of new certificates, in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase.

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the Director; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the Director.

(3) As used in this rule, "exceptional increase" means only those increases filed by an insurer as exceptional for which the Director determines the need for the premium rate increase is justified, owing to changes in statutes or rules applicable to long-term care insurance in this state or owing to increased and unexpected utilization that affects the majority of insurers of similar products. An exceptional increase is subject to the following provisions:

(a) Except as provided in this rule, an exceptional increase is subject to the same requirements as other premium rate schedule increases.

(b) The Director may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(c) The Director, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(4) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Each exceptional increase shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Each premium rate schedule increase shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(A) The accumulated value of the initial earned premium times 58 percent;

(B) 85 percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(C) The present value of future projected initial earned premiums times 58 percent; and

(D) 85 percent of the present value of future projected premiums not in paragraph (C) of this subsection on an earned basis.

(c) In the event that a policy form has both exceptional and other increases, the values in subsection (b)(B) and (D) of this section will also include 70 percent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate specified in ORS 733.310 for the valuation of life insurance issued on the same date as the long-term care insurance. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(5) For each rate increase that is implemented, the insurer shall file for review and approval by the Director updated projections, as defined in section (2)(c)(A) of this rule, annually for the next three years and include a comparison of actual results to projected values. The Director may extend the period to greater than three years if actual results are not consistent with projections values from prior projections. For group insurance policies that meet the conditions in section (12) of this rule, the projections required by this section shall be provided to the policyholder in lieu of filing with the Director.

(6) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in section (2)(c)(A) of this rule, shall be filed for review and approval by the Director every five years following the end of the required period in section (5) of this rule. For group insurance policies that meet the conditions in section (12) of this rule, the projections required by this section shall be provided to the policyholder in lieu of filing with the Director.

(7)(a) If the Director has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projection under moderately adverse conditions demonstrates that incurred claims will not exceed proportions of premiums specified in section (4) of this rule, the Director may require the insurer to implement any of the following:

(A) Premium rate schedule adjustments; or

(B) Other methods to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration shall be given to section (2)(c)(E) of this rule, if applicable.

(8) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increase, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect, otherwise the Director may impose the condition in section (9) of this rule; and

(b) The original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to section (4) of this rule had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in section (4)(a)(A) and (C) of this rule.

(9)(a) For a rate increase filing that meets the following criteria, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(A) The rate increase is not the first rate increase requested for the specific policy form or forms;

(B) The rate increase is not an exceptional increase; and

(C) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the Director may determine that a rate spiral exists. Following the determination that a rate spiral exists:

(A) The Director may require the insurer to offer, without underwriting, to all in force insureds subjected to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(B) An offer under paragraph (A) of this subsection shall:

(i) Be subject to the approval of the Director;

(ii) Be based on actuarially sound principles, but not be based on attained age;

(iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and

(iv) Shall credit any unearned premium to the new coverage.

(C) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the

policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(i) The maximum rate increase determined based on the combined experience; and

(ii) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent.

(10) If the Director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the Director may, in addition to the provisions of section (9) of this rule, prohibit the insurer from doing either of the following:

(a) Filing and marketing comparable coverage for a period of up to five years; or

(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(11) Sections (1) to (10) of this rule do not apply to policies for which long-term care benefits provided by the policy are incidental if the policy complies with all of the provisions of this section. For the purpose of this section, "incidental" means that the value of the long-term care benefits provided is less than ten percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue. The provisions are as follows:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, must be guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy.

(b) The portion of the policy that provides insurance benefits other than long-term care coverage must meet the nonforfeiture requirements for those benefits.

(c) The policy must meet the disclosure requirements under OAR 836-052-0706 for long-term care insurance policies.

(d) The portion of the policy that provides insurance benefits other than long term care coverage must meet the requirements as applicable for life and annuity policies.

(e) An actuarial memorandum that includes the following items must be filed with the Director:

(A) A description of the basis on which the long term care rates were determined.

(B) A description of the basis for the reserves.

(C) A summary of the type of policy, benefits, renewability, general marketing method and limits on ages of issuance.

(D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any.

(E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives.

(F) The estimated average annual premium per policy and the average issue age.

(G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs.

(H) A description of the effect of the long term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long term care claim status.

(12) Sections (6) and (8) of this rule do not apply to group insurance policies as defined in ORS 743.652 (3)(a) when:

(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder and not the certificate holders pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 742.005, 743.018, 743.650 & 743.652
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 12-2005(Temp), f. & cert. ef. 10-3-05 thru 3-20-06; ID 5-2006, f. 3-15-06, cert. ef. 3-20-06; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0696
Filing Requirements for Advertising

At the request of the Director, every insurer, health care service plan or other entity providing long-term care insurance or benefits in this state shall provide to the Director a copy of any long-term care insurance advertisement intended for use in this state, whether through the written, radio or television medium, for review or approval by the Director as authorized under ORS 742.009 and other state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used. Each advertisement shall comply with all applicable laws and rules of this state.

Stat. Auth.: ORS 731.244 & 742.009
Stats. Implemented: ORS 742.009 & 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0620, ID 3-2005, f. & cert. ef. 3-1-05; ID 12-2005(Temp), f. & cert. ef. 10-3-05 thru 3-20-06; ID 5-2006, f. 3-15-06, cert. ef. 3-20-06; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0706
Standards for Marketing

(1) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its insurance producers, shall:

(a) Establish marketing procedures and insurance producer training requirements to assure that:

(A) Any marketing activities, including any comparison of policies by its insurance producers, will be fair and accurate; and

(B) Excessive insurance is not sold or issued.

(b) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, or certificate if a group, the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(c) Provide copies of the disclosure forms required in OAR 836-052-0556(4) (Exhibits 1 and 2) to the applicant.

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has health insurance is not required.

(e) Establish auditable procedures for verifying compliance with this section.

(f) At solicitation, provide written notice to the prospective policyholder and certificate holder that a senior insurance counseling program approved by the Director is available and the name, address and telephone number of the program.

(g) For long-term care insurance policies, certificates and riders, use the terms "noncancellable" or "level premium" only when the policy, certificate or rider conforms to OAR 836-052-0526(1)(c).

(h) Provide an explanation of contingent benefit upon lapse provided for in OAR 836-052-0746(4)(c) and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in OAR 836-052-0746(4)(d).

(2) In addition to the practices prohibited under ORS Chapter 746, the following acts and practices are prohibited:

(a) Twisting, which includes knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insure.

(b) High pressure tactics, which include the employing of any method of marketing having the effect of inducing or tending to induce the purchase of insurance through force, fright or threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising, which is making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurer or insurance producer.

(d) Misrepresentation of a material fact in selling or offering to sell a long-term care insurance policy.

(3) An association, as defined in ORS 743.652(3)(b), and the insurer endorsing or selling long-term care insurance are subject to the following requirements and obligations:

(a) The primary responsibility of an association, when endorsing or selling long term care insurance, shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. An association shall provide objective information regarding long term care insurance policies or certificates endorsed or sold by the association to ensure that its members receive a balanced and complete

explanation of the features in the policies or certificates that are being endorsed or sold.

(b) The insurer shall file with the Director the following material:

(A) The policy, certificate, and riders;

(B) A corresponding outline of coverage; and

(C) All advertisements requested by the Director.

(c) The association shall disclose in any long-term care insurance solicitation:

(A) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(B) A brief description of the process under which the policies and the insurer issuing the policies were selected.

(d) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(e) The board of directors of an association selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(f) The association shall also:

(A) At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

(B) Actively monitor the marketing efforts of the insurer and its producers; and

(C) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies, certificates, or riders.

(g) Subsection (f) of this section does not apply to qualified long-term care insurance contracts.

(h) A group long term care insurance policy, certificate or rider may not be issued to an association unless the insurer files with the director the information required in this section.

(i) The insurer may not issue a long term care insurance policy or certificate to an association or continue to market the policy or certificate or certificate unless the insurer certifies annually that the association has complied with the requirements of this section.

(j) Failure to comply with the filing and certification requirements of this rule is an unfair trade practice in violation of ORS 746.240.

Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.655(1)(a) & 746.240
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0640, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0726
Suitability

(1) This rule does not apply to life insurance policies that accelerate benefits for long-term care.

(2) Each insurer, health care service plan or other entity shall:

(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train its insurance producers in the use of its suitability standards; and

(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the Director.

(3)(a) To determine whether an applicant meets the standards developed by the insurer, an insurance producer and insurer shall develop procedures that take the following into consideration:

(A) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(B) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(C) The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The insurer, and when an insurance producer is involved, the insurance producer, shall make reasonable efforts to obtain the information set out in subsection (a) of this section. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in OAR 836-052-0556(4), Exhibit 1, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the Director.

(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except that the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) An insurer or insurance producer shall not sell or disseminate information obtained through the personal worksheet outside the insurer or agency.

(4) An insurer shall use the suitability standards it has developed pursuant to this rule in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(5) An insurance producer shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(6) At the same time that the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall also be provided to the applicant. The form shall be in the format contained in Exhibit 1, in not less than 12 point type.

(7) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Exhibit 2. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. The insurer shall make either the applicant's returned letter or a record of the alternative method of verification a part of the applicant's file.

(8) The insurer shall report annually by May 1 to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0736
Prohibition Against Preexisting Conditions, Waiting Periods and Probationary Periods in Replacement Policies and Certificates

(1) If a long-term care insurance policy replaces another long-term care insurance policy, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods and probationary periods in the new long-term care insurance policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

(2) If a group long-term care policy is replaced by another group long-term care policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination.

Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0575, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0738
Availability of New Services or Providers

(1) An insurer shall notify policyholders of the availability of a new long term policy series that provides coverage for new long term care services or providers that are material in nature and not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date that the new policy series is made available for sale in this state.

(2) Notwithstanding section (1) of this rule, notification is not required for any policy issued prior to the effective date of this rule or to any policyholder or certificate holder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium, to add such new services or providers.

(3) An insurer shall make the new coverage available in one of the following ways:

(a) By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate.

(c) By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate.

(d) By an alternative program developed by the insurer that meets the intent of this rule if the program is filed with and approved by the Director.

(4) An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For the purpose of this section, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders that purchased such a new proprietary policy shall be notified when a new long term care policy series that provides coverage for new long term care services or providers material in nature is made available to that limited distribution channel.

(5) A policy issued pursuant to this rule shall be considered an exchange and not a replacement. An exchange is not subject to OAR 836-052-0626 and 836-052-0726, and the reporting requirements of OAR 836-052-0636(1) to (3).

(6) When a policy is offered through an employer, labor organization, professional, trade or occupational association, the required notification in section (1) of this rule must be made to the offering entity. However, if the policy is issued to a group defined in ORS 743. 650(3)(d), the notification shall be made to each certificate holder.

(7) Nothing in this rule prohibits an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificate holder. However, upon request, any policy holder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add the new services or providers.

(8) This rule does not apply to life insurance policies or riders containing accelerated long term care benefits.

Stat. Auth.: ORS 731.244
Stats. Implemented: Sec. 9, Ch. 486, OL 2007 (Enrolled SB 191)
Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0740
Right to Reduce Coverage and Lower Premiums

(1) Every long term care insurance policy and certificate must include a provision that allows the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

(a) Reducing the maximum benefit; or

(b) Reducing the daily, weekly or monthly benefit amount.

(2) An insurer may offer other reduction options that are consistent with the policy or certificate design or the insurer's administrative processes, in addition to the provision required in section (1) of this rule.

(3) The provision required in section (1) of this rule must include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

(4) The age to determine the premium for the reduced coverage must be based on the age used to determine the premiums for the coverage currently in force.

(5) The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(6) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificate holder of the right of the policyholder or certificate holder to reduce coverage and premiums in the notice required by OAR 836-052-0536(1)(c).

(7) This rule does not apply to life insurance policies or riders containing accelerated long term care benefits.

(8) This rule applies to any long term care policy issued in this state on or after December 1, 2008.

Stat. Auth.: ORS 731.244
Stats. Implemented: Sec. 9, Ch. 486, OL 2007 (Enrolled SB 191)
Hist.: ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0746
Nonforfeiture Benefit Requirement

(1) This rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of section 7, ch. 486, Oregon Laws 2007 (Enrolled Senate Bill 191):

(a) A long-term care policy, certificate or rider offered with nonforfeiture benefits must have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer must be the benefit described in section (6) of this rule.

(b) The offer must be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(3) If the offer required to be made under section 7, ch. 486, Oregon Laws 2007 is rejected, the insurer shall provide the contingent benefit upon lapse described in this rule. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in section (4)(d) of this rule shall still apply.

(4)(a) After rejection of an offer required under section 7, ch. 486, Oregon Laws 2007, for an individual or group policy without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this subsection based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, a policyholder shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase. [Table not included. See ED. NOTE.]

(d) A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this paragraph based on the insured's issue age, the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in subsection (e)(B) of this section is 40 percent or more. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase. This provision is in addition to the contingent benefit provided by subsection (c) of this section, and when both are triggered, the benefit provider shall be at the option of the insured. [Table not included. See ED. NOTE.]

(e) On or before the effective date of a substantial premium increase as defined in subsection (c) of this section, the insurer shall:

(A) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(B) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the provisions of section (6) of this rule. This option may be elected at any time during the 120-day period referenced in subsection (c) of this section; and

(C) Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in subsection (c) of this section shall be deemed to be the election of the offer to convert in paragraph (B) of this subsection unless the automatic option in subsection (f)(C) applies.

(f) On or before the effective date of a substantial premium increase as defined in subsection (d) of this section, the insurer shall:

(A) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(B) Offer to convert the coverage to a paid up status when the amount payable for each benefit is 90 percent of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in subsection (d) of this section; and

(C) Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in subsection (d) of this

section shall be deemed to be the election of the offer to convert in paragraph (B) of this subsection if the ration is 40 percent or more.

(6) Benefits that must be continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with section (4)(c) of this rule but not section (4)(d) of this rule, are described in this section as follows:

(a) For purposes of this section, attained age rating is defined as a schedule of premiums starting from the issue date that increases age at least one percent per year prior to age 50, and at least three percent per year beyond age 50.

(b) For purposes of this section, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) must be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subsection (c) of this section.

(c) The standard nonforfeiture credit must be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of section (7) of this rule.

(d)(A) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(B) Notwithstanding paragraph (a) of this subsection, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(i) The end of the tenth year following the policy or certificate issue date; or

(ii) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(7) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status may not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(8) There shall be no difference in the minimum nonforfeiture benefits as required under this rule for group and individual long term care insurance policies.

(9) The requirements set forth in this rule become effective March 1, 2006, after adoption of this provision and shall apply as follows:

(a) Except as provided in paragraphs (b) and (c) of this subsection, the provisions of this rule apply to any long-term care policy issued in this state on or after March 1, 2005.

(b) For certificates issued on or after March 1, 2006 under a group long-term care insurance policy as defined in ORS 743.652(3)(a), which policy was in force March 1, 2005, the provisions of this rule do not apply.

(c) The last sentence in section (3) and section (4)(d) and (f) of this rule apply to any long term care insurance policy or certificate issued in this state after May 31, 2008, except new certificates on a group policy as defined in ORS 743.652(3)(a) after December 1, 2008.

(10) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of OAR 836-052-0666 or 836-052-0676, whichever is applicable, treating the policy as a whole.

(11) To determine whether contingent nonforfeiture upon lapse provisions are triggered under section (4)(c) or (d) of this rule, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(12) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) The nonforfeiture provision shall be appropriately captioned;

(b) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the Director for the same contract form; and

(c) The nonforfeiture provision shall provide at least one of the following:

(A) Reduced paid-up insurance;

(B) Extended term insurance;

(C) Shortened benefit period; or

(D) Other similar offerings approved by the Director.

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

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0756

Standards for Benefit Triggers

(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(2)(a) Activities of daily living shall include at least the following as defined in OAR 836-052-0516 and in the policy:

(A) Bathing;

(B) Continence;

(C) Dressing;

(D) Eating;

(E) Toileting; and

(F) Transferring;

(b) An insurer may use activities of daily living to trigger covered benefits in addition to those contained in subsection (a) of this section as long as they are defined in the policy.

(c) For purposes of this rule, a cognitive impairment must be a result of a clinically diagnosed organic dementia, including but not limited to Alzheimer's Disease or a related progressive degenerative dementia of an organic origin such as the following, by way of example only:

(A) Parkinson's Disease;

(B) Huntington's Disease;

(C) Creutzfeldt-Jakob Disease;

(D) Picks Disease;

(E) Multi-infarct dementia;

(F) Normal pressure hydrocephalus;

(G) Multiple sclerosis;

(H) Inoperable tumors of the brain.

(3) An insurer may use additional provisions for determining when benefits are payable under a policy, certificate or rider, but the provisions shall not restrict, and are not in lieu of, the requirements contained in sections (1) and (2) of this rule.

(4) For purposes of this rule, the determination of a deficiency shall not be more restrictive than:

(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) Requiring that if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) A long term care insurance policy shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this rule are effective March 1, 2006, except for the following:

(a) The requirements of this rule apply to a long-term care policy or rider issued in this state on or after March 1, 2005.

(b) This rule does not apply to a certificate issued on or after March 1, 2006, under a group long-term care insurance policy as defined in ORS 743.652(3)(a) that was in force on March 1, 2005.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0766

Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts

(1) For purposes of this rule, the following definitions apply:

(a) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(b)(A) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(i) Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(ii) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(B) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements.

(c) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(d) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(2) A qualified long term care insurance contract shall pay only for qualified long term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(3) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(4) Certifications regarding activities of daily living and cognitive impairment required pursuant to section (3) of this rule shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(5) Certifications required pursuant to section (3) of this rule may be performed by a licensed health care professional at the direction of the insurer as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(6) A qualified long-term care insurance contract shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655, 743.656 & 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0776
Standard Format Outline of Coverage

(1) This rule implements, interprets and makes specific the provisions of ORS 743.655(7) in prescribing a standard format and the content of an outline of coverage. The format for the outline of coverage is set forth in **Exhibit 1** to this rule.

(2) The following requirements apply to the outline:

(a) The outline must be presented in the format prescribed in **Exhibit 1** to this rule and must be a free-standing document;

(b) The outline must be printed in no smaller than ten-point type;

(c) The outline may not contain material of an advertising nature;

(d) Text that is capitalized or underscored in the standard format outline of coverage in **Exhibit 1** to this rule may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

(e) Use of the text and sequence of text of the standard format outline of coverage in **Exhibit 1** is mandatory, unless otherwise specifically indicated.

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

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96; Renumbered from 836-052-0600, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0786
Requirement to Deliver Shopper's Guide

(1) A long-term care insurance Shopper's Guide in a form approved by the Director shall be provided to all prospective applicants of a long term care insurance policy, certificate or rider as provided in this rule.

(2) For the purpose of approving the form of a guide under this rule, the Director may consider the Shopper's Guide developed by the National Association of Insurance Commissioners, or any other guide, as a comparative standard.

(3) The Shopper's Guide shall be provided as follows:

(a) In the case of insurance producer solicitations, an insurance producer must deliver the Shopper's Guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the Shopper's Guide must be presented in conjunction with any application or enrollment form.

(4) The requirement of a Shopper's Guide under this rule does not apply with respect to a life insurance policy or a rider containing accelerated long-term care benefits, but the insurer or producer shall furnish the policy summary required under OAR 836-052-0716.

Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0610, ID 3-2005, f. & cert. ef. 3-1-05; ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

836-052-0900
Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on September 28, 2004, and both of which carry that date, are adopted with respect to health care service contractors as Exhibits 1 and 2 to this rule.

(2) Each health care service contractor shall use the application forms adopted in section (1) of this rule

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 to 442.807 with respect to health care service contractors.

Stat. Auth.: ORS 442.807
Stats. Implemented: ORS 442.800 - 442.807
Hist.: ID 12-2001, f. & cert. ef. 10-15-01; ID 1-2004, f. & cert. ef. 2-3-04; ID 2-2005, f. & cert. ef. 3-1-05; Renumbered from 836-052-0700, ID 10-2007, f. 12-3-07, cert. ef. 1-1-08

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Rule Caption: Relating to Licensing Examination Fees Generally and to Renewal of Adjuster and Insurance Consultant Licenses.
Adm. Order No.: ID 11-2007(Temp)
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 12-11-07 thru 6-1-08
Notice Publication Date:
Rules Amended: 836-009-0007, 836-071-0130, 836-071-0135, 836-071-0145
Subject: This temporary rulemaking reduces fees for license examinations and reexaminations for insurance producers, adjusters and insurance consultants and changes the biennial renewal date for individual adjuster and insurance consultant licenses from the anniversary of the license issuance date to the anniversary of the month of the licensee's birth date.
Rules Coordinator: Sue Munson—(503) 947-7272

836-009-0007
Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is $2,500. The fee for application as a domestic insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is $1,500;

(c) The fee for reinstatement of a certificate of authority is $100.

(2) The fees in this section apply to examinations for licenses for insurance producers, adjusters and insurance consultants. The fees are as follows:

(a) Examination fees:

(A) Insurance producer, property and casualty insurance or life and health insurance – $65;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only – $55;

(C) Surplus lines licensee — $55;

(D) Adjuster, general lines insurance or life and health insurance — $55;

(E) Adjuster, health insurance or any single other line designated by rule — $55;

(F) Consultant, life and health insurance or general lines insurance — $55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — $55;

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Insurance producer, property and casualty insurance or life and health insurance — $65;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — $55;

(C) Surplus lines licensee — $55;

(D) Adjuster, general lines insurance or life and health insurance — $55;

(E) Adjuster, health insurance or any single other line designated by rule — $55;

(F) Consultant, life and health insurance or general lines insurance — $55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — $55;

(c) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

(3) The following fees apply to application for licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — $30;

(b) Nonresident insurance producer — $30;

(c) Adjuster — $30;

(d) Insurance consultant — $30.

(4) The following fees apply to issuance of licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — $45;

(b) Nonresident insurance producer — $45;

(c) Adjuster — $45;

(d) Insurance consultant — $45.

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section (14) of this rule.

(6) The fees established in this section apply to the renewal of licenses for insurance producers, adjusters and insurance consultants. A license shall expire on the last day of the month in which the second anniversary of the initial issuance date occurs, and on the second anniversary following each renewal thereafter. The fees are as follows:

(a) Resident insurance producer — $45;

(b) Nonresident insurance producer — $45;

(c) Adjuster — $45;

(d) Insurance consultant — $45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

(a) Application for a certificate of registration — $350;

(b) Renewal of certificate of registration — $350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group — $350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group — $100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization — $180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is $50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of $5,000.

(13) The Fire Marshal shall pay $50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than $20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 293.445, 731.244, 731.804 & 744.037

Stats. Implemented: ORS 731.804, 744.001, 744.002, 744.004, 744.007, 744.066, 744.069, 744.075, 744.528, 744.531, 744.535, 744.619 & 744.621

Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08

836-071-0130

Adjuster or Insurance Consultant License Renewal

(1) The adjuster or insurance consultant license of an individual expires biennially in the month of the individual's birthday anniversary. The adjuster or insurance consultant license of a person other than an individual expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the license of a person other than an individual shall expire on the second anniversary following each renewal.

(2) An adjuster or insurance consultant licensee applying for renewal must do the following, as applicable:

(a) Submit a completed renewal application, on a form provided by the Director. If mailed, the renewal application must be postmarked by the United States Postal Service not later than the license expiration date;

(b) Submit the renewal fee; and

(c) Submit a statement of current license status from the insurance department of the state of residence of the licensee, if the licensee is a nonresident licensee.

(3) The Director may allow an adjuster or insurance consultant licensee not more than 30 days to submit missing information on the application form if the fees have been submitted on or before the expiration date.

(4) The Director may request on the renewal application any information requested on the original application for a license.

(5) For the purpose of making the transition to renewal according to birth date month as provided in this rule, the adjuster or insurance consultant license of an individual that would have expired on or after November 27, 2007 according to this rule as the rule read prior to November 27, 2007 expires instead in the birth date month next following the former expiration date.

Stat. Auth.: ORS 731.244 & 744.007

Stats. Implemented: ORS 744.007

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 9-2002, f. & cert. ef. 3-18-02; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08

836-071-0135
Renewal of Expired Adjuster or Insurance Consultant License

(1) When an expired licensed of an individual is renewed under ORS 744.009, the renewed license expires biennially in the month of the individual's birthday anniversary.

(2) When an expired license of a person other than an individual is renewed under ORS 744.009, the expiration date of the renewed license shall be the same as the expiration date of the initial license.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 744.009
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 9-2002, f. & cert. ef. 3-18-02; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08

836-071-0145
Amended License Issuance

(1) When the Director determines that an applicant for an amendment to a license satisfies all applicable requirements, the Director shall issue to the applicant a license incorporating the amendment.

(2) A license issued under this rule expires on the same date that the preceding license would have expired, unless OAR 836-071-0130(5) applies to the preceding license.

Stat. Auth.: ORS 731.244, 744.007
Stats. Implemented: 744.007, 744.009
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08

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

Rule Caption: Increases time to file a retaliation complaint from 30 to 90 days.
Adm. Order No.: OSHA 8-2007
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 12-3-07
Notice Publication Date: 10-1-2007
Rules Amended: 437-001-0295
Subject: Oregon OSHA proposes to amend OAR 437-001-0295 Discrimination Complaint, to reflect the changes made in House Bill 2259 passed into law by the 2007 Oregon Legislature. This action increases the time to file a retaliation complaint from 30 to 90 days.
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0295
Discrimination Complaint

(1) An employee or prospective employee may file a complaint as provided in ORS 654.062(5) if the employee believes discrimination has occurred because:

(a) The employee opposed a practice forbidden by, or engaged in a practice provided for, in the Oregon Safe Employment Act; or

(b) The employee refused in good faith to be subjected to imminent danger provided the employer refused to correct the hazard or it was not possible to notify the employer of the danger and the employee has notified the OR-OSHA Division or other appropriate agency, of the hazard, unless excused on the basis of insufficient time or opportunity as stated in OAR 839-003-0025, Bureau of Labor and Industries rules.

(2) The complaint shall be filed with the Commissioner of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232, within 90 days after the employee had reasonable cause to believe discrimination occurred. The complaint may also be filed in any Circuit Court of the State of Oregon.

(3) The complaint may also be filed with the U.S. Department of Labor, 3056 Federal Office Building, Seattle, Washington 98174 as stated in 29 CFR 1977.15.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001-654.295
Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 8-2007 f. & cert. ef. 12-3-07

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Rule Caption: Adopt changes to Dipping and Coating rules in General Industry.
Adm. Order No.: OSHA 9-2007
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 12-3-07
Notice Publication Date: 10-1-2007
Rules Adopted: 437-002-0122
Rules Amended: 437-002-0100
Subject: Oregon OSHA adopts a new Dipping and Coating standard in General Industry. This rule combines the requirements of the current standards in 1910.122 through 1910.126. This is also part of our initiative to convert our rules into clear language. The standards in 1910.122 though 1910.126 are removed and a new rule OAR 437-002-0122, Dipping and Coating is adopted into Division 2/H.
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0100
Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/02, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.101 Compressed gases (General requirements), published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(2) 29 CFR 1910.102 Acetylene, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(3) 29 CFR 1910.103 Hydrogen, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 4/12/88, FR vol. 53, p. 12121; 8/6/90, FR vol. 55, no. 151, p. 32015; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9236.

(4) 29 CFR 1910.104 Oxygen, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 3/7/96, FR vol. 61, no. 46, p. 9237.

(5) 29 CFR 1910.105 Nitrous oxide, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9237.

(6) 29 CFR 1910.106 Flammable and combustible liquids, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/27/75, FR vol. 40, p. 3982; 6/2/75, FR vol. 40, p. 23743; 10/24/78, FR vol. 43, p. 49746; 11/7/78, FR vol. 43, p. 51759; 9/7/82, FR vol. 47, p. 39164; 9/12/86, FR vol. 51, p. 34560; 4/12/88, FR vol. 53, p. 12121; 8/6/90, FR vol. 55, no. 151, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9237; 9/13/05, FR vol. 70, no. 176, p. 53925.

(7) 29 CFR 1910.107 Spray finishing using flammable and combustible materials, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 9/12/80, FR vol. 45, p. 60704; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12121; 3/7/96, FR vol. 61, no. 46, p. 9237; amended with AO 3-2003, removed 1910.107, and Oregon note added, f. and ef. 4/21/03.

(8) 29 CFR 1910.108 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(9) 29 CFR 1910.109 Explosives and blasting agents, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49747; 9/12/80, FR vol. 45, p. 60704; 4/12/88, FR vol. 53, p. 12122; 2/24/92, FR vol. 57, no. 36, p. 6403; 3/29/93, FR vol. 58, no. 58, p. 16496; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9237; 6/18/98, FR vol. 63, no. 117, p. 33466.

(10) 29 CFR 1910.110 Storage and handling of liquefied petroleum gases, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49747; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 6/20/90, FR vol. 55, p. 25094; 8/6/90, FR vol. 55, no. 151, p. 32015; 3/19/93, FR vol. 58, no. 52, p. 15089; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9237; 6/18/98, FR vol. 63, no. 117, p. 33466.

(11) 29 CFR 1910.111 Storage and handling of anhydrous ammonia, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 3/7/96, FR vol. 61, no. 46, p. 9238; 1/8/98, FR vol. 63, no. 5, p. 1269; 6/18/98, FR vol. 63, no. 117, p. 33466; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(12) Reserved for 29 CFR 1910.112 (Reserved)

(13) Reserved for 29 CFR 1910.113 (Reserved)

(14) 29 CFR 1910.114 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(15) 29 CFR 1910.115 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(16) 29 CFR 1910.116 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(17) 29 CFR 1910.119 Process safety management of highly hazardous chemicals, published 2/24/92, Federal Register, vol. 57, no. 36, pp.

6403-6417; amended 3/4/92, FR vol. 57, no. 43, p. 7847; 6/1/92, FR vol. 57, no. 105, pp. 23060-1. (NOTE: Excepted rules adopted by reference by OR-OSHA by Admin. Order 6-1994 on 9/30/94.) Amended 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(18) 29 CFR 1910.120 Hazardous waste operations and emergency response, Interim Final Rules, published 12/19/86, Federal Register, vol. 51, no. 244, pp. 45663-45675; and amended 5/5/87, FR vol. 52, no. 85, pp. 16241-16243. Final Rules were published 3/6/89, FR vol. 54, no. 42, pp. 9294-9335; amended 4/13/90, FR vol. 55, no. 72, pp. 14072-14075; 4/18/91, FR vol. 56, no. 75, pp. 15832-15833; amended 8/22/94, FR vol. 59, no. 161, pp. 43270-43275; 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; 4/3/06, FR vol. 71, no. 63, p. 16669.

(19) 29 CFR 1910.121 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(20) 29 CFR 1910.122 Table of contents, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909; Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(21) 29 CFR 1910.123 Dipping and coating operations: Coverage and definitions, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909; Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(22) 29 CFR 1910.124 General requirements for dipping and coating operations, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909; amended with AO 4-2002, repeal (g)(2), and Oregon note added, f. and ef. 5/30/02; Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(23) 29 CFR 1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13910; Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(24) 29 CFR 1910.126 Additional requirements for special dipping and coating applications, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13911; Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

NOTE: These standards are on file with the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 19-1988, f. & ef. 11-17-88; APD 12-1989, f. & ef. 7-14-89; OSHA 22-1990, f. 9-28-90, cert. ef. 10-1-90; OSHA 3-1992, f. & cert. ef. 2-6-92; OSHA 3-1993, f. & cert. ef. 2-23-93; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 4-2002, f. & cert. ef. 5-30-02; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 4-2005, f. & cert. ef 12-14-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 9-2007, f. & cert. ef. 12-3-07

437-002-0122
Dipping and Coating.

(1) Scope:

(a) This rule applies to all operations where an object is partially or fully immersed in a liquid, or the vapors of a liquid. Such operations include, but are not limited to, cleaning, coating, altering the surface of an object, or changing the character of an object. Examples of covered operations are paint dipping, electroplating, pickling, quenching, tanning, degreasing, stripping, cleaning, roll coating, flow coating, and curtain coating. This rule also applies to draining or drying an object that has been dipped or coated.

(b) This rule does not apply to tanks that contain only water or a molten material.

(2) Definitions:

(a) Adjacent area: Any area within 20 feet (6.1 m) of a vapor area that is not separated from the vapor area by tight partitions.

(b) Approved: The equipment is listed or approved by a nationally recognized testing laboratory.

(c) Autoignition temperature: The minimum temperature required to cause self-sustained combustion, independent of any other source of heat.

(d) Combustible liquid: A liquid having a flash point of 100º F (37.8º C) or above. For purposes of this rule, combustible liquids include any liquid with a flash point above 200º F that is heated or has heated items placed in it.

(e) Dip tank: A container holding a liquid other than water and is used for dipping or coating. An object may be immersed (or partially immersed) in a dip tank or it may be suspended in a vapor coming from the tank.

(f) Flammable liquid: A liquid having a flashpoint below 100º F (37.8º C).

(g) Flashpoint: The minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite if tested in accordance with the definition of "flashpoint" in OAR 437-002-1910.1200(c).

(h) Lower flammable limit (LFL): The lowest concentration of a material that will propagate a flame. The LFL is usually expressed as a percent by volume of the material in air (or other oxidant).

(i) Vapor area: Any space containing a dip tank, including its drain boards, associated drying or conveying equipment, and any surrounding area where the vapor concentration exceeds 25% of the LFL of the liquid in the tank.

(3) Any container used as a dip tank must be strong enough to withstand any expected load.

(4) Ventilation:

(a) Ensure airborne concentrations of materials in any vapor area do not exceed 25% of its LFL.

(b) A tank cover or material that floats on the surface of the liquid in a dip tank to replace or supplement ventilation is acceptable, as long as the airborne concentrations do not exceed 25% of the LFL or any limit established by Division 2, Subdivision Z.

(c) When mechanical ventilation is used, it must conform to design standards based on national consensus standards that meet the following:

(A) The standard specifies the safety requirements for the particular equipment;

(B) The standard is recognized in the United States as providing specifications that result in an adequate level of safety;

(C) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(d) Nonmandatory appendix A of this section contains examples of consensus standards that meet the requirements of paragraph (4)(c) of this section.

(e) When mechanical ventilation is used, each dip tank must have an independent exhaust system unless the combination of substances being removed will not cause a fire, explosion, or chemical reaction.

(f) When mechanical ventilation is used, it must draw the flow of air into a hood or exhaust duct.

(A) Ensure each room with exhaust hoods has make-up airflow that is at least 90% of the volume of air exhausted.

(B) Ensure that make-up air does not damage exhaust hoods.

(C) When air is recirculated, it must meet the requirements of OAR 437-002-0081, "Oregon Ventilation Regulations."

(g) Inspect hoods and ventilation ductwork for corrosion or damage at least quarterly and prior to operation after a prolonged shutdown.

(h) Ensure the ventilation airflow is adequate at least quarterly and prior to operation after a prolonged shutdown.

(5) Periodically inspect all dipping and coating equipment, including covers, drains, overflow piping, and electrical and fire-extinguishing systems, and promptly correct any deficiencies.

(6) Thoroughly clean dip tanks of solvents and vapors before permitting welding, burning, or open-flame work.

(7) Provide mechanical ventilation or respirators (selected and used as specified in OAR 437-002-1910.134, "Respiratory Protection) to protect employees in the vapor area from exposure to toxic substances released during welding, burning, or open-flame work.

(8) Medical, first aid, and hygiene facilities:

(a) All employees working with or around dip tanks must know the first-aid procedures appropriate to the dipping and coating hazards to which they are exposed.

(b) When employees work with liquids that may burn, irritate, or otherwise harm their skin:

(A) Obtain a physician's approval before an employee with a sore, burn, or other skin lesion that requires medical attention can return to work in a vapor area.

(B) Only a properly designated person can provide treatment for any skin abrasion, cut, rash, or open sore.

(C) Keep appropriate first-aid supplies near dipping or coating operations.

(D) Provide employees who work with chromic acid periodic examinations, at least annually, of their exposed body parts, especially their nostrils.

(E) Provide locker space or other storage space to prevent contamination of employee's street clothes.

(F) Provide at least one basin with hot water for every 10 employees who work with such liquids.

(G) Follow the emergency eyewash and shower facilities requirements of OAR 437-002-0161, "Medical & First Aid."

(9) Before cleaning a dip tank:

(a) Drain the tank and open the cleanout doors ; and

(b) Ventilate and clear any pockets where hazardous vapors may have accumulated.

(10) Use of flammable or combustible liquids:

(a) Use only dip tanks constructed from non-combustible materials. When drainboards are used, use only drainboards constructed from non-combustible materials.

(b) Overflow piping.

(A) Provide properly trapped overflow piping for dip tanks that have a capacity greater than 150 gallons (568 liters) or a surface area greater than 10 square feet (0.95 square meters).

(B) Overflow piping must discharge to a safe location.

(C) Overflow piping must be at least 3 inches (7.6 cm) diameter and must have sufficient capacity to prevent the tank from overflowing.

(D) The bottom of the overflow connector must be at least 6 inches (15.2 cm) below the top of the dip tank.

(c) Bottom Drains.

(A) Dip tanks containing more than 500 gallons (1893 L) of liquid must have a bottom drain.

(i) A bottom drain is not required if an automatic cover that meets the requirements of paragraph (10)(d)(C) is used.

(ii) A bottom drain is not required if the viscosity of the liquid at normal atmospheric temperature makes this impractical.

(B) Ensure the bottom drain will empty the dip tank in the event of a fire.

(C) Properly trap the bottom drain.

(D) Ensure the bottom drain has pipes that will empty the dip tank within 5 minutes.

(E) Bottom drains must discharge to a safe location.

(F) Bottom drains must be capable of manual and automatic operation. Manual operation must be from a safe and accessible location.

(G) When gravity flow from the bottom drain is impractical, use automatic pumps.

(d) Fire Protection.

(A) Provide portable fire extinguishers that meet the requirements of OAR 437-002-0157 in every vapor area.

(B) Provide an automatic fire extinguishing system:

(i) When the capacity of the dip tank is at least 150 gallons (568 L) or the liquid surface area is 4 square feet (0.38 square meters) or more; or

(ii) When the capacity of a hardening or tempering tank is at least 500 gallons (1893 L) or a liquid surface area of 25 square feet (2.37 square meters) or more.

(C) A cover that is closed by an approved automatic device for the automatic fire-extinguishing system may be used instead of the fire extinguishing system if the cover:

(i) Can also be activated manually;

(ii) Is noncombustible or tin-clad, with the enclosing metal applied with locked joints; and

(iii) Is kept closed when the dip tank is not in use.

(D) In each vapor area and any adjacent area, ensure that:

(i) All electrical wiring and equipment conform to OAR 437, Division 2, Subdivision S (except as specifically permitted in paragraph (15)); and

(ii) There are no flames, spark-producing devices, or other surfaces that are hot enough to ignite vapors.

(E) Electrically bond and ground portable containers used to add liquids to dip tanks to prevent static electrical sparks or arcs.

(F) All vapor areas must be free of combustible debris and as free as practicable of combustible stock.

(G) Deposit all rags or waste impregnated with dipping or coating material in a tightly-closing metal waste can immediately after use. Use only waste cans that are approved or acceptable to the local fire authority.

(H) Empty all waste containers at the end of each shift.

(I) Prohibit smoking in all vapor areas. Post a readily visible "No Smoking" sign near each dip tank or designate the entire area as "No Smoking."

(e) If a conveyor system is used with a dip tank, it must automatically shut down in the event of a fire. If a ventilation system is used to meet the ventilation requirements of paragraph (4), the conveyor system must automatically shut down if the ventilation system fails.

(f) If a liquid is heated in a dip tank, it must be maintained below the liquid's boiling point, and it must be maintained at least 100º F (37.8º C) below the liquid's autoignition temperature.

(g) Ensure that a heating system that is used in a drying operation and could cause ignition:

(A) Is installed in accordance with NFPA 86A-1969, Standard for Ovens and Furnaces (which is incorporated by reference in §1910.6 of this part); and

(B) Has adequate mechanical ventilation that operates before and during the drying operation; and

(C) Shuts down automatically if any ventilating fan fails to maintain adequate ventilation.

(11) Hardening or Tempering Tanks:

(a) Ensure that hardening or tempering tanks

(A) Are located as far as practicable from furnaces;

(B) Are on noncombustible flooring;

(C) Have noncombustible hoods and vents (or equivalent devices) for venting to the outside. For this purpose, treat vent ducts as flues and keep them away from combustible materials, particularly roofs.

(b) Equip each tank with an alarm that will sound if the temperature of the liquid comes within 50º F (10º C) of its flashpoint (the alarm set point).

(c) When practicable, provide each tank with a limit switch to shut down the conveyor supplying work to the tank.

(d) If the temperature of the liquid can exceed the alarm set point, equip the tank with a circulating cooling system.

(e) If the tank has a bottom drain, the bottom drain may be combined with the oil-circulating system.

(f) Do not use air under pressure when filling the dip tank or agitating the liquid in the dip tank.

(12) Flow Coating:

(a) Use a direct low-pressure pumping system or a 10-gallon (38 L) or smaller gravity tank to supply the paint for flow coating. In case of fire, an approved heat-actuated device must shut down the pumping system.

(b) Ensure that the piping is substantial and rigidly supported.

(13) When roll coating, roll spreading, or roll impregnating operations use a flammable or combustible liquid that has a flashpoint below 140º F (60º C), prevent sparking of static electricity by:

(a) Bonding and grounding all metallic parts (including rotating parts) and installing static collectors; or

(b) Maintaining a conductive atmosphere (for example, one with a high relative humidity) in the vapor area.

(14) Vapor degreasing tanks:

(a) Ensure that the condenser or vapor-level thermostat keeps the vapor level at least 36 inches (91 cm) or one-half the tank width, whichever is less, below the top of the vapor degreasing tank.

(b) When using gas as a fuel to heat the tank liquid, the combustion chamber must be airtight (except for the flue opening) to prevent solvent vapors from entering the air-fuel mixture.

(c) The flue must be made of corrosion-resistant material, and it must extend to the outside. Install a draft diverter if mechanical exhaust is used on the flue.

(d) Do not allow the temperature of the heating element to cause a solvent or mixture to decompose or to generate an excessive amount of vapor.

(15) Ensure that cyanide tanks have a dike or other safeguard to prevent cyanide from mixing with an acid if a dip tank fails.

(16) If a liquid is sprayed in the air over an open-surface cleaning or degreasing tank, control the spraying to the extent feasible by:

(a) Enclosing the spraying operation; and

(b) Using mechanical ventilation to provide enough inward air velocity to prevent the spray from leaving the vapor area.

(17) Electrostatic paint detearing:

(a) Use only approved electrostatic equipment in paint-detearing operations. Electrodes in such equipment must be substantial, rigidly supported, permanently located, and effectively insulated from ground by nonporous, noncombustible, clean, dry insulators.

(b) Use conveyors to support any goods being paint deteared.

(c) Do not manually handle goods being electrostatically deteared.

(d) Maintain a minimum distance of twice the sparking distance between goods being electrostatically deteared and the electrodes or conductors of the electrostatic equipment. This minimum distance must be displayed conspicuously on a sign located near the equipment.

(e) Ensure that the electrostatic equipment has automatic controls that immediately disconnect the power supply to the high-voltage transformer and signal the operator if:

(A) Ventilation or the conveyors fail to operate;

(B) A ground (or imminent ground) occurs anywhere in the high-voltage system; or

(C) Goods being electrostatically deteared come within twice the sparking distance of the electrodes or conductors of the equipment.

(f) Use fences, rails, or guards, made of conducting material and adequately grounded, to separate paint-detearing operations from storage areas and from personnel.

(g) To protect paint-detearing operations from fire, use automatic sprinklers or an automatic fire-extinguishing system conforming to the requirements of OAR 437, Division 2, Subdivision F.

(h) To collect paint deposits, provide drip plates and screens and clean these plates and screens in a safe location.

Stat. Authority: ORS 654.025(2), 656.726(4).
Stats. Implemented: ORS 654.001 - 654.295.
Hist.: OSHA 9-2007, f. & cert. ef. 12-3-07

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Rule Caption: Extends deadline from 20 to 30 days; extends civil penalty to judgment from 10 to 20 days.
Adm. Order No.: OSHA 10-2007
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 10-1-2007
Rules Amended: 437-001-0205, 437-001-0215, 437-001-0220, 437-001-0240, 437-001-0255
Subject: Oregon OSHA amends rules in Division 1, General Administrative Rules, to reflect the changes made in Senate Bill 556 passed into law by the 2007 Oregon Legislature. This action increases the time to file an appeal from 20 to 30 days and extends the period before civil penalty can be recorded as a judgment from 10 to 20 days after the final order. Also amended is the Extension of Correction Date - Application rule to allow greater discretion for granting extensions.
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0205
Citation and Notice of Penalty

(1) If the Division concludes from the review of an inspection report that a rule or order was violated, a citation will be issued to the employer which shall:

(a) State the name of the employer, place of employment, and date of inspection. If the violation occurred on other than the inspection date, the date of the violation will be included;

(b) Describe factually the nature and location of the violation;

(c) State the type of violation, if other than general;

(d) Identify the rule or order violated;

(e) Fix a time for the correction of each violation not corrected at the time of inspection;

(f) State the penalty for each violation;

(g) Identify which, if any, penalties are suspended;

(h) State the total dollar amount of assessed penalties;

(i) Inform the employer of the right to appeal the citation, the civil penalty or the period of time fixed for correction of the violation to the Board;

(j) Inform affected employees of their right to appeal the time fixed for correction of the violation; and

(k) Notify the employer that the citation becomes a final order if an appeal is not filed within 30 days of receipt of the citation by the employer.

(2) The citation shall be served on the employer by certified mail or in person.

(3) Each employee representative shall be sent a copy of all citations and notices of penalties issued.

Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; 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 10-2007, f. 12-3-07, cert. ef. 1-1-08

437-001-0215
Employer Response to Citation and Notice of Penalty

(1) After receipt of a citation, the employer shall:

(a) Promptly post the citation for employees information for 3 days or until the violation is corrected, whichever occurs last;

(b) Assure that any amendments or withdrawals to a citation are posted with the original citation for 3 days or until the violation is corrected, whichever occurs last;

(c) Correct each violation by the date ordered; and

(d) If no appeal is filed, remit any penalty by the 31st calendar day following receipt of the citation.

(2) The above requirements shall not limit an employer's appeal rights.

Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-2007, f. 12-3-07, cert. ef. 1-1-08

437-001-0220
Payment of Penalties

(1) All civil penalties become due and owing after the citation becomes a final order.

(2) If payment is not received within 20 days after the order becomes final, it may be docketed as a judgment as provided by ORS 654.086(3).

Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-2007, f. 12-3-07, cert. ef. 1-1-08

437-001-0240
Extension of Correction Date — Application

(1) An employer may apply for an extension of the date for correcting a violation.

(2) An application for extension of correction date shall be in writing to the OR-OSHA Division, 350 Winter St. NE, Salem, Oregon 97310, or received by any office of the Department.

(3) The application for extension must include:

(a) The name and address of the employer;

(b) The location of the place of employment;

(c) The citation number;

(d) The item number of the violation for which the extension is sought;

(e) The reason for the request;

(f) Any interim steps being taken to safeguard employees against the cited hazard during the requested extended correction period;

(g) The date by which the employer proposes to complete the correction; and

(h) A statement that a copy of the request for extension has been posted as required by OAR 437-001-0275(2) or for at least 10 days, whichever is longer, and, if appropriate, served on the authorized representative of affected employees, and certification of the date upon which such posting or service was made.

(i) Any employee who feels a posted request for an extension is unjust may contact the Administrator for a review of the matter.

(4) The application shall be postmarked or received by the Department no later than the correction date of the violation for which the extension is requested. For good cause, the Administrator may approve exceptions to this rule.

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 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-2007, f. 12-3-07, cert. ef. 1-1-08

437-001-0255
Informal Conference

(1) The Administrator shall provide an opportunity for the employer and employees to discuss informally with the Division any matter affecting occupational safety and health in the place of employment.

(2) An informal conference may be used to:

(a) Clarify statements of observed violations;

(b) Discuss safety and health requirements;

(c) Discuss abatement dates;

(d) Explain the penalty system;

(e) Improve employer/employee understanding of the Oregon Safe Employment Act;

(f) Correct errors;

(g) Narrow issues; or

(h) Negotiate a settlement agreement to resolve disputed citations. Notwithstanding any other rule in this division, proposed civil penalties may be reduced as part of a settlement agreement resolving disputed claims.

(3) An informal conference concerning a citation shall not extend the 30 days allowed for filing an appeal with the Board.

(4) In those cases where an informal conference concerns a citation, the Division shall contact the employer and require them to notify the employees or their representatives of the opportunity to attend the informal conference.

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 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 10-2007, f. 12-3-07, cert. ef. 1-1-08

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Department of Consumer and Business Services, Workers' Compensation Board
Chapter 438

Rule Caption: CDA/ALJ-Mediator Approval; Cost Bills/Attorney Fee Liens; Hearing Notice; Own Motion (Attorney Fees and TTD Suspension).
Adm. Order No.: WCB 2-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Adopted: 438-015-0019, 438-015-0022
Rules Amended: 438-005-0046, 438-005-0050, 438-005-0055, 438-006-0020, 438-006-0100, 438-009-0005, 438-009-0010, 438-009-0020, 438-009-0022, 438-009-0025, 438-009-0028, 438-009-0030, 438-009-0035, 438-011-0020, 438-012-0035, 438-015-0005, 438-015-0080, 438-019-0030
Subject: Adopts and amends rules to implement SB 253 (ALJ-mediator approval of Claim Disposition Agreements (CDAs)) and SB 404 (cost bills and attorney fee liens) and amends the briefing extension rule (OAR 438-011-0020(3)). Amends OAR 438-006-0020 to provide not less than 60 days notice of a hearing in compliance with ORS 656.238(5)(a); amends OAR 438-006-0100(3)(a) to reflect renumbering and title changes in the Supreme Court rules; amends OAR 438-009-0022(3)(f) to delete requirement for the workers' social security number in a CDA in accordance with SB 583; deletes the Own Motion suspension rule (OAR 438-012-0035(6)) in compliance with Jordan v. SAIF, 343 Or 208 (August 30, 2007); changes the out of compensation attorney fee rules for Own Motion cases (OAR 438-015-0080(1),(2)); deletes the Own Motion attorney fee rules regarding "post-aggrivation rights" new or omitted medical condition claims; and updates telephone numbers and addresses.

These amendments are effective January 1, 2008 and apply as follows. Amendments to OAR 438-005-0046, OAR 438-009-0020, OAR 438-009-0022, OAR 438-009-0025, OAR 438-009-0028, OAR 438-009-0030, and OAR 438-009-0035 apply to all claim disposition agreements filed on or after January 1, 2008. Amendments to OAR 438-005-0050 and OAR 438-005-0055 apply to all notices of claim acceptance and notices of claim denial issued on or after January 1, 2008. Amendments to OAR 438-006-0020 and OAR 438-006-0100 apply to all cases pending before the Hearings Division on or after January 1, 2008. Amendments to OAR 438-009-0005 apply to all settlement stipulations filed on or after January 1, 2008. Amendments to OAR 438-009-0010 apply to all disputed claims settlements filed on or after January 1, 2008. Amendments to OAR 438-011-0020 apply to briefing extension requests filed on or after January 1, 2008. Amendments to OAR 438-012-0035 and OAR 438-015-0080 apply to all Own Motion claims existing on or after January 1, 2008. Amendments to OAR 438-015-0005 and OAR 438-015-0019 apply to all claims in which the order on compensability of the claim denial has not become final on or before January 1, 2008. Amendments to OAR 438-015-0022 apply to all claims in which an order that grants attorney fees is issued after January 1, 2008, regardless of the date of injury. Amendments to OAR 438-019-0030 apply to all mediations pending on or after January 1, 2008.
Rules Coordinator: Vicky Scott—(503) 378-3308

438-005-0046
Filing and Service of Documents; Correspondence

(1) Filing:

(a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;

(b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR 436, Division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;

(c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;

(d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, "filing" also includes the physical delivery of the settlement stipulation, disputed claim settlement, or claim disposition agreement to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.

(e) Filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute may be accomplished by electronic mail (e-mail). To electronically file a request for hearing or Board review, a party shall:

(A) Send an e-mail to: request.wcb@state.or.us; and

(B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review. These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg).

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). An electronic filing under subsection (d) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

(f) Except for the documents specified in subsection (c) or (e) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely;

(g) "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:

(A) The document transmitted indicates at the top that it has been delivered by FAX;

(B) The Board's facsimile transmission number is used; and

(C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d) is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.726(5)
Hist.: WCB 5-1987, f. 12-18-87, cert. ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1991(Temp), f. 5-24-91, cert. ef. 5-28-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-1999(Temp), f. 9-24-99, cert. ef. 10-23-99 thru 4-14-00; WCB 1-2000, f. 3-29-00, cert. ef. 4-3-00; WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-005-0050
Notice of Claim Acceptance and Hearing Rights under ORS 656.262(6)(d)

(1) Every notice of claim acceptance shall include all of the information prescribed by ORS 656.262(6)(b) and OAR 436.

(2) In the event that the insurer or self-insured employer disagrees with all or any portion of a worker's objections to a notice of claim acceptance under ORS 656.262(6)(d), the insurer's or self-insured employer's written response shall specify the reasons for the disagreement, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU DISAGREE WITH THIS DECISION, YOU MAY FILE A LETTER WITH
THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1280. YOUR LETTER SHOULD STATE THAT YOU WANT A HEARING, YOUR ADDRESS, THE DATE OF YOUR INJURY, AND YOUR CLAIM NUMBER.
"IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE AT 1-800-452-0288."

Stat. Auth: ORS 656.307, 656.388, 656.593 & 656.726(5)
Stats. Implemented: ORS 656.262(6)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-005-0055
Notice of Claim Denial and Hearing Rights

(1) Except for a denial issued under ORS 656.262(14), in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial; and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR LETTER MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS
ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES.IF YOU MAKE A TIMELY REQUEST FOR HEARING ON A DENIAL OF COMPENSABILITY OF YOUR CLAIM AS REQUIRED BY ORS 656.319(1)(a) THAT IS BASED ON ONE OR MORE REPORTS OF EXAMINATIONS CONDUCTED AT THE REQUEST OF THE INSURER OR SELF-INSURED EMPLOYER UNDER ORS 656.325(1)(a) AND YOUR ATTENDING PHYSICIAN DOES NOT CONCUR WITH THE REPORT OR REPORTS, YOU MAY REQUEST AN EXAMINATION TO BE CONDUCTED BY A PHYSICIAN SELECTED BY THE DIRECTOR. THE COST OF THE EXAMINATION AND THE EXAMINATION REPORT SHALL BE PAID BY THE INSURER OR SELF-INSURED EMPLOYER. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE AT 1-800-452-0288."

(2) If an insurer or self-insured employer intends to deny a claim under ORS 656.262(14) because of a worker's failure to cooperate in the investigation of the claim, in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR LETTER MUST STATE THAT YOU WANT AN EXPEDITED HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOU WILL RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE AT 1-800-452-0288."

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.262(6), 656.262(15) & 656.325
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-006-0020
Acknowledgment; Notice of Conference and Hearing in Ordinary Hearing Process

The Hearings Division shall, by mail, acknowledge receipt of a request for hearing. Such acknowledgment may include notice of date for an informal prehearing conference pursuant to OAR 438-006-0062 or notice of hearing date. The hearing shall be scheduled for a date that is within 90 days of the request for hearing and not less than 60 days after mailing of a notice of hearing date.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.283(4)(5)(a)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 6-1990(Temp), f. 4-24-90, cert. ef. 4-25-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-006-0100
Representation by Counsel

(1) Except as permitted by ORS 656.291 and this rule, corporations and state agencies must be represented by members of the Oregon State Bar. The Board encourages injured workers also to be represented in formal hearings.

(2) Notwithstanding section (1) of this rule, a state agency officer or employee may represent the Director as permitted by rule of the Director.

(3)(a) A law student authorized to appear before courts and administrative tribunals of this state in accordance with Rule 13.05 through 13.30 of the Supreme Court Rules for Admission of Attorneys (Law Student Appearance Program) has the consent of the Board to appear on behalf of a client at a hearing if:

(A) All of the following documents have been filed with the Presiding Administrative Law Judge prior to the hearing:

(i) A true copy of the student's certification to appear under the Law Student Appearance Program showing approval by the Supreme Court and filing with the State Court Administrator;

(ii) The client's written consent to representation under the Law Student Appearance Program, which shall be made a part of the official record of each case; and

(iii) The student's supervising attorney has introduced the student to the Presiding Administrative Law Judge in a letter of introduction signed by the supervising attorney; and

(B) The Presiding Administrative Law Judge has approved the law student's appearance prior to the hearing.

(b) The supervising attorney is encouraged, though not required, to personally introduce the law student to the assigned Administrative Law Judge in each case.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.726(5) & 9.320
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0005
Settlement Stipulations

(1) Contested matters arising out of a claim closure may be resolved by the parties at any time after the conclusion of the reconsideration proceeding under ORS 656.268, whether or not a hearing has been requested by a party.

(2) Any contested matters not arising out of a claim closure may be resolved by the parties at any time, whether or not a hearing has been requested by a party.

(3) All settlement stipulations that provide for an award of compensation for permanent partial disability shall recite the body part(s) for which

the award(s) is (are) made and shall recite all awards in both degrees and percent of loss. In the event there is any inconsistency between the stated degrees and percent of loss awarded in a settlement stipulation, the stated percent of loss shall be controlling.

(4) For purposes of ORS 656.289(1)–(3), an Administrative Law Judge's order approving a settlement stipulation is a determination of all matters included within the terms of the settlement stipulation.

(5) All settlement stipulations shall recite whether a claim disposition agreement in the claim has been filed.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.268 & 656.289(1)-(3)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0010
Disputed Claim Settlements

(1) Any document submitted for approval by the Board or the Hearings Division as a settlement of a denied or disputed claim shall be in the form specified by this rule.

(2) A disputed claim settlement shall recite, at a minimum:

(a) The date and nature of the claim;

(b) That the claim has been denied and the date of the denial;

(c) That a bona fide dispute as to the compensability of all or part of the claim exists and that the parties have agreed to compromise and settle all or part of the denied and disputed claim under the provisions of ORS 656.289(4);

(d) The factual allegations and legal positions in support of the claim;

(e) The factual allegations and legal positions in support of the denial of the claim;

(f) That each of the parties has substantial evidence to support the factual allegations of that party;

(g) A list of medical service providers who shall receive reimbursement in accordance with ORS 656.313(4), including the specific amount each provider shall be reimbursed, and the parties' acknowledgment that this reimbursement allocation complies with the reimbursement formula prescribed in ORS 656.313(4)(d); and

(h) The terms of the settlement, including the specific date on which those terms were agreed.

(3) If an accepted claim is later denied entirely at any time based on fraud, misrepresentation or other illegal activity by the worker, the disputed claim settlement shall further recite the specific factual allegations and legal positions of the parties concerning the fraud, misrepresentation or other illegal activity.

(4) If a claim was previously accepted in good faith but later denied, in whole or in part, based on later obtained evidence that the claim is not compensable or evidence that the paying agent is not responsible for the claim, the disputed claim settlement shall further recite:

(a) If the accepted claim is later denied entirely at any time up to two years from the date of claim acceptance, an allegation that the self-insured employer or insurer has obtained later evidence that the claim is not compensable or that the paying agent is not responsible for the claim; or

(b) If the denial is a denial of aggravation, current need for medical services or a partial denial

of a medical condition on the ground that the condition is not related to the accepted injury, that the claimant retains all rights that may later arise under ORS 656.245, 656.273, 656.278 and 656.340, insofar as these rights may be related to the original accepted claim.

(5) If the claimant is unrepresented, the denial of the claim which is being settled by any document described in section (1) of this rule shall not be contained within that document, but rather shall be issued separately. In addition, any document described in section (1) of this rule shall recite that the unrepresented claimant has been orally advised of the following matters:

(a) The right to an attorney of the claimant's choice at no cost to the claimant for attorney fees;

(b) The existence of the office of the Ombudsman pursuant to ORS 656.709;

(c) Except with the consent of the worker, reimbursement made to medical service providers from the proceeds of a disputed claim settlement shall not exceed 40 percent of the total present value of the settlement amount; and

(d) Reimbursement from the proceeds of a disputed claim settlement made to medical service providers shall not prevent a medical service provider or health insurance provider from recovering the balance of amounts owing for such services directly from the worker.

(6) Any document described in section (1) of this rule shall also recite that the claimant has been orally advised that:

(a) The claimant has the right to request a hearing concerning the claim, after which an Administrative Law Judge will determine whether the claimant will receive workers' compensation benefits;

(b) If, following the hearing, the claim is finally determined compensable, the claimant would be entitled to workers' compensation benefits, which could include temporary disability, permanent disability, medical treatment, and vocational rehabilitation;

(c) If, following the hearing, the claim is finally determined not compensable, the claimant would not be entitled to workers' compensation benefits;

(d) As a result of this agreement, the claimant's rights to seek workers' compensation benefits concerning this claim would be extinguished;

(e) Both parties agree that the terms of the agreement are reasonable; and

(f) The agreement shall not be binding upon the parties unless and until the agreement is approved by an Administrative Law Judge or the Board, depending upon which forum is considering the dispute.

(7) No document described in section (1) of this rule shall be approved unless the document submitted by the parties establishes that a bona fide dispute as to compensability exists and the proposed disposition of the dispute is reasonable. If an Administrative Law Judge or the Board is not satisfied that a bona fide dispute exists or that disposition of the dispute is reasonable, the Administrative Law Judge or Board may reject the agreement or specify the manner in which objection(s) can be cured.

(8) All disputed claim settlements shall:

(a) Recite whether a claim disposition agreement in the claim has been filed; and

(b) Be in a separate document from a claim disposition agreement.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236, 656.289(4) & 656.313(4)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 5-1990, f. 4-19-90, cert. ef. 5-21-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1993, f. 10-27-93, cert. ef. 11-4-93; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0020
Claim Disposition Agreements; Form

Any document filed with the Board for approval by the Administrative Law Judge who mediated the agreement or the Board Members as a claim disposition agreement shall:

(1) Contain the terms, conditions, and information as prescribed by the Board pursuant to OAR 438-009-0022;

(2) Be in a separate document from a disputed claim settlement; and

(3) Include, in prominent or bold-face type, the following paragraph, which shall be located at the conclusion of the document after the signature lines for the parties:

"THIS AGREEMENT IS IN ACCORDANCE WITH THE TERMS AND CONDITIONS PRESCRIBED BY THE BOARD. SEE ORS 656.236(1). ACCORDINGLY, THIS CLAIM DISPOSITION AGREEMENT IS APPROVED. AN ATTORNEY FEE PAYABLE TO CLAIMANT'S ATTORNEY ACCORDING TO THE TERMS OF THIS AGREEMENT IS ALSO APPROVED.

IT IS SO ORDERED.

DATED THIS ___ DAY OF _____, 19__ .

Board Member

Board Member
NOTICE TO ALL PARTIES: THIS ORDER IS FINAL AND IS NOT SUBJECT TO REVIEW. ORS 656.236(2)."

(4) If the document filed for approval lacks any of the information required by section (1) of this rule, the Administrative Law Judge who mediated the agreement or the Board may:

(a) Mail a letter notifying the parties that the deficiency must be corrected and that an addendum signed by one or more of the parties or their representatives must be filed in the manner described in the letter within 21 days from the date of the letter; and

(b) In the event that the deficiency is not corrected in the manner and within the time described in subsection (a) of this section, disapprove the proposed agreement as unreasonable as a matter of law under ORS 656.236(1)(a).

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1991(Temp), f. & cert. ef. 3-8-91; WCB 5-1991, f. 8-22-91, cert. ef. 9-2-91; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0022
Required Information in a CDA

(1) If a claim disposition agreement involves more than one claim, the disposition shall contain all of the information required by this rule for each claim including a separate first page of the claim disposition agreement as set forth in section (3) of this rule.

(2) The insurer/self-insured employer shall provide the claimant information explaining claim dispositions in a separate enclosure accompanying the proposed claim disposition agreement. The Board shall prescribe by a bulletin the specific form and format for the enclosure. If the claimant does not read or comprehend English, or is otherwise unable to understand written language, the insurer/self-insured employer shall provide this information in a language or other manner which ensures the worker understands the meaning of the disposition.

(3) The first page of the claim disposition agreement shall include, but not be limited to, the following information:

(a) The worker's name;

(b) The case number assigned to the claim by the Board, if any;

(c) The insurer's/self-insured employer's claim number;

(d) The date of the compensable injury or disease;

(e) The file number assigned to the claim by the Workers' Compensation Division, if known;

(f) The name of the insurer/self-insured employer;

(g) Specific identification of all benefits, rights and insurer/self-insured employer obligations under Workers' Compensation Law which are released by the agreement;

(h) The total attorney fee, if any, to be paid to claimant's attorney;

(i) The total amount (excluding attorney fee) to be paid to the claimant; and

(j) A statement indicating whether or not the parties are waiving the "30-day" approval period of ORS 656.236(1)(a)(C) as permitted by ORS 656.236(1)(b).

(4) The claim disposition agreement shall also contain, but not be limited to, the following:

(a) Identification of the accepted conditions that are the subject of the disposition;

(b) The date of the first claim closure, if any;

(c) The amount of any permanent disability award(s), if any;

(d) Whether the worker has ever been able to return to the work force following the industrial injury or occupational disease;

(e) The worker's age, highest education level, and the extent of vocational training (or in the event that the worker is deceased, the age, highest education level, and the extent of vocational training of the worker's beneficiaries);

(f) A list of occupations that the worker has performed (or in the event that the worker is deceased, a list of occupations that each of the deceased worker's beneficiaries has performed);

(g) That the worker has been provided the informational enclosure prescribed by bulletin pursuant to section (2) of this rule (attachment of the informational enclosure to the parties' claim disposition agreement is not required, unless the enclosure is expressly incorporated into the agreement); and

(h) The following notice in prominent or bold face type, which shall either be included in the claim disposition agreement or incorporated by reference into the agreement:

"NOTICE TO CLAIMANT: UNLESS YOU ARE REPRESENTED BY AN ATTORNEY AND YOUR CLAIM DISPOSITION AGREEMENT INCLUDES A PROVISION WHICH WAIVES THE 30-DAY "COOLING OFF" PERIOD, YOU WILL RECEIVE A NOTICE FROM THE WORKERS' COMPENSATION BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT TELLING YOU THE DATE THIS AGREEMENT WAS RECEIVED BY THEM FOR APPROVAL. YOU HAVE
30 DAYS FROM THE DATE THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT RECEIVES THE AGREEMENT TO REJECT THE AGREEMENT, BY TELLING THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT IN WRITING. DURING THE 30 DAYS ALL OTHER PROCEEDINGS AND PAYMENT OBLIGATIONS OF THE INSURER/SELF-INSURED EMPLOYER, EXCEPT FOR MEDICAL SERVICES, ARE STAYED ON YOUR CLAIM. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY DISCUSS THIS AGREEMENT WITH THE BOARD IN PERSON WITHOUT FEE
OR CHARGE. TO CONTACT THE BOARD, WRITE OR CALL: WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1280, TELEPHONE: (503) 378-3308, TOLL-FREE AT 1-877-311-8061, 8:00
TO 5:00, MONDAY THROUGH FRIDAY.
"YOU MAY ALSO DISCUSS THIS AGREEMENT WITH THE WORKERS' COMPENSATION OMBUDSMAN, WITHOUT FEE OR CHARGE. TO CONTACT THE OMBUDSMAN, WRITE OR CALL: WORKERS' COMPENSATION OMBUDSMAN, LABOR & INDUSTRIES BUILDING, 350 WINTER STREET NE, SALEM, OR 97310, TELEPHONE: (503) 378-3351, TOLL-FREE AT 1-800-927-1271, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.
"YOU MAY ALSO CALL THE WORKERS' COMPENSATION DIVISION'S INJURED WORKER HOTLINE, TOLL-FREE IN OREGON, AT 1-800-452-0288."

Stat. Auth: ORS 656.726(5)
Stats Implemented: ORS 656.236
Hist.: WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0025
Claim Disposition Agreements; Processing

(1) The parties shall file an original and one legible copy of the claim disposition agreement with the Board for approval by the Administrative Law Judge who mediated the agreement or the Board Members. Any claim disposition agreement may be filed in accordance with OAR 438-005-0046(1)(a) and (1)(d). The original claim disposition agreement shall be retained in the Board's file and a copy shall be conformed and distributed to the Director.

(2) Any claim disposition agreement filed under section (1) of this rule, shall be deemed to have been submitted as of the date the agreement is received by the Administrative Law Judge who mediated the agreement or the Board. All times to be calculated shall be calculated from the date of receipt of the agreement by the Administrative Law Judge who mediated the agreement or the Board.

(3) A request by an unrepresented claimant to meet with the Board must be made to the Board not more than 30 days after the Board's receipt of a claim disposition agreement, but need not be in any particular form; verbal requests will be accepted.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WDB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0028
Postcard Announcing CDA Approval Order

(1) The parties shall also file self-addressed "Announcement of CDA Approval Order" postcards which shall be mailed by the Administrative Law Judge who mediated the agreement or the Board to all parties and their attorneys if the claim disposition agreement is approved. The Administrative Law Judge who mediated the agreement may also physically deliver the postcards to all parties and their attorneys as provided in OAR 438-009-0030(6).

(2) The postcard, which shall be in a form prescribed by the Board, shall provide the following information:

(a) The claimant's name;

(b) The claim number; and

(c) Blank spaces for the Administrative Law Judge who mediated the agreement or the Board to insert:

(A) The CDA case number; and

(B) The date when the claim disposition agreement was approved.

(3) If an insufficient number of postcards is filed by the parties or if any postcard lacks the information set forth in section (2) of this rule, the Administrative Law Judge who mediated the agreement or the Board may follow the procedures described in OAR 438-009-0020(4).

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236
Hist.: WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0030
Claim Disposition Agreements; Stay of Other Proceedings; Payment of Proceeds

(1) Notwithstanding OAR 438-006-0081, 438-006-0091, 438-011-0020 and 438-011-0025,

the receipt of a claim disposition agreement by the Administrative Law Judge who mediated the agreement or the Board shall suspend all other proceedings before the Board and the Hearings Division until completion of action upon the agreement, except that the Board shall accept and file requests for hearing and Board review for purposes of establishing jurisdiction.

(2) In those cases where the claimant is unrepresented or the claim disposition agreement does not include a provision in which the parties waive their "30-day" rights to seek disapproval, the Administrative Law Judge who mediated the agreement or the Board shall notify the parties and the Director of the receipt of a claim disposition agreement.

(3) In all cases, the Administrative Law Judge who mediated the agreement or the Board shall notify the Director of the receipt of a claim disposition agreement.

(4) In cases in which a party has requested judicial review of an order of the Board and such judicial review is pending on the date the Board

receives the claim disposition agreement, the Administrative Law Judge who mediated the agreement or the Board shall notify the State Court Administrator of the receipt of the agreement.

(5) In the event that the Administrative Law Judge who mediated the agreement or the Board Members issue[s] a separate written decision, copies of that decision approving or disapproving a claim disposition agreement shall be mailed to parties, their attorneys, and the Director.

(6) Except as otherwise provided in section (5) of this rule, the signature of the Administrative Law who mediated the agreement or two Board Members on a claim disposition agreement shall constitute a final order approving the disposition under ORS 656.236(1). Notice of this approval shall be accomplished either:

(a) By the Administrative Law Judge who mediated the agreement or the Board mailing the postcards filed pursuant to OAR 438-009-0028 to the parties and their attorneys; or

(b) By physical delivery of the postcards filed pursuant to OAR 438-009-0028 to the parties and their attorneys by the Administrative Law Judge who mediated the agreement.

(7) Payment of the disposition shall be made no later than the 14th day after notice of its approval has been mailed or delivered under Section (5) or (6) of this rule to the parties, unless otherwise stated in the agreement.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-009-0035
Reconsideration of Claim Disposition Agreements

(1) A motion for reconsideration of final orders issued under ORS 656.236 and these rules shall be filed within 10 days of the date of mailing of the order.

(2) The Administrative Law Judge who mediated the agreement or the Board may reconsider final orders under ORS 656.236, provided that the motion for reconsideration:

(a) Is filed in accordance with section (1) of this rule; and

(b) States specifically the reason(s) reconsideration is requested.

(3) Reconsideration of a final order issued under ORS 656.236 and these rules shall be limited to the record before the Administrative Law Judge who mediated the agreement or the Board at the time the final order was mailed or delivered under OAR 438-009-0030(5) or (6) and no additional information will be considered, unless the Administrative Law Judge who mediated the agreement or the Board finds good cause for allowing the additional submission.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236
Hist.: WCB 1-1991(Temp), f. & cert. ef. 3-8-91; WCB 5-1991, f. 8-22-91, cert. ef. 9-2-91; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-011-0020
Briefs and Other Documents

(1) Filing of briefs is not jurisdictional; however, the Board views briefs as a significant aid to the review process. Briefs submitted for consideration by the Board shall comply with this section.

(2) The party requesting Board review shall file its appellant's brief to the Board within 21 days after the date of mailing of the transcript of record to the parties. Respondent(s) shall file its (their) brief(s) within 21 days after the date of mailing of the appellant's brief. Any party who has filed a cross-request for review shall include its cross-appellant's opening brief as a part of its respondent's brief. An appellant may file a reply and/or cross-respondent's brief within 14 days after the date of mailing of the respondent's and/or cross-appellant's brief. Any party who has not filed a request for review may file a cross-respondent's brief within 14 days after the date of mailing of the cross-appellant's brief. A cross-appellant may file a cross-reply brief within 14 days of the mailing date of a cross-respondent's brief. Unless otherwise authorized by the Board, no other briefs will be considered.

(3) Extensions of time for filing of briefs will be allowed only on written request filed no later than the date the brief is due. A statement whether opposing counsel (or a party if the party is not represented by counsel) objects to, concurs in or has no comment regarding the extension of time requested shall be furnished in all cases. Briefing extensions will not be allowed unless the Board finds that extraordinary circumstances beyond the control of the party requesting the extension justify the extension.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.295(5) & 656.726(4)
Hist.: WCB 4-1986, f. 10-8-86, ef. 11-1-86; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 4-1990(Temp), f. 4-13-90, cert. ef. 4-30-90; WCB 10-1990(Temp), f. 10-25-90, cert. ef. 10-27-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1993, f. 5-19-93, cert. ef. 6-1-93; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-012-0035
Temporary Disability Compensation

(1) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

(a) The Own Motion claim for temporary disability compensation is filed after the aggravation rights under ORS 656.273 expired;

(b) There is a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work; and

(c) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(2) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

(a) A new medical condition or an omitted medical condition claim has been determined to be compensable as defined under OAR 438-012-0001(4) and was initiated after the aggravation rights under ORS 656.273 expired; and

(b) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(3) The claimant is deemed to be in the work force if:

(a) The claimant is engaged in regular employment;

(b) The claimant, although not employed, is willing to work and is making reasonable efforts to obtain employment; or

(c) The claimant is willing to work, but the claimant is not employed, and the claimant is not making reasonable efforts to obtain employment because such efforts would be futile as a result of the effects of the compensable injury.

(4) The insurer shall make the first payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) within 14 days from:

(a) The date of an order of the Board reopening the claim; or

(b) The date the insurer voluntarily reopened the claim.

(5) Temporary disability compensation shall be paid until one of the following events first occurs:

(a) The claimant is medically stationary pursuant to ORS 656.005(17);

(b) The claim is closed pursuant to OAR 438-012-0055;

(c) A claim disposition agreement is submitted to the Board pursuant to ORS 656.236(1), unless the claim disposition agreement provides for the continued payment of temporary disability compensation; or

(d) Termination of such benefits is authorized by the terms of ORS 656.268(4)(a) through (d).

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.005(30), 656.262(4), 656.268(4), 656.278(1) & (2) & 656.726(5)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-015-0005
Definitions

In addition to the definitions set forth in OAR 438-005-0040:

(1) "Approved fee" means an attorney fee paid out of a claimant's compensation.

(2) "Assessed fee" means an attorney fee paid to a claimant's attorney by an insurer or self-insured employer in addition to compensation paid to a claimant.

(3) "Attorney" means a member of the Oregon State Bar.

(4) "Attorney fee" means payment for legal services performed by an attorney on behalf and at the request of a claimant under ORS Chapter 656.

(5) "Compensation" means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.

(6) "Cost bill" means an itemized statement from the claimant of the amount of expenses and costs for records, expert opinions, and witness fees incurred as a result of the litigation involving a claim denial under ORS 656.386(1).

(7) "Denied claim" means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation.

(8) "Expenses and costs" reimbursable under ORS 656.386(2) mean reasonable expenses and costs incurred by the claimant for things and services reasonably necessary to pursue a matter, but do not include attorney fees. Examples of expenses and costs referred to include, but are not limited to, costs of records, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.388(3) & 656.726(4)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-015-0019
Cost Bill Procedures

(1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees incurred in the litigation of the denied claim(s).

(2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant incurred as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied claim(s) under ORS 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer, not to exceed $1,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within 30 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and

(b) The claimant's signature confirming that the claimed expenses and costs were incurred in the litigation of the denied claim(s).

(4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) and are in addition to compensation payable to the claimant and in addition to attorney fees.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.386(2), 656.726(5)
Hist.: WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-015-0022
Attorney Fee Lien Procedures

(1) If a former attorney of a claimant alleges that the former attorney has been instrumental in obtaining additional compensation or in settling a claim, the former attorney may provide a notice of potential attorney fee lien to the insurer or the self-insured employer. Copies of such a notice shall also be simultaneously provided to the claimant and to the appropriate litigation forum, if there is a pending case before the Hearings Division or the Board.

(2) The notice of potential attorney fee lien shall include, but is not limited to, the following information:

(a) A description of the former attorney's services that support the allegation that the attorney was instrumental in obtaining additional compensation or in settling the claimant's claim;

(b) The amount of the potential claim;

(c) The amount of the potential attorney fee lien; and

(d) A copy of an executed retainer agreement between the claimant and the former attorney.

(3) If the insurer or self-insured employer has received a notice of a potential attorney fee lien, any proposed disputed claim settlement, settlement stipulation, or claim disposition agreement shall include a provision resolving the potential attorney fee lien. Any approval of a settlement agreement that does not comply with this provision shall be void.

(4) If the notice of potential attorney fee lien is disputed, the former attorney, the claimant, the insurer, or the self-insured employer may file a petition for resolution of the lien dispute with the forum where litigation involving the claim is pending or, if there is no pending litigation, with the Hearings Division. The petition shall include copies of the notice of potential attorney fee lien and the accompanying materials that were submitted to the claimant and the insurer or the self-insured employer, as well as any other relevant documents.

(5) If a petition for resolution of a potential attorney fee lien dispute is filed, the respondent(s) shall be provided not less than seven days to respond to the petition. The former attorney shall also be provided not less than seven days to reply to the responses.

(6) The resolution of a potential attorney fee lien dispute shall be made by a final, appealable order.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.388(3), 656.726(5)
Hist.: WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-015-0080
Attorney Fees in Own Motion Cases

(1) If an attorney is instrumental in obtaining increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, but not more than $1,500, to be paid out of the increased compensation.

(2) If an attorney is instrumental in obtaining a voluntary reopening of an Own Motion claim that results in increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, but not more than $1,500, to be paid out of the increased temporary disability compensation resulting from the voluntary reopening.

(3) If the Board awards additional compensation for permanent disability, the Board shall approve a reasonable attorney fee in the amounts prescribed in OAR 438-015-0040, payable out of the increased compensation.

(4) The Board may allow a fee in excess of the amounts prescribed in sections (1) through (3) of this rule upon a finding that extraordinary services have been rendered.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.267(3), 656.278(1), 656.386(1)(2) & 656.388(3)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

438-019-0030
Confidentiality

(1) Unless there is a written agreement otherwise, any communication made in mediation which relates to the controversy being mediated is confidential.

(2) The mediator shall create and maintain a separate mediation file. All memoranda, work product, and other materials contained in the mediation file are confidential.

(3) The names and case numbers of cases for which mediation has been requested and the outcomes of those mediations are not confidential.

(4) Any mediation agreement that requires approval by the Administrative Law Judge who mediated the agreement or the Board pursuant to ORS Chapter 656 and OAR Chapter 438 shall not be confidential.

(5) Statements, memoranda, materials, and other tangible evidence that are subject to discovery under the Board's Rules of Practice and Procedure are not confidential unless they were prepared specifically for use in mediation.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.012(2)(b), 656.283(1), 656.283(9) & 656.289(4)
Hist.: WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

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

Rule Caption: Correction of "Matrix for health care provider types."
Adm. Order No.: WCD 12-2007(Temp)
Filed with Sec. of State: 12-14-2007
Certified to be Effective: 1-2-08 thru 6-29-08
Notice Publication Date:
Rules Amended: 436-010-0210, 436-010-0220, 436-010-0280
Subject: OAR 436-010-0210, 0220, and 0280 refer readers to the "Matrix for health care provider types" in Appendix A. The matrix, published recently under administrative order number 07-057, erred in describing the treatment limitations of certain health care providers. ORS 656.245(2)(b)(A) states in part: "A medical service provider who is not qualified to be an attending physician may provide compensable medical service to an injured worker for a period of 30 days from the ***date of injury*** [emphasis added] or occupational disease or for 12 visits, whichever first occurs, without the authorization of an attending physician." The matrix described the 30-day treatment period as beginning with the ***first visit on the initial claim***. The revised matrix with these temporary rules corrects this description to agree with the statute.

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

Rules are available on the internet: http://www. wcd.oregon.gov/policy/rules/rules.html
Rules Coordinator: Fred Bruyns—(503) 947-7717

436-010-0210
Who May Provide Medical Services and Authorize Timeloss

(1) Type A and B attending physicians may authorize time loss and manage medical services subject to the limitations of ORS chapter 656. (See "Matrix for health care provider types" Appendix A)

(2) Emergency room physicians may authorize time loss for not more than 14 days when they refer the worker to a primary care physician. However an emergency room physician also in private practice, apart from the duties of an emergency room physician, may qualify as a type A attending physician. For the purpose of this rule, private practice means a physician who treats individuals on an established patient basis.

(3) Authorized primary care physicians and authorized nurse practitioners may provide medical services to injured workers subject to the terms and conditions of the governing MCO. An MCO may allow greater latitude for the provider types to treat a worker enrolled under ORS 656.260.

(4) Attending physicians and authorized nurse practitioners may prescribe treatment or services to be carried out by persons licensed to provide a medical service. Attending physicians may prescribe treatment or services to be carried out by persons not licensed to provide a medical service or treat independently only when such services or treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(5) Authorized nurse practitioners, out-of-state nurse practitioners, and physician assistants working within the scope of their license and as directed by the attending physician, need not be working under a written treatment plan as prescribed in OAR 436-010-0230(4)(a), nor under the direct control and supervision of the attending physician.

(6) Effective October 1, 2004, in order to provide any compensable medical service under ORS chapter 656, a nurse practitioner licensed under ORS 678.375 to 678.390 must certify in a form provided by the director that the nurse practitioner has reviewed a packet of materials which the director will provide upon request and must have been assigned an authorized nurse practitioner number by the director. An authorized nurse practitioner may:

(a) Provide compensable medical services to an injured worker for a period of 90 days from the date of the first nurse practitioner visit on the initial claim. Thereafter, medical services provided by an authorized nurse practitioner are not compensable without authorization of an attending physician; and

(b) Authorize temporary disability benefits for a period of up to 60 days from the date of the first nurse practitioner visit on the initial claim.

(7) In accordance with ORS 656.245(2)(a), with the approval of the insurer, the worker may choose an attending physician outside the state of Oregon. Upon receipt of the worker's request, or the insurer's knowledge of the worker's request to treat with an out-of-state physician, the insurer must give the worker written notice of approval or denial of the worker's choice of attending physician within 14 days.

(a) If the insurer does not approve the worker's out-of-state physician, notice to the worker must clearly state the reason(s) for the denial, which may include, but are not limited to, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010, and identify at least two other physicians of the same healing art and specialty whom it would approve. The notice must also inform the worker that if the worker disagrees with the denial, the worker may refer the matter to the director for review under the provisions of OAR 436-010-0220.

(b) If the insurer approves the worker's choice of out-of-state attending physician, the insurer must immediately notify the worker and the medical service provider in writing of the following:

(A) The Oregon fee schedule requirements;

(B) The manner in which the out-of-state physician may provide compensable medical treatment or services to Oregon injured workers; and

(C) Billings for compensable services in excess of the maximum allowed under the fee schedule may not be paid by the insurer.

(8) After giving prior approval, if the out-of-state physician does not comply with these rules, the insurer may object to the worker's choice of physician and must notify the worker and the physician in writing of the reason for the objection, that payment for services rendered by that physician after notification will not be reimbursable, and that the worker may be liable for payment of services rendered after the date of notification.

(9) If the worker is aggrieved by an insurer decision to object to an out-of-state attending physician, the worker or the worker's representative may refer the matter to the director for review under the provisions of OAR 436-010-0220.

Stat. Auth.:ORS 656.726(4)
Stats. Implemented: ORS 656.005(12), 656.245 & 656.260
Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0050; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-000; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08

436-010-0220
Choosing and Changing Medical Providers

(1) A newly selected attending physician, authorized nurse practitioner, or a specialist physician who becomes primarily responsible for the worker's care, must notify the insurer not later than five days after the date of change or first treatment, using Form 827. An attending physician or authorized nurse practitioner:

(a) Is primarily responsible for the worker's care,

(b) Authorizes time loss,

(c) Monitors ancillary care and specialized care, and

(d) Is determined by the facts of the case and the actions of the physician, not whether a Form 827 is filed.

(2) The worker may have only one attending physician or authorized nurse practitioner at a time. Simultaneous or concurrent treatment by other medical service providers must be based upon a written request of the attending physician or authorized nurse practitioner, with a copy of the request sent to the insurer. Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician or authorized nurse practitioner to be reimbursable. When the attending physician or authorized nurse practitioner refers the worker to a specialist physician, the referral must be written. An attending physician must specify any limitations regarding the referral within such document. Unless the documented referral limits the referral to consultation only, the referral is deemed to include attending physician authorization for the specialist physician to provide or order all compensable medical services and treatment he or she determines appropriate. Nothing in this rule diminishes the attending physician's responsibility to fulfill all their duties under ORS chapter 656, including authorizing temporary disability. Fees for services by more than

one physician at the same time are payable only when the service is sufficiently different that separate medical skills are needed for proper care.

(3) The worker is allowed to change his or her attending physician or authorized nurse practitioner by choice two times after the initial choice. Referral by the attending physician or authorized nurse practitioner to another attending physician or authorized nurse practitioner, initiated by the worker, will count in this calculation. The limitations of the worker's right to choose physicians or authorized nurse practitioners under this section begin with the date of injury and extend through the life of the claim. For purposes of this rule, the following are not considered changes by choice of the worker:

(a) Emergency services by a physician;

(b) Examinations at the request of the insurer;

(c) Consultations or referrals for specialized treatment or services initiated by the attending physician or authorized nurse practitioner;

(d) Referrals to radiologists and pathologists for diagnostic studies;

(e) When workers are required to change medical service providers to receive compensable medical services, palliative care, or time loss authorization because their medical service provider is no longer qualified as an attending physician or authorized to continue providing compensable medical services.

(f) Changes of attending physician or authorized nurse practitioner required due to conditions beyond the worker's control. This could include, but not be limited to:

(A) When the physician terminates practice or leaves the area;

(B) When a physician is no longer willing to treat an injured worker;

(C) When the worker moves out of the area requiring more than a 50 mile commute to the physician;

(D) When the period for treatment or services by a type B attending physician or an authorized nurse practitioner has expired; (See "Matrix for health care provider types" Appendix A);

(E) When the nurse practitioner is required to refer the worker to an attending physician for a closing examination or because of a possible worsening of the worker's condition following claim closure; and

(F) When a worker is subject to managed care and compelled to be treated inside an MCO;

(g) A Worker Requested Medical Examination;

(h) Whether a worker has an attending physician or authorized nurse practitioner who works in a group setting/facility and the worker sees another group member due to team practice, coverage, or on-call routines; or

(i) When a worker's attending physician or authorized nurse practitioner is not available and the worker sees a medical provider who is covering for that provider in their absence.

(4) When a worker has made an initial choice of attending physician or authorized nurse practitioner and subsequently changed two times by choice or reaches the maximum number of changes established by the MCO, the insurer must inform the worker by certified mail that any subsequent changes by choice must have the approval of the insurer or the director. If the insurer fails to provide such notice and the worker subsequently chooses another attending physician or authorized nurse practitioner, the insurer must pay for compensable services rendered prior to notice to the worker. If an attending physician or authorized nurse practitioner begins treatment without being informed that the worker has been given the required notification, the insurer must pay for appropriate services rendered prior to the time the insurer notifies the medical service provider that further payment will not be made and informs the worker of the right to seek approval of the director.

(5)(a) If a worker not enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the limit established in section (3) of this rule, the worker must request approval from the insurer. Within 14 days of receipt of a request for a change of medical service provider or a Form 827 indicating the worker is choosing to change his or her attending physician or authorized nurse practitioner, the insurer must notify the worker in writing whether the change is approved. If the insurer objects to the change, the insurer must advise the worker of the reasons, advise that the worker may request director approval, and provide the worker with Form 2332 (Worker's Request to Change Attending Physician or Authorized Nurse Practitioner) to complete and submit to the director if the worker wishes to make the requested change.

(b) If a worker enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the changes allowed in the MCO contract or certified plan, the worker must request approval from the insurer. Within 14 days of receiving the request, the insurer must notify the worker in writing whether the change is approved. If the insurer denies the change, the insurer must provide the reasons and give notification that the worker may request dispute resolution through the MCO. If the MCO does not have a dispute resolution process for change of attending physician or authorized nurse practitioner issues, the insurer shall give notification that the worker may request director approval and provide the worker with a copy of Form 2332.

(6) Upon receipt of a worker's request for an additional change of attending physician or authorized nurse practitioner, the director may notify the parties and request additional information. Upon receipt of a written request from the director for additional information, the parties will have 14 days to respond in writing.

(7) After receipt and review, the director will issue an order advising whether the change is approved. The change of attending physician or authorized nurse practitioner will be approved if the change is due to circumstances beyond the worker's control as described in section (3) of this rule. On a case by case basis consideration may be given, but is not limited to, the following:

(a) Whether there is medical justification for a change, including whether the attending physician or authorized nurse practitioner can provide the type of treatment or service that is appropriate for the worker's condition.

(b) Whether the worker has moved to a new area and wants to establish an attending physician or authorized nurse practitioner closer to the worker's residence.

(c) Whether such a change will cause unnecessary travel costs or lost time from work.

(8) Any party that disagrees with the director's order may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order. OAR 436-001 applies to the hearing.

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

Stat. Auth.: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0401, 5-1-85; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0060; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08

436-010-0280

Determination of Impairment

(1) On disabling claims, when the worker becomes medically stationary, the attending physician must complete a closing exam or refer the worker to a consulting physician for all or part of the closing exam. For workers under the care of a type B attending physician or an authorized nurse practitioner, the provider must refer the worker to a type A attending physician to do a closing exam if there is a likelihood the worker has permanent impairment. The closing exam must be completed under OAR 436-030 and OAR 436-035.

(2) The attending physician or authorized nurse practitioner has 14 days from the medically stationary date to send the closing report to the insurer. Within eight days of the medically stationary date, the attending physician may arrange a closing exam with a consulting physician. This exam does not count as an IME or a change of attending physician.

(3) When an attending physician requests a consulting physician to do the closing exam, the consulting physician has seven days from the date of the exam to send the report for the concurrence or objections of the attending physician. The attending physician must also state, in writing, whether they agree or disagree with all or part of the findings of the exam. Within seven days of receiving the report, the attending physician must make any comments in writing and send the report to the insurer. (See "Matrix for Health Care Provider types" Appendix A)

(4) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level physical capacities exam or work capacities exam (as described in OAR 436-009-0070(4)) pursuant to the following:

(a) A physical capacities exam when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A work capacities exam when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(5) If the insurer issues a major contributing cause denial on the accepted claim and the worker is not medically stationary, the health care provider must do a closing exam, or in the case of a type B attending physician or authorized nurse practitioner, refer the worker to a type A attending physician for a closing exam. (See "Matrix for Health Care Provider types" Appendix A)

(6) The closing report must address the accepted conditions and must include:

(a) Objective findings of permanent impairment; and

(b) A statement of the validity of the impairment findings.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

Stat. Auth.: ORS 656.726(4) & 656.245(2)(b)(B)
Stats. Implemented: ORS 656.245 & 656.252
Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08

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Department of Corrections
Chapter 291

Rule Caption: Management of Inmates That Present an Elevated Security Risk to Department Facilities.
Adm. Order No.: DOC 8-2007(Temp)
Filed with Sec. of State: 11-26-2007
Certified to be Effective: 12-1-07 thru 5-29-08
Notice Publication Date:
Rules Adopted: 291-069-0200, 291-069-0210, 291-069-0220, 291-069-0230, 291-069-0240, 291-069-0250, 291-069-0260, 291-069-0270, 291-069-0280
Rules Suspended: 291-069-0010, 291-069-0020, 291-069-0031, 291-069-0040, 291-069-0050, 291-069-0060, 291-069-0070, 291-069-0090, 291-069-0100
Subject: These temporary rule amendments are necessary to immediately establish department policy and procedures for the identification and management of individual inmates that in the judgment of the department present an elevated security threat risk based their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-069-0010
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of this rule is:

(a) To maintain procedures for the identification of security threat group (STG) affiliates under the custody/supervision of the Department of Corrections.

(b) To maintain a departmental response to security threat group-related activity conducted by inmates under the jurisdiction of the Department of Corrections.

(c) To maintain an information network to monitor and control security threat group-related activity.

(d) To provide procedures for the classification of inmates identified as security threat group affiliates.

(3) Policy: It is the policy of the Department of Corrections that a zero-tolerance for any security threat group-related behavior/activity be maintained at all times. Security threat group activity poses a serious threat to the safe, secure, orderly and/or efficient operation and management of Department of Corrections facilities, specifically including the safety and security of Department employees, inmates and the public. Any security threat group-related behavior will be investigated in a fair and objective manner, and such behavior will be dealt with immediately utilizing Department of Corrections rules. Additionally, any such behavior shall be referred to the Oregon State Police if criminal conduct appears to be present.

(a) The Department of Corrections recognizes the needs to identify those inmates affiliated with identified security threat groups and to monitor and manage security threat group-related activity of those under its jurisdiction. In cooperation with other criminal justice agencies, the Department of Corrections may share information regarding security threat group activity to assist in controlling the criminal activity associated with these groups.

(b) Inmates under the jurisdiction of the Department of Corrections shall not encourage, promote, further, assist, or otherwise participate in any security threat group activity as defined by this rule.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0020
Definitions

(1) Confidential Information: The following types of information shall be classified as confidential:

(a) Information which, if known to the inmate or others, would endanger the safety of any person.

(b) Information which would jeopardize the safe, secure and orderly operation of a Department of Corrections facility.

(c) Information which another governmental agency has classified as confidential.

(2) Department Security Threat Group (STG) Investigator: A department employee assigned to review and investigate suspected security threat group behavior; maintain and gather intelligence on security threat groups and their affiliates; assist the department STG manager in coordination between institution STG managers; assist in monitoring, conducting, developing, and coordinating employee training; serve as liaison between the department and other local, state and federal law enforcement agencies and correctional institutions; and assist in managing the department's overall security threat group management program.

(3) Department Security Threat Group (STG) Manager: A department employee assigned to coordinate communication between institution STG managers; monitor, conduct, develop and coordinate employee training; and manage the department's overall security threat group management program.

(4) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(5) Intelligence File: Those documents maintained by the Department of Corrections for administrative and case management purpose.

(6) Institution Security Threat Group (STG) Assistant Manager: A department employee designated to assist the institution STG manager.

(7) Institution Security Threat Group (STG) Manager: A department employee assigned to investigate and assess security threat group affiliation, document security threat group activity, and provide information to others.

(8) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common name, identifying symbol, or characteristic which serves to distinguish themselves from others.

(b) Have members, affiliates, and/or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violates Oregon Department of Corrections rules.

(c) Have the potential to act in concert to present a threat, or potential threat, to staff, public, visitors, inmates, offenders or the secure and orderly operation of the institution.

(9) Security Threat Group Activity: Any conduct or behavior which has been determined to be related to a security threat group.

(10) Security Threat Group Management Team: Department of Corrections employees, as assigned, consisting of the department STG manager, department STG investigator, institution STG managers, institution STG assistant managers, and institution STG management team members.

(11) Security Threat Group Paraphernalia: Any material, document(s) or items evidencing security threat group involvement or activities (e.g., rosters, constitutions, structures, codes, pictures, training material, clothing, communications or other security threat group-related contraband.

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

Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0031
Institution Security Threat Group Managers

Each functional unit manager shall designate at least one employee to fill each of the following: institution STG manager, institution STG assistant manager, and institution STG management team members as appropriate.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0040
Identification

(1) Any department employee who becomes aware of any inmate who may be affiliated with a security threat group shall communicate such information to the appropriate institution STG manager.

(2) The institution STG manager will determine if the information is valid.

(3) If the information appears to be valid, the institution STG manager will document the activity on the computerized security threat group information system. The information will be verified by the department STG manager or designee.

(4) Once identification has been established, the institution STG manager will inform the assigned counselor. The counselor shall revise the classification of the inmate and score him/her as appropriate under security threat group affiliation.

(5) The department will maintain a record of all identified security threat group affiliates and any documentation or information which supports such identification. All intelligence records will be kept in a secure area designated by the department STG manager.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0050
Reporting

The department will produce a periodic security threat group distribution report and distribute the report to the Director, Assistant Directors for Institutions, Chief of Security Operations-Institutions, each Department of Corrections facility (including the functional unit manager, security manager, institution STG manager, department STG manager, and other criminal justice agencies as requested or required.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0060
Discipline

(1) The hearings officers/adjudicators shall report all disciplinary actions which involve security threat group-related activity to the institution STG manager to assist in tracking security threat group activity, trends, etc.

(2) Any inmate found in violation of a rule(s) of prohibited inmate conduct which involved security threat group activity shall be subject to the review and validation process.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0070
Contraband

All security threat group paraphernalia, as defined in this rule, will be considered contraband within Department of Corrections facilities and is subject to confiscation. Contraband may be used to further document and validate security threat group identification and classification. Contraband may be used for training purposes.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0090
Transfers

(1) An inmate identified as a security threat group affiliate may be transferred to any facility in accordance with the department's overall security threat group management plan and population/program management needs.

(2) Interstate Compact staff shall notify the department STG manager, or designee, of any inmate requesting transfer to or from Oregon where security threat group affiliation is suspected. A security threat group affiliate questionnaire will be sent to states requesting the transfer of one of their inmates to Oregon. The questionnaire will be reviewed and approved prior to the transfer of the inmate to a Department of Corrections facility.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0100
Facility Programs/Work Assignments/Clubs

An inmate identified as a security threat group affiliate may be denied participation in, or may be removed from, any work/program assignment, group activity or club if the inmate's participation is determined to present an undue risk to the safe, secure, orderly and/or efficient operation and management of the facility.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 10-1992, f. & cert. ef. 3-30-92; DOC 12-1998, f. & cert. ef. 5-19-98; DOC 21-1999, f. & cert. ef. 11-15-99; Suspended by DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0200
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish department policy and procedures for the identification and management of individual inmates and groups of inmates that in the judgment of the department present an elevated security threat risk based their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence.

(3) Policy:

(a) Security threat activity by individual inmates or groups of inmates poses a serious threat to the safe, secure, orderly and efficient operation and management of Department of Corrections facilities, the safety and security of Department employees, inmates, and the public. For these reasons, it is the policy of the Department of Corrections to maintain zero-tolerance for significant security threat related behavior and activity by inmates under its jurisdiction. In furtherance of this policy, the Department of Corrections will:

(A) Identify and effectively manage inmates and groups of inmates that in the judgment of the Department present an elevated security threat risk based on their criminal history, institutional conduct history, present behavior, interstate transfer status, escape history, and based on intelligence. Effective inmate management may include intensive interaction with the inmates by trained Security Threat Management managers, and the suspension, restriction, or modification of department programs and services on an individualized basis, in accordance with these rules.

(B) Maintain an information network to monitor and control security threat behavior and activity and provide intelligence information to department staff.

(C) Investigate security threat related behavior or activity by inmates in a fair and objective manner.

(b) In cooperation with other criminal justice agencies, the Department of Corrections may share information regarding security threat behavior or activity of inmates or groups of inmates to assist in controlling criminal activity associated with these inmates. Security threat related behavior or activity that may include criminal conduct shall be referred to the Oregon State Police.

(c) Inmates under the jurisdiction of the Department of Corrections shall not encourage, promote, further, assist, or otherwise participate in any security threat behavior or activity as described in these rules.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0210
Definitions

(1) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(2) Intelligence File: Those documents maintained by the Department of Corrections for administrative and case management purpose.

(3) Security Threat Activity: Inmate behavior which poses a significant threat to the safe and secure operation of the facility, including, but not limited to, threatening or inflicting bodily injury on another person, posing a high risk of escape, promoting or engaging in disruptive group behavior, distributing a controlled substance, or being involved in any other activity that could significantly threaten the safe and secure operation of the facility.

(4) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common group name, identifying symbol, or characteristic which serves to distinguish themselves from others.

(b) Have members, affiliates, and/or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violates Oregon Department of Corrections rules.

(c) Have the potential to act in concert to present a threat, or potential threat, to staff, public, visitors, inmates, offenders or the secure and orderly operation of the institution.

(5) Security Threat Group Paraphernalia: Any material, document(s) or items evidencing security threat group involvement or activities (e.g., rosters, constitutions, structures, codes, pictures, training material, clothing, communications or other security threat group-related contraband).

(6) Security Threat Management (STM) Assistant Chief: A department Public Services Division, Special Investigations Unit employee assigned to coordinate communication between institution managers and STM lieutenants; monitor, conduct, develop and coordinate employee training; and manage the department's overall security threat management program.

(7) Security Threat Management (STM) Intelligence Analyst: An STM Unit employee with the responsibility of receiving incoming intelligence and data, analyzing information, predicting trends and activity, organizing information into a usable format, documenting information and disseminating intelligence to appropriate stakeholders.

(8) Security Threat Management (STM) Lieutenant: An STM Unit employee assigned to review and investigate suspected security threat activity; maintain and gather intelligence on security threat groups, inmates and their affiliates; directly manage the day-to-day activities of inmates identified as security threats; assist the STM Assistant Chief and his/her team responsible for STM coordination with institution managers; assist in monitoring, conducting, developing, and coordinating employee training; serve as liaison between the department and other local, state and federal law enforcement agencies and correctional institutions; and assist in managing the department's overall security threat management program.

(9) Security Threat Management (STM) Unit: Department of Corrections employees, as assigned, consisting of the department STM Assistant Chief, STM lieutenants and STM intelligence analyst(s).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0220
Institution Intelligence Officer(s)

Each functional unit manager shall designate one security manager or Assistant Superintendent of Security, and a designated backup, to act as the institution intelligence officer. This employee will be the direct liaison of STM intelligence information between the STM lieutenant and the institution. The purpose of this is to get intelligence information to the institution at a level capable of making immediate management decisions based on the intelligence received.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0230
Identification

(1) The department will identify inmates and groups of inmates that present an elevated security threat risk based on their criminal history, institutional conduct history, interstate transfer status, escape history, present behavior, STM intelligence data base, human intelligence, and other available resources. Inmates identified by the department as presenting an elevated security threat may be managed by the Security Threat Management (STM) Unit.

(2) An inmate may be identified as a "high alert" management inmate based on the criteria listed in Attachment A.

(3) The STM Unit will maintain a record of all inmates identified by intelligence sources as affiliates of a security threat group who are actively supporting, promoting or engaging in behavior which caused an elevated risk to the safety, security and orderly operations of DOC facilities. These records will be kept in a secured area designated by the STM Assistant Chief.

(4) Any department employee who becomes aware of any inmate who may be engaged in or affiliated with security threat behavior or activity shall communicate such information to the appropriate STM lieutenant. Each correctional facility will have an assigned STM lieutenant, who may or may not be housed on-site, but will be responsible for management of STM related activity at their specific institutions.

(5) Upon receipt of security threat information, the STM lieutenant will determine whether the information is valid. If the information is deemed valid, the STM lieutenant will forward the information to the institution intelligence officer and the STM intelligence analyst.

(6) The STM intelligence analyst will use various means to analyze and document the intelligence information. The intelligence analyst will then disseminate any applicable information to the appropriate STM lieutenant, institution intelligence officer, functional unit manager or other internal and external stakeholders.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0240
Reporting

The STM Unit will produce a periodic security threat management distribution report and distribute the report to the Director, Deputy Director, Assistant Directors, Inspector General, Institutions Administrator, Chief of Security, institution functional unit managers, and other criminal justice agencies as requested or required by the Director or designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0250
Discipline

(1) The hearings officers and adjudicators shall report all disciplinary actions which involve security threat related activity to the STM lieutenant to assist in tracking security threat group activity, trends, etc.

(2) Any inmate found in violation of a rule(s) of prohibited inmate conduct which involved security threat activity may be subject to a review from the STM Unit.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0260
Security Threat Group Paraphernalia

All security threat group paraphernalia, as defined in this rule, is unauthorized and considered contraband within Department of Corrections facilities and is subject to confiscation. Security threat group paraphernalia may be used to further document and validate security threat group identification and classification.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0270
Management of "High Alert" Inmates

(1) Inmates identified by the department as "high alert" management inmates may be managed by the department's STM Unit.

(2) Inmate Management Plans: The STM lieutenant will develop an approved Inmate Management Plan for each inmate identified by the department as a "high alert" management inmate.

(a) The Inmate Management Plan will be in writing and describe the behavior or other circumstance(s) that resulted in the inmate's identification as "high alert," and the department's corresponding program and behavior expectations for the inmate.

(b) The Inmate Management Plan may direct the denial, removal, suspension, restriction or modification of inmate programs, services or activities for the inmate to encourage an inmate to modify his or her behavior to conform to department rules, standards, and staff expectations, and to

advance the inmate towards appropriate pro-social behavior, in accordance with these rules.

(c) The Inmate Management Plan will document any denial, removal, suspension, restriction, or modification of inmate programs, services or activities ordered for the inmate.

(d) The STM lieutenant will provide each high alert inmate with a copy of the inmate's Inmate Management Plan.

(3) Denial, Removal, Suspension, Restriction or Modification of Inmate Programs, Services or Activities:

(a) Facility Programs, Work Assignments, and Clubs: An inmate under the management of the STM Unit may be denied participation in, or may be removed from, any work or program assignment, group activity or club if the inmate's participation is determined to present an undue risk to the safe, secure, orderly or efficient operation and management of the facility or as a part of an approved Inmate Management Plan.

(b) Other Inmate Programs, Services, and Activities: An inmate under the management of the STM Unit may have other inmate programs, services, and activities suspended, restricted or modified by the department. Programs, services, and activities that may be affected include, but are not limited to, recreation yard, housing assignments, work assignments, canteen use, telephone use (except legal calls), visiting (except attorney visits), inmate-to-inmate mail, and television services.

(B) An Inmate Management Plan that directs the suspension, restriction, or modification of programs or services to an inmate requires the approval of the STM Assistant Chief or designee.

(C) An Inmate Management Plan that directs the suspension, restriction, or modification of programs or services to an inmate in excess of 90 days requires the approval of the Inspector General's Chief Investigator.

(D) An Inmate Management Plan that directs the suspension, restriction, or modification of programs or services to an inmate in excess of 120 days requires the approval of the Inspector General.

(E) Any suspension, restriction, or modification of programs or services provided to an inmate will be in accordance with the STM Restriction Scale. (Attachment B).

(4) Temporary Placement in Disciplinary Segregation: With the approval of the functional unit manager or designee or the officer-in-charge, the STM lieutenant may order the immediate temporary placement of an inmate in disciplinary segregation when in his or her judgment the assignment is necessary to further the department's management of a specific security threat, or the safe, secure and orderly operation and management of the facility. An inmate managed by the STM unit will not be placed in temporary segregation beyond five working days; otherwise the placement will be considered Administrative Segregation in accordance with OAR 291-046.

(5) Transfers:

(a) An inmate under management of the STM Unit may be transferred to any facility, in or out of state, in accordance with the inmate's Inmate Management Plan, the department's overall security threat management plan, interstate compact agreements and population or program management needs.

(b) The Interstate Compact Unit staff shall notify the STM Assistant Chief or designee of any inmate requesting transfer to or from Oregon where security threat group affiliation or security threat behavior is suspected.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

291-069-0280
Administrative Review

(1) An inmate who has been identified by the department as a "high alert" management inmate may obtain an administrative review of the classification action in accordance with this rule, by submitting a written request for administrative review to the Inspector General's Chief Investigator or designee at the department's central administrative offices.

(a) The administrative review request must specify the reason(s) why the inmate believes that his or her high alert management identification is inappropriate. The request for review must also include any supporting documentation by the inmate to be considered in reviewing the appropriateness of the high alert management identification.

(b) The Chief Investigator or designee must receive the administrative review request within 15 days of the issuance of the Inmate Management Plan to the inmate.

(2) Upon receipt of a timely written request for administrative review, the Chief Investigator or designee will review the high alert management identification, and affirm or reverse the classification as circumstances warrant. The decision of the Chief Investigator or designee shall be final.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2007(Temp), f. 11-26-07, cert. ef. 12-1-07 thru 5-29-08

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Department of Energy
Chapter 330

Rule Caption: Amend Business Energy Tax Credit (BETC) program rules.
Adm. Order No.: DOE 3-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07
Notice Publication Date: 10-1-2007
Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0135, 330-090-0140, 330-090-0150
Subject: Pass-through rate for facilities eligible for a 50% BETC is set at 33.5%. The pass-through rate for facilities eligible for the 50% BETC that cost $20,000 or less is set at 43.5%.

The cost of reviews is reduced from 0.0075 multiplied by the eligible project cost to 0.0060 multiplied by the eligible project cost. A maximum cost of review has been set at $35,000. The new fee rate and cap will be applied to projects costing $1 million and more retroactively to January 1, 2007. For all other projects, the new rate and cap is effective to applications received on or after December 1, 2007.

A minimum refund amount of $10 for fees submitted in excess of the final cost of review has been established. Refunds less than $10 will not be issued.

The requirement to subtract federal tax credits from project cost when determining eligible cost has been eliminated. Only grants and gifts shall be subtracted.

Renewable energy resource equipment manufacturing facilities and renewable energy resource facilities, including high efficiency combined heat and power facilities, completed on or after January 1, 2007 are eligible for a tax credit equal to 10% of the certified cost in each of the five succeeding tax years, not to exceed $20 million.

An RD&D facility that uses or produces a renewable energy resource facility or is a renewable energy manufacturing facility is eligible for a tax credit of 10% in each of five succeeding tax years.

The eligibility criteria for a homebuilder-installed renewable energy facility are defined. Such a facility is eligible for a tax credit not to exceed $9,000 per home. To qualify, a home must provide more than 1 kilowatt hour per year per square foot of conditioned space and meet minimum technical requirements. To qualify, a home must include one of the following:

- solar electric (photovoltaic) system;
- solar domestic hot water system;
- passive solar design equivalent;
- active solar space heating system;
- other evaluated on a case-by-case basis.

Changed maximum eligible cost calculation for solar facilities from 30-year payback to $/watt for a photovoltaic and $/kBtu for solar thermal facilities, declining based on volume of systems installed

Revised the rules to allow other sustainable building programs approved by the Department that provide comparable performance on environmental measures, equivalent or better energy performance as documented by whole building modeling, is commissioned, and is verified by an independent third-party.

The eligibility criteria for a homebuilder-installed renewable energy facility that also constitutes a high-performance home, which is eligible for a tax credit not to exceed $12,000, are defined. To qualify, the home must:

- include a homebuilder installed renewable energy system (above);
- be built to the minimum prescriptive requirements of the state building code;

- include U≤ 0.030 attic insulation, U≤ 0.025 floor insulation, U≤ 0.050 wall insulation, U=0.32 windows;

- be certified by the Energy Star Homes Northwest program;

- include ducts within the heated space, or have no ducts;

- include a high efficiency heating system (minimum AFUE 0.92 gas furnace, , ≥ 8.5 HSPF air source heat pump, ≥ 3.0 COP ground source heat pump, or a ductless mini-split heat pump with inverter)

- be certified by a sustainable building program approved by the Department (e.g., Earth Advantage, LEED), or the building meets Energy Star Homes Northwest indoor air quality and ventilation specifications, including a heat recovery ventilator or an energy recovery ventilator.

It is required that a Tax Credit Certified Technician verify a photovoltaic system for a Homebuilder-Installed Renewable Energy Facility meets Oregon Dept. of Energy technical standards.

High-efficiency combined heat and power facility is defined as a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual energy savings of 20 percent.

Renewable energy resource facilities that recover material and energy from a waste stream are required to meet certain conditions. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met: The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice. Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis. The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions or other emissions. The facility does not divert materials from a higher value use. The facility has an acceptable energy balance as determined by the Director.

Standards are established for efficiency and emission for eligible biomass combustion devices.

Biomass is defined as organic matter that is available on a renewable or naturally recurring basis.

Liquid biofuels, as a subset of alternative fuels, must be derived from 100% organic sources.

The size of hydroelectric facilities eligible for BETC is increased from 1 megawatt to 10 megawatts, provided they meet all statutory requirements for protection of fish and wildlife.

BETCs are available to mass transit districts serving communities with more than 50,000 residents for providing qualifying transportation services to K-12 students.

The minimum requirement for using transportation options was changed from "days" to "working days," and from "calendar year" to "project year."

The definition of carpool and vanpool was changed to mean an "employer-sponsored program" or "organization-sponsored program."

Made editorial and housekeeping changes to OAR 330-090-0105 to OAR 330-090-0150, as needed.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-090-0105
What a BETC Is

A Business Energy Tax Credit may be received against owed Oregon income taxes for up to 35 percent of the cost of qualifying facilities. Qualifying renewable energy resource equipment manufacturing facilities, and renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 are eligible for a tax credit equal to 50 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities completed on or after January 1, 2007 are eligible for a tax credit of $9,000 and qualifying high performance homes completed on or after January 1, 2007 are eligible for a $12,000 tax credit. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications for facilities eligible for a 35 percent tax credit received by ODOE on or after December 1, 2007. These rules also apply to applications for renewable energy resource equipment manufacturing facilities; qualifying renewable energy resource facilities, including high efficiency combined heat and power facilities; qualifying homebuilder installed renewable energy facilities and high performance homes facilities received by ODOE on or after January 1, 2007.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0110
Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant": A person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(5) "Biofuels": A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act, and

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend, and

(c) Ethanol (CH3CH2OH) is and alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007; and

(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and

(e) "E85," a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

(6) "Biomass": An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates that is available on a renewable or naturally recurring basis.

(7) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(8) "Building Automation Controls Facility": Energy facilities that controlenergy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 19(b)(D) of this rule.

(9) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(10) "Carpool Facility": A facility in which riders share the same vehicle to commute between different communities or neighborhoods on a regular basis.

(11) "Car Sharing Facility": A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(12) "Commercial New Construction Facility": An energy facility which includes a new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(13) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(14) "Commercial Process": An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(15) "Commuter Parking Space" means a facility that is a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(16) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(17) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(18) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(19) "Cost": The actual capital costs and expenses the Director finds are needed to acquire, erect, build, or install a facility under these rules. Ancillary costs that otherwise would be incurred (such as replacing wiring to meet current building code) are not eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions, other than costs financed by grants excluded by ORS 315.356(1) that are not subject to specific restrictions, terms and conditions, may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the facility;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the facility; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility; or

(E) Administrative costs to apply for a facility including, but not limited to, the Business Energy Tax Credit review fee and the cost paid to secure a pass-through partner for the facility.

(F) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Eligible facility costs are limited by the following:

(A) Facilities must have a one to 15-year simple payback period unless specified below. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.

(C) Rental weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic eligible facility costs will be limited on a dollar-per-watt basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

(i) The precertified eligible costs will be effective for 36 months for public buildings and 12 months for all other facilities from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(E) For solar thermal systems, the maximum eligible cost shall be limited on a capacity basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

(i) The precertified eligible costs will be effective for 12 months from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(F) Research, Development & Demonstration, Sustainable Building, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities are exempt from simple payback requirements.

(g) Costs for a Research, Development & Demonstration facility also include costs of instruments, controls, and other equipment needed to monitor or audit the facility. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the facility cost based on similar facilities, but not exceeding 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building facilities OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(20) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Web site of the Oregon Department of Energy.

(21) "Director": The Director of the Oregon Department of Energy or designees.

(22) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(23) Energy Facility": means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(24) "Facility": means an energy facility, recycling facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system, a renewable energy resource equipment manufacturing facility or Research, Development & Demonstration facility that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development or recycling facility.

(a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(17)(e), of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) A new electric motor that complies with the BETC Technical Requirements.

(e) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(f) Except as noted in (23)(d), a facility does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B) which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(25) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Facility, facility eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

(26) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.

(27) "Facility Owner": An applicant who purchases and owns a qualified facility.

(28) "Facility Start": The date the applicant chooses to write on the preliminary certificate application that meets one of the following criteria:

(a) A non-refundable deposit is place on the facility equipment;

(b) A purchase order is placed for the equipment;

(c) A contract is executed for the design of the facility;

(d) A document is executed that obligates the applicant to proceed with a facility; or

(e) The date facility information for a preliminary certification application is received by a cooperative agreement organization.

(29) "Final Certification": Final certificate issued upon completion of an approved BETC facility.

(30) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(31) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative energy device, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent Business Energy Tax Credit.

(32) "High Efficiency Combined Heat and Power": A renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent. The fuel-chargeable-to-heat rate would need to be 5,440 Btu/kWh. (See BETC Technical Requirements for formula and other specifications.) This renewable energy resource facility would be eligible for a 50 percent Business Energy Tax Credit. Facilities that do not meet this requirement may be eligible for a 35 percent tax credit under Combined Heat and Power facilities or may qualify in part for a tax credit relating to the heat recovery portion of the facility.

(33) "High Performance Home:" is an energy facility that is a new dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code which has its own space conditioning and water heating systems, complies with the specifications listed in the BETC Technical Requirements and is intended for sale to an end-use homebuyer. A High Performance Home must include a Homebuilder Installed Renewable Energy System that produces at least 1 kWh per square foot of conditioned space on an annual basis for photovoltaics or the equivalent for other technologies as listed in the BETC Technical Requirements. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying High Performance Home features qualifying for the Business Energy Tax Credit.

(34) "Homebuilder Installed Renewable Energy Facility:" is a renewable energy resource facility in a single family dwelling that meets specified technical requirements as listed in the BETC Technical Requirements. The renewable energy resource facility must be approved by a technician certified by the Oregon Department of Energy. Renewable energy resource facilities must be connected to the home's main service panel and the installers must provide a two-year warranty covering all parts and labor. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying Homebuilder Installed Renewable Energy Facility features qualifying for the Business Energy Tax Credit. Renewable energy resource facilities may include:

(a) Photovoltaic — The credit amount is based on $3 per watt of installed capacity.

(b) Solar Domestic Water Heating — The credit amount is equal to $0.60 per kWh saved as determined by the ODOE solar domestic water heating yield table.

(c) Active Solar Space Heating The credit amount is equal to $0.60 per kWh saved based on a calculation procedure approved by ODOE staff.

(d) Passive Solar — The credit amount is equal to $600 per home plus $0.60 per square foot of heated floor space.

(e) Other — Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to $0.60 per kWh saved.

(35) "Hybrid Electric Vehicle": An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(36) "Individualized Travel Behavior Change Program": A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(37) "Industrial Process Energy Facility": An energy facility that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) An energy facility that provides substantial energy savings from conservation; or

(b) A renewable energy resource facility that provides substantial energy savings through the use of renewable resources; or

(c) A renewable energy resource facility that provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) A renewable energy resource facility that prepares or conditions alternative fuels for distribution or dispensing; or

(e) An energy facility that increases industrial process efficiency through recycling market development; or

(f) An energy facility that provides emergency replacement inventory of electric motors as defined in (20)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(38) "Lease Contract": A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

(39) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(40) "Lighting Facility": Means an energy facility that will reduce the affected lighting energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the facility or that will be subsequently replaced will be recycled and, if so, how.

(41) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(42) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(43) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(44) "Necessary Feature": A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statues or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(45) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b). Also referred to as the "pass-through rate."

(46) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(47) "Parking Cash Out" means a facility that offers cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(48) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(49) "Pass-through Partner": A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(50) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(51) "Premium Efficient Appliance": An energy facility that is an appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE's Premium Efficient Commercial Appliances Directory.

(52) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(53) "Qualified Transit Pass Contract": A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(54) "Recycling": A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an "Energy Facility" or "Waste to Energy Facility" where they include characteristics required to meet those definitions.

(55) "Recycling Facility": means an energy facility with equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any facilities which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(b) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(56) "Recycling Market Development Facility": Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

(a) The facility uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(57) "Renewable Diesel": A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007; and

(c) Has a producer's Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

(58) "Renewable Energy Resource" includes, but is not limited to:

(a) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, solar energy, wind power, water power or geothermal energy; or

(b) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(A) That does not exceed 10 megawatts of installed capacity; or

(B) Qualifies as a research, development or demonstration facility.

(59) Renewable Energy Resource Facility:" means an energy facility used in the processing or utilization of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(60) "Renewable Energy Resource Equipment Manufacturing Facility": means any structure, building, installation, excavation, machinery, equipment or device, or an addition, reconstruction or improvement to land or an existing structure, building, installation, excavation, machinery, equipment or device, that is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used primarily to manufacture equipment, machinery or other products designed to use a renewable energy resource and that meets the criteria established by the Oregon Department of Energy.

(61) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) and (b):

(a) A facility that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology though pilot or production scale applications of technology;

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than $2 million annually in eligible costs for innovative travel reduction programs.

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Facilities in the Director's determination are likely to achieve Energy Office goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent Business Energy Tax Credit; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.

(62) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(63) "Rideshare Matching Services Program": A facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis.

(64) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(65) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(66) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(67) "Substantial Energy Savings": Means that ODOE has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building facility as defined under "Sustainable Building" of this rule; or

(d) The facility measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(68) "Sustainable Building Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:

(a) Is rated and certified LEED-NC, LEED-CS, or LEED-CI under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council; or

(b) Is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party.

(c) For a Sustainable Building Facility to be eligible for a tax credit it must also comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(69) "Transportation District": A transportation district included in ORS 184.675(7).

(70) "Transportation Facility": A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

(a) Telework defined as working from home or from an office near home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new or used equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes purchase of vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Eligible costs include purchase of bicycles and equipment used to store bicycles. Accessory items such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the

fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible.

(k) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(l) Rideshare Matching Service is defined as a facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(m) Carpool/Vanpool Program is defined as a facility that is an employer-sponsored or organization-sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but does not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.

(n) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.

(A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.

(71) "Transportation Provider": means a public, private, or non-profit entity that provides transportation services to members of the public.

(72) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(73) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(74) "Vanpool Program": A is defined as a facility that is a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(75) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(76) "Waste-to-Energy Facility": means a renewable energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.

(d) The facility does not divert materials from a higher value use.

(e) The facility has an acceptable energy balance as determined by the Director.

(77) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0120
What Qualifies for a BETC

Both the party asking for a BETC and a facility must comply with these standards.

(1) Standards for an Applicant — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) File, have a pass-through partner that files, or commit to select such a partner prior to final certification, an Oregon income tax return; and

(c) Own or contract to buy a facility; or

(d) Own or contract to buy or lease an Oregon firm that will use or lease the facility or sell power from the facility.

(2) Standards for a Facility — A facility must:

(a) Be a facility as defined by these rules; and

(b) Comply with or have a variance from the land use laws of the city or county where the facility will be located; and

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) Standards for Leased facilities: A BETC may be granted to the owner of a facility which leases the facility for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98;

DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f.12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0130
How ODOE Handles a BETC

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must notify ODOE in writing.

(c) A facility owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(2) Preliminary Certification Preapproval: The Director may preapprove a preliminary certification for facilities that ODOE has reviewed and determined to be otherwise qualified under these rules. Such facilities may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a facility owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Facilities that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on a facility begins.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the facility.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is a facility under these rules.

(e) Facility start and finish dates.

(f) Facts that describe the facility, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the facility.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before facility development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.

(A) For a solar energy facility: A sun chart and solar insolation data for the site.

(B) For a wind energy facility: The average monthly wind speed for 12 consecutive months. Measure wind speed at the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or, measure wind speed at two heights, one at least 10 meters above ground.

(C) For a geothermal energy facility (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy needs.

(F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.

(G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 g/hr for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(k) The payment required by OAR 330-090-0150(2).

(l) For wind facilities with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report must be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicle facilities: proof that the vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicle facilities: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling station facilities: a description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) For transportation facilities: required documentation for each category specified by OAR 330-090-0110(62) (a through n).

(q) For a waste-to-energy renewable energy resource facility that meets the definition of waste stream, includes the percentage of waste stream product to be recovered and a remediation plan for emissions and byproducts.

(r) Other data the Director requires to assure a facility complies with these rules.

(5) Preliminary Certification After Start of a Facility:

(a) If a facility has been started an applicant may file a written request with the Director for preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120; and

(B) Special circumstances make application for preliminary certification before facility start up a hardship. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(6) How Preliminary Certification Can be Revoked: The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A facility is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a facility that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, facility design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed facility complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-though Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the facility owner has received the pass-through payment in full and notified ODOE.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the facility is complete.

(a) Within 30 days after a final certification application is filed, the Director will decide if it is complete. If it is not complete, the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(17)(b). For a Research, Development & Demonstration facility, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within six months after the facility begins to operate; and, if needed to make the facility work better.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The facility complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the facility remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the facility costs, including prorated costs.

(i) If facility costs are less than $50,000, the account may be records of facility costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner; or

(ii) If the facility costs are $50,000 or more, a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19); or

(iii) For a sustainable building facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of facility cost receipts.

(C) Proof the facility is completed.

(D) If the facility is leased, a copy of the lease.

(E) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a facility complies with these rules.

(10) Changes After Final Certification:

(a) The applicant must inform the Director in writing if a facility that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased facility has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the preliminary certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a facility may apply for final certification. The request must comply with OAR 330-090-0130(9). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a facility owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The facility has been moved; or

(B) Title to the facility has been conveyed; or

(C) The facility is not operating; or

(D) The term of a leased facility has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the facility in a reasonable time after the Director requests it.

(d) Other changes in the facility or its owner or lessor that violate these rules in the years for which the credit is claimed.

(12) Loss of Tax Credit Benefits: If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the facility owner many not claim tax credits for

the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the facility owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the facility. ODOE will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a facility, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0135
Business Energy Tax Credit Sustainable Building Facility Rules

(1) To be eligible for a tax credit, sustainable building facilities must achieve a minimum rating of "Silver" using the LEED-NC, LEED-CS, or LEED-CI path of the U.S. Green Building Council's rating systems, listed in the BETC Technical Requirements, in effect as of the facility registration date. Facilities receiving a "Gold" or "Platinum" rating will be awarded proportionally larger tax credits, as calculated by ODOE. Sustainable building facilities must also comply with all applicable BETC Technical Requirements.

(2) All Sustainable Building Facilities must acquire a preliminary certification from ODOE in accordance with OAR 330-090-0130(3). For these facilities, the facility owner must submit a certified copy of the Facility Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify ODOE in writing, and provide a statement of intent to apply for a tax credit as an energy facility, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).

(3) ODOE may, at its discretion, convert a preliminary certification for an Energy Facility to a preliminary certification as a Sustainable Building Facility, or accept a statement of intent to register as a Sustainable Building Facility, provided that a certified copy of the U.S. Green Building Council facility registration certificate is provided to ODOE within 30 days of the new preliminary certification date.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0140
Pass-through Option Facilities

(1) Accepting a Business Energy Tax Credit Certificate in Return for a Cash Payment Equivalent to Net Present Value of the Tax Credit.

(a) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a facility that is otherwise eligible for the tax credit in return for a cash payment equivalent to the net present value of the tax credit.

(b) Net Present Value: The minimum tax credit required to be passed through, known as the net present value, to an otherwise eligible applicant who purchases and owns a qualified facility. The net present value is applied to the final certified cost of the facility to determine the amount of the pass-through payment.

(A) The net present value will be determined and published at least each year and may be periodically revised by the Director.

(B) The Director may establish different net present value amounts for facilities with final certifications of more than $20,000 and for facilities with final certifications of $20,000 or less.

(i) 50% BETC more than $20,000 in eligible costs — 33.5% pass-through rate

(ii) 50% BETC $20,000 or less in eligible costs — 43.5% pass-through rate

(iii) 35% BETC more than $20,000 in eligible costs — 25.5% pass-through rate

(iv) 35% BETC $20,000 or less in eligible costs — 30.5 % pass-through rate

(v) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits – 87% of tax credit amount

(C) In making a determination of the pass-through amounts, the Director may consider the inflation rates, opportunity costs, and tax consequences among other factors.

(D) The net present value for the facility is the amount in effect when ODOE receives the pass-through option agreement declaring a pass-through partner, without regard to when the final certification is issued.

(2) An Investor-Owned Utility May Choose to Become a Utility Pass-Through Partner under the Provisions of this Section or Participate as a Pass-Through Partner under Other Provisions of These Rules that Would Apply to Any Other Pass-Through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-Through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(D) The application for preliminary certification of the pass-through must include a supplemental work plan, which includes a copy, or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered. The applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Director for final certification. An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, solar or other renewable resource and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is defined in the BETC Technical Requirements as a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If the facility costs are $50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).

(B) Within 30 days after a final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to $5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv); or

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment will be the lesser of 25 percent of the cost-effective portion of the energy conservation measures, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; or $350 per rental dwelling unit, plus the present value of the tax credit accrued the IOU may claim; or,

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0150
Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) $20 million in maximum eligible facility costs for a renewable energy resource facility renewable energy resource equipment manufacturing facility or high efficiency combined heat and power facility;

(B) $10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits subject to subsection (b).

(b) A final certification for a Business Energy Tax Credit will not be issued for more than 50 percent of the cost not to exceed $9,000 for a homebuilder-installed renewable energy facility or $12,000 if the facility also constitutes a high performance home.

(2) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for facilities qualifying under OAR 330-090-0130(2), for which a fee must be paid with the application for final certification. For all facilities except Sustainable Building Facilities or qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or $30 whichever is greater. The maximum payment amount is $35,000. The 0.0060 payment rate up to $35,000 will be applied to all facilities with eligible costs of $1 million and more that were received on or after January 1, 2007. For facilities with eligible costs of less than $1 million, the 0.0060 payment rate up to $35,000 will be applied to applications received on or after December 1, 2007. For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Only refunds that are $10 or greater will be issued. Amounts under $10 will not be refunded. Conditions for which a refund may be granted are:

(A) Denial of a application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f.12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

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Rule Caption: Amend Residential Energy Tax Credit (RETC) program rules.
Adm. Order No.: DOE 4-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07
Notice Publication Date: 10-1-2007
Rules Amended: 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0021, 330-070-0022, 330-070-0025, 330-070-0026, 330-070-0048, 330-070-0059, 330-070-0060, 330-070-0064, 330-070-0073, 330-070-0089, 330-070-0091, 330-070-0097
Subject: The combined tax credit for energy efficient appliances can exceed the former limit of $1,000 per year per residence.

Applicants may not receive certification for more than $6,000 per residence for solar electric (photovoltaic) systems or $1,500 for ground source heat pump systems in any one year.

The tax credit for wind electric systems increased from $1,500 to $6,000, to be taken over four years, and the basis of calculating the tax credit was raised from $0.60 to $2.00 multiplied by the first year energy yield in kilowatt hours.

Fuel cell systems may qualify for a tax credit of $6,000, to be taken over four years.

The criteria for premium efficiency biomass combustion devices were established. Such devices may qualify for a tax credit equal to

the first year energy yield in kilowatt hours multiplied by $0.40 up to $300 or 25% of the net cost of the device whichever is less.

The criteria for ductless mini-split heat pumps were established. Qualifying mini-split heat pumps will be eligible for a tax credit equal to $50 per 6,000 Btu of rated capacity up to $400 or 25% of the net cost of the system, whichever is less.

On and after January 1, 2009, to become a Tax Credit Certified Technician, first-time solar technician applicants must be tested and certified by the North American Board of Certified Energy Practitioners (NABCEP) or a certification approved by the Oregon Department of Energy. All Tax Credit Certified Solar Technicians certified by the Oregon Department of Energy must obtain NABCEP certification or other approved certification on and after January 1, 2010.

Systems installed under the Business Energy Tax Credit (BETC) program as well as the Residential Energy Tax Credit (RETC) program will be counted to satisfy the requirements that a Tax Credit Certified Solar Technician install two systems per year.

Effective January 1, 2009, the standard for high efficiency residential gas furnaces will increase from a minimum AFUE rating of 0.90 (90 percent) to a minimum AFUE rating of 0.92 (92 percent) to be consistent with Energy Star.

The Energy Factor (EF) on qualifying dishwashers increased from 0.68 to 0.70 and the Water Factor (WF) requirement for qualifying dishwashers has been eliminated.

An alternative fuel vehicle capable of using E-85 and gasoline is not eligible for the tax credit.

Applicants for a hybrid vehicle tax credit must acknowledge on the application form that they do not intend to sell the vehicle to a person who is not an Oregon resident for a period of one year.

Editorial and housekeeping changes to OAR 330-070-0010 to OAR 330-070-0097.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-070-0010
Purpose

(1) ORS 469.160 through 469.180 offer tax credits for Alternate Energy Devices (AEDs).

(2) These rules are OAR 330-070-0010 through 330-070-0097. They govern the way tax credits for AEDs will be granted or denied. None of these rules replace any building code requirements.

(3) Effective Date: December 1, 2007. All decisions made by the Oregon Department of Energy (ODOE) regarding AED eligibility, issuance of tax-credit technician certification, complaints regarding performance of tax-credit certified technician, revocation of technician tax-credit certification and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) These rules apply to tax years beginning on or after January 1, 2007. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) ODOE grants or denies AED tax credits. By granting a tax credit, neither ODOE nor the state implies that the AED will save more money than it will cost. Meeting standards in these rules does not assure that an AED is safe or reliable.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0013
Definitions

As used in OAR 330-070-0010 through 330-070-0097:

(1) "AED" — Alternative Energy Device.

(2) "Active Solar Heating" — A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(3) "AFUE" (Annual Fuel Utilization Efficiency) — The efficiency rating for furnaces and boilers expressed as the ratio of the energy output to the energy (fuel) input, including part load and cycling effects, but not including fan or pump electrical energy use.

(4) "Alternative Energy Device" ("AED") — A device or system that reduces the amount of conventional energy used by a dwelling. AEDs include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy efficient appliances, energy efficient heating, ventilating and air conditioning systems; premium efficiency biomass combustion devices, fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(5) "Alternative Fuel" — Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director of ODOE.

(6) "Alternative Fuel Device" — An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(7) "Applicant" — A person who applies for a residential alternative energy device tax credit under this section.

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in ORS 757.015 that is designated by an applicant under OAR 330-070-0013(7)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant.

(c) Any other entity qualified to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant, as determined by ODOE.

(d) An individual or business that provides the tax credit pass-through amount to the eligible AED owner, and is assigned the tax credit by the AED owner.

(8) "ARI" — Air Conditioning and Refrigeration Institute.

(9) "ASHRAE" — American Society of Heating, Refrigerating and Air Conditioning Engineers.

(10) "AWEA" — American Wind Energy Association.

(11) "Btu" — British Thermal Unit.

(12) "CEF" — Energy Factor for Combined Systems. A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (space heating efficiency and combined efficiency being the other two) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(13) "CAFUE" — Annual Fuel Utilization Efficiency for Combined Systems. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (water heating efficiency and combined efficiency being the other two) does not count any standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(14) "Consumer Disclosure" — A form approved and provided by ODOE describing some AEDs. The technician fills this form out and gives it to the buyer of an AED. It shows estimated energy savings of the AED, required conservation items, required maintenance, freeze protection information and other data required by ODOE. Exclusions: energy efficient appliances and alternative fuel devices.

(15) "COP" — Coefficient of Performance. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(16) "Department", "Energy Office", or "Office" — The Oregon Department of Energy.

(17) "Director" — Director of ODOE or the Director's representative.

(18) "Domestic Water Heating" — The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(19) "Ductless Mini-split Heat Pump" means an air-source heat pump consisting of an outdoor unit connected directly to one or more indoor units where the refrigerant is condensed and conditioned air is delivered directly to the room or zone of a home rather than through a central air handler.

(20) "Dwelling" — means real or personal property inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(a) Principal residence — The dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the

mortgagor under a duly recorded mortgage of real property, the trust or under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in the calendar year for which the credit is claimed;

(b) Secondary residence — Vacation property owned by the applicant; and

(c) Not qualifying — Primary or secondary residences do not include motor homes or recreational vehicles as defined in ORS 446.003.

(21) "EER" (Energy Efficiency Ratio) — A measure of a cooling system's instantaneous efficiency (cooling capacity divided by the power consumption), at DOE "A" test conditions, expressed in Btu/hr per watt.

(22) "Electric Load" — Appliance and lighting exclusive of any water or space heating use.

(23) "Energy Efficient Appliance" — A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by ODOE to have premium energy efficiency characteristics. Lists of certified energy efficient appliances are available from ODOE.

(24) "Energy Factor"(EF) — The non-dimensional efficiency rating for water heaters. It can be loosely translated as a percentage (e.g. EF 0.93 = 93 percent). A higher energy factor denotes better efficiency.

(25) "Energy Yield Chart" — Chart developed by ODOE showing first year energy yield of an AED.

(26) "Energy Recovery Ventilator" (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(27) "EUI(FURNACE)" — The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Gas Appliance Manufacturers Association (GAMA) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment: 3.412 x EAE / (3.412 x EAE + 1,000 x EF) = 2.0 percent.

(28) "EUI(HERV)" — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(29) "FERC" — Federal Energy Regulatory Commission.

(30) "First Year Energy Yield" — Usable energy produced under average conditions by an AED in one year. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(31) "Fuel Cell Stack" — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(32) "Fuel Cell System" — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy. Systems using reformed fossil fuels will also produce carbon dioxide.

(33) "Ground Source Heat Pump" — A heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(34) "Heating Season" — September 1 through March 31.

(35) "Heat Recovery Ventilator" (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(36) "HSPF" (Heating Season Performance Factor) — A measure of the heating efficiency of a heat pump system over the entire heating season (heating accomplished divided by power used), expressed as a ratio of Btu per watt-hour.

(37) "HUD" — U.S. Department of Housing and Urban Development.

(38) "Hybrid Vehicle" — An alternative fuel vehicle which draws propulsion energy from on-board sources of stored energy which include both an internal combustion or heat engine and a rechargeable energy storage system.

(39) "Hydronic Space Heating System" — A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(40) "IREC" — Interstate Renewable Energy Council.

(41) "kWh" — kilowatt-hour; 1 kWh = 3413 BTUs for purposes of ODOE calculations.

(42) "Latent Recovery Moisture Transfer" (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(43) "MCFC" — Molten carbonate fuel cell.

(44) "Modified Energy Factor" (MEF) — The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(45) "MM" — Million.

(46) "Net Cost" — What the applicant paid to design, acquire, build and install the AED. Net cost includes permit and inspection fees. Net cost may include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, discounts or refunds.

(47) "Net Generation" — The gross kWh produced minus internal losses and parasitic loads. The net generation is the amount available to serve dwelling loads, to provide to the utility, or both.

(48) "OG" — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.

(49) "ODOE" — Oregon Department of Energy.

(50) "Owner-Built" — An AED that is assembled and installed on an owner's personal property and with an owner's labor only.

(51) "Parasitic Power" — The electrical energy the system uses to operate.

(52) "Passive" — A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(53) "Passive Solar Space Heating" — This refers to a system or building design that collects and stores solar energy received directly though south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy. See section 330-070-0062 for details.

(54) "Pass-Through Amount" — The minimum amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined on an annual basis by the Director.

(55) "Pass-Through Provider" — An individual or business that pays the pass-through amount to an eligible system owner and applies for the tax credit in place of the system owner.

(56) "Pass-Through Verification" — Information collected by ODOE verifying that the approved pass-through amount has been provided, that the AED owner has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.

(57) "Peak Power Ratio" — In the case of a hybrid vehicle, the maximum power available from the electric motor providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(58) "Performance Checked Duct System"— A forced air duct system whose premium efficiency characteristics are that it has been tested for duct leakage by a tax credit certified technician using ODOE-approved testing procedures, and that it has been repaired or constructed using ODOE-approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked ducts are considered energy efficient appliances.

(59) "Performance Checked Heat Pumps and Air Conditioners" — A heat pump or air conditioner whose premium efficiency characteristics are that it has been tested using approved procedures and repaired or serviced as needed by a tax-credit certified technician to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy efficient appliances.

(60) "Placed in Service" — The date when an AED is ready and available to produce usable energy.

(61) "Premium Efficiency Biomass Combustion Device" is any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(62) "PV System" — A complete solar electric power system capable of delivering power to either the main or sub-panel in a residence. Necessary components include: solar electric modules, inverter, mounting system, and disconnection equipment.

(63) "SEER" (Seasonal Energy Efficiency Ratio) — a measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(64) "Solar Attic Fan" — A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(65) "Solar Domestic Water Heating System" — A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.

(66) "Solar Electric AC Module" — A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(67) "SRCC" — Solar Rating and Certification Corporation.

(68) "Sensible Recovery Efficiency" (SRE) — In an HRV or ERV, the sensible (measurable) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(69) "STC" — Standard Test Conditions, which are 25 degrees Celsius cell temperature and 1000 watts per square meter.

(70) "Sunchart" — A chart or form issued or approved by ODOE showing the plotted path of the sun and any objects which block the sun from the AED. This shall include plant life and structures. The viewpoint shall be from the center of the lower edge of the collector. It shall show whether the plant life is made up of evergreen or leafy trees. If there is no shading on the AED, technicians shall indicate this in writing on the chart and shall include their signature and the date of the analysis.

(71) "System Certification" — Certification that an AED as described in the application meets criteria for the tax credit.

(72) "System Owner" — A person who owns the AED.

(73) "Tax-Credit Certified Technician" — A technician who has been approved by ODOE as sufficiently knowledgeable about the tax credit program. A tax-credit certified technician is responsible for assuring that the system installed is according to ODOE rules and verifying system installation quality and performance. A tax-credit certified technician must ensure that the applicant or system owner is knowledgeable about ODOE's AED rules.

(74) "Tax-Credit Listed Company" A company that employs at least one tax-credit certified technician.

(75) "Total Solar Resource Fraction" — the fraction of usable solar energy that is received by the solar panel/collector throughout the year. This accounts for impacts due to external shading, collector tilt and collector orientation.

(76) "Unheated Spaces" — Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below during the heating season.

(77) "Used Equipment" — Any product or any piece of equipment not under current manufacturers' warranty or which has not had a previous owner or user.

(78) "Wastewater Heat Recovery Device" — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.

(79) "Water Factor" (WF) — The measure of water efficiency in clothes washers. Measured in gallons per cubic foot of tub capacity, per cycle (gal/ft3/cycle).

(80) "Wind AED" — A wind alternative energy device. A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy. This includes turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0014
Pass-Through

(1) Any person or business that provides the approved tax credit pass-through amount to the person who owns the eligible energy device is entitled to claim the tax credit associated with that device in place of the system owner. Any person or business that provides the approved tax credit pass-through amount to the person who owns or constructs an eligible alternative fuel station is entitled to claim the tax credit associated with that device in place of the system owner or contractor.

(2) The pass-through amount shall be determined and published at least each year and may be periodically revised by the Director.

(3) In addition to other required information, verification information for tax credits obtained by pass-through providers shall include verification that the approved pass-through amount has been provided, and acknowledgement that the person originally eligible to receive a tax credit has relinquished his or her claim to the credit and has assigned the credit to the pass through provider.

Stat. Auth.: ORS 469.040, 469.160 - 180 & 469.710 - 720
Stats. Implemented: ORS 469.040, 469.160 - 180 & 469.710 - 720
Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0021
Eligible Devices

(1) To earn a tax credit, the AED shall:

(a) Be a complete system. That is, the system must be able to collect, store, convert, monitor, and distribute energy to the dwelling it serves. Exception: Additions to existing AED systems, that are not pool, spa, or hot tub systems, shall be eligible when they increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accord with ORS 469.160 through 469.180;

(c) Be a system with manufacturer's warranties against defects in products and materials;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems. (OAR 330-070-0020; 330-070-0040 through 330-070-0055; and 330-070-0060 through 330-070-0097);and be one of the following:

(A) A system that uses solar energy;

(B) A ground water heat pump or ground loop AED;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device are eligible for the tax credit.

(F) A fuel cell system;

(G) Heat pump water heaters;

(H) A premium efficiency biomass combustion device; and

(I) Ductless mini-split heat pumps.

(2) These devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above ground, un-insulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump — A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems;

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water; and

(p) Renewable energy systems that received certification under the Business Energy Tax Credit program as Homebuilder Installed Renewable Energy Facilities or as part of a High Performance Home.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0022
Amount of Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The energy yield basis for a solar tax credit may be adjusted by ODOE to account for less than optimal solar access.

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) $1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for solar or geothermal space heating, cooling, electrical energy production or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, the credit allowed is 25 percent of the eligible cost of the alternative fuel device, not to exceed $750 for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle and an alternative fuel fueling system.

(A) Eligible cost is the difference in the cost between the conventional fueled vehicles of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(i) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference which are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(ii) Low-speed alternative fuel vehicles for which no conventional fueled vehicle is available for comparison (seating cap/size/features) must use a minimum of $1,500 to determine cost difference for the alternative fueled vehicle.

(iii) Alternative fuel vehicles capable of using E-85 and gasoline (flex-fuel vehicles) are not eligible for a tax credit.

(d) For fuel cell systems placed in service on or after January 1, 2007, one tax credit can be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by 60 cents, not to exceed $6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed $1,500.

(e) For photovoltaic systems installed on or after November 4, 2005, one $6,000 tax credit per year per residence for four years ($1,500 per year) not to exceed 50 percent of the cost of the system.

(f) For wind AEDs installed on or after January 1, 2007, one tax credit can be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by $2.00, not to exceed $6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed $1,500.

(3) For an energy efficient appliance, the credit allowed under this section shall equal:

(a) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved. The total for each appliance is not to exceed 25 percent of the cost of the appliance.

(b) $50 per 6,000 Btu/hr of rated capacity, up to $400 or 25 percent of the cost, whichever is less, if the energy efficient appliance is a very high efficiency air source ductless heat pump.

(4) For photovoltaic systems installed on or after November 4, 2005, the credit allowed under this section shall equal: $3 per watt of the installed capacity measure in watts of direct current at industry standard test conditions. A maximum of one credit valued at $6,000 shall be issued per residence per year for the year in which it was installed in annual increments up to $1,500 over a four-year period. The total credit shall not exceed 50 percent of the cost of the system.

(5) For premium efficiency biomass combustion devices, the credit allowed under this section shall be up to $300 or 25 percent of the cost of the device, whichever is less, based upon the efficiency and the first year energy yield of the AED in kilowatt hours multiplied by 40 cents as determined by Oregon Department of Energy.

(6) The amount of the tax credit must not exceed the net cost of the AED to the applicant.

(7) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) ODOE may find an AED to be too large for a dwelling. In such case net cost must be prorated. Net cost must be based on the largest useful size of an AED for the dwelling. ODOE must determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and an addition may not exceed $1,500 per year.

(8) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and must not include:

(a) Unpaid labor including the applicant's labor;

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Amounts from vendors of an AED that reduce its cost. These include rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system;

(l) Any part of the purchase price which is optional, such as an extended warranty; and

(m) Delivery fees.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0025
Application for System Certification

(1) Applicants for the tax credit must get a system certification from ODOE.

(2) Applications for a system certification must be made in a form developed by ODOE:

(a) All applications must contain a statement that the system and technician or owner-builder will meet all federal, state and local requirements;

(b) All applications will request purchasers to provide social security numbers for use as an identification number in maintaining internal records. The purchaser's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) All applications must state:

(A) The net cost of the AED;

(B) The location of the AED;

(C) Estimated first-year energy yield of the AED by the technician or from the ODOE energy yield chart, (found in the ODOE AED System Directory), if any; and

(D) That the purchaser has received an operating manual for the AED. Exception: No operating manual is required for sunspaces or direct gain space heating systems.

(d) All applications must state that the technician agrees to make any changes required by ODOE for the system to comply with ORS 469.160 through 469.180;

(e) All applications must be signed by the purchaser and technician, if any, or, a form of electronic signature acceptable to ODOE shall be provided; and

(f) A technician or applicant must not give ODOE false or misleading information about an AED.

(3) System certification applications for solar water heating AEDs must contain:

(a) The number of collectors;

(b) The manufacturer and/or supplier;

(c) The collector dimensions and/or the net area of the collectors;

(d) The amount of heat storage;

(e) The system type;

(f) Declaration of SRCC certification status or equivalence as determined by ODOE;

(g) A description of the freeze protection for the system;

(h) A description of the over-heat protection for the system;

(i) The system model;

(j) Orientation and tilt of the collector;

(k) A sunchart for the collector location;

(l) A Consumer Disclosure signed by the applicant and technician or supplier, if any;

(m) A statement that the purchaser has received a copy of consumer information supplied by ODOE; and

(n) Any other data ODOE requires.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A sunchart for the collector location; and

(e) Any other data ODOE requires.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) A copy of the building permit plans;

(b) A copy of the window specifications used;

(c) The type and amount of thermal storage;

(d) A sunchart taken at the center of the solar glazing; and

(e) Any other data ODOE requires.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The brand name of the module(s);

(b) The module(s) area;

(c) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

(d) A description of the storage provided if storage is a part of the system;

(e) Storage brand and model;

(f) Storage capacity in kWh;

(g) The brand name of the inverter if an inverter is part of the system;

(h) The capacity of the inverter;

(i) Orientation and tilt of the array;

(j) A sunchart of the array location; and

(k) Any other data ODOE requires.

(7) System certification applications for ground water heat pumps and ground loop AEDs must contain:

(a) For all systems connected to a well, data on the well including:

(A) Depth;

(B) Diameter (cased);

(C) Temperature;

(D) Static water level below grade;

(E) A copy of the well driller's log, if available; and

(F) Any other data ODOE requires.

(b) For systems connected to a heat pump:

(A) Brand name and model number of the heat pump;

(B) Rated output at the entering water temperature;

(C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data ODOE requires.

(c) For ground loop heat pump systems:

(A) All the information in subsection (7)(b) of this rule; and

(B) Brand name, rated output, estimated COP;

(C) Length and depth of the loop;

(D) Materials and spacing used;

(E) Type of heat transfer fluid; and

(F) Any other data ODOE requires.

(8) System certification applications for energy efficient appliances must contain:

(a) Taxpayer's name and principal address;

(b) Installation location by street address;

(c) The name of the dealer or licensed and bonded technician;

(d) The dealer's business location;

(e) The brand name, make, model number, capacity and/or size of the appliance;

(f) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of purchaser's name and address; and

(B) Verification of model of appliance; and

(C) Verification of actual price paid for appliance.

(g) Certification of new equipment warranty; and

(h) Any other data ODOE requires.

(9) System certification applications for alternative fuel devices must contain:

(a) Taxpayer's name;

(b) Taxpayer i.d. or social security number;

(c) State of Oregon vehicle registration number;

(d) Installation location by street address;

(e) The name of the licensed and bonded company employing the technician;

(f) The company's business location;

(g) The brand name, make, model number, or component list of the AFD;

(h) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of purchaser's name and address; and

(B) Verification of model of, or components used for AFD; and

(C) Verification of actual price paid for the AFD.

(i) Certification of new equipment warranty;

(j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:

(A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and

(B) Signature, or form of electronic signature acceptable to ODOE, of an authorized representative of the IOU or other designated qualifying party stating willingness to accept the tax credit certificate; and

(k) Any other data ODOE requires.

(10) System certification applications for fuel cells shall provide information regarding:

(a) The rated fuel cell stack peak capacity, in kW;

(b) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);

(c) Whether or not the system is grid connected;

(d) The fuel used by the system;

(e) The type of fuel stack (PEM, PAFC, SOFC, etc.);

(f) An estimate of the average load, in kW, expected to be placed on the system;

(g) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;

(h) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(i) Any other data ODOE requires.

(11) System certification applications for premium efficiency biomass combustion devices shall provide information regarding:

(a) The manufacturer, model, capacity, serial number; and

(b) The device characteristics defined as catalytic, non-catalytic, or pellet stove or boiler; and

(c) Vendor name and address; and

(d) Price paid for the device, any parts or installation; and

(e) A signed certification from the applicant verifying that any wood burning device which is being replaced has been rendered unusable and will be retired permanently from service; and

(f) The efficiency and grams of smoke per hour published in the List of EPA Certified Wood Stoves ; or

(g) The efficiency and grams of smoke per hour published in a third-party list approved by the Director in the year in which the device was purchased; or

(h) A certificate of performance including the grams of smoke per hour and efficiency for the specific manufacturer and model of wood burning device from a currently US EPA certified woodstove testing laboratory.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0026
Technician Tax Credit Certification

(1) Technicians may on a voluntary basis apply for ODOE tax-credit certification for a particular technology on an annual basis. Certification is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to ODOE rules, and verify system installation quality and performance.

(2) A tax-credit certified technician applies only to the following products:

(a) Solar water heating systems;

(b) Ground source heat pumps (geothermal);

(c) Photovoltaic systems;

(d) Performance-tested ducts; and

(e) Air source heat pumps/air conditioning systems.

(3) The tax-credit certified technician's status is based on the following:

(a) Knowledge and understanding of the tax credit program requirements and expectations;

(b) Ability to provide systems that are designed and installed with a focus on performance and longevity;

(c) Ability to deal with both ODOE and consumers in a professional manner; and

(d) Employment by a company with a Construction Contractors Board (CCB) license. Failure to meet any of these criteria are grounds for removal from being certified. (See Section 330-070-0045 (2)).

(4) Tax-credit certified technician status entitles a technician to:

(a) Inform the owner that he or she has attended an ODOE-required training class and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meet ODOE standards for performance and longevity.

(5) Tax-credit certified technician status requires that the technicians must follow ODOE requirements including:

(a) Duct and air-source heat pump/air conditioning technicians must acquire training required by the Director for providing the services necessary for that technology and pass a competency test with a score of 70 percent or above.

(b) Solar technicians must show certification (North American Board of Certified Energy Practitioners-NABCEP or Limited Renewable Energy Technician (LRT) license for solar electric and Solar Thermal License (STL) for solar thermal or pass an ODOE competency testing with a score of 70 or above for the technology. On or after January 1, 2009, new applicants for tax credit certified solar technicians must show NABCEP photovoltaic (PV) certification or NABCEP entry-level certification or Limited Renewable Energy Technician (LRT) license or Solar Thermal License (STL) or other certification approved by the Director to be a tax credit certified solar technician. On and after January 1, 2010 all tax credit certified solar technicians must show proof of appropriate NABCEP or LRT or STL certification or other certification approved by the Director to maintain their tax credit solar certification with the Oregon Department of Energy.

(c) First-time geothermal technician applicants must show proof of successful completion within the previous 5 years of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the ODOE Director. If IGSHPA or other certification is more than 5 years old, applicant must also complete two-hour relevant installer training, community college HVAC course, or other training approved by the Director within the previous year.

(d) Participate in ODOE tax-credit training and annual ODOE update telephone conference calls.

(e) Verify owner has user manual for equipment/system.

(f) Provide the customer with a completed application and a copy of the final itemized dated invoice for the system that is marked "inspected and paid for." Verify owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(g) Maintain tax-credit certification status by completing the following technology-specific requirements during the previous calendar year:

(A) For solar technology — Complete at least two (2) hours of Oregon Solar Energy Industries Association (OSEIA)-approved solar-related training and either have submitted and approved two (2) Residential or Business Energy Tax Credit applications for systems in technology in which technician is certified or score 70 percent or above on an ODOE competency test for appropriate solar technology. On or after January 1, 2010, solar technicians who have appropriate third-party certification, but who do not complete installation of at least two (2) approved Residential or Business Energy Tax Credit systems in the technology they are certified in, must complete an additional two-hours of OSEIA-approved solar training. This is in addition to the two hours of solar training currently required per year.

(B) For air source heat pumps/air conditioning — Maintain current requisite technical certification and licensing; complete and either have submitted and approved four (4) tax credit applications or score 70 percent or above on competency test.

(C) For performance tested duct systems — Have submitted and approved a minimum of four (4) tax credit applications or score 70 percent or above on competency test.

(D) For ground-source heat pumps — Have submitted and approved a minimum of one (1) tax credit application or proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(E) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by an ODOE tax-credit certified technician. Homeowner-installed systems will be verified by ODOE on a case-by-case basis.

(F) A tax-credit certified technician must notify ODOE within 30 days if changes are made in any of the information in the certification application.

(G) ODOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0048
Administrative Process for Review and Revocation of Technician Tax Credit Certification

(1) If ODOE receives a complaint, the tax-credit certified technician and employing company must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractors Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of technician tax-credit certification or civil penalty.

(b) In all other cases, ODOE must evaluate the technician's or employing company's response and determine whether a violation occurred. ODOE must notify the technician and employing company of its determination and, if appropriate, the necessary remedy. ODOE must give the technician and employing company 30 days to remedy a violation. ODOE may grant the technician and employing company additional time where appropriate.

(2) If the technician and employing company do not take appropriate action within the time specified, ODOE must begin enforcement proceedings. An enforcement proceeding may be brought to revoke the technician

tax-credit certification, remove company name from ODOE listing, and/or to impose a civil penalty.

(3) ODOE must commence an enforcement proceeding by sending the technician and employing company a notice of violation. The notice must describe the violation(s) and notify the technician and employing company of the proposed penalty (revocation and/or civil penalty).

(4) Civil Penalties: The technician and employing company may be subject to a civil penalty if a system certification or technician tax-credit certification is revoked by the Director. The amount of the penalty must be the total amount of tax relief estimated to have been provided to purchasers of the system for which a system or technician tax-credit certification is revoked under this rule.

(5) Before the Director imposes a penalty, the technician and/or employing company must be given 21 days in which to request a hearing pursuant to ORS 183.310-183.550 and the Attorney General's Uniform and Model Rules of Procedure, January 1, 2006 edition. The hearing will be to contest the revocation of a system or technician tax-credit certification based on actions listed under OAR 330-070-0045.

(6) Re-application: To reapply after the revocation of a technician tax-credit certification, the technician and employing company must prove to the satisfaction of ODOE that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that technician or employing company or any other firm with any of the same shareholders may reapply for certification.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.180
Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0059
Guidelines for Solar Pool and Spa AEDs

(1) Installations must be of professional quality, be installed according to manufacturer's instructions; comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to monitor the system performance;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs;

(3) Pool heating system designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Any building insulation disturbed due to the system installation must be restored to previous condition;

(d) Pool collector materials must come with a minimum 10-year manufacturer's full

warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.

(f) Collector risers must follow the slope of the surface they are mounted on to ensure drainage for proper freeze protection.

(g) Pool collectors must be equal to not less than 40 percent of the pool surface area if equipped with swimming pool blanket or not less than 60 percent if no pool blanket is present.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the Oregon Department of Energy. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) Spa or hot tub must be insulated with not less than R-15 perimeter and bottom insulation and have a cover rated to not less than R-5.

(5) ODOE will provide technicians with a simple means of estimating annual energy savings for a pool heating system. Spa heating system performance will be determined on a case-by-case basis. For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

(6) The costs listed in subsection (8)(a) through (h) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(7) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of monitors, meters and controls;

(d) The cost of photovoltaic devices used to supply electricity to parts of the system;

(e) Installation charges;

(f) Fees paid for design or building;

(g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and

(h) Up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(8) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(9) ODOE will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) ODOE will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

(10) A tax credit for a system addition must count as a tax credit for the tax year in which the addition is placed in service. The total tax credit of current and previous year credits shall not exceed $1,500 per year.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0060
Guidelines for Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality, comply with all applicable state, county, or local codes and regulations and be verified by an ODOE tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system; and

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method shall follow these guidelines:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Drain-down or manual drain systems for pools or spas must be designed for gravity draining of the collector and piping.

(g) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) ODOE will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems common to Oregon and R&D systems. Annual energy savings will be based on the annual performance simulations provided by the SRCC modified for conditions required under state law.

(a) OG-300 systems that meet ODOE approval do not have to be on the yield chart if there has been no request by a tax-credit certified technician that they appear on the yield chart.

(b) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent. Yields must be developed for each of the three weather zones defined by ODOE and updated at least annually.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. ODOE will extend this temporary authorization for up to 12 systems of a specific design. The solar technician will need to submit a complete copy of the system design and operation documents provided to the consumer to ODOE for approval. ODOE shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this status will be determined by ODOE based on 90 percent of the estimated annual energy output.

(b) Temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. ODOE will extend an unlimited quantity of systems to be installed in a 12-month period, providing ODOE has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(11) All technician tax-credit certified-installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(b) Provide clear labeling of on/off/bypass controls and safety issues;

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

(d) Be installed to meet local building codes; and

(e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(12) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(13) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. ODOE will evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0064

Guildelines for Photovolatic AEDs

(1) Installations must be professional quality, comply with all applicable Oregon codes, comply with the requirements of the **National Electric Code article 690**, and be verified by an ODOE tax-credit certified solar technician.

(2) A photovoltaic tax credit for a system installed on or after November 4, 2005, shall be limited to $6,000 per PV system. The amount of the credit shall be based on $3 per watt. The maximum tax credit given in a calendar year is $1,500. If a system results in a tax credit larger than $1,500, the remainder will be applied on to the subsequent year until either the $6,000 limit or the total tax credit is provided.

(3) System size shall be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC).

(4) The minimum system size must be 200 Watts DC output under STC.

(5) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Photovoltaic modules;

(b) Inverters;

(c) Storage systems and regulators;

(d) Monitors, meters, and controls;

(e) Wiring and framing materials;

(f) Trackers;

(g) Installation charges; and

(h) Permits and fees, including up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(6) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0073

Guidelines for Energy Efficient Appliances and Alternative Fuel Devices

(1) Energy efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with ODOE as qualifying premium efficiency appliances. In the event that the same model number has more than one energy efficiency rating, one of which is non-qualifying, all units with that model number will be declared ineligible and removed from the ODOE qualifying list of premium efficiency appliances. Models declared ineligible due to multiple energy efficiency ratings may be reinstated upon demonstration by the manufacturer that the problem has been remedied, but not earlier than 12 months from the time of removal from the list.

(2) Where USDOE test procedures do not exist, ODOE will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers:

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Effective April 1, 2007, clothes washers shall have a minimum Modified Energy Factor (MEF) of 2.0 and a maximum Water Factor (WF) of 6.5 gal/cubic foot/cycle.

(4) Refrigerator-Freezers:

(a) Must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers;

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 30 cubic feet; and

(c) Must have a fully automatic defrost cycle.

(5) Dishwashers:

(a) Effective January 1, 2008, dishwashers must have an Energy Factor of 0.70 cycles/kWh or higher; and

(b) Dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(6) Water Heating Appliances:

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by ODOE.

(B) Electric units of nominal 1-ton or less shall have an Energy Factor not less than 1.0; units with capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5.

(C) Natural gas, propane, or oil-fired units shall have an Energy Factor of 0.80 or greater as tested with natural gas fuel. If tankless, the water heater shall have a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by ODOE must be the basis for tax credit qualification. The following rules also apply:

(a) The systems must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All joints and seams in duct work outside the conditioned space must be sealed, when accessible, with mastics that meet NFPA class 1 requirements, that are UL 181 listed, and that meet ASTM standards C557 and C919-79.

(b) All closure systems must be applied according to the manufacturer's instructions or as specified by these standards.

(c) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(d) Duct leakage must be tested using ODOE-approved, calibrated duct testing equipment and ODOE approved testing protocols.

(e) Testing to verify that these standards have been achieved must be conducted by technicians approved by ODOE or by an ODOE-designated agent or representative.

(f) In addition to general requirements (a) through (e), performance checked duct systems must meet situation specific standards for eligibility, materials, design, installation, air tightness and safety, as specified in the Oregon Department of Energy Premium Efficiency Duct System Standards, dated October 30, 2003.

(g) Measures eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) New construction:

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

(vi) Duct testing; and

(vii) Labor and materials for bringing duct systems inside heated space.

(B) New ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles; and

(vi) Duct testing.

(C) Duct repair and sealing/existing ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Labor and materials for installing multiple returns;

(iii) Labor and materials for installing passive pressure relief grilles; and

(iv) Duct testing.

(h) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Test results worksheet for "new construction," "new duct systems in existing homes," or " duct repair and sealing"/existing ducts in existing homes, as applicable;

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, shall be made available to ODOE upon request; and

(D) Itemized invoice identifying measures detailed in (g).

(i) The amount of the tax credit for performance checked duct systems must be 25 percent of the eligible costs detailed in (g), up to $250.

(9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by technicians certified by ODOE or its approved agent, based on procedures approved by ODOE.

(b) Approved supplemental air flow test methods must be used, including: flow grid, duct blaster, strip heat, or flow hood. Supplemental air flow test results must include pre-repair and post repair air flow readings in cubic feet per minute, cfm.

(c) To verify electronically commutated motor (ECM) installation results, the wattage of the existing fan motor and new ECM fan motor must be measured using a wattmeter or by clocking the revenue meter using the following procedure:

(A) Turn off all circuit breakers except the breaker to the AC/HP air handler.

(B) Turn on the air handler fan (cooling speed).

(C) At the meter, use a stopwatch, and for a period of at least 90 seconds, count the number of revolutions of the wheel. Record seconds and number of revolutions.

(D) Record meter data: kWh and multiplier if any.

(E) Calculate the watt draw of the fan: Watts = [kWh x number of revolutions x multiplier x 3600]/seconds.

(d) Eligible measures must be confirmed by the system diagnostic tests using ODOE-approved protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(e) Measures eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include:

(A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more;

(E) Replacing an existing inside fan motor with an electronically commutated motor (ECM) when initial diagnostic tests show low air flow and tests after ECM installation show an air flow improvement of 10 percent or more; and

(F) Control modifications necessary for the system to pass the diagnostic test.

(f) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre and post repair system air flow measurements using approved methods listed in (b), if applicable;

(D) Watt draw of existing fan motor and new ECM, if applicable; and

(E) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(g) The amount of the performance checked heat pump/AC tax credit must be 25 percent of the cost of testing and repair, up to $250.

(10) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion. Equipment may consist of original equipment manufacturer components; or

(a) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted; or

(b) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(c) Other components as recognized by ODOE as necessary for alternative fuel use.

(d) Those applying for hybrid vehicle tax credits must acknowledge that they do not intend to transfer ownership of the vehicle to a non-Oregon resident for a period of one year.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of refueling/recharging an alternative fuel vehicle within 14 hours. The following rules also apply:

(a) On-board charging systems that feed into the rechargeable energy storage system in a hybrid vehicle must be high-voltage systems of 100 Volts or higher that have an active regenerative braking system integrated into the recharging system of the hybrid vehicle; and

(b) The use of an on-board charging system on a hybrid vehicle must result in significant energy savings as determined by the Director of ODOE.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed; Have a maximum EUI(HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at –13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at –13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum EER rating at DOE "A" conditions of 13.0; and

(e) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be a central, split-system;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum DOE Region IV HSPF rating of 9.0;

(e) Have a minimum EER rating at DOE "A" conditions of 12.0; and

(f) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.90 (90 percent); effective January 1, 2009, the minimum AFUE rating will increase to 0.92 (92 percent);

(c) Use ducted outdoor air for combustion; and

(d) The air handler for the unit must have an electronically commutated, permanent magnet variable speed DC (ECPM) motor, or have an EUI(FURNACE) of less than 0.02.

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted; and

(b) Have a minimum AFUE rating of 0.88 (88 percent).

(19) Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace systems may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings if the duct system to which

it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the air conditioning and/or heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.

(20) Very High Efficiency Ductless Air Source Heat Pump Systems must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed by model combination in the Air Conditioning and Refrigeration Institute (ARI) directory

(c) Deliver at least 50 percent of its ARI-certified rated capacity at 17°F outside temperature;

(d) Include no integrated electric resistance backup heat;

(e) Be sized and installed per manufacturer specifications; and

(f) Be installed by a technician trained by the equipment manufacturer within the last five years.

(21) Very Efficient Biomass Combustion Devices must be:

(a) Less than one quarter of a million British thermal units (Btu) per hour heat input; and

(b) Installed in an Oregon residential dwelling; and

(c) Installed with a dedicated outside combustion air intake; and

(d) Listed in the United States Department Environmental Protection Agency List of EPA Certified Wood Stoves or other third-party certified list approved by the Director with emissions of 4.5 grams of smoke per hour or less if it is designated in that list as a non-catalytic wood stove; or

(e) Listed in the List of EPA Certified Wood Stoves or other third-party certified list approved by the Director with emissions of 2.5 grams of smoke per hour or less if it is designated in that list as a catalytic wood or pellet stove; or

(f) Have a certificate of performance for the specific manufacturer and model of wood burning device from a currently US EPA certified woodstove testing laboratory. The certificate must show emissions of 4.5 grams of smoke per hour or less if it is designated as a non-catalytic wood stove or emissions of 2.5 grams of smoke per hour or less if it is designated as a catalytic wood or pellet stove.

(22) Any other standards adopted by ODOE for energy efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director of the Oregon Department of Energy.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0089

Guidelines for Wind AEDs

(1) To qualify for a tax credit:

(a) A wind AED system manufacturer must provide monthly data of average energy produced (kWh) and average wind speed for one consecutive year for each model of system to demonstrate reliable operation of that model of equipment at a site with average annual wind speeds of at least 12 mph; OR The wind AED system model must be listed on the official list of Qualified Wind Generators published by the California Energy Commission or the New York State Energy Research and Development Authority (NYSERDA) in effect as of December 1, 2007.

(b) A wind AED system application must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

(2) The Oregon Department of Energy reserves the right to deny eligibility for any wind AED for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented; lack of manufacturing support for maintenance, warranties, etc., insufficient experience with generator, etc.

(3) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(4) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to wind, lightning, ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(5) The wind AED must withstand all natural forces it may be expected to experience.

(6) No part of a wind AED project must put toxic substances into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(7) Wind AED parts must be serviceable without the need to trespass.

(8) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(9) Manual Shutdown: All wind AEDs must have a manual way to stop the rotor from turning. This method must work safely during high winds and routine service.

(10) Overspeed Control: Rotor overspeeds shall be prevented by the wind AED's design.

(11) Tower safety: All parts of a wind AED project shall meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(12) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(13) Lightning: Wind AEDs must withstand lightning strikes.

(14) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(15) The first-year energy yield of wind AEDs must be at least 350 kWh.

(a) The first-year energy yield must be estimated using the measured or estimated wind resource data and the wind AED's power curve or energy production data.

(A) The provided wind data must cover at least a one-year period.

(B) Wind data may be used from (1) three nearby wind monitoring stations, (2) the wind AED site itself, (3) in the event of less than one year's measurements at the wind AED site, the application shall include the months of on-site measurements and one year's worth of data from two nearby locations, or (4) a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(b) ODOE will use data supplied by the applicant to verify the first-year energy yield.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0091

Eligible Costs for a Wind AED

(1) The costs listed in subsections (2)(a) through (m) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified as AEDs to ODOE's satisfaction. Only total working systems will qualify for a tax credit. All systems must comply with OAR 330-70-0021 and 330-070-0040.

(2) Eligible costs include:

(a) The cost of wind turbine generators;

(b) The cost of DC/AC converters, inverters and synchronous inverters;

(c) The cost of wind and system instruments and controls when part of a total wind AED;

(d) The cost of energy storage (batteries or other methods);

(e) The cost of tower, foundation and guys;

(f) Fees paid for design and building;

(g) Fee to install;

(h) The cost of electric meters, switches and electrical safety equipment;

(i) The cost of electric transformers and lines and supports;

(j) The cost of safety equipment;

(k) Up to $500 of wind permitting cost;

(l) The cost of windmills; and

(m) The cost of pumps, linkage, pump heads, and vacuum chambers.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

330-070-0097

Guidelines for Electricity Producing AEDs

Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be UL listed and installed per the state electrical code.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07

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Rule Caption: Criminal background check to determine if individual is fit to provide services to the Department.

Adm. Order No.: DOE 5-2007

Filed with Sec. of State: 12-13-2007

Certified to be Effective: 12-13-07

Notice Publication Date: 11-1-2007

Rules Adopted: 330-007-0200, 330-007-0210, 330-007-0220, 330-007-0230, 330-007-0240, 330-007-0250, 330-007-0260, 330-007-0270, 330-007-0280, 330-007-0290, 330-007-0300, 330-007-0310, 330-007-0320, 330-007-0330

Subject: Rules to control the Department's acquisition about an individual's criminal history and its use to determine whether an individual is fit to provide services to the Department as an employee, contractor or volunteer.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-007-0200

Statement of Purpose and Statutory Authority

(1) Purpose. These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, contractor or volunteer in a position covered by OAR 330-007-0220(2)(a)-(g). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee or volunteer.

(2) Authority. These rules are authorized under ORS 181.534 and 469.055.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534(9)

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0210

Definitions

As used in OAR chapter 330, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 330-007-0240 or a final fitness determination under OAR 330-007-0260, an authorized designee has determined that the subject individual is fit to be an employee or volunteer in a position covered by OAR 330-007-0220(2)(a)-(g).

(2) "Authorized Designee" means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Contact Person" means a person who is authorized by the Department to receive and process criminal records check request forms signed by subject individuals and is authorized to receive other criminal records information. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(4)"Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(5) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(6) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 330-007-0270.

(7) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 330, division 007.

(8) "Criminal Records Check" or "CRC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(9) "Denied" means that, pursuant to a preliminary fitness determination under OAR 330-007-0240 or a final fitness determination under OAR 330-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, contractor or volunteer in a position covered by OAR 330-007-0220(2)(a)-(g).

(10) "Department" means the Oregon Department of Energy (ODOE) or any subdivision thereof.

(11) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:

(a) provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record; or

(b) Failed to provide to the Department information material to determining his or her criminal history.

(12) "Fitness Determination" means a determination made by an authorized designee pursuant to the process established in OAR 330-007-0240(preliminary fitness determination) or 330-007-0260(final fitness determination) that a subject individual is or is not fit to be a Department employee, contractor or volunteer in a position covered by OAR 330-007-0220(2)(a)-(g).

(13) "Family Member" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) "Subject Individual" means an individual identified in OAR 330-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 469.055.

Stats. Implemented: ORS 181.534

Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0220

Subject Individual

"Subject Individual" means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Its employed or applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In the Hanford Nuclear Safety program;

(b) In which the person conducts energy audits in schools, colleges, universities or medical facilities;

(c) In the Budget and Finance section of the Department;

(d) That has personnel or human resource functions as one of the position's primary responsibilities;

(e) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(f) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers or criminal background information; or

(g) In which the person has access to tax or financial information about individuals or business entities or processes tax credits.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0230
Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual, if requested, shall complete and sign the ODOE Criminal Records Request form and, if requested by the Department, a fingerprint card. The Criminal Records Request Form shall require the following information: name, birth date, physical characteristics, driver's license or identification card number, current address, prior residences, and any other information deemed necessary by the authorized designee. The ODOE Criminal Records Request form may also require details concerning any circumstance listed in OAR 330-007-0240(3)(a)-(f).

(b) A subject individual shall complete and submit to the Department the ODOE Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Department shall not request a fingerprint card from a subject individual under the age of 18 years unless the Department also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 330-007-0260(3)(d)(B).

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve any issues hindering the completion of a criminal records check.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:

(a) An individual meets the definition of "subject individual"; or

(b) Required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee may request or conduct a LEDS Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0240
Preliminary Fitness Determination

(1) An authorized designee or contact person may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) If an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the authorized designee or contact person shall make that preliminary fitness determination based on information disclosed by the subject individual under OAR 330-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee or contact person shall approve a subject individual as fit on a preliminary basis if the authorized designee or contact person has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee or contact person does not disclose that the subject individual:

(a) Has pled nolo contedere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 330-007-0270;

(b) Has been arrested for or charged with a crime listed under OAR 330-007-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 330-007-0270;

(d) Is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 330-007-0270;

(e) Has a deferred sentence or conditional discharge in connection with a crime listed under OAR 330-007-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 330-007-0270 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 330-007-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 330-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0250
Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee or contact person has approved the subject individual on the basis of a preliminary fitness determination under OAR 330-007-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 330-007-0260, may not appeal the termination under the process provided under OAR 330-007-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 330-007-0260(3)(d), then the Department shall immediately terminate the subject individual's employment or appointment.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0260
Final Fitness Determination

(1) If the Department elects to conduct a criminal records check, an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 330-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)-(f) in relation to information provided by the subject individual under OAR 330-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The subject individual shall meet with the authorized designee if requested and provide additional information within a reasonable period of time, as established by the authorized designee. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 330-007-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 330-007-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 330-007-0270;

(B) Evidence that the subject individual has a pending indictment for a crime listed in OAR 330-007-0270;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 330-007-0270;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines:

(A) That the evidence is not credible; or

(B) If the evidence is credible, that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual before removing a restriction.

(d) Denial:

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the employment of the individual, or revoke or deny any applicable position, authority to provide services, license, certification, registration, or permit. A person may not appeal any determination made based on a refusal to consent.

(C) If a subject individual is denied as not fit, the subject individual may not be employed by or provide services as a volunteer or contractor to the Department in a position covered by OAR 330-007-0220(2).

(4) Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Order. A completed final fitness determination is final unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 330-007-0300(2)(a) or an alternative appeals process as provided by OAR 330-007-0300(6).

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0270
Crimes Relevant to a Fitness Determination

(1) Crimes Relevant to a Fitness Determination.

(a) All felonies;

(b) All misdemeanors;

(c) Any United States Military crime or international crime;

(d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;

(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.555, when the underlying crime is listed in this section (1);

(2) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0280
Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 330-007-0220;

(b) The subject individual does not provide materials or information under OAR 330-007-0230(1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other relevant information under OAR 330-007-0260(2);

(e) The Department determines that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer) for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 330-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0290
Notice to Subject Individual of Fitness Determination

(1) An authorized designee shall provide written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.

(2) The authorized designee shall record on the notice the date on which the preliminary or final fitness determination was either closed as incomplete or completed. This shall include the mailing date.

(3) If the notice pertains to a completed final fitness determination, it shall meet the requirements of OAR 137-003-0505 and ORS 183.415.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0300
Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determination made under OAR 330-007-0260 that he or she is fit or not fit to hold a position with, or provide services to the Department as an employee, vol-

unteer or contractor. Section (6) of the rule identifies an alternative appeal process available only to ODOE employees.

(2) Process:

(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 330-007-290(1)(b), within 14 calendar days of the mailing date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(3) Discovery. The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order.

(b) Exceptions. The subject individual, the subject individual's legal counsel, or the Department's representative may file written exceptions with the Department within 14 calendar days after service of the proposed order. Exceptions will be considered as set forth in OAR 137-003-0650 and 137-003-0655.

(c) Default. A completed final fitness determination made under OAR 330-007-0260 becomes final:

(A) unless the subject individual makes a timely request for a hearing; or

(B) when a party withdraws a hearing request, notifies the agency or the ALJ that the party will not appear, or fails to appear at the hearing.

(6) Alternative Process. A subject individual currently employed by ODOE may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 330-007-0260(3)(c), and that, at the request of the subject individual, the subject individual's employment application will be kept on file. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.

(8) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (8), a subject individual may use any process made available by the agency that provided the information.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 330-007-0260 by submitting a new ODOE Criminal Records Request form.

(9) Appealing a fitness determination under section (2) or section (6) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under section (8) of this rule, will not delay or postpone the Department's hiring process or employment decisions except when the authorized designee, in consultation with the Human Resources Section, decides that a delay or postponement should occur.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0310
Recordkeeping and Confidentiality

(1) An authorized designee or contact person shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15) and federal laws and regulations.

(b) Only the Department's authorized designees and the contact person shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee and contact person shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee or contact person has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees and the contact person shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law. The Department shall require sufficient identification from the subject individual to determine his or her identity before providing this criminal offender information to him or her. The Department shall require that the subject individual sign a receipt confirming his or her receipt of the criminal offender information.

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including ODOE Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees and the contact person shall have access to the records identified under subsection (a).

(c) An authorized designee and contact person shall have access to records identified under subsection (a) only if the authorized designee or contact person has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0320
Contact Person and Authorized Designees

(1) Appointment.

(a) The Department Director or the Director's designee shall designate the positions that include the responsibilities of an authorized designee or contact person.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her sole discretion.

(2) The Department Director or Appointing Authority may also serve as an authorized designee or contact person, contingent on being approved

under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee and the contact person shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee or contact person is a family member of the subject individual; or

(b) The authorized designee or the contact person has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee or contact person shall consult with his or her supervisor before taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee or Contact Person Status.

(a) When an authorized designee's or contact person's employment in a designated position ends, his or her status as an authorized designee or contact person is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position, and thereby suspend or terminate his or her status as an authorized designee or contact person, if the employee fails to comply with OAR 330-007-0200 through 330-007-0310 in conducting criminal records checks and fitness determinations.

(c) An authorized designee or contact person shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 330-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position, and thereby termination of his or her status as an authorized designee or contact person.

(d) The Department will review and update an authorized designee's or contact person's eligibility for service in a designated position, during which a new criminal records check and fitness determination may be required:

(A) At any time the Department has reason to believe that the authorized designee or contact person has violated these rules or no longer is eligible to serve in his or her current position.

(5) A denial under OAR 330-007-0260(3) related to a designated position is subject to the appeal rights provided under OAR 330-007-0300.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

330-007-0330
Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.

(3) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 469.055.
Stats. Implemented: ORS 181.534
Hist.: DOE 5-2007, f. & cert. ef. 12-13-07

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Department of Environmental Quality
Chapter 340

Rule Caption: Asbestos Abatement Notification Filing Fee Increase.
Adm. Order No.: DEQ 9-2007
Filed with Sec. of State: 11-21-2007
Certified to be Effective: 11-30-07
Notice Publication Date: 8-1-2007
Rules Amended: 340-248-0260
Subject: This rulemaking increases asbestos abatement notification fees to provide sufficient funds to maintain existing staff levels in the Department of Environmental Quality's (DEQ) asbestos program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. The DEQ's asbestos program is supported by asbestos contractor license fees and asbestos abatement notification fees. Asbestos abatement notification fees have not been increased since 1995 and there has been a significant shift from large to smaller asbestos abatement projects that generate less fee income but cost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and penalties for mishandling asbestos materials. These rules implement the legislatively adopted budget.
Rules Coordinator: Larry McAllister—(503) 229-6412

340-248-0260
Asbestos Abatement Notification Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), or (7).

(1) Submit the notifications as specified in section (4) of this rule and the project notification fee to the Department at least ten days before beginning any friable asbestos abatement project and at least five days before beginning any non-friable asbestos abatement project.

(a) The project notification fee is:

(A) $100 for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.

(B) $200 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.

(C) $400 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.

(D) $525 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.

(E) $900 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.

(F) $1,050 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

(G) $1,700 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.

(H) $2,800 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(I) $3,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(J) $750 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material.

(K) $500 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.

(b) Project notification fees must accompany the project notification form. Notification has not occurred until the completed notification form and appropriate notification fee is received by the Department.

(c) The Department may waive the ten-day notification requirement in section (1) of this rule in emergencies that directly affect human life, health, and property. This includes:

(A) Emergencies where there is an imminent threat of loss of life or severe injury;

(B) Emergencies where the public is exposed to air-borne asbestos fibers; or

(C) Emergencies where significant property damage will occur if repairs are not made immediately.

(d) The Department may waive the ten-day notification requirement in section (1) of this rule for asbestos abatement projects that were not

planned, resulted from unexpected events, and will cause damage to equipment or impose unreasonable financial burden if not performed immediately. This includes the non-routine failure of equipment.

(e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects must notify the Department by telephone before commencing work or by 9:00 am of the next working day if the work was performed on a weekend or holiday. In any case, notification as specified in section (4) of this rule and the appropriate fee must be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.

(f) Failure to notify the Department before any changes in the scheduled starting or completion dates or other substantial changes will render the notification void.

(g) If an asbestos project equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year from the original start date of the project a new notification and fee must be submitted annually thereafter until the project is complete.

(h) Residential buildings include: site built homes, modular homes constructed off site, mobile homes, condominiums, and duplexes or other multi unit residential buildings consisting of four units or less.

(2) Annual notification for small-scale friable asbestos abatement projects. This notification may be used only for projects where no more than 40 linear or 80 square feet of asbestos-containing material is removed. The small-scale friable asbestos projects may be conducted at multiple facilities by a single licensed asbestos contractor, or at a facility that has a centrally controlled asbestos operation and maintenance program where the facility owner uses appropriately trained and certified personnel to remove asbestos.

(a) Establish eligibility for use of this notification procedure with the Department prior to use.

(b) Maintain on file with the Department a general asbestos abatement plan. The plan must contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible.

(c) Provide to the Department a summary report of all asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter when possible.

(d) Provide to the Department, upon request, a list of asbestos abatement projects that are scheduled or are being conducted at the time of the request.

(e) Submit project notification and fee prior to use of this notification procedure.

(f) Failure to provide payment for use of this notification procedure will void the general asbestos abatement plan and each subsequent abatement project will be individually assessed a project notification fee.

(3) Annual non-friable asbestos abatement projects may only be performed at schools, colleges, and facilities where the removal work is done by certified asbestos abatement workers. Submit the notification as follows:

(a) Establish eligibility for use of this notification procedure with the Department prior to use.

(b) Maintain on file with the Department a general non-friable asbestos abatement plan. The plan must contain the information specified in subsections (4)(a) through (4)(i) of this rule to the extent possible.

(c) Provide to the Department a summary report of all non-friable asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report must include the information specified in subsections (4)(i) through (4)(l) of this rule for each project, a description of any significant variations from the general asbestos abatement plan, and a list describing the non-friable asbestos abatement projects anticipated for the next quarter, when possible.

(d) Submit project notification and fee prior to use of this notification procedure.

(e) Failure to provide payment for use of this notification procedure will void the general non-friable asbestos abatement plan and each subsequent non-friable abatement project will be individually assessed a project notification fee.

(4) The following information must be provided for each notification:

(a) Name and address of person conducting asbestos abatement.

(b) The Oregon asbestos abatement contractor's license number and certification number of the supervisor for the asbestos abatement project or, for non-friable asbestos abatement projects, the name of the supervising person that meets Oregon OSHA's competent person qualifications as required in OAR 437, division 3 "Construction," Subdivision Z, 1926.1101(b) "Competent person," (2/10/1994).

(c) Method of asbestos abatement to be employed.

(d) Procedures to be employed to insure compliance with OAR 340-248-0270 through 340-248-0290.

(e) Names, addresses, and phone numbers of waste transporters.

(f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.

(g) Description of asbestos disposal procedure.

(h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:

(A) The age, present and prior use of the facility;

(B) Address or location where the asbestos abatement project is to be accomplished, including building, floor, and room numbers.

(i) Facility owner or operator name, address and phone number.

(j) Scheduled starting and completion dates of asbestos abatement work.

(k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.

(l) Amount of asbestos to be abated: linear feet, square feet, thickness.

(m) For facilities described in OAR 340-248-0270(8) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.

(n) Any other information requested on the Department form.

(5) The project notification fees specified in this section will be increased by 50% when an asbestos abatement project is commenced without filing of a project notification or submittal of a notification fee or when notification of less than ten days is provided under subsections (1)(c) and (d) of this rule.

(6) The Director may waive part or all of a project notification fee. Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.

(7) Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees will be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91, Renumbered from 340-025-0465(5)(a) - (d); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93, Renumbered from 340-025-0467; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5630; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03; DEQ 9-2003, f. 5-21-03, cert. ef. 6-21-03; DEQ 9-2007, f. 11-21-07, cert. ef. 11-30-07

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Definition of Wild Birds and Wild Mammals.
Adm. Order No.: DFW 122-2007
Filed with Sec. of State: 11-19-2007
Certified to be Effective: 11-19-07
Notice Publication Date: 10-1-2007
Rules Adopted: 635-057-0000
Rules Amended: 635-056-0010, 635-056-0020
Subject: Adopt rule and amendments to the Oregon Administrative Rules that define wild birds and wild mammals.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-056-0010
Definitions

For the purposes of these rules, the definitions in ORS 496.004 and OAR 635-045-0002 apply. In addition, the following definitions apply:

(1) "Aquaria" means any tanks, pools, ponds, bowls or other containers intended for and capable of holding or maintaining live fish and from which there is no outfall to any waters of this state.

(2) "Aquaria Fish" means any fish, shellfish or marine invertebrates legally acquired and sold in the pet store trade, except game fish, state or federally protected threatened and endangered species and those species listed as Prohibited or Controlled.

(3) "Commercial Fur Farm" means any operation which raises captive fox (Vulpes vulpes or Urocyon cinereoargenteus) or mink (Mustela vison) for profit and possesses 10 or more animals.

(4) "Controlled Species" means wildlife that the commission has placed on the Controlled list.

(5) "Domestic" means those animals which are identified in OAR 635-056-0020 (Domestic or Otherwise Exempt Animals).

(6) "Exotic" means a wildlife species not native to Oregon; foreign or introduced.

(7) "Hold" means any form of possession or control of an animal, gamete, or hybrid thereof.

(8) "Hybrid" means any animal, gamete or egg that is produced by crossing at least one wild individual of a species with any other species or subspecies.

(9) "Import/importation" means to bring or cause live wildlife to be transported into Oregon by any means.

(10) "Introduced" means a species, subspecies or populations which occur in Oregon because of human action or intervention, rather than natural (nonhuman) colonization or immigration.

(11) "Live Foodfish" means any fish or marine invertebrate legally acquired and held in aquaria or packaged live and sold in the wholesale or retail trade for human consumption, except game fish, state or federally protected threatened and endangered species and those species listed as Prohibited or Controlled.

(12) "Marine invertebrate" means any marine invertebrate species commonly sold in the wholesale or retail trade for human consumption, or commonly found in the ornamental aquarium trade.

(13) "Native" means species, subspecies or populations which occur currently or historically in Oregon through natural (i.e. nonhuman) colonization or immigration, rather than by human action or intervention.

(14) "Nonnative" means a wildlife species not native to Oregon; foreign or introduced.

(15) "Noncontrolled Species" means wildlife that the commission has placed on the Noncontrolled list.

(16) "Prohibited Species" means wildlife that the commission has placed on the Prohibited list.

(17) "Species" means a unit of classification of animals which are capable of interbreeding and producing fertile offspring.

(18) "Subspecies" means a unit of classification of animals within a species which show differences in size, color or form as a result of being partially or completely reproductively isolated from other populations of the species.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Hist.: FWC 69-1996, f. & cert. ef. 12-20-96; DFW 94-1999, f. & cert ef. 12-23-99; DFW 94-1999, f. & cert ef. 12-23-99; DFW 116-2001, f. & cert. ef. 12-18-01; DFW 122-2007, f. & cert. ef. 11-19-07

635-056-0020

Animals Exempt from These Rules

Pursuant to the definition of "wildlife," the following species are not subject to these rules because they are not "wild": SPECIES — SCIENTIFIC NAME

(1) Alpaca — Lama pacos.

(2) Ass, Burro, Donkey — Equus asinus.

(3) Bison — Bison bison.

(4) Camel — Camelus bactrianus and C. dromedarius.

(5) Cat (all domestic breeds) — Felis catus.

(6) Cattle and Yak — Bos species.

(7) Chinchilla — Chinchilla laniger.

(8) Dog (all domestic breeds) — Canis familiaris.

(9) European Rabbit — Oryctolagus cuniculus.

(10) Ferret — Mustela putorius.

(11) Gerbil — Meriones unguiculatus.

(12) Goat — Capra hircus.

(13) Gaunaco — Lama guanicoe.

(14) Guinea pig — Cavia porcellus.

(15) Hamster — Mesocricetus auratus.

(16) Horse — Equus caballus.

(17) Llama — Lama glama.

(18) Mouse (House mouse) — Mus musculus.

(19) Mule and Hinny — Equus asinus x E. caballus.

(20) Rat — Rattus norvegicus and R. rattus.

(21) Sheep — Ovis aries and hybrids of O. aries with O. musimon, hybrids of O. aries with Ammotragus lervia, and hybrids of O. aries with Pseudois nayaur.

(22) Swine — Sus scrofa domestica (includes pot-bellied pigs)

(23) Vicuña — Vicugna vicugna.

(24) Cassowary — Casuarius species.

(25) Chicken — Gallus gallus.

(26) Ducks and Geese (morphologically distinct from wild waterfowl; except Egyptian geese and Mute swans).

(27) Emu — Dromaius novaehollandiae.

(28) Guinea fowl — Numida meleagris.

(29) Ostrich — Struthio camelus.

(30) Parrots, Parakeets, Lories, and Cockatoos — Psittaciforme (All species).

(31) Peafowl — Pavo cristatus.

(32) Pigeon or Rock dove — Columba livia.

(33) Rhea — Rhea americana and R. pennata.

(34) Turkey (morphologically distinct from wild turkey) — Meleagris gallopavo.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Hist.: FWC 69-1996, f. & cert. ef. 12-20-96; FWC 59-1997, f. & cert. ef. 9-3-97; DFW 21-1998, f. & cert. ef. 3-13-98; DFW 99-1998, f. & cert. ef. 12-22-98; DFW 94-1999, f. & cert ef. 12-23-99; DFW 79-2000, f. & cert. ef. 12-22-00; DFW 122-2007, f. & cert. ef. 11-19-07

635-057-0000

Definition of "wild birds" and "wild mammals"

This rule governs all Commission Rules using the terms "wild birds" or "wild mammals," pursuant to SB 804, (Oregon Laws 2007). The purpose of this rule is to clarify the scope of the term "wildlife," which according to statute includes (among other things) "wild mammals" and "wild birds." "Wildlife" is the term used in many statutes describing the regulatory authority of the Fish and Wildlife Commission. The intent of this rule is to include as "wild mammals" and "wild birds" all species which, if viewed globally, typically exist in a wild state. Note that other statutes governing the authority of other agencies may use terms that (in some circumstances) may overlap with the Commission's authority over "wildlife." For example, the Department of Agriculture has the authority to regulate the private holding of "exotic" animals, some of which otherwise qualify as "wildlife" (and which the Commission otherwise is in charge of regulating). Therefore, the reader is cautioned to note distinctions in how Oregon law uses different terms regarding wild animals.

(1) "Wild mammals" means all mammals except:

(a) Alpaca — Lama pacos;

(b) Ass, Burro, Donkey — Equus asinus;

(c) Bison — Bison bison;

(d) Camel — Camelus bactrianus and C. dromedarius;

(e) Cat (all domestic breeds) — Felis catus;

(f) Cattle and Yak — Bos species;

(g) Chinchilla — Chinchilla laniger;

(h) Dog (all domestic breeds) — Canis familiaris;

(i) European Rabbit — Oryctolagus cuniculus;

(j) Ferret — Mustela putorius;

(k) Gerbil — Meriones unguiculatus;

(l) Goat — Capra hircus;

(m) Gaunaco — Lama guanicoe;

(n) Guinea pig — Cavia porcellus;

(o) Hamster — Mesocricetus auratus;

(p) Horse — Equus caballus;

(q) Llama — Lama glama;

(r) Mouse (House mouse) — Mus musculus;

(s) Mule and Hinny — Equus asinus x E. caballus;

(t) Rat — Rattus norvegicus and R. rattus;

(u) Sheep — Ovis aries and hybrids of O. aries with O. musimon, hybrids of O. aries with Ammotragus lervia, and hybrids of O. aries with Pseudois nayaur.

(v) Swine, domestic pig Sus scrofa domestica (includes pot-bellied pigs);

(w) Vicuña Vicugna vicugna.

(2) "Wild birds" means all birds except:

(a) Cassowary Casuarius species;
(b) Chicken Gallus gallus;
(c) Ducks and Geese (morphologically distinct from wild waterfowl; except (Egyptian geese and Mute swans);
(d) Emu — Dromaius novaehollandiae;
(e) Guinea fowl — Numida meleagris;
(f) Ostrich — Struthio camelus;
(g) Parrots, Parakeets, Lories, and Cockatoos Psittaciformes (All species);
(h) Peafowl — Pavo cristatus;
(i) Pigeon or Rock dove — Columba livia;
(j) Rhea — Rhea americana and R. pennata;
(k) Turkey (morphologically distinct from wild turkey) — Meleagris gallopavo.
Stat. Auth.: ORS: 496.004, 496.012, 496.138, 496.146, 496.162
Stats Implemented: ORS 496.004(19), 496.004; 496.012, 496.138, 496.146, 496.162, SB 804 (OL 2007, ch. 523)
Hist.: DFW 122-2007, f. & cert. ef. 11-19-07

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Rule Caption: Closure of Commercial Nearshore Fishery
Adm. Order No.: DFW 123-2007(Temp)
Filed with Sec. of State: 11-26-2007
Certified to be Effective: 11-28-07 thru 12-31-07
Notice Publication Date:
Rules Amended: 635-004-0019, 635-004-0033, 635-004-0170
Rules Suspended: 635-004-0019(T), 635-004-0033(T)
Subject: Amended rules prohibits retention of nearshore species for all commercial vessels, as follows: prohibit retention of nearshore fish species including: black rockfish, tiger rockfish, vermilion rockfish, other nearshore rockfish, cabezon and greenling species for the remainder of 2007. These revisions are effective at 12:01 a.m. Wednesday,November 28th, 2007.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0019
Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subpart G**, West Coast Groundfish Fisheries.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-04, announced inseason management measures, effective April 17, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-05, announced inseason management measures, effective May 1, 2007, including but not limited to commercial trip limit tables.

(5) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-06, announced inseason management measures, effective August 1, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries and adjustments to commercial groundfish trip limit tables.

(6) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-08, announced inseason management measures, effective October 1, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries, adjustments to commercial groundfish trip limit tables, and re-opening of the primary Pacific whiting fishery.

(7) Effective 12:01 a.m. November 28, 2007, no commercial fishing vessel may land the following nearshore fish species or species groups:
(a) Black rockfish;
(b) Blue rockfish;
(c) Other nearshore rockfish;
(d) Tiger rockfish;
(e) Vermilion rockfish;
(f) Greenling;
(g) Cabezon;
(h) Buffalo sculpin;
(i) Red Irish lord;
(J) Brown Irish lord.
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07

635-004-0033
Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:
(a) Minor Nearshore Rockfish;
(b) Minor Shelf Rockfish;
(c) Minor Slope Rockfish;
(d) Black Rockfish;
(e) Blue Rockfish;
(f) Cabezon;
(g) Canary Rockfish;
(h) Greenling;
(i) Tiger Rockfish;
(j) Vermilion Rockfish;
(k) Widow Rockfish;
(l) Yelloweye Rockfish;
(m) Yellowtail Rockfish;
(n) Darkblotched Rockfish;
(o) Pacific Ocean Perch;
(p) Longspine Thornyhead;
(q) Shortspine Thornyhead;
(r) Arrowtooth Flounder;
(s) Dover Sole;
(t) Petrale Sole;
(u) Rex Sole;
(v) Other Flatfish;
(w) Lingcod;
(x) Sablefish;
(y) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysolmelas*); 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*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2007, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2007, the commercial landing caps are:
(a) Black rockfish and blue rockfish combined of 104.6 metric tons.
(b) Other nearshore rockfish, 12.0 metric tons.
(c) Cabezon, 31.3 metric tons.
(d) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:
(a) 600 pounds in period 1;
(b) 800 pounds in period 2;

(c) 1600 pounds in each of periods 3 and 4;

(d) 2000 pounds in period 5; and

(e) 15 pounds per day not, to exceed a cumulative total of 800 pounds in period 6 through 12:00 midnight Tuesday, November 27, 2007. Effective 12:01 a.m. Wednesday, November 28, 2007 retention of black and blue rockfish is prohibited through the remainder of the year.

(7) In each period, no vessel may land more than:

(a) 700 pounds of other nearshore rockfish, combined for period 5 and 6 through 12:00 midnight Tuesday, November 27, 2007. Effective 12:01 a.m. Wednesday, November 28, 2007 retention of other nearshore rockfish is prohibited through the remainder of the year;

(b) 4000 pounds of cabezon for period 5 and 6 through 12:00 midnight Tuesday, November 27, 2007. Effective 12:01 a.m. Wednesday, November 28, 2007 retention of cabezon is prohibited through the remainder of the year; or

(c) 800 pounds of greenling species for period 5 and 6 through 12:00 midnight Tuesday, November 27, 2007. Effective 12:01 a.m. Wednesday, November 28, 2007 retention of greenling is prohibited through the remainder of the year.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07

635-004-0170

Incidental Catch in Other Fisheries

A person may operate a vessel in the black rockfish/blue rockfish/nearshore fishery without a permit required by OAR 635-006-1015(1)(j) if the person:

(1) For only one landing per day, lands no more than 15 pounds of black rockfish, blue rockfish, nearshore fish or a combination of black rockfish, blue rockfish or nearshore fish and if the black rockfish, blue rockfish and nearshore fish:

(a) Make up 25 percent or less of the total poundage of the landing; and

(b) Are landed with fishing gear that is legal to use in the fishery in which the black rockfish, blue rockfish or nearshore fish are landed;

(2) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the person lands black rockfish, blue rockfish or a combination of black rockfish and blue rockfish in the same landing in which the person lands a salmon under the permit required by ORS 508.801 to 508.825. The black rockfish or blue rockfish landed under this paragraph must be landed dead. A person who lands black rockfish and blue rockfish under this paragraph may land up 100 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per landing.

(3) Lands no more than 15 pounds per vessel of black rockfish, blue rockfish, or a combination of black rockfish and blue rockfish per trip, after the total amount of black rockfish and blue rockfish combined landed in the salmon troll fishery reaches 3000 pounds in any calendar year, except as provided in subsection (4).

(4) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per calendar year and if the black rockfish and blue rockfish:

(a) Make up 25 percent or less of the total poundage of each landing; and

(b) Are landed dead;

(5) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish; or

(6) Does not exceed daily, weekly, or period limits as established in OAR 635-004-0033.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450 - 506.465

Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07

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Rule Caption: Amend rules for the Modified Preference Point System.

Adm. Order No.: DFW 124-2007

Filed with Sec. of State: 11-28-2007

Certified to be Effective: 12-1-07

Notice Publication Date: 9-1-2007

Rules Amended: 635-060-0023

Subject: Amended rules will allow youth nine years of age or older to be eligible to apply for automatic Preference Points, beginning in 2008 applicants will not forfeit preference accumulated for a hunt number series when they do not apply for that hunt number series for two consecutive years, and applicants who have their hunting license suspended or revoked by legal action will forfeit all preference points.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-060-0023

Modified Preference Point System

(1) The Modified Preference Point System separates the tags for each controlled game mammal hunt into two groups:

(a) Seventy-five percent of the tags will be issued through the preference point system;

(b) The remaining 25 percent of the tags will be issued by the equal-probability computer drawing.

(2) Applicants shall accrue no more than one preference point per hunt number series per year.

(a) Valid applicants who did not receive controlled hunt tags for their first choice hunt number in the 100, 200, 400, 600, or 700 series hunts during the controlled hunt drawing shall receive one preference point applicable to subsequent controlled hunt drawings for the respective hunt number series, except as excluded in OAR 635-060-0008(4).

(3) A preference point will automatically accrue within each controlled hunt series when an applicant's first choice is as follows:

(a) Hunt number 199: controlled buck deer;

(b) Hunt number 299: controlled elk;

(c) Hunt number 499: controlled pronghorn antelope;

(d) Hunt number 699: controlled antlerless deer;

(e) Hunt number 799: controlled black bear.

(4) Youth nine years of age or older are eligible to apply for automatic Preference Points as described in (3) provided they have a social security number, a Hunter/Angler ID number issued by ODFW, and purchase the appropriate (resident or nonresident) adult hunting license.

(5) The Modified Preference Point System will group controlled hunt applicants by the number of preference points they have accrued for each hunt number series. Applicants with the highest number of preference points for each hunt number will be drawn first. Applicants having the next highest number of preference points per hunt number will be drawn next. This tag issuance process will continue through descending numbers of preference points until 75 percent of the tags authorized for the hunt have been issued, unless all qualified applicants with preference points have been issued tags prior to that point. Any tags remaining following the issuance of preference point tags will be issued through the equal-probability computer drawing. Applicants unsuccessful in the preference point tag issuance procedure and those applicants without preference points will be placed in the equal-probability computer drawing for the remaining tags.

(6) Applicants successful in drawing their first choice hunt except numbers ending in 99 within a hunt number series shall have zero preference points when they next apply for a tag in that hunt number series.

(7) Beginning in 2008 applicants will not forfeit preference points accumulated for a hunt number series when they do not apply for that hunt number series for two consecutive years.

(8) Applicants who have their hunting license suspended or revoked by legal action will forfeit all preference points.

(9) Party applicant preference points shall be determined by totaling the preference points of all party members and then calculating the average of this total. Party preference points will be rounded up from x.51 (e.g. 3.51 to 4, 3.50 to 3) to the next whole number.

(10) Department records are final to determine accrued preference points for controlled hunt applicants.

(11) Each applicant's preference point accrual record will be linked to his or her permanent identification number. Preference point applicants shall use the permanent identification number each time they apply for a controlled hunt tag. Failure to do so shall place the applicant in the equal-probability drawing for his or her hunt number series and preference points will not be accrued together.

(12) Applicants will receive no preference points when:

(a) Their application is not received by the appropriate application date;

(b) They request their controlled hunt application be withdrawn prior to the controlled hunt drawing;

(c) The controlled hunt application has been falsified.

(13) The Modified Preference Point System shall apply to 100, 200, 400, 600, and 700 series hunts.

(14) In 2005, 800 series points will be converted into 600 series points.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 6-1994, f. & cert. ef. 1-26-94; FWC 13-1994(Temp), f. & cert. ef. 3-1-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef 10-18-04 thru 11-27-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 124-2007, f. 11-28-07, cert. ef. 12-1-07

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Rule Caption: Amend rule to Allow Commercial Smelt Harvest 24-hours per Day in the Columbia River.
Adm. Order No.: DFW 125-2007(Temp)
Filed with Sec. of State: 11-29-2007
Certified to be Effective: 12-1-07 thru 5-28-08
Notice Publication Date:
Rules Amended: 635-042-0130
Subject: Amended rule allows the commercial harvest of smelt in the Columbia River Zones 1 through 5, 24-hours per day from December 1 through 31, 2007. A modification is made clarifying the gill net mesh size allowed in the commercial harvest of smelt.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0130
Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River in Zones 1 through 5, 24 hours per day from 12:01 a.m. December 1 through 11:59 p.m. December 31, 2007.

(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

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Rule Caption: In-season actions implemented by the federal government for commercial groundfish fisheries.
Adm. Order No.: DFW 126-2007(Temp)
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 12-11-07 thru 12-31-07
Notice Publication Date:
Rules Amended: 635-004-0019
Subject: Amend rule adopts in-season actions implemented by the federal government for commercial groundfish fisheries including changes to limited entry trawl sablefish daily trip limit fishery.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0019
Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subpart G**, West Coast Groundfish Fisheries.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-04, announced inseason management measures, effective April 17, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-05, announced inseason management measures, effective May 1, 2007, including but not limited to commercial trip limit tables.

(5) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-06, announced inseason management measures, effective August 1, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries and adjustments to commercial groundfish trip limit tables.

(6) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-08, announced inseason management measures, effective October 1, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries, adjustments to commercial groundfish trip limit tables, and re-opening of the primary Pacific whiting fishery.

(7) Effective 12:01 a.m. November 28, 2007, no commercial fishing vessel may land the following nearshore fish species or species groups:

(a) Black rockfish;

(b) Blue rockfish;

(c) Other nearshore rockfish;

(d) Tiger rockfish;

(e) Vermilion rockfish;

(f) Greenling;
(g) Cabezon;
(h) Buffalo sculpin;
(i) Red Irish lord;
(J) Brown Irish lord.

(8) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-09a, announced inseason management measures, effective December 4, 2007, including changes to limited entry trawl sablefish trip limits and changes to the open access sablefish daily trip limit fishery.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07

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Rule Caption: Commercial fishing vessels allowed to retrieve derelict ocean Dungeness crab gear in-season.
Adm. Order No.: DFW 127-2007(Temp)
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 12-11-07 thru 6-7-08
Notice Publication Date:
Rules Amended: 635-005-0055
Subject: Amended rule specifies conditions under which commercial fisherman are allowed to retrieve up to six Dungeness crab pots not belonging to their vessel each fishing trip provided the pots are un-baited, no crab from these pots is retained, and the document the activity in their logbook.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0055
Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and an ODFW buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the crab pot buoy tags was:

(i) Due to an extraordinary event; and

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (E) of this rule, and a request for replacement tags under subsection (C) of this rule, the Director or his designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (C). The Director or his designee shall provide the Director's order to the permit holder and to ODFW License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(8) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(9) Possess on a vessel, use, control, or operate any crab pot which does not have a pot tag identifying the pot as that vessel's, a surface buoy bearing the ODFW buoy brand registered to that vessel and an ODFW buoy tag issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) To retrieve from the ocean, including the Columbia River, and transport to shore up to six crab pot(s) of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(B) Crab from the retrieved pot(s) shall not be retained; and

(C) Immediately upon retrieval of pot(s), the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot retrieval, number of retrieved crab pots, location of retrieval, and retrieved pot owner identification information; and

(D) Any retrieved crab pot(s) must be transported to shore during the same fishing trip that retrieval took place; or

(c) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(d) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DWF 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07;DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef.12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert .ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08

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Rule Caption: Amend Rules for the Commercial Harvest of Groundfish in 2008.
Adm. Order No.: DFW 128-2007
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 635-004-0018, 635-004-0033, 635-004-0170
Subject: rule amendments related to the commercial groundfish fisheries were adopted to be consistent with existing federal regulations. Amended commercial nearshore groundfish rules to implement management measures within the 2008 Commercial Nearshore Groundfish Fisheries.
Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0018
Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, the groundfish specifications and management measures for 2008 included in the Biennial Specifications and Management Measures, Final Rule, published in the Federal Register in December 2006, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations**, **Title 50 Part 660**, **Subpart G** (**61FR34572**, **July 2**, **1996**), as amended to incorporate the standards in the Biennial Specifications and Management Measures, Final Rule. Therefore, persons must consult the Federal Regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Federal Regulations may be obtained by contacting the National Oceanic and Atmospheric Administration's National Marine Fisheries Service at www.nwr.noaa.gov or 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; 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 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08

635-004-0033
Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

(a) Minor Shelf Rockfish;
(b) Minor Slope Rockfish;
(c) Black and Yellow Rockfish;
(d) Brown Rockfish;
(e) Calico Rockfish;
(f) China Rockfish;
(g) Copper Rockfish;
(h) Gopher Rockfish;
(i) Grass Rockfish;
(j) Kelp Rockfish;
(k) Olive Rockfish;
(l) Treefish;
(m) Black Rockfish;
(n) Blue Rockfish;
(o) Cabezon;
(p) Canary Rockfish;
(q) Greenling;
(r) Tiger Rockfish;
(s) Vermilion Rockfish;
(t) Widow Rockfish;
(u) Yelloweye Rockfish;
(v) Yellowtail Rockfish;
(w) Darkblotched Rockfish;
(x) Pacific Ocean Perch;
(y) Longspine Thornyhead;
(z) Shortspine Thornyhead;
(aa) Arrowtooth Flounder;
(bb) Dover Sole;
(cc) Petrale Sole;
(dd) Rex Sole;
(ee) Other Flatfish;
(ff) Lingcod;
(gg) Sablefish;
(hh) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysolmelas*); 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*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2008, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2008, the commercial landing caps are:

(a) Black rockfish and blue rockfish combined of 104.6 metric tons.
(b) Other nearshore rockfish, 12.0 metric tons.
(c) Cabezon, 31.3 metric tons.
(d) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

(a) 600 pounds in period 1;

(b) 800 pounds in period 2;

(c) 1600 pounds in each of periods 3, 4, and 5; and

(d) 800 pounds in period 6.

(7) In each period, no vessel may land more than:

(a) 700 pounds of other nearshore rockfish, combined;

(b) 2,500 pounds of cabezon; or

(c) 450 pounds of greenling species.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08

635-004-0170

Incidental Catch in Other Fisheries

A person may operate a vessel in the black rockfish/blue rockfish/nearshore fishery without a permit required by OAR 635-006-1015(1)(j) if the person:

(1) For only one landing per day, lands no more than 15 pounds of black rockfish, blue rockfish, nearshore fish or a combination of black rockfish, blue rockfish or nearshore fish and if the black rockfish, blue rockfish and nearshore fish:

(a) Make up 25 percent or less of the total poundage of the landing; and

(b) Are landed with fishing gear that is legal to use in the fishery in which the black rockfish, blue rockfish or nearshore fish are landed;

(2) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the person lands black rockfish, blue rockfish or a combination of black rockfish and blue rockfish in the same landing in which the person lands a salmon under the permit required by ORS 508.801 to 508.825. The black rockfish or blue rockfish landed under this paragraph must be landed dead. A person who lands black rockfish and blue rockfish under this paragraph may land up 100 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per landing.

(3) Lands no more than 15 pounds per vessel of black rockfish, blue rockfish, or a combination of black rockfish and blue rockfish per trip, after the total amount of black rockfish and blue rockfish combined landed in the salmon troll fishery reaches 3000 pounds in any calendar year, except as provided in subsection (4).

(4) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per calendar year and if the black rockfish and blue rockfish:

(a) Make up 25 percent or less of the total poundage of each landing; and

(b) Are landed dead; or

(5) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish.

(6) Does not exceed daily, weekly, or period limits as established in OAR 635-004-0033.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450 - 506.465

Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08

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Rule Caption: Allow early replacement of up to ten percent of ocean Dungeness crab buoy tags.

Adm. Order No.: DFW 129-2007(Temp)

Filed with Sec. of State: 12-14-2007

Certified to be Effective: 12-14-07 thru 6-7-08

Notice Publication Date:

Rules Amended: 635-005-0055

Rules Suspended: 635-005-0055(T)

Subject: Amend rule to provide an earlier opportunity for commercial ocean Dungeness crab permit holders to obtain replacements for lost crab buoy tags, up to 10% of the tags initially issued to them. Upon receipt of a completed Declaration of Loss, the department will issue these replacement tags as of December 14, 2007, about two weeks earlier than specified in permanent rule.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0055

Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and an ODFW buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of December 14, 2007, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the crab pot buoy tags was:

(i) due to an extraordinary event; and

(ii) the loss was minimized with the exercise of reasonable diligence; and

(iii) reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (E) of this rule, and a request for replacement tags under subsection (C) of this rule, the Director or his designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (C). The Director or his designee shall provide the Director's order to the permit holder and to ODFW License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(8) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(9) Possess on a vessel, use, control, or operate any crab pot which does not have a pot tag identifying the pot as that vessel's, a surface buoy bearing the ODFW buoy brand registered to that vessel and an ODFW buoy tag issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) To retrieve from the ocean, including the Columbia River, and transport to shore up to six crab pot(s) of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(B) Crab from the retrieved pot(s) shall not be retained; and

(C) Immediately upon retrieval of pot(s), the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot retrieval, number of retrieved crab pots, location of retrieval, and retrieved pot owner identification information; and

(D) Any retrieved crab pot(s) must be transported to shore during the same fishing trip that retrieval took place; or

(c) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(d) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DWF 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07;DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef.12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert .ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08

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Department of Human Services, Addictions and Mental Health Division: Addiction Services
Chapter 415

Rule Caption: Temporary Suspension of Certain Rules in OAR 415 to respond to A "State of Emergency."
Adm. Order No.: ADS 5-2007(Temp)
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 12-5-07 thru 6-2-08
Notice Publication Date:
Rules Adopted: 415-010-0005
Subject: The Addictions and Mental Health Division is adopting a temporary rule suspending rules in OAR Chapter 415 such as building Requirements and Food Service for Oregon counties that are declared by the Governor of Oregon to be in a state of emergency due to flooding. This rule suspension shall be effective on December 2nd, 2007.
Rules Coordinator: Richard Luthe—(503) 947-1186

415-010-0005
Providing Services During An Emergency

(1) The purpose of these rules is to ensure that DHS clients who reside in the counties which the Governor has declared a state of emergency receive all appropriate and necessary services during the emergency flooding of those counties. These rules take effect on December 2, 2007, and expire when the Director of the Department of Human Services determines the appropriate and necessary services can resume in normal operating mode in each county.

(2) The Addictions and Mental Health Division is suspending rules in OAR Chapter 415 for the counties designated in (1) of this rule such as Building Requirements and Food Service, including but not limited to: 415-051-0067; and 415-051-0072.

(3) This rule suspension shall be effective on December 2nd, 2007.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: ADS 5-2007(Temp), f. & cert. ef. 12-5-07 thru 6-2-08

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Rule Caption: Amendment of the PSRB administrative rules.
Adm. Order No.: ADS 6-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 12-11-07
Notice Publication Date: 11-1-2007
Rules Amended: 415-051-0045

Subject: The Department of Human Services, Addictions and Mental Health Division, is amending OAR 415-051-0045 "Clinical Supervision and Staffing Pattern" rules to remove the term "outpatient."
Rules Coordinator: Richard Luthe—(503) 947-1186

415-051-0045
Clinical Supervision and Staffing Pattern

(1) **Clinical Supervision**: The alcohol and other drug abuse treatment program shall provide a minimum of two hours per month of clinical supervision or consultation for each staff person or volunteer who is responsible for the delivery of treatment services, one hour of which must be individual, face-to-face clinical skill development. The objective of clinical supervision or consultation is to assist staff and volunteers to increase their treatment skills, improve quality of services to clients, and supervise program staff and volunteers' compliance with program policies and procedures implementing these rules.

(2) **Staffing Patterns**: Each client admitted to the program must be assigned a primary counselor.

Stat. Auth.: ORS 409.410 & 409.420
Stats. Implemented: ORS 430.240 - 430.590
Hist.: MHD 47(Temp), f. & ef. 10-4-77; MHD 3-1979, f. & ef. 1-16-78; MHD 14-1983, f. 7-27-83, ef. 10-25-83, Renumbered from 309-052-0020(6); ADAP 3-1993, f. & cert. ef. 12-6-93, Renumbered from 309-051-0045; ADAP 1-1995, f. & cert. ef. 7-25-95; ADAP 1-2000(Temp), f. 5-11-00, cert. ef. 6-1-00 thru 11-27-00; Administrative correction 6-20-01; ADS 6-2007, f. & cert. ef. 12-11-07

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Department of Human Services, Addictions and Mental Health Division: Mental Health Services
Chapter 309

Rule Caption: Establishment of a Hearing Process prior to Administration of Significant Procedures.
Adm. Order No.: MHS 14-2007(Temp)
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07 thru 5-29-08
Notice Publication Date:
Rules Amended: 309-114-0000, 309-114-0005, 309-114-0010, 309-114-0015, 309-114-0020, 309-114-0025, 309-118-0015, 309-031-0215
Subject: The Addictions & Mental Health Division of the Department of Human Services is temporarily amending OAR 309-114-0000 through 309-114-0025, 309-118-0015 & 309-031-0215 to establish a hearing process for patients and residents prior to the administration of "significant procedures," as defined in OAR 309-114-0005.
Rules Coordinator: Richard Luthe—(503) 947-1186

309-114-0000
Purpose and Statutory Authority

Purpose. These rules prescribe standards and procedures to be observed by personnel of state institutions operated by Addictions and Mental Health Division or the Seniors and People With Disabilities Division in obtaining informed consent to significant procedures, as defined by these rules, from patients and residents of such state institutions. These rules do not apply to routine medical procedures. Administration of significant procedures without informed consent is permitted in emergencies under OAR 309-114-0015. The purpose of these rules is to assure that the rights of patients and residents are protected with respect to significant procedures.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-114-0005
Definitions

As used in these rules:

(1) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(2) "Division," as used in these rules means these Divisions of the Department of Human Services:

(a) Addictions and Mental Health Division (AMH) when referring to "patients;" and

(b) The Seniors and People with Disabilities Division (SPD) when referring to "residents."

(3) "Guardian" means a legal guardian, person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(4) "Lay Advocate" means a person authorized by the patient or resident to assist in presenting his or her case during a contested case hearing on the administration of a significant procedure without informed consent. A lay advocate may present evidence, examine and cross-examine witnesses, and present factual and legal argument in the proceeding.

(5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological and/or physical health. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.

(7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who provides information to patients and residents in order to attempt to obtain informed consent to a significant procedure. This person must be specifically qualified to effectively communicate with patients or residents, from an impartial perspective, all the information required in OAR 309-114-0010(3)(a).

(8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under ORS 427.020.

(10) "Qualified Mental Health Professional" (QMHP) means any person meeting the following minimum qualifications as documented by the state institution:

(a) Possess one of the following education degrees:

(A) Graduate degree in psychology;

(B) Bachelor's degree in nursing and licensed by the State of Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational art, or music therapy; or

(F) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(b) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental, emotional and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social, and work relationships; conduct a mental status assessment; document a multiaxial DSM diagnosis; write and implement or supervise implementation of a treatment plan; conduct and document a mental health assessment; and provide mental health treatment and rehabilitative services within the scope of his or her practice.

(11) "Qualified Mental Retardation Professional" means a person who meets the professional requirements under 42 CFR 483.430.

(12) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(13) "Routine medical procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to physical examinations, blood draws, tuberculosis (TB) testing, and hygiene.

(14) "Significant Procedure" means a diagnostic or treatment modality which poses a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electroconvulsive therapy. Significant procedures do not include routine medical procedures.

(15) "State Institution" means all Oregon State Hospital campuses, Blue Mountain Recovery Center and Eastern Oregon Training Center.

(16) "Superintendent" means the executive head of the state institution listed in section (15) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-114-0010
General Policy on Obtaining Informed Consent to Treatment and Training

(1) Basic Rule. Patients and residents, or parents or guardians of minors, or guardians on behalf of legally incapacitated patients and residents, may refuse any significant procedure and may withdraw at any time consent previously given to a significant procedure. Any refusal or withdrawal or withholding of consent shall be documented in the patient's or resident's record.

(a) Personnel of a state institution shall not administer a significant procedure to a patient or resident unless written informed consent is obtained from or on behalf of the patient or resident in the manner prescribed in these rules, except as follows:

(A) Administration of significant procedures to legally incapacitated patients or residents as provided in section (6) of this rule;

(B) Administration of significant procedures without informed consent in emergencies under OAR 309-114-0015; and

(C) Involuntary administration of significant procedures with good cause to persons committed to the Division under OAR 309-114-0020.

(b) In no case may personnel of a state institution for the mentally retarded administer a procedure using aversive stimuli to a resident without the consent of a parent or legal guardian.

(2) Capacity of patient or resident: The patient or resident from whom informed consent is being sought must have the capacity to make a decision concerning acceptance or rejection of a significant procedure, as follows:

(a) Unless adjudicated legally incapacitated for all purposes or for the specific purpose of making treatment decisions, a patient or resident shall be presumed competent to consent to, or refuse, withhold, or withdraw consent to significant procedures. A person committed to the Division may be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure only if the person currently demonstrates an inability to comprehend and weigh the risks and benefits of the proposed procedure, alternative procedures, or no treatment at all or other information disclosed pursuant to subsections (3)(a) and (b) of this rule. Such inability is to be documented in the person's record and supported by documented statements or behavior of the person and may be evidenced in forms provided for obtaining informed consent, evaluations by independent examining physicians, review by disposition boards in the case of a resident, and approved or disapproved by the superintendent or chief medical officer;

(b) A person committed to the Division shall not be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure merely by reason of one or more of the following facts:

(A) The person has been involuntarily committed to the Division;

(B) The person has been diagnosed as mentally ill or mentally retarded;

(C) The person has disagreed or now disagrees with the treating physician's or certified nurse practitioner's diagnosis;

(D) The person has disagreed or now disagrees with the treating physician's or certified nurse practitioner's recommendation regarding treatment.

(c) If a court has determined that a patient or resident is legally incapacitated, then consent shall be sought from the legal guardian.

(3) Procedures for Obtaining Informed Consent and Information to be Given: The person from whom informed consent to a significant procedure is sought shall be given information, orally and in writing, the substance of which is to be found on an informed consent form. In the case of medication, there shall be attached a preprinted patient information sheet on the risks and benefits of the medication;

(a) The information shall describe:

(A) The nature and seriousness of the patient's or resident's mental illness or condition;

(B) The purpose of the significant procedure, its intended outcome and the risks and benefits of the procedure;

(C) Any alternatives, particularly alternatives offering less material risks to the proposed significant procedure that are reasonably available and reasonably comparable in effectiveness;

(D) If the proposed significant procedure is medication, facility medical staff shall give the name, dosage range, and frequency of administration of the medication, and shall explain the material risks of the medication at that dosage range.

(E) The side effects of the intended medication or electro-convulsive therapy;

(F) The predicted medical and/or psychiatric consequences of not accepting the significant procedure or any comparable procedure;

(G) That consent may be refused, withheld or withdrawn at any time; and

(H) Any additional information concerning the proposed significant procedure requested by the person.

(b) A medication educator shall assist by providing information to the patient or resident that explains the proposed significant procedure, as described in section (3)(a) of this rule;

(c) Facility medical staff intending to administer a significant procedure shall document in the patient's or resident's chart that the information required in subsections (3)(a) and (b) of this rule was explained and that the patient, resident, parent or guardian of a minor or guardian of a legally incapacitated patient or resident explicitly consented, refused, withheld or withdrew consent. Facility medical staff shall also complete the informed consent form and make it part of the person's record.

(4) When informed consent is sought, the patient or resident must be given a reasonable opportunity to obtain and present additional information relevant to making this decision.

(5) Voluntary Consent: Consent to a proposed significant procedure must be given voluntarily, free of any duress or coercion. Subject to the provisions of OAR 309-114-0020, the decision to refuse, withhold or withdraw consent previously given shall not result in the denial of any other benefit, privilege, or service solely on the basis of refusing, withholding or withdrawing consent. A voluntary patient or resident may be discharged from the institution if offered procedures are refused.

(6) Obtaining Consent with Respect to Legally Incapacitated Patients and Residents: A state institution may not administer a significant procedure to a legally incapacitated patient or resident without the consent of the guardian, or, in the case of a minor, the parent or guardian, except in the case of an emergency under OAR 309-114-0015.

(7) Reports of Progress: A patient or resident, the parents or guardian of a minor patient or resident, or the guardian of a legally incapacitated patient or resident shall, upon request, be informed of the progress of the patient or resident during administration of the significant procedure.

(8) Contest of Rules: A patient or resident has the right to contest the application of any provision of these rules.

(a) Before the final determination to administer a significant procedure without informed consent is made under OAR 309-114-0020(4)(c), a patient or resident has the right to file a grievance under OAR 309-118-0000 through 309-118-0050 contesting the determination.

(b) After the final determination to administer a significant procedure without informed consent is made, and if a patient or resident disagrees with the institution's decision to involuntarily administer a significant procedure without informed consent, the patient or resident may challenge that decision by requesting a contested case administrative hearing under ORS 183.310. The administrative hearing will conform to the requirements set forth in ORS 183.413 through 183.500. Instructions and a simple method of requesting such a hearing shall be provided to every patient or resident when he or she receives notice that the institution intends to administer a significant procedure without informed consent. Facility staff shall assist any patient or resident who verbally expresses a desire to challenge administration of a significant procedure without informed consent in writing and filing the request for hearing form. If the patient or resident is a minor or legally incapacitated, the parents or guardian has the right to contest the application of any provision of these rules.

(c) After filing a request for an administrative hearing, a lay advocate will be appointed by the Division to represent any patient or resident who requests one.

(d) When a patient or resident requests a hearing after being found incapable of giving or refusing informed consent, a hearing must be held within 7 days of the date of the request, unless the patient or resident, or his or her lay advocate, requests a delay, and the other parties agree that there is good cause for the delay. A final written hearing decision must be issued by one day after the hearing, except when the administrative law judge determines that there is good cause to delay the decision. All hearing decisions must be made within 3 days of the close of the hearing or the record, whichever is later, excluding holidays.

(e) Any administrative law judge who will preside over a hearing regarding involuntary administration of a significant procedure without informed consent must complete agency approved training unique to administration of psychiatric treatment without consent. This training shall be developed in consultation with the Oregon Advocacy Center.

(f) If a patient or resident requests a hearing to review the institution's decision to involuntarily administer a significant procedure without informed consent, the decision to involuntarily medicate shall not be implemented until a hearing decision has been issued.

(g) These rules will be effective as of December 1, 2007 on all new orders for administration of significant procedures without informed consent. This includes new orders written after expiration of the previous order. This rule will be effective for existing, unexpired orders as of January 1, 2008, on a phased-in schedule that will accommodate as many new hearings as is practicable to schedule each week.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-114-0015
Administration of Significant Procedures Without Informed Consent in Emergencies

(1) An emergency exists if in the opinion of the chief medical officer or designee:

(a) Immediate action is required to preserve the life or physical health of the patient or resident and it is impracticable to obtain informed consent as provided in OAR 309-114-0010; or

(b) Immediate action is required because the behavior of the patient or resident creates a substantial likelihood of immediate physical harm to the patient, resident, or others in the institution and it is impracticable to obtain informed consent as provided in OAR 309-114-0010.

(2) If an emergency exists, the chief medical officer or designee may administer a significant procedure to a patient or resident without obtaining prior informed consent in the manner otherwise required by these rules provided:

(a) The specific nature of each emergency and the procedure which was used to deal with the emergency are adequately documented in the patient's or resident's record and a form provided for emergency procedure is completed and placed in the patient's or resident's record;

(b) Reasonable effort shall be made to contact the parent or legal guardian prior to the administration of the significant procedure. If contact is not possible, notice shall be given to the parent or legal guardian as soon as possible;

(c) Within a reasonable period of time after an emergency procedure is administered, the treatment team shall review the treatment or training program and, if practicable, implement a treatment or training program designed to correct the behavior creating the emergency;

(d) The administration of a significant procedure in an emergency situation does not allow the institution to administer these procedures, once the emergency has subsided, without obtaining informed consent.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-114-0020
Involuntary Administration of Significant Procedures to Persons Committed to the Division with Good Cause

(1) Good cause: Good cause exists to administer a significant procedure to a person committed to the Division without informed consent if in the opinion of the treating physician or certified nurse practitioner after consultation with the treatment team:

(a) Pursuant to OAR 309-114-0010(2), the person is deemed unable to consent to, refuse, withhold or withdraw consent to the significant procedure. This determination must be documented in the patient's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(b) The proposed significant procedure will likely restore, or prevent deterioration of, the person's mental or physical health; alleviate extreme suffering; or save or extend the person's life;

(c) The proposed significant procedure is the most appropriate treatment for the person's condition according to current clinical practice, and all other less intrusive procedures have been considered and all criteria and information set forth in OAR 309-114-0010(3)(a) are considered; and

(d) The treating facility medical staff, QMHP and medication educator have made a conscientious effort to obtain informed consent to the significant procedure from the person. A "conscientious effort" means a good faith attempt to obtain informed consent by attempting to explain the procedure more than once and at different times, and shall be recorded in the person's record.

(2) Independent Review: Prior to granting approval for the administration of a significant procedure for good cause to a person committed to the Division, the superintendent or chief medical officer of a state institution for the mentally ill shall obtain consultation and approval from an independent examining physician. The superintendent or chief medical officer shall maintain a list of independent examining physicians and shall seek consultation and approval from independent examining physicians selected on a rotating basis from the list. The independent examining physician shall not be an employee of the Division, shall be a board-eligible psychiatrist, shall have been subjected to review by the medical staff executive committee as to qualifications to make such an examination, shall have been provided with a copy of administration rules OAR 309-114-0000 through 309-114-0025, and shall have participated in a training program regarding these rules, their meaning and application;

(3) Prior to granting approval for the administration of a significant procedure for good cause, the superintendent or chief medical officer of a state institution for the mentally retarded shall refer the matter for review to a disposition board convened for such purpose. The disposition board shall have five members; two of which are employees of the institution not directly involved in the treatment of the resident in question, and three public members. Members of the disposition board shall be provided a copy of administrative rules OAR 309-114-0000 through 309-114-0025 and shall be part of a training program regarding their meaning and application;

(4) The superintendent or chief medical officer shall provide to a patient or resident to whom a significant procedure is proposed to be administered written advance notice of the intent to seek consultation and approval of an independent examining physician or review by a disposition board for the purpose of administering the procedure without the patient's or resident's consent.

(5) The physician selected to conduct the independent consultation or the disposition board shall:

(a) Review the person's medical chart, including the records of efforts made to obtain the person's informed consent, personally examine the person, or, in the case of the disposition board, interview the resident;

(b) Discuss the matter with the person to determine the extent of the need for the procedure and the nature of the person's refusal, withholding, or withdrawal or inability to consent to the significant procedure. This determination must be documented in the patient's or resident's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(c) Consider additional information, if any, presented prior to or at the time of examination or interview as may be requested by the person or anyone on behalf of the person;

(d) Make a determination whether the factors required under these rules exist for the particular person or that one or more factors are not present, and complete a report of his or her findings, which provides their approval or disapproval of the proposed significant procedure. The written report must be provided to:

(A) The superintendent or chief medical officer; and

(B) The person to whom a significant procedure is proposed to be administered, with a copy being made part of the person's record.

(6) Superintendent's Determination:

(a) The superintendent or chief medical officer shall approve or disapprove of the administration of the significant procedure to a person committed to the Division based on good cause, provided that if the examining physician or disposition board found that one or more of the factors required by section (1) of this rule were not present or otherwise disapproved of the procedure, the superintendent or chief medical officer shall not approve the significant procedure and it shall not be performed;

(b) Approval of the significant procedure shall be only for as long as no substantial increase in risk is encountered in administering the significant procedure during the term of a person's commitment but in no case longer than 180 days. Disapproval shall be only for as long as no substantial change occurs in the person's condition during the term of commitment but in no case longer than 180 days;

(c) Written notice of the superintendent's or chief medical officer's determination shall be provided to the person and made part of the person's record. This notice must be delivered to the patient or resident, and fully explained by facility medical staff. This notice must include a clear statement of the decision to treat without informed consent, specific bases for the decision, state what evidence was relied on to make the decision, and include a clear notice of the opportunity to ask for a contested case hearing with an administrative law judge if the patient disagrees with the decision. Attached must be a form with a simple procedure to request a hearing. The patient or resident indicating in writing or verbally to any staff member will be sufficient to request a hearing. The patient or resident shall have 48 hours to request a contested case hearing prior to administration of a significant procedure. If no request is made within the 48 hours, administra-

tion of the significant procedure may begin. A patient or resident retains the right to request an initial hearing on the decision to administer a significant procedure without informed consent at any time.

(d) Records of all reports by independent examining physicians or disposition boards and of the determinations of the superintendent or chief medical officer under this rule shall be maintained by the superintendent or chief medical officer in a separate file and shall be summarized each year. Such summaries shall show:

(A) Each type of proposed significant procedure for which consultation with an independent examining physician or review by a disposition board was sought;

(B) The number of times consultation or review was sought from a particular independent examining physician or disposition board for each type of proposed significant procedure;

(C) The number of times each independent examining physician or disposition board approved and disapproved each type of proposed significant procedure; and

(D) The number of times the superintendent or chief medical officer approved and disapproved each type of proposed significant procedure;

(E) Such summaries shall be public records and shall be made available to the public during reasonable business hours in accordance with ORS Chapter 192.

(7) A patient or resident who has requested a hearing to challenge the hospital's decision to administer a significant procedure without informed consent has the right to be free from antipsychotic medications for 24 hours before the hearing and during the hearing except when doing so would pose a significant health risk to the patient or resident. If the patient or resident can not be free from medications prior to and during the hearing because of significant health risks, that patient or resident has the right to have the least amount of psychotropic medication that is medically safe 24 hours prior to and during the hearing. As soon as facility staff knows that a patient who has requested a hearing regarding administration of a significant procedure wishes to be free from medication for their hearing, a safe titration plan will be developed and implemented so that the patient or resident can be as free of medication as is safely possible for the hearing.

(8) A patient or resident has the right to representation by a lay advocate at an administrative hearing on the administration of a significant procedure without informed consent and with good cause. A patient or resident has the right to bring their own advocate to the hearing, including a lawyer.

(9) When treatment is being administered without informed consent, facility medical staff must review the patient's or resident's records every 30 days, including progress notes, and conduct an abbreviated interview to assess the patient's capacity to comprehend and weigh the risks and benefits of the treatment, alternative procedures, or no treatment. Staff must document the questions asked and answers given. If the abbreviated review results in a determination that there has been a significant change in the patient's level of capacity, facility medical staff must conduct an evaluation. Whether or not a significant change exists, a report must be filed documenting the patient's response to medications, attitudes towards treatment, and any changes in treatment or side effects from treatment. The report will be included with the patient's treatment record and will be reviewed by the treating physician or certified nurse practitioner.

(10) At any time that a patient's condition changes so that there appears to any member of the facility staff to be a substantial improvement in their capacity to consent to or refuse treatment, a formal re-assessment of the patient's capacity to consent shall occur, as described in OAR 309-114-0010 and 0020. No order to administer treatment without informed consent in non-emergency situations shall be valid for longer than 180 days, or the duration of the commitment, whichever is shorter, without re-establishing the need for the order by following the procedures described in OAR 309-114-0010 and 309-114-0020.

(11) When a patient is transferred to a state institution from a community hospital or another state institution where he/she was already being treated with a significant procedure without informed consent, the receiving institution must apply OAR 309-114-0000 et seq. no later than 7 days after the date of admission to the new institution. A state institution can honor an existing order for involuntary administration of a significant procedure without informed consent if procedures such as those outlined in OAR 309-114-0010 et seq. have already been applied and all necessary documentation is in the patient's file.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-880, cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-114-0025
Notice to Patients, Residents, and Employees

(1) Upon a patient's or resident's admission, the state institutions shall inform the patient and resident, orally and in writing, of the rights, policies, and procedures set forth in these rules. In addition, a clear and simple summary of the contents, including the title, number, and purpose of these rules, and instructions on how to obtain a copy of the rules and advice about their content shall be prominently displayed in areas frequented by patients and residents in all state institutions.

(2) All employees of state institutions involved in patient or resident care shall be notified in writing at the commencement of his or her employment, or, for present employees, within a reasonable time after the effective date of these rules, of the rights, policies, and procedures set forth in these rules. These employees shall participate in a training program regarding the rules, their meaning and application.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-118-0015
Non-Grievable Issues

Notwithstanding the definition of a grievance in OAR 309-118-0005(4), an issue may not be processed through the grievance procedures set forth in these rules if there is a contested case hearing or other separate process recognized by statute or administrative rule that affords notice and opportunity to be heard before an impartial decision-maker concerning that issue, including Involuntary administration of a significant procedure without informed consent, such as institutional reimbursement orders and judicial certifications of continuing mental illness or mental retardation.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 15-1982, f. 7-9-82, ef. 7-23-82; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

309-031-0215
Procedures for Admission to and Discharge From State or Other Adult Inpatient Psychiatric Hospitals

(1) Screening. The responsible community mental health program (CMHP) shall, if possible, screen and refer persons whose admission to a state or other inpatient psychiatric hospital is sought. The purpose of this screening is to determine the availability of appropriate care or treatment in the community. For state hospitals, hospital-community linkage agreements shall specify the procedures for screening, including identification of any significant procedure order that will need to be transferred from one facility to another. The CMHP shall communicate the results of screening by telephone.

(2) Scheduling. In order to provide a comprehensive evaluation in a state hospital, admission should occur between 8:30 a.m. and 4 p.m., Mondays through Fridays except holidays. The responsible CMHP should telephone the hospital to make appointments for these evaluations and should be available for telephone consultation.

(3) Temporary Admissions. In exceptional situations, persons who meet the admission criteria and who need immediate hospitalization may be temporarily admitted to a state hospital at any time. Exceptional situations include but are not restricted to persons:

(a) For whom screening or scheduling by the responsible CMHP is not feasible;

(b) Who pose a psychiatric emergency, as used under OAR 309-114-0015;

(c) Who present themselves at the hospital having traveled long distances;

(d) Who have been committed by warrant of detention, two-physician hold, emergency commitment, or peace-officer hold;

(e) For whom team evaluation cannot be scheduled; or

(f) Whom a private physician has referred;

(g) The superintendent or designee shall notify the responsible CMHP of temporary admissions. This notice shall be given either immediately, if the CMHP is open or has a 24-hour crisis response, or at the beginning of the next CMHP workday. The hospital team shall re-evaluate each temporary admission after consultation with the CMHP, during scheduled hours. This consultation shall determine whether appropriate care or treatment is available in the community. No temporary admission shall extend beyond the next scheduled admission day.

(4) Authority. The superintendent or designee has the final authority on the decision to admit and discharge voluntary patients and to discharge civilly committed patients. The Division has authority to assign civilly

committed patients to the appropriate facility, unless the Division has delegated this authority to a county.

(5) Records. The superintendent or designee shall document in the patient's clinical record:

(a) Those aspects of the history and/or examination used in arriving at the conclusions that a patient is severely mentally disordered and needs hospital care or treatment, or that the patient poses a psychiatric emergency, as used under OAR 309-114-0015;

(b) Sufficient medical orders to provide for the initial care, safety, and treatment of the patient;

(c) The procedures by which the patient was admitted or discharged;

(d) The reasons for discharge; and

(e) The recommendations of the CMHP, the hospital's action in response, and the hospital's reasons if these recommendations have not been followed.

(6) Notice. When a patient is admitted or discharged, the superintendent or designee shall promptly notify the responsible CMHP. For civilly committed patients, the court shall also be notified. If the patient has had no responsible CMHP or if the responsible CMHP is unknown, the superintendent or designee shall determine the patient's county of residence, in order to determine which CMHP is responsible for the patient. The superintendent or designee shall inform the patient of the CMHP responsible for him or her.

(7) Referral. If admission is denied, the superintendent or designee shall promptly notify the responsible CMHP and, for civilly committed patients the court, and for patients referred by private physicians, the physician. The superintendent or designee shall refer the person to appropriate community care including crisis respite services, and should assist the person in obtaining alternative care.

(8) Periodic Review. Patients who remain in a state or other inpatient psychiatric hospital after 15 days shall be reviewed by staff of the responsible CMHP. The purpose of this review is to determine the availability of appropriate resources for care or treatment in the community. For state psychiatric hospitals, hospital-community linkage agreements shall specify the procedure for review. The CMHP shall, directly or by telephone, notify the hospital staff of the recommendations resulting from this review. The recommendation shall be either:

(a) That appropriate resources do not exist in the community, and that the CMHP recommends continued hospitalization. A new review shall be conducted within 60 days. Hospital-community linkage agreements may specify more frequent review; or

(b) That appropriate resources do exist in the community. The CMHP, with the cooperation of the hospital staff, shall develop a discharge plan for the patient.

(9) Utilization Review. Each state psychiatric hospital shall systematically review admissions and discharges at that hospital. A plan for this utilization review shall be established by the superintendent or designee, submitted to the Division within 30 days of adoption of this rule, and approved by the Division. This review will monitor the number and appropriateness of temporary and regular admissions, the length of stay, discharges, and the quality of care and treatment provided.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 24-1982, f. 10-13-82, ef. 11-15-82; MHD 7-1987, f. & ef. 12-30-87; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

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Rule Caption: Temporary suspension of Certain Rules in OAR Chapter 309 to respond to A "State of Emergency."
Adm. Order No.: MHS 15-2007(Temp)
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 12-5-07 thru 6-2-08
Notice Publication Date:
Rules Adopted: 309-011-0100
Subject: The Addictions and Mental Heath Division is adopting a temporary rule suspending rules in OAR Chapter 309 such as Licensing, record-keeping, Facilities, and Health Services for Oregon counties that are declared by the Governor of Oregon to be in a state of emergency due to flooding. This rule suspension shall be effective on December 2nd, 2007.
Rules Coordinator: Richard Luthe—(503) 947-1186

309-011-0100
Providing Services During An Emergency

(1) The purpose of these rules is to ensure that DHS clients who reside in the counties which the Governor has declared a state of emergency receive all appropriate and necessary services during the emergency flooding of those counties. These rules take effect on December 2, 2007, and expire when the Director of the Department of Human Services determines the appropriate and necessary services can resume in normal operating mode in each county.

(2) The Addictions and Mental Health Division is suspending rules in OAR Chapter 309 for the counties designated in (1) of this rule, such as Licensing, Record-keeping, Facilities, and Health Services, including but not limited to:

(a) 309-035-0270;
(b) 309-035-0300;
(c) 309-035-0320;
(d) 309-035-0350;
(e) 309-035-0440;
(f) 309-035-0110;
(g) 309-035-0117;
(h) 309-035-0125;
(i) 309-035-0140;
(j) 309-035-0175;
(k) 309-040-0380;
(l) 309-040-0385; and
(m) 309-040-0390.
(2) This rule suspension shall be effective on December 2nd, 2007.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.; MHS 15-2007(Temp), f. & cert. ef. 12-5-07 thru 6-2-08

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Rule Caption: Amendment of the PSRB administrative rules.
Adm. Order No.: MHS 16-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 12-11-07
Notice Publication Date: 10-1-2007
Rules Amended: 309-032-0455
Subject: The Department of Human Services, Addictions and Mental Health Division, is amending OAR 309-032-0455 Psychiatric Security Review Board (PSRB) rules to correct a definition error. The correction will clarify the meaning of "qualified person."
Rules Coordinator: Richard Luthe—(503) 947-1186

309-032-0455
Definitions

As used in these rules:

(1) "Case Number" means the unique identification number assigned to each client by the provider. No more than one such number shall be assigned to the client, and that number shall be identical for both the client's treatment record and CPMS enrollment. Once assigned, the case number must be retained for all subsequent admissions or periods of service for the client.

(2) "Client" means a person who is under the jurisdiction of the PSRB and receiving services under these rules.

(3) "Client Identifying Information" means specific personal, biographical, and demographic information about the client.

(4) "Community Mental Health Program" or "CMHP" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, and operated in a specific geographic area of the state under an omnibus contract with the Division.

(5) "Conditional Release" means placement by a court or the PSRB, of a person who has been found eligible under ORS 161.327(b) or 161.336, for supervision and treatment in a community setting.

(6) "CPMS" or "Client Process Monitoring System", means an automated client data system maintained by the Division. "CPMS" shall also mean any subsequent modification or change to this system.

(7) "Data Base" means that collection of client information obtained through the mental health assessment process. It includes, but is not limited to: Identifying information, behavioral description, presenting problem(s), psychosocial and medical histories, developmental history, mental status, and current health information.

(8) "Diagnosis" means a DSM diagnosis determined through the mental health assessment and any examinations, tests, procedures, or consultations suggested by the assessment.

(9) "DSM" means the current edition of the "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association.

(10) "Division" means the Addictions and Mental Health Division of the Department of Human Services.

(11) "Goal" means the broad aspirations or more final objectives toward which the client is striving, and toward which all services are intended to assist the client.

(12) "Health History" means a review of the client's current and past state of health as reported by the client, including:

(a) History of any significant illnesses, injuries, allergies, or drug sensitivities; and

(b) History of any significant medical treatments, including hospitalizations and major medical procedures.

(13) "Informed Consent" means the client or guardian understands a specific diagnosis and consents to service procedures and is informed of the risks or benefits, alternative services and procedures and the consequences of not receiving a specific service or procedure.

(14) "Licensed Medical Professional" means a medically trained person who is licensed to practice in the State of Oregon and has one of the following degrees: MD (Medical Doctor); DO (Doctor of Osteopathy); NP (Nurse Practitioner); PA (Physician's Assistant); or RN (Registered Nurse).

(15) "Local Mental Health Authority", as described in ORS 430.620, means the county court or board of county commissioners or one or more counties who choose to operate a community mental health 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 program, the board of directors of a public or private corporation.

(16) "Medication Use Record" means information kept in the client's treatment record which documents medications and/or agents prescribed or recommended by the provider's employed or contracted licensed medical professional who has prescriptive privileges, and includes medication progress notes as applicable.

(17) "Mental Health Assessment" means a process in which the client's need for mental health services is determined through evaluation of the client's strengths, goals, needs, and current level of functioning.

(18) "Mental Status Examination" means an overall assessment of a person's mental functioning that includes descriptions of appearance, behavior, speech, mood and affect, suicidal/homicidal ideation, thought processes and content, and perceptual difficulties including hallucinations and delusions. Cognitive abilities are also assessed and include orientation, concentration, general knowledge, abstraction abilities, judgment, and insight.

(19) "Objective" means an interim level of progress or a component step that is necessary or helpful in moving toward a goal.

(20) "Progress Note" means a written summary of how the client is progressing with respect to the client's treatment plan.

(21) "Provider" means:

(a) An organizational entity which is operated by, or contractually affiliated with, a community mental health program, and is responsible for the direct delivery of mental health services to clients; or

(b) A public agency or private corporation or an individual, as provided for in ORS 161.390. Notwithstanding the conditions of certification in OAR Chapter 309, the Division may contract directly with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for a conditionally released person.

(22) "Psychiatric Evaluation" means an assessment performed by a licensed medical professional with prescriptive privileges who is a qualified mental health professional.

(23) "Qualified Mental Health Associate" (QMHA) means a person who delivers services under the direct supervision of a qualified mental health professional, and who meets the following minimum qualifications:

(a) Has a bachelor's degree in a mental health related field; or

(b) Has a combination of at least one year's work experience and two years education, training or work experience in mental health.

(24) "Qualified Mental Health Professional" (QMHP) means a person who meets all of the following minimum qualifications:

(a) Fits one of these categories:

(A) Psychiatrist or physician, licensed to practice in the State of Oregon; graduate degree in psychology, social work, or other mental health related field; graduate degree in psychiatric nursing, licensed in the State of Oregon; registration as an occupational therapist; graduate degree in recreational therapy; or

(B) Any other person whose education and experience meet, in a determination process approved by the Division, a level of competence consistent with the standards established for qualified mental health professionals.

(b) Has demonstrated competence to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social, and work relationships; conduct a mental status assessment; document a DSM diagnosis; write and supervise a treatment plan; and provide individual, family, and/or group therapy.

(25) "Qualified Person" means a person who is a qualified mental health professional, or a qualified mental health associate, is identified by the PSRB in the Conditional Release Order and who is designated by the provider to deliver and/or arrange and monitor the provision of required reports and services in this rule.

(26) "Treatment plan" means an individualized, written plan defining specific treatment objectives and proposed service interventions derived from the client's mental health assessment, and the Conditional Release Order.

(27) "Treatment Record" means a separate file established and maintained under these rules for each client.

(28) "Service Supervisor" means a person who has two years of experience as a qualified mental health professional and who, in accordance with OAR 309-032-0505, reviews the services provided to clients by qualified persons.

(29) "Setting" means the location at which a service is provided, and includes, but is not limited to: CMHP office, client's residence, or other identified location.

(30) "Significant Procedure" means a diagnostic or service modality which may have a substantial adverse effect on the client's psychological or physical health, such as administration of medications which have serious side effects.

(31) "Supervision" means monitoring of client's compliance with Conditional Release Orders, Agreement to Conditional Release, the treatment plan requirements, and any additional monitoring and reporting requirements stipulated by the PSRB, the courts, or the Division, not otherwise specified in these rules.

(32) "Termination Summary" means a summary of client progress toward treatment objectives from the time of admission to the termination of services.

(33) "Utilization Review" means a process in which client treatment records are examined by a review committee to evaluate the need for, and appropriateness of services, as well as completeness of the record.

[Publication: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270
Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07; MHS 11-2007(Temp), f. & cert. ef. 8-31-07 thru 2-27-08; MHS 16-2007, f. & cert. ef. 12-11-07

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

Rule Caption: Customer Service Complaint Rule Amendment.
Adm. Order No.: DHSD 10-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07
Notice Publication Date: 11-1-2007
Rules Amended: 407-005-0110
Subject: Amends the customer service complaint rule by adding a provision requiring the Department to inform individuals about the written customer service complaint process when the individual has expressed verbal dissatisfaction with customer service.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-005-0110
Customer Service Complaint Procedure

(1) Customers or clients who are dissatisfied with staff conduct or some aspect of customer services received from Department personnel or Department contractors may file a customer service complaint with the Department. Customers or clients verbally expressing dissatisfaction with customer service will be informed by Department staff of the written customer service complaint process.

(2) A customer service complaint must be filed within 60 calendar days from the date of the event that caused the dissatisfaction. Untimely complaints will not be processed.

(3) Written customer service complaints may be filed by:

(a) Postal mail;

(b) In person at any Department office; or

(c) By contacting the Governor's Advocacy Office for assistance in filing a written customer service complaint.

(4) The Department will assist customers or clients in completing a customer service complaint in writing at the request of a customer or client or when Department staff identifies a need for assistance.

(5) Customer service complaints will be considered filed on the day the written complaint is received and date stamped by the Department.

(6) Within five business days of receipt of a written customer service complaint, filed in a Department office, a copy will be sent to the Governor's Advocacy Office.

(7) Within two business days of receipt of a written customer service complaint filed with the Governor's Advocacy Office, the complaint will be reviewed and sent to the appropriate Department office.

(8) The Department will develop a process for tracking filed written customer service complaints. The tracking process will be utilized to assure compliance with these rules.

(9) The Department shall post the customer service complaint process in an easily identifiable format in each local office of the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 411.977
Hist.: DHSD 7-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2007, f. 11-30-07, cert. ef. 12-1-07

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Rule Caption: Establishment of process for restricting an individual's access to Department premises, employees, and visitors.
Adm. Order No.: DHSD 11-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07
Notice Publication Date: 9-1-2007
Rules Adopted: 407-012-0005, 407-012-0010, 407-012-0015, 407-012-0020, 407-012-0025
Subject: Defines prohibited conduct; establishes process for restricting an individual's access to Department employees, visitors and premises, defines review process.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-012-0005
Definitions

The following definitions apply to OAR 407-012-0005 through 407-012-0025:

(1) "Department" means the Department of Human Services.

(2) "Division" means every individual organizational unit within the Department of Human Services.

(3) "Employee" means individuals acting in the course and scope of their duties who are on the State of Oregon payroll, contract employees, employees of temporary service agencies, and volunteers. It also includes employees of other government or social service agencies who, at the time they are accompanying a Department employee on Department business, are the target of conduct described in OAR 407-012-0010.

(4) "Premises" means any land, building, facility, and other property owned, leased, or in the possession of, and used or controlled by the Department. When the Department occupies space in a building occupied by multiple tenants, the definition includes the common areas of the building used by all tenants such as, but not limited to, restrooms, hallways, and food service areas.

(5) "Restriction of Access" means the Department has limited an individual's access to specific Department premises, employees, or methods of communication.

(6) "Weapon" includes, but is not limited to:

(a) A dangerous or deadly weapon as defined in ORS 161.015;

(b) Any other object or substance used in a manner that compromises the safety of Department employees or visitors on Department premises;

(c) An imitation or replica of any of the above.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0010
Prohibited Conduct

(1) Conduct that may result in restriction of access includes, but is not limited to the following:

(a) Causing or threatening to cause physical injury to Department employees or visitors;

(b) Engaging in actions which compromise the safety or health of Department employees or visitors;

(c) Causing or threatening to cause harm to the family or property of an employee or visitors through written, electronic, or verbal communication;

(d) Causing or threatening to cause damage to Department premises;

(e) Bringing a deadly or dangerous weapon onto the Department's premises, unless authorized by ORS chapter 166 to carry a handgun;

(f) Displaying, attempting, or threatening to use any weapon, on or off Department premises, that compromises the safety of Department employees or visitors;

(g) Engaging in harassing conduct as defined in ORS 166.065.

(h) Engaging in telephonic harassment as defined in ORS 166.090.

(2) The conduct listed in section (1) is also prohibited if it occurs during employees' off-work hours and off Department premises and the prohibited conduct is related to the employee's work with the Department.

(3) Prior to issuing a restriction of access notice, the Department will make an individualized assessment as to whether the conduct listed in section (1) of this rule is a result of a disability of which the Department has knowledge and whether the conduct is a "direct threat" to others as described in OAR 407-005-0000 through 407-005-0030. If the Department determines the disabled individual's conduct is not a direct threat, the Department will explore the possibility of a reasonable accommodation to mitigate the safety risk.

(4) The prohibitions on conduct in this rule do not apply to individuals who are residents of a Department-operated residential facility.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0015
Continuation of Eligible Services

(1) An individual whose access has been restricted by the Department will continue to be provided services for which the individual meets program eligibility requirements by an alternate and effective method of communication as determined by the Department.

(2) Alternate methods may include telephone, electronic mail, written communication, meeting at a designated secure site, or through the individual's representative.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0020
Notification

(1) If the Department determines that it is necessary to restrict access or the methods of communication because of prohibited conduct, the individual will be provided written notification, signed by the assistant director or deputy assistant director of the affected division, and sent by certified mail or other traceable means. The notice will describe the following:

(a) Conduct giving rise to the restrictions;

(b) The specific premises or parts of premises from which the individual is excluded; or the forms of communication which are restricted;

(c) The alternate method by which services may be obtained;

(d) Contact information for services or appointment scheduling;

(e) The availability of the review process, including notification that individuals with disabilities are entitled to request modification;

(f) The potential criminal consequences for violating the notice of restriction of access; and

(g) The law enforcement agency being notified.

(2) The notice will be effective upon issuance.

(3) Restrictions on access to Department premises or methods of communication will remain in place until the Department determines the individual no longer poses a threat and issues an official notification of removal.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

407-012-0025
Department Review

(1) The Department will establish an internal review process to ensure that a notice of restriction of access is warranted prior to issuing a written notice of restriction of access.

(2) Following the Department's issuance of a notice of restriction of access, the recipient of the notice may request review of the Department's determination. The request must be submitted to the office of the Director of the Department. The request must be in writing and submitted, by mail or personal delivery, within 15 business days of the date of issuance of the notice of restriction of access. If the request is submitted by mail, it must

be postmarked within 15 business days. No particular format is required for the request for review; however, the individual should include specific grounds for requesting the review.

(3) Upon receipt of a request for review, the Director or an assistant director will review the request and issue a written decision. The review may include an informal conference. The decision will be issued within ten days of receipt of the request for review.

(4) The Department's decision is final.

(5) If the Department's decision rules in favor of the individual, the restricted individual's access restriction will be immediately lifted. If the decision is unfavorable to the restricted individual, the restricted individual may seek further review after six months have lapsed since the date of issuance by following the process described in this rule.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050, 654.010
Hist.: DHSD 11-2007, f. 11-30-07, cert. ef. 12-1-07

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Rule Caption: Reporting and Investigation of Child Abuse and Neglect in Children's Residential Care Facilities.
Adm. Order No.: DHSD 12-2007(Temp)
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 12-3-07 thru 5-30-08
Notice Publication Date:
Rules Adopted: 407-045-0800, 407-045-0810, 407-045-0820, 407-045-0830, 407-045-0840, 407-045-0850, 407-045-0860, 407-045-0870, 407-045-0880, 407-045-0890, 407-045-0900, 407-045-0910, 407-045-0920, 407-045-0930, 407-045-0940, 407-045-0950, 407-045-0960, 407-045-0970, 407-045-0980
Subject: This rule governs the investigation of allegations of child abuse or neglect by the Department's Office of Investigations and Training (OIT), when the abuse is alleged to have occurred in a children's Residential Care Agency, Day Treatment Program, Therapeutic Boarding School, Foster Care Agency, or Outdoor Youth Program. The rule identifies the responsibilities of OIT to receive, screen, and investigate these allegations. The rule identifies the duties of the provider agencies to report child abuse, and to cooperate with the investigation. The rule also establishes a notice and review procedure for any person substantiated for abuse by OIT.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-045-0800
Scope

These rules (OAR 407-045-0800 through 407-045-0980) prescribe standards and procedures for investigating, assessing, and providing protective services in children's Residential Care Agencies, Day Treatment Programs, Therapeutic Boarding Schools, Foster Care Agencies, and Outdoor Youth Programs (hereafter, "Children's Care Providers" or "CCP's"). These rules also set forth the nature and content of the abuse investigation and the protective services report and set forth review rights and procedure.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.005 – 419B.050, 418.205 – 418.327, 409.185, 418.015
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0810
General Policy and Applicability

(1) Every child deserves safe, respectful, and dignified treatment provided in a caring environment. All CCP's governed by these rules, and their staff shall conduct themselves in such a manner that children are free from abuse.

(2) In these rules, the term "abuse" is defined in some detail because of the unique vulnerabilities of children served by CCP's, and the nature of the settings where the abuse may occur. All forms of abuse are prohibited. CCP's and their staff must always be aware of the potential for abuse in interactions with children.

(3) Each case shall be evaluated based upon the facts available, and upon the individual circumstances of the child, including the child's particular vulnerabilities and needs.

(4) These rules govern allegations of abuse or neglect in which the CCP, or its staff, is alleged to be responsible. The investigation of these allegations shall be conducted by the Department's Office of Investigations and Training (OIT).

(5) Nothing in these rules relieves any mandatory reporter, including a CCP, from reporting allegations of abuse or neglect alleged to have been caused by other individuals, including but not limited to family members. Those allegations will continue to be investigated by the Department's Children, Adults and Families Division (CAF) or by law enforcement.

Stat. Auth: ORS 418.005, 418.189
Stats. Implemented: ORS 418.189, 418.205 – 418.327
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0820
Definitions

The following definitions apply to OAR 407 045-0800 through 407-045-0980:

(1) "Abuse" which is defined in Oregon Revised Statutes (ORS) 419B.005 and includes but is not limited to:

(a) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as those acts are defined in ORS chapter 163.

(d) Sexual abuse, as defined in ORS chapter 163.

(e) Sexual exploitation, as defined in ORS chapters 163 and 167.

(f) Negligent treatment of a child, which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare. It also includes, but is not limited to failure to supervise a child, or failure to intervene when a child needs assistance or nurturance.

(g) Maltreatment of child, which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare. It also includes but is not limited to the willful infliction of pain or injury, hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive, or other physical contact with a child inconsistent with prescribed treatment or care, the use of derogatory names, phrases or profanity, ridicule, harassment, coercion, intimidation, or exposure to domestic violence.

(h) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(2) "Child" means an unmarried individual under 18 years of age.

(3) "Children's Care Provider (CCP)" means a licensed Residential Care Agency, Day Treatment Program, Foster Care Agency, Therapeutic Boarding School, or Outdoor Youth Program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(4) "Day Treatment Program" means a licensed CCP that provides day treatment services.

(5) "Day Treatment Services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(6) "Department" means the Department of Human Services.

(7) "Designated Medical Professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to ORS 418.782.

(8) "Foster Care Agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.

(9) "Inconclusive" means the investigator is unable to determine whether there is reasonable cause to believe abuse occurred or did not occur, based upon the available evidence.

(10) "Legal Finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.

(11) "Mandatory Reporter" means individuals having a duty to report as defined in ORS 419B.005 through 419B.050.

(12) "Not Substantiated" means the allegation is unfounded because the investigator cannot conclude that there is reasonable cause to believe abuse occurred, based upon the available evidence.

(13) "OIT" means the Department's Office of Investigations and Training.

(14) "OIT Investigator" means an employee of the Department's OIT who is authorized and trained to investigate allegations of child abuse or neglect under these rules.

(15) "OIT Substantiation Review Committee (OSRC)" means a group of five Department employees selected by the deputy director of the Department, or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee will include the following members:

(a) A Department employee from the Department's Children, Adults and Families Division (CAF);

(b) A child welfare program manager from a local CAF office, with knowledge of residential programs;

(c) A child protective services consultant from a county other than the county in which the substantiation occurred;

(d) A Department employee with knowledge of protective services investigations, especially investigations of alleged abuse and neglect of vulnerable populations; and

(e) One other individual with knowledge about child abuse and neglect and CCP programs.

(16) "Outdoor Youth Program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral problems, mental problems, or problems with abuse of alcohol or drugs. "Outdoor Youth Program" does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other authority of the Department. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.

(17) "Person" means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.

(18) "Protective Services" means a set of services or activities undertaken to address and meet a child's safety needs.

(19) "Reasonable Cause to Believe" means a belief comparable to a reasonable suspicion. The belief need not rise to the level of probable cause.

(20) "Residential Care Agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(21) "Substantiated" means the allegation is founded, because available evidence supports a conclusion that there is reasonable cause to believe that abuse or neglect occurred.

(22) "Suspicious Physical Injury" which is defined in ORS 419B.005 and includes but is not limited to burns or scalds, extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child's developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss of impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.

(23) "Therapeutic Boarding School" means a licensed organization or a program in an organization that:

(a) Is primarily a school and not a residential care agency;

(b) Provides educational services and care to children 24 hours a day; and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or assuring that children receive therapeutic services.

Stat. Auth.: ORS 418.005, 409.050
Stats. Implemented: ORS 409.185, 418.005, 418.189, 419B.005 – 419B.050, 418.205 – 418.327, 419B.328, 418.747
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0830
Training of Children's Care Providers

(1) The Department shall provide training and consultation to CCP's to identify abuse and to prevent abuse from occurring.

(2) The Department will provide training to assist CCP's to understand the abuse investigation process and the CCP's responsibilities in cooperating with the investigation.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.189, 418.702
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0840
General Duties of Children's Care Providers

(1) Every CCP shall have procedures in place to assure immediate reporting of suspected abuse or neglect of a child.

(2) Every CCP shall have procedures in place to assess the need for protective services, and to take immediate action on behalf of a child who is, or who is suspected of being, a victim of abuse or neglect, and where the CCP is alleged to be responsible for the abuse. Protective services must be undertaken in a manner that is least intrusive to the child and must provide for the greatest degree of safety and protection of the child.

(3) Every CCP shall cooperate fully with any investigation conducted under these rules. Cooperation includes, but is not limited to:

(a) Providing the investigator with access to the child, the facility, and to all potential witnesses; and

(b) Producing all records and reports requested, including but not limited to medical, psychiatric, psychological reports or evaluations, and individual service or behavioral support plans for the child.

(4) When abuse of a child is alleged and the Department or a law enforcement agency has decided to initiate an investigation, the CCP must not conduct an internal investigation without prior authorization from the Department. CCP's shall not:

(a) Conduct interviews with the alleged victim, witnesses, the alleged perpetrator, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Review evidence relevant to the abuse allegation, other than the initial report; or

(c) Take any other actions beyond initially determining:

(A) Whether there is reasonable cause to believe that abuse has occurred;

(B) Whether the alleged victim is in danger or in need of immediate protective services; or

(C) Whether any immediate personnel action needs to be taken.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.205 – 418.327, 418.189
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0850
Initial Action of Children's Care Providers on Reports of Alleged Abuse

(1) Mandatory Reporting. CCP's are mandatory reporters governed by ORS 419B.005 through 419B.050. Mandatory reporters must immediately report when they have reasonable cause to believe any child with whom they have come in contact has suffered abuse or that any person with whom they have come in contact has abused a child. All reports must be made verbally or in writing to the Department or to a law enforcement agency within the county where the person making the report is located at the time of the contact.

(2) Protective Action. Concurrently with reporting the suspected abuse or neglect of a child, CCP's shall immediately assess the safety of the child and take any action necessary to remove the child from danger and keep the child safe.

(3) Documentation. CCP's shall document all reports of suspected abuse or neglect of a child. CCP's must attempt to elicit and provide the following information:

(a) The name, age, and present location of the child;

(b) The names and addresses of persons, programs, or facilities responsible for the child's care;

(c) The nature and extent of the alleged abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might aid in establishing the cause of the abuse and the identity of the alleged perpetrator; and

(f) The date of the incident.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.010 – 419B.015
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0860
Responsibilities of the Office of Investigations and Training

(1) Cross-Reporting to Law Enforcement. When OIT receives an allegation of abuse, OIT shall notify a law enforcement agency within the county where the report was made. If the abuse is alleged to have occurred in a different county, OIT must also cross-report to the law enforcement agency in the county where the alleged abuse occurred.

(2) Same Day Reporting. OIT shall cross-report to law enforcement on the same day the OIT screener determines the report requires an immediate or a 24-hour response.

(a) Required same day cross-reports include, but are not limited to, reports of moderate to severe physical abuse, visible injuries to a child, sexual abuse, or suspicious or unexpected death of a child. Same day reports may be cross-reported verbally, by electronic transmission, or by hand delivery.

(b) When a cross-report is verbal and OIT and law enforcement do not respond to the report together, OIT must send a completed screening report to law enforcement.

(3) Ten Day Reporting. All other reports, including those investigated at screening but closed, must be cross-reported to law enforcement not later than ten days after the Department receives the report. The cross-report may be made by electronic transmission, hand delivery, or regular mail.

(4) Notices. When OIT receives a report of alleged abuse or neglect, OIT shall notify the child's parent or legal guardian that an allegation has been made, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation. If the child is in the legal custody of the Department, OIT will notify the child's assigned Department caseworker, if notice has not already been provided. If the child has been placed at the CCP through the Oregon Youth Authority (OYA), OIT shall notify OYA. If OIT has reason to believe the child is an Indian child, OIT shall notify the tribe within 24 hours from the time the report was received by the Department. In cases in which OIT finds reasonable cause to believe that a child has died as a result of abuse or where the death occurred under suspicious or unknown circumstances, OIT shall notify the appropriate law enforcement agency.

Stat. Auth: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.005 – 419B.050
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0870
Office of Investigations and Training Screening Decision Time Frames

(1) Child Alleged to be Unsafe. When the information received constitutes a report of abuse in which a child is alleged to be unsafe, OIT shall interview the child, conduct a site visit, or coordinate with CCP staff to assure that the child is safe within 24 hours after the report is received. If OIT plans to interview the child, OIT must notify the child's parent or legal guardian, unless notification is prohibited by law or court order, or could compromise the child's safety or a criminal investigation.

(2) Child Not Alleged to be Unsafe. When it has not been alleged that the child is unsafe, and there are no other indicators the child is unsafe, OIT will decide to open the case for investigation or to close it at screening. OIT must make the decision to open or close the case within five calendar days from the date the allegation is received by the Department. The OIT screener may request approval for an extension of time beyond five days if extenuating circumstances exist. Extensions may only be granted by the OIT director or that individual's designee.

(3) Investigatory Screening Process. All reports shall be screened to identify the nature and cause of the alleged abuse.

(a) In all cases, the screener shall evaluate whether the child is safe or unsafe, assess the need for protective services, request that protective services be provided, if needed, and assess the need for further investigation.

(b) In conducting the screening process, OIT may:

(A) Coordinate in person or by telephone, with any CCP staff authorized to take protective action on behalf of the child;

(B) Conduct a site visit at the CCP;

(C) Interview the child, or other witnesses;

(i) Prior to interviewing a child victim or child witness, OIT shall give notice of its intent to interview to the child's legal guardian, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation.

(ii) If OIT determines contact with the child should occur at the child's school, OIT shall comply with the requirements of ORS 419B.045.

(D) Gather and secure physical evidence as necessary;

(E) Take photographs of the child and obtain a medical assessment, as necessary, consistent with OAR 407-045-0880(2)(d) and (e) of this rule;

(F) Take photographs of the facility as necessary or appropriate; and

(G) Receive, review, or copy records pertaining to the child or the incident, including but not limited to, incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.

(4) Closed at Screening. If OIT decides the information received does not constitute a report of child abuse or neglect, the report will be closed at screening. If the report is closed at screening, the screener shall document the information supporting the decision to close. If the child is in the legal custody of the Department, OIT will notify the child's assigned caseworker of the decision to close the case. If the child has been placed in the CCP by OYA, OIT will notify OYA. OIT will notify the CCP and the person who made the report, that the report has been closed. All notices of the decision to close shall be made within three days of the decision.

(5) Opening a Case for Investigation after Screening. If OIT decides to investigate, OIT shall immediately notify the child's legal guardian, unless notification is specifically prohibited by law or by court order, or could compromise the child's safety or a criminal investigation. OIT shall also notify the child's caseworker if the child is in the legal custody of the Department, and will notify OYA or the child's tribe, as applicable.

Stat. Auth: ORS 418.005
Stats. Implemented: ORS 418.005, 419B.015, 419B.017, 419B.020
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0880
Opened Case Investigative Process

(1) OIT will conduct thorough and unbiased investigations of abuse allegations.

(2) In conducting abuse investigations, the OIT investigator:

(a) Shall make in-person contact with the child;

(b) Shall interview the child, witnesses, the alleged perpetrator and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances. Any individual providing peer support or consultation to a foster parent who is the subject of an interview shall be obligated to maintain the confidentiality of information declared to be confidential under State or Federal laws;

(c) Shall review all relevant and material evidence;

(d) Shall take photographs as appropriate or necessary. If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator will immediately photograph or have photographed the suspicious physical injury, pursuant to ORS 418.747;

(e) If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must, pursuant to ORS 418.747, ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the child's medical needs. If a designated medical professional is not available, the investigator must ensure that an available physician conducts the medical assessment. The investigator must document the efforts made to locate the designated medical professional.

(3) When a law enforcement agency is conducting an investigation of the alleged abuse, the OIT investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:

(a) There is potential for action by a licensing agency;

(b) Timely investigation by law enforcement is not likely; or

(c) When the law enforcement agency does not complete a criminal investigation.

(4) During the investigation, if the investigator knows or has reason to know the child is an Indian child, the investigator must give notice to the child's tribe within 24 hours that an investigation is being conducted, if the Tribe has not already been notified.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 419B.005 – 419B.050, 418.747, 419B.045
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0890
Abuse Investigation and Protective Services Report

(1) When the investigation is complete, OIT will issue a final decision of substantiated, not substantiated, or inconclusive and will prepare a written report which must include:

(a) A description of the alleged incident being investigated, including the date, location and time;

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, not substantiated, or inconclusive;

(e) A list of protective services provided to the child to the date of the report;

(f) A plan of action necessary to prevent further abuse of the child;

(g) Any additional corrective action required by the CCP and deadlines for completing the action;

(h) A list of any notices made to licensing or certifying agencies; and

(i) The name and title of the individual completing the report.

(2) The report must be competed within 45 days from the date the case was opened for investigation.

(3) The report and underlying investigatory documents are confidential and not available for public inspection. Except as provided in ORS 419B.035, names of witnesses and the alleged abuse victim are confidential unless the provisions of ORS 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and shall not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contains "individually identifiable health information," as that term is defined in ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2. The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) and other federal and state confidentiality laws.

(4) Except as provided in section (3) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child.

(5) Subject to ORS 419B.035(3) the Department may make the protective services report or relevant materials, in redacted form, available to the CCP, any public agency that licenses or certifies the persons working in a CCP, or to any person who was alleged to have abused or neglected the child. The Department shall not disclose confidential information which is prohibited by state or federal law.

(6) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not redisclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015, 419B.005 – 050, 419B.035, 409.225
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0900
Right to Request Review of a Substantiated Finding of Abuse

(1) When OIT has substantiated that abuse of a child has occurred, the person against whom the finding has been made has the right to request an administrative review of the OIT decision following the procedure set forth in OAR 407-045-0940

(2) When OIT issues a substantiated abuse report, OIT shall also include written notice of the person's right to request an administrative review.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.010, 419.370
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0910
Providing Notice of an OIT Substantiation

OIT must deliver a notice of an OIT substantiation of abuse or neglect to the person identified as the person substantiated in the OIT report. The notice must be delivered:

(1) By certified mail, restricted delivery, return receipt requested to the last known address of the person; or

(2) By hand delivery to the person. If hand delivered, the notice must be addressed to the person and a copy of the notice must be signed and dated by the person acknowledging receipt and also signed by the person delivering the notice.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0920
Claim of Lack of Notice

(1) If a person believes he or she is entitled to a notice of OIT substantiation but has not received one, the person may contact OIT to inquire about a review of the disposition.

(2) OIT must determine whether a notice of OIT substantiation was delivered to the person or the person refused delivery of the notice, as evidenced by the returned receipt.

(3) If a notice was delivered to the person or the person refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OIT must:

(a) Prepare and deliver a notice of waived rights for review; or

(b) Inform the person by telephone of the information required in the notice of waived rights for review. OIT must document the telephone call.

(4) If no return receipt exists or if it appears that notice was not properly provided, OIT must deliver a notice of OIT substantiation as provided in these rules.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0930
Information Included in the Notice of an OIT Substantiation

The notice of an OIT substantiation must include the following:

(1) The case number assigned to the investigation that resulted in the OIT substantiation;

(2) The full name of the person who has been identified as responsible for the child abuse as recorded in the OIT report;

(3) A statement that the OIT investigation resulted in a substantiation, including a description of the type of child abuse or neglect identified;

(4) A description of the OIT investigation, including a summary of findings and conclusions;

(4) A statement that the person has a right to request a review;

(6) Instructions for making a request for review, including the requirement that the person provide a full explanation why the person believes the OIT substantiation is wrong;

(7) A statement that the Department will not review an OIT substantiation if a legal proceeding is pending and that the person may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the OIT substantiation;

(8) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of receipt of the notice of OIT substantiation, as documented by a returned receipt.

(9) A statement that the OSRC will consider relevant documentary information, including the OIT report and accompanying exhibits, and information submitted with the request for review by the person requesting review.

(10) A statement that the OSRC will not re-interview the victim; interview or meet with the person, with others associated with the person, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that OIT will send the person a notice of OSRC decision within 60 calendar days of receiving a request for review.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0940
Requesting Review of an OIT Substantiation

A person requesting a review must use information contained on the notice of OIT substantiation to prepare a written request for review. The written request for review must be received by OIT within 30 calendar days of the receipt of the notice of OIT substantiation. If request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:

(1) Date the request for review is written;

(2) Case number found on the notice of OIT substantiation;

(3) Full name of the person;

(4) The person's current name (if it has changed from the name noted in subsection (c) of this section);

(5) A full explanation, responsive to the information provided in the Department's notice, explaining why the person believes the OIT substantiation is wrong and any additional information and documents the person wants considered during the review;

(6) The person's current street address and telephone number; and

(7) The person's signature.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0950
When Legal Findings Precludes Right to Request a Review and Providing Notice of Legal Proceeding

(1) If OIT has knowledge of a pending legal proceeding, the OSRC will not review the disposition until the legal proceeding is completed.

(2) If OIT has knowledge of a pending legal proceeding, OIT must prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person that the Department will not review the substantiation until the legal proceeding is completed and will take no further action on the request.

(3) If the completed legal proceeding results in a legal finding consistent with the OIT substantiation, the Department may not conduct a review. In that case, OIT will provide a notice of legal finding to the person.

(4) If the completed legal proceeding results in a legal finding which is not consistent with the OIT substantiation, the person may, at the conclusion of the legal proceeding, re-submit a request for review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0960
OIT Responsibilities Related to Notices and Reviews

(1) If a person asks to review Department records for the purpose of reviewing an OIT substantiation, state and federal confidentiality laws, including OAR 413-010-0000 through 413-010-0075 and OAR 413-350-0000 through 413-350-0090 govern the inspection and copying of records.

(2) OIT must maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a notice of OIT substantiation;

(b) Whether the notice of OIT substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and

(c) The date a request for review was received by OIT.

(3) The OIT director or designee must maintain a comprehensive record of completed OIT substantiation reviews.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0970
OSRC Review

(1) The OSRC will conduct a review and issue a notice of OSRC decision within 60 calendar days from the date OIT receives a request for review.

(2) The OSRC operates as follows:

(a) The OSRC considers relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.

(b) The OSRC will not re-interview the victim; interview or meet with the person, with others associated with the person, or with others mentioned in the report, or conduct a field assessment of the allegation of child abuse or neglect.

(c) All OSRC decisions must be decided by majority vote of the five participating committee members, all of whom must be present.

(d) The OSRC shall make a determination as to:

(A) Whether there is reasonable cause to believe that child abuse or neglect occurred;

(B) Whether there is reasonable cause to believe that the person is responsible for the child abuse or neglect; and

(C) Whether there is reasonable cause to believe the type of abuse is correctly identified in the report.

(e) The OSRC will decide to either uphold the OIT substantiation, or change that conclusion to not substantiated or inconclusive. The OSRC also may change the type of abuse which was alleged.

(3) Within 60 calendar days from the date the OSRC receives the request for review, the OSRC will prepare and send to the requestor by certified mail or restricted delivery, with return receipt requested, a notice of OSRC decision that includes the following information:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person was responsible for the child abuse;

(c) Whether the OSRC is changing the OIT substantiation;

(d) If the OIT substantiation is changed, whether the change will be to not substantiated or inconclusive;

(e) If the OSRC decides that the OIT substantiation should be upheld but the type of substantiated abuse should be changed, the new type of abuse and the reason for this change;

(f) If the OIT substantiation is upheld but the type of abuse is changed, notice that the person has the right to request a new OSRC review based on the change; and

(g) A summary of the information used by the OSRC and its reasoning in reaching its decision.

(2) OSRC shall send the notice of OSRC decision to the person, CAF, the OIT investigator who conducted the investigation, applicable public agencies licensing or certifying facilities or the person practicing therein, and the OIT director.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

407-045-0980
Retaliation Prohibited

No person, including a child who reports suspected abuse, shall be subject to retaliatory action by a CCP.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08

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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 21-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07
Notice Publication Date: 10-1-2007
Rules Amended: 413-010-0400, 413-010-0410, 413-010-0420, 413-010-0430, 413-010-0440, 413-010-0480
Rules Repealed: 413-010-0450, 413-010-0460, 413-010-0470, 413-010-0490
Subject: OAR 413-010-0400, 413-010-0410, 413-010-0420, 413-010-0430, 413-010-0440, and 413-010-0480 are being amended and OAR 413-010-0450, 413-010-0460, 413-010-0470, and 413-010-0490 are being repealed to update and clarify the complaint process for Child Welfare, incorporate the various new Department-wide processes and forms, and remove references to outdated policies and forms. The rules about the Child Welfare Formal Grievance process are being repealed and the Department-wide process is being followed. In addition, the above rules have also been changed to reflect new Department terminology and to correct formatting and punctuation.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0400
Purpose

These rules (OAR 413-010-0400 to 413-010-0480) prescribe the standards and procedures for reviewing and resolving complaints about Child Welfare.

Stat. Auth.: ORS 409.194, 418.005
Stats. Implemented: ORS 409.192, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 21-2007, f. 11-30-07, cert. ef. 12-1-07

413-010-0410
Definitions

The following definitions apply to OAR 413-010-0400 to 413-010-0480:

(1) "Client" means any individual receiving services from the Department, including the parent or legal guardian of a child, or the custodian of an unemancipated minor client.

(2) "Contract Provider" means any individual or organization that provides services to a Child Welfare client pursuant to a contract or agreement with Child Welfare.

(3) "Department" means the Department of Human Services.

Stat. Auth.: ORS 409.194, 418.005
Stats. Implemented: ORS 409.192, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 31-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 21-2007, f. 11-30-07, cert. ef. 12-1-07

413-010-0420
Right to Review

(1) An individual may receive a review of any action or decision of Child Welfare.

(2) In addition to the review provided under section (1) of this rule, a contract provider (defined in OAR 413-010-0410) may receive a review of any action or decision of Child Welfare that violates a condition or term of the contract or agreement.

(3) When a client or family member of a client notifies the Department that the client or family member has a complaint, the client or family member will be assisted in setting a meeting with a caseworker and the caseworker's supervisor (see DHS Form 0170, section about Resolving Complaints Informally).

(4) An individual or contract provider may file a written complaint or report of discrimination by completing DHS Form 0170. The complaint or report of discrimination may be sent to the Governor's Advocacy Office, 500 Summer Street NE, Salem, or submitted as provided on DHS Form 0170.

(a) When an individual or contract provider submits a written customer service complaint (defined in OAR 407-005-0105), Child Welfare will follow the procedures set out in OAR 407-005-0100 to 407-005-0120.

(b) When a client submits a report of discrimination arising from his or her disability, the formal complaint review must comply with OAR 407-005-0030.

(c) When a client with a disability requests a reasonable modification (see OAR 407-005-0025) or requests auxiliary aids, auxiliary services, or alternative format communication (see OAR 407-005-0005 and 407-005-0010), the initial decision must comply with OAR 407-005-0000 to 407-005-0030 and Department Policy DHS-010-0005, "Non Discrimination on the Basis of Disability for Programs, Services and Activities."

(d) When an individual or contract provider submits a written complaint, which does not fall within subsections (a) to (c) of this section, Child Welfare will follow the procedures set out in Department Procedure DHS-010-005-01, "Filing a Client Complaint or Report of Discrimination".

(5) No individual or contract provider shall be subjected to a reprisal for seeking review of a complaint.

(6) The complaint review shall be administered in a manner that protects the confidentiality of client records to the extent prescribed by Child Welfare Policy I-A.3.2 "Confidentiality of Client Information", OAR 413-010-0000 to 413-010-0075.

(7) If an individual or contract provider or any agent of the individual or contract provider chooses to disclose his or her version of case information to the media or community members who would otherwise not be involved, the local Child Welfare program manager must consult Administrative Procedure DHS-120-003-01, "Sensitive Issues" and may, as allowed by OAR 413-010-0000 to 413-010-0140, disclose information from the case record that is not third-party information to respond to the statements of the individual or contract provider by providing the Department's understanding of the facts.

(a) Third-party information includes but is not limited to psychological and psychiatric evaluations, police reports, references, alcohol and drug evaluations or reports, and reports from mental health professionals.

(b) Third-party information may be disclosed only if the individual or contract provider has signed a release of information, and the third-party that provided the confidential information has approved the disclosure.

(8) At any time, the parties may agree to resolve the complaint through an alternative dispute resolution procedure.

Stat. Auth.: ORS 409.194, 418.005
Stats. Implemented: ORS 409.192, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 31-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 21-2007, f. 11-30-07, cert. ef. 12-1-07

413-010-0430
Grievances Not Subject to These Rules

(1) Except as provided in section (2) of this rule and in OAR 413-010-0440(1) and (2), complaint review procedures in these rules (OAR 413-010-0400 to 413-010-0480) are not required in each of the following situations:

(a) The individual or contract provider (defined in OAR 413-010-0410) has requested a contested case hearing.

(b) The matter, which would be the subject of the complaint review, is presently the subject of a juvenile court proceeding.

(c) The individual or contract provider has initiated court action.

(d) The subject matter of the complaint has been reviewed by a judge.

(e) A term or condition in a contract provider's contract or agreement provides for a different process.

(f) The complainant has requested review of a Child Protective Services (CPS) disposition, under OAR 413-010-0700 to 413-010-0750 (Review of Founded Dispositions), that is the subject matter of the complaint.

(g) The complainant has requested review of an Adoption Committee Decision, under OAR 413-120-0060 (Review of Adoption Committee Decision), that is the subject matter of the complaint.

(2) A complaint about a "reasonable modification" (see OAR 407-005-0005(10)) or a report of discrimination arising from the disability of a client (see OAR 407-005-0005(6)) is handled as described in these rules, in OAR 407-005-0025 and 407-005-0030, and in Department Policy DHS-010-0005, "Non-Discrimination on the Basis of Disability for Programs, Services and Activities."

Stat. Auth.: ORS 409.194, 418.005
Stats. Implemented: ORS 409.192, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 31-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 21-2007, f. 11-30-07, cert. ef. 12-1-07

413-010-0440
Informal Complaint Review

(1) A client, family member of a client, or contract provider (defined in OAR 413-010-0410) may request an informal complaint review if no written complaint is submitted and the client, family member, or contract provider informs the caseworker or the caseworker's supervisor of the request.

(2) Within one week of the caseworker or caseworker's supervisor receiving the request for an informal complaint review, the client, family member, or contract provider will be contacted to schedule a meeting at an agreed-upon time involving the caseworker, the supervisor, and the client, family member, or contract provider. The focus will be defining the problem, identifying the desired outcome, and establishing a plan for resolution. Every effort will be made to resolve the complaint through this informal discussion. In some local Department offices, the supervisor and the program manager may be the same individual.

(3) If the matter has not been resolved and the program manager did not participate in the informal complaint review, the program manager shall participate in an additional discussion with the client or contract provider to attempt to resolve it. This discussion will be scheduled as soon as possible at a mutually agreed-upon time.

(4) If the client, family member, or contract provider remains dissatisfied following discussion with the program manager, the program manager will give the client or contract provider a written decision regarding the subject of the complaint within five working days. If OAR 413-010-0430 does not make the matter ineligible for review, the written decision shall include information about the steps necessary to file a written complaint or report of discrimination (Form DHS 0170 and Department Procedure DHS-010-005-01, "Filing a Client Complaint or Report of Discrimination").

Stat. Auth.: ORS 409.194, 418.005
Stats. Implemented: ORS 409.192, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 31-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 21-2007, f. 11-30-07, cert. ef. 12-1-07

413-010-0480
Judicial Review

These rules (OAR 413-010-0400 to 413-010-0480) do not create a contested case, as defined by ORS 183.310, subject to judicial review under ORS 183.482.

Stat. Auth.: ORS 409.194, 418.005
Stats. Implemented: ORS 409.192, 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 21-2007, f. 11-30-07, cert. ef. 12-1-07

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Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 22-2007(Temp)
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 12-3-07 thru 4-11-08
Notice Publication Date:
Rules Amended: 413-015-0100, 413-015-0115, 413-015-0205
Rules Suspended: 413-015-0115(T)
Subject: OAR 413-015-0100 about Child Protective Service Authority and Responsibility 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 413-015-0115 about definitions used in Child Protective Services (CPS) rules is being

amended to add definitions of Children's Care Providers and OIT (Office of Investigations and Training), which is necessary to identify the population for which OIT will provide child abuse and neglect investigations. OAR 413-015-0205 about CPS screening activities is being amended to provide direction to CPS screeners for transferring child abuse neglect reports to OIT for child

abuse investigative response. These amendments are necessary to meet the Department's statutory mandate of designating the programs that will respond to allegations of abuse and neglect.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0100

Child Protective Service Authority and Responsibility

Reports of alleged child abuse or neglect are received by Child Welfare and screened for Department response. The processes and time lines for completion are provided in division 015 of this chapter of rules, and also in OAR chapter 407 division 045 for Children's Care Providers. OAR 413-015-0100 to 413-015-0125 provide an overview of division 015, which implements ORS 409.185, 418.015 and 419B.005 to 419B.050.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert .ef. 12-3-07 thru 4-11-08

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) "Department" means the Department of Human Services, Child Welfare.

(11) "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.

(12) "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.

(13) "Face-to-face" means an in-person interaction between individuals.

(14) "FACIS" means the Family and Child Information System.

(15) "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.

(16) "Guided Assessment Process (GAP)" is a tool used to document the CPS assessment.

(17) "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.

(18) "ICWA" means the Indian Child Welfare Act.

(19) "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.

(20) "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).

(21) "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.

(22) "Observable" means specific, definite, real, can be seen and described. Observable does not include suspicion and gut feeling.

(23) "OIT" means Department of Human Services, Office of Investigations and Training.

(24) "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.

(25) "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.

(26) "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.

(27) "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.

(28) "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.

(29) "Protective custody" means custody authorized by ORS 419B.150.

(30) "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.

(31) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(32) "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.

(33) "Reporter" means an individual who makes a report.

(34) "Safe" means there is an absence of safety threats, the child is not vulnerable to identified safety threats, or there is sufficient parent or care-

giver protective capacity to protect the vulnerable child from the identified safety threats.

(35) "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.

(36) "Safety services" mean the actions, assistance, and supervision provided by safety service providers to manage the identified safety threats to a child.

(37) "Safety threat" means family behavior, conditions, or circumstances that could result in harm to a child.

(38) "Screener" means a Child Welfare employee with training required to provide screening services.

(39) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(40) "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.

(41) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over the counter medications, or alcoholic beverages.

(42) "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.

(43) "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.

(44) "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.

(45) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A vulnerable child is defenseless, exposed to behavior, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050, 2007 OL. 674

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 22-2007(Temp), f. & cert .ef. 12-3-07 thru 4-11-08

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 a child is unsafe:

(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.

(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 refer to 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 refer to 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 refer to the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters:

(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter;

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report;

(c) The Department's decision about whether the report will be assigned for a CPS assessment. If this decision has not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decision;

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the child abuse information system; and

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with ORS 419B.010 and 419B.015.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
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

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Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 23-2007(Temp)
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07 thru 6-9-08
Notice Publication Date:
Rules Amended: 413-120-0060
Subject: OAR 413-120-0060 is being amended to strengthen the Assistant Director's authority to review an adoption placement decision for a child who is in the permanent custody of the Department or a legal risk adoptive placement.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0060
Review of Adoption Committee Decision

(1) Committee Decisions are Final. All decisions of Department adoption committees are final and do not qualify for a contested case hearing. Adoption committee decisions, including the current caretaker decision making process (i.e., preliminary and final recommendations), may be reviewed as provided in this rule.

(2) At Assistant Director's Discretion. The Assistant Director of CAF or the Assistant Director's designee may, on his or her initiative, review an adoption committee's decision. If there is no request for review, and if the Assistant Director or Assistant Director's designee decides to review the decision of an adoption committee he or she must decide within 7 calendar days after the decision of the adoption committee. In calculating this time period, the first day of the 7 days is the day after the date of the committee. After deciding to review the committee decision, the Assistant Director or Assistant Director's designee shall give notice to the child's worker, with copies to the supervisor, the Child Welfare program manager, adoption workers, and committee chair.

(3) Scope of Review. The scope of the review when requested by someone other than the Assistant Director of CAF is limited to the selection process and the decisions made by the adoption committee.

(4) Who may request a review under this rule:

(a) The child's caseworker;

(b) The child;

(c) The child's attorney;

(d) The Court Appointed Special Advocate (CASA) for the child;

(e) A relative who was considered by but not selected at an Adoption Committee per subsections (6)(b) or (c) of this rule;

(f) A current caretaker who was considered but not selected at an adoption committee per subsections (6)(b), (c), (d), or (e) of this rule; or

(g) An individual who was considered but not selected by an Adoption Committee and who alleges that placement of the child was denied or delayed because of the geographic location of the individual.

(5) Who may not request a review under this rule:

(a) A general applicant who is considered but not selected by an adoption committee; and

(b) Any person other than those listed in section (4) of this rule.

(6) Cases on which a review may be requested:

(a) The worker requests a review based on the worker's assessment that placement in the selected home will not meet the individual needs of the child;

(b) The adoption committee's choice was between a relative and an unrelated current caretaker as defined in Child Welfare Policy I-G.1.1, "Current Caretaker Adoption Planning", OAR 413-120-0500 to 413-120-0540;

(c) The adoption committee's choice was between two non-current caretaker relatives;

(d) The adoption committee's choice was between a current caretaker and a general applicant; or

(e) The adoption committee considered the current caretaker alone but did not select the current caretaker.

(7) If an adoption committee reaches a decision with which the child's worker does not agree, the child's worker shall staff the case with his or her supervisor and the Child Welfare program manager or designee. The child's worker, with the approval of the supervisor and the Child Welfare program manager or designee, is the only Department staff person who may request a review. If the Child Welfare program manager or designee agrees that further review should occur, she or he shall request a review of the decision by the Assistant Director of CAF or the Assistant Director's designee.

(8) Time Lines. A child's caseworker or person eligible under subsections (4)(a) to (4)(f) of this rule who wishes to request a review of an adoption committee's decision must submit the request to the Adoption Services Unit Manager or designee. In order for the request to be considered, the Adoption Services Unit Manager or designee must receive the request within 7 calendar days after the decision of an adoption committee. In calculating this time period, the first day of the 7 days is the day after the date of the committee.

(9) Decision and Notice of Intent to Review. If the Assistant Director of CAF receives a request for a review, the Assistant Director or the Assistant Director's designee must decide whether to review the decision of the committee within 7 calendar days after the full time line allowed in section (8) of this rule for the Adoption Services Manager's receipt of the request. After deciding whether to review or not to review the committee decision, the Assistant Director shall give notice to the requestor, with copies to the child's worker, supervisor, Child Welfare program manager, or their designees, other adoption workers, and committee chair.

(10) Assistant Director's Actions. If the Assistant Director of CAF or the Assistant Director's designee gives Notice of Intent to Review, then the Assistant Director or the Assistant Director's designee may:

(a) Remand the decision to a current caretaker, adoption relative placement, or other committee which may be but is not limited to the committee which participated in making the permanency decision on behalf of the child, with instructions to gather or review information or consider additional issues, and to issue a new decision;

(b) Conduct a review of all relevant files and information, and issue a decision affirming or changing the committee's decision, and where appropriate, directing a legal risk placement or adoptive placement; or

(c) Appoint someone to conduct a review of all relevant files and information, and make a recommendation to the Assistant Director or the Assistant Director's designee to affirm or change the committee's decision and where appropriate, recommend a legal risk placement or adoptive placement.

(11) Assistant Director's Decision is Final. The decision upon review by the Assistant Director of CAF or the Assistant Director's designee made as a result of the review is final, and does not qualify for a contested case hearing.

(12) Notwithstanding sections (1) through (11) of this rule, if the time to request review of a decision under sections (1) to (11) has expired pursuant to this rule and there is no request for review pending pursuant to those sections, and the deadline set by statute for a person entitled to seek judicial review of an agency decision entered under sections (1) through (11) has not expired, then the Assistant Director may withdraw and reconsider the decision.

(a) The Assistant Director may conduct a review of all relevant files and information, and issue a decision affirming or changing the decision, and where appropriate, directing a legal risk placement or adoptive placement; or

(b) The Assistant Director may appoint a person to conduct a review of all relevant files and information, and make a recommendation to the Assistant Director to affirm or change the decision and where appropriate, recommend a legal risk placement or adoptive placement. After receiving the recommendation(s), the Assistant Director may issue a decision affirming or changing the decision, and where appropriate, directing a legal risk placement or adoptive placement.

(c) The Assistant Director's decision issued pursuant to subsection (a) or (b) of this section does not qualify for a contested case hearing.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.280 - 418.285
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 23-2007(Temp), f. & cert. ef. 12-12-07 thru 6-9-08

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

Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients
Adm. Order No.: SSP 12-2007(Temp)
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 12-1-07 thru 3-29-08
Notice Publication Date:
Rules Amended: 461-120-0310
Rules Suspended: 461-120-0310(T)
Subject: OAR 461-120-0310 about clients who are required to assign support rights is being amended to make changes to the temporary rule that became effective October 1, 2007. The changes to OAR 461-120-0310 state that in order to be eligible for EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), OHP-OPC (Oregon Health Plan coverage for children who qualify under the 100 percent income standard), OHP-OP6 (Oregon Health Plan coverage for children under age 6 who qualify under the 133 percent income standard), and the OSIPM (Oregon Supplemental Income Program Medical) programs, clients must assign support rights pursuant to this rule. Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for program medical assistance payments made on behalf of the Medicaid-eligible child in the filing group. Once yearly the remainder of the amount retained will be paid to the Medicaid-eligible child.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-120-0310
Assignment of Support Rights; Not BCCM, FS, OHP-CHP, OHP-OPP

(1) To be eligible for any program in whole or in part with federal grants funded under Titles IV-A (TANF) or IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(2) To be eligible for the EXT, MAA, MAF, OHP-OPC, OHP-OP6, and the OSIPM programs, a filing group must assign to the state the right of any Medicaid-eligible child in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(3) Cash medical support received by the Department is retained by the Department as necessary to reimburse the Department for EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. Once yearly, the remainder of such amount retained will be paid to such individual.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 414.025, 414.042, 418.035, 418.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 12-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 3-29-07

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

Rule Caption: January 2008 Revisions.
Adm. Order No.: DMAP 15-2007
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Adopted: 410-122-0662
Rules Amended: 410-122-0202, 410-122-0203, 410-122-0320, 410-122-0325, 410-122-0330, 410-122-0380, 410-122-0678, 410-122-0720
Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Program administrative rules govern Division

of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP adopted: 410-122-0662 Ankle-Foot-Orthoses and Knee-Ankle-Foot-Orthoses: Establishes conditions of coverage. DMAP amended other rules as follows:

410-122-0202 Continues Positive Airway Pressure Devices: Corrects limitations for some CPAP accessories.

410-122-0203 Oxygen and Oxygen Equipment: Rule is recodified for clarification purposes.

410-122-0320 Manual Wheelchair Base, 410-122-0325 Motorized/Power Wheelchair Base, 410-122-0330 Power-Operated Vehicle and 410-122-0720 Pediatric Wheelchair: remove the word "entirely" from the following sentence: "The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living(MRADL) entirely."

410-122-0320 Manual Wheelchair Base and 410-122-0720 Pediatric Wheelchair: *For a tilt-in-space wheelchair request: requires documentation that a standard base with a reclining back option will not meet the client's needs.

*Adds coverage for the following: One month's rental for a manual adult tilt-in-space wheelchair (E1161) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less:

(B) The conditions of coverage for a manual tilt-in-space wheelchair are met;

(C)The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental.

410-122-0325 Motorized/Power Wheelchair Base: Replaces this sentence: "The client is unable to stand and pivot to transfer due to a neurological condition, myopathy or congenital skeletal deformity."

410-122-0325 Motorized/Power Wheelchair Base and 410-122-0330 Power-Operated Vehicle: Adds that a nurse practitioner may conduct a face-to-face exam of a client.

410-122-0380 Hospital Beds: Rule is rewritten to clarify conditions of coverage.

410-122-0678 Dynamic Adjustable Extension/Flexion Devices: Rule is rewritten to add conditions of coverage. Text is revised to improve readability and take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0202
Continuous Positive Airway Pressure (CPAP) System

(1) Indications and Limitations of Coverage and/or Medical Appropriateness:

(a) Initial Coverage:

(A) A single-level continuous positive airway pressure (CPAP) device (E0601) may be covered by the Division of Medical Assistance Programs (DMAP) when the client has a diagnosis of obstructive sleep apnea (OSA) documented by an attended, facility-based polysomnogram and meets either of the following criteria (i or ii):

(i) The apnea-hypopnea index (AHI) is greater than or equal to 15 events per hour; or

(ii) The AHI is between 5 and 14 events per hour with documented symptoms of:

(I) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(II) Hypertension, ischemic heart disease, or history of stroke;

(B) A three-month rental period is required for CPAP prior to purchase;

(b) Continued coverage of an E0601 beyond the first three months of therapy: Ongoing rental beyond the first three months is an option in lieu of purchase if medically appropriate and cost effective;

(c) For a client using a CPAP prior to Medicaid enrollment, and with recent,supportive documentation from the treating practitioner indicative of effective treatment with a CPAP device, coverage criteria in this rule may be waived;

(d) Payment Authorization: From the initial date of service through the second date of service, CPAP rental and only related accessories necessary for the effective use of the CPAP during this time period and subject to rule limitations may be dispensed without prior authorization (PA). The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require PA;

(e) An order refill does not have to be approved by the ordering physician; however, a client or their caregiver must specifically request ongoing CPAP supplies and accessories, subject to rule limitations and requirements, before they are dispensed. The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must not automatically dispense a quantity of supplies and accessories on a predetermined regular basis, even if the client has "authorized" this in advance.

(2) Guidelines:

(a) A CPAP device delivers a constant level of positive air pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal, oral, or facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs;

(b) A respiratory cycle is defined as an inspiration, followed by an expiration;

(c) Polysomnography is the continuous and simultaneous monitoring and recording of various physiological and pathophysiological parameters of sleep with physician review, interpretation, and report. It must include sleep staging, which is defined to include a 1-4 lead electroencephalogram (EEG), and electro-oculogram (EOG), and a submental electromyogram (EMG). It must also include at least the following additional parameters of sleep: airflow, respiratory effort, and oxygen saturation by oximetry. It may be performed as either a whole night study for diagnosis only or as a split night study to diagnose and initially evaluate treatment;

(d) For the purpose of this rule, polysomnographic studies must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements;

(e) The diagnostic portion of the polysomnogram recording must be a minimum of two hours;

(f) Polysomnographic studies must not be performed by a DMEPOS provider;

(g) The AHI is defined as the average number of episodes of apneas and hypopneas per hour and must be based on a minimum of two hours of recording time without the use of a positive airway pressure device, reported by polysomnogram. The AHI may not be extrapolated or projected;

(h) Apnea is defined as the cessation of airflow for at least 10 seconds documented on a polysomnogram;

(i) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% decrease in oxygen saturation;

(j) The AHI calculation must be based on the sleep time (in hours) within the two hours (or more) of recorded time.

(3) Documentation Requirements:

(a) Initial Coverage: Prior to the third date of service, submit the following documentation:

(A) A facility-based polysomnogram report that supports a diagnosis of OSA; and, if applicable;

(B) Any other medical documentation that supports indications of coverage;

(b) Continued coverage beyond the first three months of therapy: No sooner than the 61st day after initiating therapy and prior to the fourth date of service, submit documentation from the treating physician that indicates the client is continuing to effectively comply (time spent at the effective pressure) with CPAP treatment. This means that the client is continuing to use the CPAP at the effective pressure for at least four hours in a 24-hour continuous period at least 80 percent of the time.

(4) Accessories:

(a) Accessories used with an E0601 device are covered when the coverage criteria for the device are met;

(b) Accessories are separately reimbursable at the time of initial issue and when replaced;

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating physician for use with a covered E0601 device;

(d) The following represents the usual maximum amount of accessories expected to be medically appropriate:

(A) A4604 — 1 per 3 months;
(B) A7030 — 1 per 3 months;
(C) A7031 — 1 per month;
(C) A7032 — 2 per month;
(D) A7033 — 2 per month;
(E) A7034 — 1 per 3 months;
(F) A7035 — 1 per 6 months;
(G) A7036 — 1 per 6 months;
(H) A7037 — 1 per 3 months;
(I) A7038 — 2 per month;
(J) A7039 — 1 per 6 months;
(K) A7046 — 1 per 6 months;
(L) K0553 — 1 per 3 months;
(M) K0554 — 2 per month;
(N) K0555 — 2 per month.

(5) Miscellaneous:

(a) It is the provider's responsibility to monitor appropriate and effective use of the device as ordered by the treating physician. When the equipment is not being used as prescribed, the provider must stop billing for the equipment and related accessories and supplies;

(b) For auto-titrating CPAP devices, use HCPCS code E0601;

(c) Products must be coded as published in the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) Product Classification List for CPAP Systems and Respiratory Assist Devices.

(6) **Table 122-0202** – CPAP System.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0203
Oxygen and Oxygen Equipment

(1) Indications and limitations:

(a) For all the sleep oximetry criteria described in section (1) (c-e) of this rule, the five minutes do not have to be continuous:

(A) When both arterial blood gas (ABG) and oximetry tests have been performed on the same day under the same conditions (i.e., at rest/awake, during exercise, or during sleep), the ABG result will be used to determine if the coverage criteria are met;

(B) If an ABG test at rest/awake is nonqualifying, but an exercise or sleep oximetry test on the same day is qualifying, the oximetry test result will determine coverage;

(b) The Division of Medical Assistance Programs (DMAP) may cover home oxygen therapy services for children under age 19 when the treating practitioner has determined it to be medically appropriate;

(c) DMAP may cover home oxygen therapy services for clients who are:

(A) Adults 19 years of age and older if the following conditions are met:

(i) The treating practitioner has determined that the client has a severe lung disease or hypoxia-related symptoms that might be expected to improve with oxygen therapy; and

(ii) The client's blood gas study meets the criteria stated below; and

(iii) A physician or qualified provider or supplier of laboratory services performed the qualifying blood gas study; and

(iv) The qualifying blood gas study was obtained under the following conditions:

(I) If the qualifying blood gas study is performed during an inpatient hospital stay, the reported test must be the one obtained closest to, but no earlier than two days prior to the hospital discharge date; or

(II) If the qualifying blood gas study is not performed during an inpatient hospital stay, the reported test must be performed while the client is in a chronic stable state, that is, not during a period of acute illness or an exacerbation of their underlying disease;

(v) Alternative treatment measures have been tried or considered and deemed clinically ineffective;

(B) Clients residing in a nursing facility only when continuous oxygen is required that exceeds 1000 liters in a 24-hour period. See OAR 410-120-1340 and 411-070-0085;

(d) Group I coverage duration and indications:

(A) DMAP limits initial Group I coverage to 12 months or the practitioner-specified length of need, whichever is shorter. See documentation requirements for information on recertification;

(B) Criteria for Group I include any of the following:

(i) An arterial partial pressure of oxygen (PO2) at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent taken at rest (awake); or

(ii) An arterial PO2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 88 percent, for at least five minutes taken during sleep for a client who demonstrates an arterial PO2 at or above 56 mm Hg or an arterial oxygen saturation at or above 89 percent while awake; or

(iii) A decrease in arterial PO2 more than 10 mm Hg, or a decrease in arterial oxygen saturation more than 5 percent, for at least 5 minutes taken during sleep associated with symptoms or signs reasonably attributable to hypoxemia (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis); or

(iv) An arterial PO2 at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent, taken during exercise for a client who demonstrates an arterial PO2 at or above 56 mm Hg or an arterial oxygen saturation at or above 89 percent during the day while at rest. In this case, oxygen is provided for during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air;

(e) Group II coverage duration and indications:

(A) Initial coverage limited to three months or the practitioner-specified length of need, whichever is shorter. See documentation requirements for information on recertification;

(B) Criteria include presence of PO2 of 56-59 mm Hg or an arterial blood oxygen saturation of 89 percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria); and any of the following:

(i) Dependent edema suggesting congestive heart failure; or

(ii) Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF); or

(iii) Erythrocythemia with a hematocrit greater than 56 percent.

(f) Group III indications include a presumption of non-coverage and are considered precautionary, not therapeutic, in nature. Criteria include arterial PO2 levels at or above 60 mm Hg or arterial blood oxygen saturations at or above 90 percent;

(g) DMAP does not cover oxygen therapy and related services, equipment or supplies for any of the following:

(A) Angina pectoris in the absence of hypoxemia;

(B) Dyspnea without cor pulmonale or evidence of hypoxemia;

(C) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia;

(D) Terminal illnesses that do not affect the respiratory system;

(E) Humidifiers (E0550, E0555 and E0560) with rented oxygen equipment. All accessories, such as humidifiers necessary for the effective use of oxygen equipment, are included in the monthly rental payment;

(F) Group III clients;

(G) Emergency or stand-by oxygen systems, including oxygen as needed (i.e., PRN), since they are precautionary and not therapeutic in nature;

(H) Topical hyperbaric oxygen chambers (A4575);

(I) Oxygen for topical use;

(J) Back-up equipment, since it is part of the all-inclusive rate;

(K) Travel oxygen:

(i) Clients traveling outside the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider's service area must make their own arrangements for oxygen;

(ii) DMAP will only pay one DMEPOS provider for oxygen during any one rental month;

(iii) The traveling client is responsible to pay for oxygen furnished by an airline, not the DMEPOS provider.

(2) Guidelines for testing and certification:

(a) Testing specifications:

(A) The term blood gas study in this policy refers to either an ABG test or an oximetry test:

(i) An ABG is the direct measurement of the PO2 on a sample of arterial blood;

(ii) The PO2 is reported as mm Hg;

(iii) An oximetry test is the indirect measurement of arterial oxygen saturation using a sensor on the ear or finger;

(iv) The saturation is reported as a percent;

(B) The qualifying blood gas study must be performed by a qualified provider (a laboratory, physician, etc.);

(i) DMAP does not consider a DMEPOS provider a qualified provider or a qualified laboratory for purposes of this policy;

(ii) DMAP will not accept blood gas studies either performed by, or paid for, by a DMEPOS provider;

(iii) This prohibition does not extend to blood gas studies performed by a hospital certified to do such tests;

(C) For sleep oximetry studies, the tester must provide the client a tamper-proof oximeter that has the capability to download data that allows documentation of the duration of oxygen desaturation below a specified value;

(D) When oxygen services are based on an oxygen study obtained during exercise, DMAP requires documentation of three oxygen studies in the client's medical record:

(i) Testing at rest without oxygen; and

(ii) Testing during exercise without oxygen; and

(iii) Testing during exercise with oxygen applied, to demonstrate the improvement of the hypoxemia.

(E) The qualifying test value (i.e., testing during exercise without oxygen) on the Certificate of Medical Necessity (CMN). The other results do not have to be routinely submitted but must be available to DMAP on request;

(F) The qualifying blood gas study may be performed while the client is on oxygen, as long as the reported blood gas values meet the Group I or Group II criteria.

(b) Certification:

(A) On the CMN, the blood gas study obtained must be the most recent study prior to the initial date, indicated in Section A of the CMN, and this study must be obtained within 30 days prior to that initial date;

(B)There is an exception for clients who were on oxygen prior to enrollment with DMAP. For those clients, the blood gas study does not have to be obtained 30 days prior to the initial date, but must be the most recent test obtained prior to enrollment with DMAP;

(C) For clients initially meeting Group I criteria:

(i) The tester must report the most recent blood gas study prior to the 13th month of therapy on the recertification CMN;

(ii) If the estimated length of need on the initial CMN is less than lifetime and the practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the revised certification;

(D) For clients initially meeting Group II criteria:

(i) On the recertification CMN, the tester must report the most recent blood gas study that was performed between the 61st and 90th day following the date of the initial certification CMN;

(ii) If a tester does not obtain a qualifying test between the 61st and 90th day of home oxygen therapy, but the client continues to use oxygen and a test is obtained at a later date, if that test meets Group I or II criteria, DMAP will resume coverage beginning with the date of that test;

(iii) If the estimated length of need on the initial CMN is less than lifetime and the practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the revised certification;

(E) On any revised CMN, the tester must report the most recent blood gas study performed prior to the revision date;

(F) DMAP may request a repeat blood gas study at any time;

(G) The treating practitioner must see and evaluate the client:

(i) Within 30 days prior to the date of initial certification;

(ii) Within 90 days prior to the date of any recertification;

(iii) If the treating practitioner fails to see and reevaluate the client within 90 days prior to recertification, but subsequently evaluates and determines the client meets the blood gas study criteria, DMAP will cover the dates of service between the scheduled recertification date and the practitioner visit date.

(3) Portable oxygen system coverage:

(a) A portable oxygen system may be covered if the client is mobile within the home and the qualifying blood gas study was performed while at rest (awake) or during exercise. If the only qualifying blood gas study was performed during sleep, portable oxygen is not covered;

(b) If coverage criteria are met, a portable oxygen system is usually separately payable in addition to the stationary system. (See the exception in Section (4) of this rule);

(c) If a portable oxygen system is covered, the DMEPOS provider must provide whatever quantity of oxygen the client uses;

(d) DMAP's reimbursement is the same, regardless of the quantity of oxygen dispensed;

(e) Code K0738 (portable gaseous oxygen system, rental; home compressor used to fill portable oxygen cylinders; includes portable containers, regulator, flow meter, humidifier, cannula or mask, and tubing) is to be used for billing and payment for oxygen transfilling equipment used in the beneficiary's home to fill portable gaseous oxygen cylinders.

(4) Liter flow greater than 4 liters per minute (LPM):

(a) DMAP will pay for a higher allowance of a flow rate of greater than 4 LPM only if:

(A) Basic oxygen coverage criteria have been met; and

(B) The client meets Group I or II criteria; and

(C) A blood gas study is performed while client is on 4 LPM oxygen;

(b) DMAP will limit payment to the standard fee schedule allowance if the provider requests a flow rate greater than 4 LPM when the coverage criterion for the higher allowance is not met;

(c) If a client qualifies for additional payment for greater than 4 LPM of oxygen and also meets the requirements for portable oxygen:

(A) DMAP will pay for either the stationary system (at the higher allowance) or the portable system (at the standard fee schedule allowance for a portable system), but not both;

(B) In this situation, if both a stationary system and a portable system are requested for the same rental month, DMAP will not cover the portable oxygen system.

(5) Oxygen contents:

(a) The DMAP allowance for rented oxygen systems includes oxygen contents;

(b) Stationary oxygen contents (E0441, E0442) are separately payable only when the coverage criteria for home oxygen have been met and they are used with a client-owned stationary gaseous or liquid system respectively;

(c) Portable contents (E0443, E0444) are separately payable only when the coverage criteria for home oxygen have been met and:

(A) The client owns a concentrator and rents or owns a portable system; or

(B) The client rents or owns a portable system and has no stationary system (concentrator, gaseous, or liquid);

(C) If the criteria for separate payment of contents are met, they are separately payable regardless of the date that the stationary or portable system was purchased.

(6) Oxygen accessory items:

(a) The DMAP allowance for rented systems includes, but is not limited to, the following accessories:

(A) Transtracheal catheters (A4608);

(B) Cannulas (A4615);

(C) Tubing (A4616);

(D) Mouthpieces (A4617);

(E) Face tent (A4619);

(F) Masks (A4620, A7525);

(G) Oxygen tent (E0455);

(H) Humidifiers (E0550, E0555, E0560);

(I) Nebulizer for humidification (E0580);

(J) Regulators (E1353);

(K) Stand/rack (E1355);

(b) The DMEPOS provider must provide any accessory ordered by the practitioner;

(c) Accessories are separately payable only when they are used with a client-owned system that was purchased prior to June 1, 1989. DMAP does not cover accessories used with a client-owned system that was purchased on or after June 1, 1989;

(7) Billing for miscellaneous oxygen items:

(a) DMAP only covers rented oxygen systems (E0424, E0431, E0434, E0439, E1390RR, E1405 RR, E1406RR, E1392RR);

(b) For gaseous or liquid oxygen systems or contents, report one unit of service for one month rental. Do not report in cubic feet or pounds;

(c) Use the appropriate modifier if the prescribed flow rate is less than 1 LPM (QE) or greater than 4 LPM (QF or QG). DMAP only accepts these modifiers with stationary gaseous (E0424) or liquid (E0439) systems or with an oxygen concentrator (E1390, E1391). Do not use these modifiers with codes for portable systems or oxygen contents;

(d) Use Code E1391 (oxygen concentrator, dual delivery port) in situations in which two clients are both using the same concentrator. In this situation, this code must only be requested for one of the clients;

(e) Use Codes E1405 and E1406 (oxygen and water vapor enriching systems) only for products for which a written coding verification has been received from the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(f) Code E1392 describes a portable oxygen concentrator system. Use E1392 when billing DMAP for the portable equipment add-on fee for clients using lightweight oxygen concentrators that can function as both the client's stationary equipment and portable equipment. A portable concentrator:

(A) Weighs less than 10 pounds;

(B) Is capable of delivering 85 percent or greater oxygen concentration; and

(C) Is capable of providing at least two hours of remote portability at a 2 LPM order equivalency;

(g) Contact the SADMERC for guidance on the correct coding of these items.

(8) Documentation Requirements: The DMEPOS provider must have the following documentation on file which supports conditions of coverage as specified in this rule are met:

(a) Medical records that reflect the need for the oxygen care provided include records from:

(A) Physician's or practitioner's office;

(B) Hospital;

(C) Nursing home;

(D) Home health agency;

(E) Other health care professionals;

(F) Test reports;

(b) The treating practitioner's signed and dated orders for each item billed. When the DMEPOS provider bills DMAP before the provider receives a signed and dated order, the provider must submit the claim with an EY modifier added to each affected HCPCS code. In the following situations, a new order must be obtained and kept on file by the DMEPOS provider, but neither a new CMN nor a repeat blood gas study are required:

(A) Prescribed maximum flow rate changes but remains within one of the following categories:

(i) Less than 1 LPM;

(ii) 1-4 LPM;

(iii) Greater than 4 LPM;

(B) Change from one type of system to another (i.e., concentrator, liquid, gaseous);

(c) A completed, signed, dated CMN from the treating practitioner;

(A) The CMN may substitute for a written order if it is sufficiently detailed;

(B) The CMN for home oxygen is CMS form 484. Section B (order information) of the CMN must be completed by the physician or the practitioner, not the DMEPOS provider. The DMEPOS provider may use Section C to record written confirmation of other details of the oxygen order, or the practitioner can enter other details directly, such as means of deliver (e.g., cannula, mask, etc.) and the specifics of varying oxygen flow rates or non-continuous use of oxygen;

(C) The ABG PO2 must be reported on the CMN if both an ABG and oximetry test were performed the same day under the condition reported on the CMN (that is, at rest, awake, during exercise, or during sleep);

(D) A completed sleep study documenting the qualifying desaturation for clients who qualify for oxygen coverage based only on a sleep oximetry study. The saturation value reported in Question 1(b) of the Oxygen CMN must be the lowest value (not related to artifact) during the five-minute qualifying period reported on the sleep study;

(E) The blood gas study reported on the initial CMN must be the most recent study obtained prior to the initial date and this study must be obtained within 30 days prior to that initial date;

(i) There is an exception for clients who were on oxygen in a Medicare Health Maintenance Organization (HMO) and who transition to fee-for-service Medicare;

(ii) For those clients, the blood gas study does not have to be obtained 30 days prior to the initial date, but must be the most recent test obtained while in the HMO;

(F) The DMEPOS provider must submit to DMAP an initial CMN in the situations described below. The initial date refers to the dates reported in Section A of the CMN;

(i) With the first claim to DMAP for home oxygen, even if the client was on oxygen prior to becoming eligible for DMAP coverage, or oxygen was initially covered by a Medicare HMO;

(ii) When the first CMN did not meet coverage criteria and the client was subsequently retested and meets coverage criteria, the initial date on the new CMN is the date of the subsequent, qualifying blood gas study;

(iii) When a change occurs in the client's condition that caused a break in medical necessity of at least 60 days plus whatever days remain in the rental month during which the need for oxygen ended. This indication does not apply if there was just a break in billing because the client was in a hospital, nursing facility, hospice or Medicare HMO, but the client continued to need oxygen during that time;

(iv) When a Group I client with length of need less than or equal to 12 months was not retested prior to Revised Certification/ Recertification, but a qualifying study was subsequently performed. The initial date on this new CMN is the date of the subsequent, qualifying blood gas study;

(v) When a Group II client did not have a qualifying, repeat blood gas study between the 61st and 90th days of coverage, but a qualifying study was subsequently performed. The initial date on the new CMN is the date of the subsequent, qualifying blood gas study;

(vi) When a change of provider occurs due to an acquisition and the previous provider did not file a recertification when it was due or the requirements for recertification were not met when it was due. The initial date on this new CMN is the date of the subsequent qualifying blood gas study;

(G) The DMEPOS provider must submit to DMAP a recertification CMN in the following circumstances. The initial date refers to the dates reported in Section A of the CMN:

(i) For Group I oxygen test results, 12 months after the initial certification (i.e., with the 13th month's claim). The blood gas reported study must be the most recent study performed prior to the 13th month of therapy;

(ii) If a Group I client with a lifetime length of need was not seen and evaluated by the practitioner within 90 days prior to the 12-month recertification, but was subsequently seen, the date on the recertification CMN must be the date of the practitioner visit;

(iii) For Group II oxygen test results, three months after the initial certification (i.e., with the fourth month's claim). The reported blood gas study must be the most recent study performed between the 61st and 90th day following the initial date;

(iv) If there was a change of provider due to an acquisition and the previous DMEPOS provider did not file a recertification when it was due, but all the requirements for the recertification were met when it was due, the provider would file a recertification CMN with the recertification date being 12 months (for a Group I initial CMN) or three months (for a Group II initial CMN) after the initial date;

(v) In other situations at the discretion of DMAP. The blood gas study must be the most recent study that was performed within 30 days prior to the recertification date;

(H) The DMEPOS provider must submit to DMAP a revised CMN in the following circumstances. Submission of a revised CMN does not change the recertification schedule specified elsewhere. The initial date refers to the dates reported in Section A of the CMN:

(i) When the prescribed maximum flow rate changes from one of the following categories to another:

(I) Less than 1 LPM;

(II) 1-4 LPM;

(III) Greater than 4 LPM;

(IV) If the change is from category (a) or (b) to category (c), a repeat blood gas study with the client on 4 LPM must be performed within 30 days prior to the start of the greater than 4 LPM flow;

(ii) When a portable oxygen system is added subsequent to initial certification of a stationary system. In this situation, DMAP does not require a repeat blood gas study, unless the initial qualifying study was performed during sleep, in which case a repeat blood gas study must be performed while the client is at rest (awake) or during exercise within 30 days prior to the revised date;

(iii) When a stationary system is added subsequent to initial certification of a portable system. In this situation, DMAP does not require a repeat blood gas study;

(iv) When the length of need expires, if the practitioner specified less than lifetime length of need on the most recent CMN. In this situation, a blood gas study must be performed within 30 days prior to the revised date;

(v) When there is a new treating practitioner, but the oxygen order is the same. In this situation, DMAP does not require a repeat blood gas study.

Note: In this situation, the revised CMN does not have to be submitted with the claim but must be kept on file by the provider;

(vi) If there is a new provider, that provider must be able to provide DMAP with a CMN on request. That CMN would not necessarily be an initial CMN or the first CMN for that client. If the provider obtains a new CMN, it would be considered a revised CMN;

(vii) If the indications for a revised CMN are met at the same time that a recertification CMN is due, file the CMN as a recertification CMN.

(9) **Table 122-0203** – Oxygen and Oxygen Equipment.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0320

Manual Wheelchair Base

(1) Indications and Limitations of Coverage and/or Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a manual wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADL) ; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the manual wheelchair that is being requested;

(D) Use of a manual wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested manual wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested manual wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) DMAP may authorize a manual wheelchair for any of the following situations, only when conditions of coverage as specified in (1)(a) of this rule are met:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a manual wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a manual wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of a manual wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a manual wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair. See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing).

(c) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(d) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(e) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(f) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(g) DMAP may cover an adult tilt-in-space wheelchair (E1161) when a client meets all of the following conditions:

(A) A standard base with a reclining back option will not meet the client's needs;

(B) Is dependent for transfers;

(C) Spends a minimum of six hours a day in a wheelchair;

(D) The client's plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(E) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(h) One month's rental for a manual adult tilt-in-space wheelchair (E1161) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less;

(B) The conditions of coverage for a manual tilt-in-space wheelchair as described in (1)(g)(A)-(E) are met;

(C)The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental;

(i) DMAP may cover a standard hemi (low seat) wheelchair (K0002) when a client requires a lower seat height (17" to 18") because of short stature or needing assistance to place his/her feet on the ground for propulsion;

(k) DMAP may cover a lightweight wheelchair (K0003) when a client:

(A) Cannot self-propel in a standard wheelchair using arms and/or legs; and

(B) Can and does self-propel in a lightweight wheelchair.

(j) High-strength lightweight wheelchair (K0004):

(A) DMAP may cover a high-strength lightweight wheelchair (K0004) when a client:

(i) Self-propels the wheelchair while engaging in frequent activities that cannot be performed in a standard or lightweight wheelchair; and/or

(ii) Requires a seat width, depth or height that cannot be accommodated in a standard, lightweight or hemi-wheelchair, and spends at least two hours per day in the wheelchair.

(B) If the expected duration of need is less than three months (e.g., post-operative recovery), a high-strength lightweight wheelchair is rarely medically appropriate;

(l) DMAP may cover an ultralightweight wheelchair (K0005) when a client has medical needs that require determination on a case-by-case basis;

(m) DMAP may cover a heavy-duty wheelchair (K0006) when a client weighs more than 250 pounds or has severe spasticity;

(n) DMAP may cover an extra heavy-duty wheelchair (K0007) when a client weighs more than 300 pounds;

(o) For a client residing in a nursing facility, an extra heavy-duty wheelchair (K0007) may only be covered when a client weighs more than 350 pounds;

(p) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement and Delivery;

(q) A manual wheelchair for use only outside the home is not covered.

(2) Coding Guidelines:

(a) Adult manual wheelchairs (K0001-K0007, K0009, E1161) have a seat width and a seat depth of 15" or greater;

(b) For codes K0001-K0007 and K0009, the wheels must be large enough and positioned so that the user can self-propel the wheelchair;

(c) In addition, specific codes are defined by the following characteristics:

(A) Adult tilt-in-space wheelchair (E1161):

(i) Ability to tilt the frame of the wheelchair greater than or equal to 45 degrees from horizontal while maintaining the same back-to-seat angle; and

(ii) Lifetime warranty on side frames and crossbraces.

(B) Standard wheelchair (K0001):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: 19" or greater; and

(iii) Weight capacity: 250 pounds or less.

(C) Standard hemi (low seat) wheelchair (K0002):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: Less than 19"; and

(iii) Weight capacity: 250 pounds or less.

(D) Lightweight wheelchair (K0003):

(i) Weight: 34-36 pounds; and

(ii) Weight capacity: 250 pounds or less.

(E) High strength, lightweight wheelchair (K0004):

(i) Weight: Less than 34 pounds; and

(ii) Lifetime warranty on side frames and crossbraces.

(F) Ultralightweight wheelchair (K0005):

(i) Weight: Less than 30 pounds;

(ii) Adjustable rear axle position; and

(iii) Lifetime warranty on side frames and crossbraces.

(G) Heavy duty wheelchair (K0006) has a weight capacity greater than 250 pounds;

(H) Extra heavy duty wheelchair (K0007) has a weight capacity greater than 300 pounds.

(d) Coverage of all adult manual wheelchairs includes the following features:

(A) Seat width: 15"-19";

(B) Seat depth: 15"-19";

(C) Arm style: Fixed, swingaway, or detachable, fixed height;

(D) Footrests: Fixed, swingaway, or detachable.

(e) Codes K0003-K0007 and E1161 include any seat height;

(f) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(g) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(h) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(i) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229 (see 410-122-0720 Pediatric Wheelchairs);

(j) For more information on other features included in the allowance for the wheelchair base, see 410-122-0340 Wheelchair Options/ Accessories;

(k) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation Form (DMAP 3125):

(A) Providers must submit this form or other medical documentation that supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned manual wheelchairs except for K0001, K0002, or K0003 (unless modifications are required).

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a PT, OT, treating physician or nurse practitioner. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician or nurse practitioner and the physical therapist (PT) or occupational therapist (OT).

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a PT, OT, treating physician or nurse practitioner that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a PT, OT, treating physician or nurse practitioner about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, power-operated vehicle (POV), or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a PT, OT, treating physician or nurse practitioner that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All HCPCS codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician or nurse practitioner, identifying the specific type of manual wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority;

(d) For purchase of K0001, K0002 or K0003 (without modifications):

(A) Send documentation listed in (3)(b)(A-E) of this rule;

(B) The DMAP 3125 Functional Mobility Evaluation Form is not required;

(e) For an ultralight wheelchair (K0005), documentation from a PT, OT, treating physician or nurse practitioner that includes a description of the client's mobility needs within the home, even though a client who qual-

ifies for coverage of a manual wheelchair may use the wheelchair outside the home. This may include what types of activities the client frequently encounters and whether the client is fully independent in the use of the wheelchair. Describe the features of the K0005 base which are needed compared to the K0004 base;

(f) When code K0009 is requested, send all information from a PT, OT, treating physician or nurse practitioner that justifies the medical appropriateness for the item;

(g) Any additional documentation that supports indications of coverage are met as specified in this policy;

(h) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician or nurse practitioner, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(i) All documentation listed in section (3) of this rule must be kept on file by the DMEPOS provider;

(j) Documentation that coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request.

(4) **Table 122-0320** – Manual Wheelchair Base.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 18-1994(Temp), f. & cert. ef. 4-1-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. l2-30- 94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a power wheelchair (PWC) (K0815-K0816, K0822-K0829, K0835-K0843, K0848-K0864, K0898) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) ; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day;

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the PWC that is being requested;

(E) Use of a PWC will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(F) The client is willing to use the requested PWC in the home, and the client will use it on a regular basis in the home;

(G) The client has either:

(i) Strength, postural stability, or other physical or mental capabilities insufficient to safely operate a power-operated vehicle (POV) in the home; or

(ii) Living quarters that do not provide adequate access between rooms, maneuvering space, and surfaces for the operation of a POV with a small turning radius;

(H) The client has either:

(i) Sufficient mental and physical capabilities to safely operate the PWC that is being requested; or

(ii) A caregiver who is unable to adequately propel an optimally configured manual wheelchair, but is available, willing, and able to safely operate the PWC that is being requested;

(I) The client's weight is less than or equal to the weight capacity of the PWC that is being requested;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a PWC for any of the following situations:

(A) When the PWC can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits, and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a PWC will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a PWC may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of a PWC coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a PWC;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement costs;

(C) When a covered client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair (see OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) For a PWC to be covered, the treating physician or nurse practitioner must conduct a face-to-face examination of the client before writing the order and the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device;

(A) When this examination is performed during a hospital or nursing facility stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(B) The physician or nurse practitioner may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination;

(i) If the client was referred to the PT/OT before being seen by the physician or nurse practitioner, then once the physician or nurse practitioner has received and reviewed the written report of this examination, the physician or nurse practitioner must see the client and perform any additional examination that is needed. The physician's or nurse practitioner's report of the visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician or nurse practitioner must provide the DMEPOS provider with a copy of both examinations within 45 days of the face-to-face examination with the physician or nurse practitioner;

(ii) If the physician or nurse practitioner examined the client before referring the client to a PT/OT, then again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician or nurse practitioner visit. However, it is also acceptable for the physician or nurse practitioner to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician or nurse practitioner must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period

begins when the physician or nurse practitioner signs and dates the PT/OT examination;

(iii) If the PWC is a replacement of a similar item that was previously covered by DMAP or when only PWC accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(d) DMAP does not reimburse for another chair if a client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting the living quarters;

(f) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, and tail lights;

(g) Reimbursement for wheelchair codes include all labor charges involved in the assembly of the wheelchair and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the wheelchair;

(h) The delivery of the PWC must be within 120 days following completion of the face-to-face examination;

(i) A PWC may not be ordered by a podiatrist;

(j) The following are not covered:

(i) A PWC with a captain's chair for a client who needs a separate wheelchair seat and/or back cushion;

(ii) Portable PWCs (K0813, K0814, K0820, K0821);

(iii) Seat elevator PWCs (K0830, K0831);

(iv) A PWC for use only outside the home.

(2) Coding Guidelines:

(a) Specific types of PWCs:

(A) A Group 1 PWC (K0813-K0816) or a Group 2 Heavy Duty (HD), Very Heavy Duty (VHD), or Extra Heavy Duty (EHD) wheelchair (K0824-K0829) may be covered when the coverage criteria for a PWC are met;

(B) A Group 2 Standard PWC with a sling/solid seat (K0820, K0822) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client is using a skin protection and/or positioning seat and/or back cushion that meets the coverage criteria defined in Wheelchair Options/Accessories, 410-122-0340;

(C) A Group 2 Single Power Option PWC (K0835 – K0840) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Requires a drive control interface other than a hand or chin-operated standard proportional joystick (examples include but are not limited to head control, sip and puff, switch control); or

(II) Meets the coverage criteria for a power tilt or recline seating system (see Wheelchair Options/Accessories, 410-122-0340) and the system is being used on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(D) A Group 2 Multiple Power Option PWC (K0841-K0843) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Meets the coverage criteria for a power tilt or recline seating system with three or more actuators (see Wheelchair Options/Accessories, 410-122-0340); or

(II) Uses a ventilator which is mounted on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT, OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(E) A Group 3 PWC with no power options (K0848-K0855) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client's mobility limitation is due to a neurological condition, myopathy or congenital skeletal deformity; and

(iii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical necessity for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, physician or nurse practitioner may have no financial relationship with the DMEPOS provider;

(F) A Group 3 PWC with Single Power Option (K0856-K0860) or with Multiple Power Options (K0861-K0864) may be covered when:

(i) The Group 3 criteria (2)(a)(E) (i-ii) are met; and

(ii) The Group 2 Single Power Option (2)(a)(C)(i)(I-II) or Multiple Power Options (criteria (2)(a)(D)(i)(I-II) are met;

(b) PWC Basic Equipment Package: Each PWC code is required to include the following items on initial issue (i.e., no separate billing/payment at the time of initial issue, unless otherwise noted):

(A) Lap belt or safety belt (E0978);

(B) Battery charger single mode (E2366);

(C) Complete set of tires and casters any type (K0090, K0091, K0092, K0093, K0094, K0095, K0096, K0097, K0099);

(D) Legrests. There is no separate billing/payment if fixed or swingaway detachable non-elevating legrests with/without calf pad (K0051, K0052, E0995) are provided. Elevating legrests may be billed separately;

(E) Fixed/swingaway detachable footrests with/without angle adjustment footplate/platform (K0037, K0040, K0041, K0042, K0043, K0044, K0045, K0052);

(F) Armrests. There is no separate billing/ payment if fixed/swingaway detachable non-adjustable armrests with arm pad (K0015, K0019, K0020) are provided. Adjustable height armrests may be billed separately;

(G) Upholstery for seat and back of proper strength and type for patient weight capacity of the power wheelchair (E0981, E0982);

(H) Weight specific components per patient weight capacity;

(I) Controller and Input Device. There is no separate billing/payment if a non-expandable controller and proportional input device (integrated or remote) is provided. If a code specifies an expandable controller as on option (but not a requirement) at the time of initial issue, it may be separately billed;

(c) If a client needs a seat and/or back cushion but does not meet coverage criteria for a skin protection and/or positioning cushion, it may be appropriate to request a captain's chair seat rather than a sling/solid seat/back and a separate general use seat and/or back cushion;

(d) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified (see OAR 410-122-0720 Pediatric Wheelchairs);

(e) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician or nurse practitioner:

(A) This report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

(iv) Why a POV/scooter can't meet this client's mobility needs in the home;

(v) This client's physical and mental abilities to operate a PWC safely in the home;

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in activities of daily living (ADLs), how these conditions will be ameliorated or compensated by use of the wheelchair;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home.

(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a PWC may use that device outside the home, because DMAP's coverage of a wheelchair is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's or nurse practitioner's written order, received by the DMEPOS provider within 45 days (date stamp or equivalent must be used to document receipt date) after the physician's or nurse practitioner's face-to-face examination. The order must include all of the following elements:

(A) Client's name;

(B) Description of the item that is ordered. This may be general — e.g., "power wheelchair" or "power mobility device" — or may be more specific;

(i) If this order does not identify the specific type of PWC that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific PWC that is being ordered and any options and accessories requested.

(ii) The items on this clarifying order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination;

(C) Date of the face-to-face examination;

(D) Pertinent diagnoses/conditions and diagnosis codes that relate specifically to the need for the PWC;

(E) Length of need;

(F) Physician's or nurse practitioner's signature;

(G) Date of physician's or nurse practitioner's signature;

(c) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable;

(e) For the home assessment, prior to or at the time of delivery of a PWC, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a PWC. Assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) A written document (termed a detailed product description) prepared by the DMEPOS provider and signed and dated by the physician or nurse practitioner that includes:

(i) The specific base (HCPCS code and manufacturer name/model) and all options and accessories (including HCPCS codes), whether PA is required or not, that will be separately billed;

(ii) The DMEPOS provider's charge and the DMAP fee schedule allowance for each separately billed item;

(iii) If there is no DMAP fee schedule allowance, the DMEPOS provider must enter "not applicable";

(iv)The DMEPOS provider must receive the signed and dated detailed product description from the physician or nurse practitioner prior to delivery of the PWC;

(v) A date stamp or equivalent must be used to document receipt date of the detailed product description; and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The DMEPOS provider must keep the above documentation on file;

(i) Documentation that the coverage criteria have been met must be present in the client's medical records and made available to DMAP on request.

(4) Prior Authorization:

(a) All codes in this rule required PA and may be purchased, rented and repaired;

(b) See DMAP's fee schedule for more information;

(c) Codes specified in this rule are not covered for clients residing in nursing facilities;

(d) Rented equipment is considered purchased when the client has used the equipment for 13 months, when the provider's actual charge for purchase is met, when the manufacturer's suggested retail price (MSRP) is met or when DMAP's fee schedule allowable for purchase is met, whichever is the lowest;

(e) For PWCs furnished on a rental basis with dates of services prior to November 15, 2006, use codes K0010, K0011, K0012 and K0014 as appropriate.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0330

Power-Operated Vehicle

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a power-operated vehicle (POV) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) ; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day:

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion, or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair features an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client has sufficient strength, postural stability, or other physical or mental capabilities needed to safely operate a POV in the home;

(E) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the POV being requested;

(F) Use of a POV will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(G) The client is willing to use the requested POV in the home, and the client will use it on a regular basis in the home;

(H) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup POVs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if the POV meets the same need, custom colors, and wheelchair gloves;

(b) For a POV to be covered, the treating physician or nurse practitioner must conduct a face-to-face examination of the client before writing the order:

(A)The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device.

(B) When this examination is performed during a hospital or nursing facility stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(C) The physician or nurse practitioner may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination:

(i) If the client was referred to the PT/OT before being seen by the physician or nurse practitioner, then once the physician or nurse practitioner has received and reviewed the written report of this examination, the physician or nurse practitioner must see the client and perform any additional examination that is needed. The physician's or nurse practitioner's report of the visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician or nurse practitioner must provide the DMEPOS provider with a copy of both examinations within 45 days of the face-to-face examination with the physician or nurse practitioner;

(ii) If the physician or nurse practitioner examined the client before referring the client to a PT/OT, then again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician or nurse practitioner visit. However, it is also acceptable for the physician or nurse practitioner to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician or nurse practitioner must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician or nurse practitioner signs and dates the PT/OT examination;

(iii) If the POV is a replacement of a similar item that was previously covered by DMAP or when only POV accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(c) DMAP may authorize a new POV when a client's existing POV is no longer medically appropriate; or repair and/or modifications to the POV exceed replacement costs;

(d) If a client has a medically appropriate POV regardless of payer, DMAP will not reimburse for another POV;

(e) The cost of the POV includes all options and accessories that are provided at the time of initial purchase, including but not limited to batteries, battery chargers, seating systems, etc.;

(f) Reimbursement for the POV includes all labor charges involved in the assembly of the POV and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the POV;

(g) If a client-owned POV meets coverage criteria, medically appropriate replacement items, including but not limited to batteries, may be covered;

(h) If a POV is covered, a manual or power wheelchair provided at the same time or subsequently will usually be denied as not medically appropriate;

(i) DMAP will cover one month's rental of a POV if a client-owned POV is being repaired;

(j) The following services are not covered:

(A) POV for use only outside the home; and

(B) POV for a nursing facility client.

(2) Coding Guidelines:

(a) Codes K0800 — K0802 are used only for POVs that can be operated inside the home;

(b) Codes K0800 — K0802 are not used for a manual wheelchair with an add-on tiller control power pack;

(c) A replacement item, including but not limited to replacement batteries, should be requested using the specific wheelchair option or accessory code if one exists (see 410-122-0340, Wheelchairs Options/Accessories). If a specific code does not exist, use code K0108 (wheelchair component or accessory, not otherwise specified);

(d) For guidance on correct coding, DMEPOS providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC). See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician or nurse practitioner:

(A) The report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

(iv) This client's physical and mental abilities to operate a POV (scooter) safely in the home:

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in MRADLs, how these conditions will be ameliorated or compensated;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home.

(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a POV may use that device outside the home, because DMAP's coverage of a POV is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's or nurse practitioner's written order, received by the DMEPOS provider within 30 days after the physician's or nurse practitioner's face-to-face examination, which includes all of the following elements:

(A) Client's name;

(B) Description of the item that is ordered. This may be general — e.g., "POV" or "power mobility device" — or may be more specific:

(i) If this order does not identify the specific type of POV that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific POV that is being ordered and any options and accessories requested;

(ii) The items on this order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination.

(C) Date of the face-to-face examination;

(D) Most significant ICD-9 diagnosis code that relates specifically to the need for the POV;

(E) Length of need;

(F) Physician's or nurse practitioner's signature;

(G) Date of physician's or nurse practitioner's signature;

(c) For all requested equipment and accessories, include the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including the age of the equipment and why it can't be grown or modified, if applicable;

(e) A written evaluation of the client's living quarters, performed by the DMEPOS provider. This assessment must support that the client's home can accommodate and allow for the effective use of a POV, including, but is not limited to, evaluation of door widths, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) All HCPCS to be billed on this claim (both codes that require authorization and those that do not require authorization); and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The above documentation must be kept on file by the DMEPOS provider;

(i) Documentation that the coverage criteria have been met must be present in the client's medical record. This documentation and any additional medical information from the DMEPOS provider must be made available to DMAP on request.

(4) Billing:

(a) Procedure Codes:

(A) K0800 Power operated vehicle, group 1 standard, patient weight capacity up to and including 300 pounds — PA;

(B) K0801 Power operated vehicle, group 1 heavy duty, patient weight capacity, 301 to 450 pounds — PA;

(C) K0802 Power operated vehicle, group 1 very heavy duty, patient weight capacity, 451 to 600 pounds — PA;

(b) DMAP will purchase, rent and repair;

(c) Item considered purchased after 13 months of rent.

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0380

Hospital Beds

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover some hospital beds for a covered condition including:

(a) A fixed height hospital bed (E0250, E0251, E0290 and E0291) when the client meets at least one of the following criteria:

(A) Has a medical condition which requires positioning of the body in ways not feasible with an ordinary bed. Elevation of the head/upper body less than 30 degrees does not usually require the use of a hospital bed;

(B) Requires positioning of the body in ways not feasible with an ordinary bed in order to alleviate pain;

(C) Requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges must have been considered and ruled out;

(D) Requires traction equipment which can only be attached to a hospital bed;

(b) A variable height hospital bed (E0255, E0256, E0292 and E0293) when all of the following criteria are met:

(A) Criteria for a fixed height hospital bed are met;

(B) A bed height different than a fixed height hospital bed to permit transfers to chair, wheelchair or standing position is required;

(c) A semi-electric hospital bed (E0260, E0261, E0294 and E0295) when all of the following criteria are met:

(A) Criteria for a fixed height hospital bed are met;

(B) Frequent changes or an immediate need for a change in body position are required;

(C) The client is capable of safely and effectively operating the bed controls;

(d) A heavy duty extra wide hospital bed (E0301, E0303) when all of the following criteria are met:

(A) Criteria for a fixed height hospital bed are met;

(B) The client weighs more than 350 pounds, but less than 600 pounds;

(C) The client is capable of safely and effectively operating the bed controls;

(e) An extra heavy duty hospital bed (E0302, E0304) when all of the following are met:

(A) Criteria for one of the hospital beds described in (1)(a)-(d) are met;

(B) The client weighs more than 600 pounds;

(C) The client is capable of safely and effectively operating the bed controls;

(D) When provided for a nursing facility client, the bed must be rated for institutional use;

(f) Total electric hospital beds (E0265, E0266, E0296 and E0297) are not covered since the height adjustment feature is considered a convenience feature;

(g) Payment Authorization: Subject to service limitations of DMAP rules, a hospital bed rental may be dispensed without prior authorization (PA) only from the initial date of service through the second date of service. The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting any claims to DMAP, regardless of the date of service, including the initial and second dates of service, and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. Required documentation must be received by the authorizing authority prior to the third date of service.

(2) Documentation Requirements: Submit documentation which has been reviewed, signed and dated by the prescribing practitioner and which supports conditions of coverage as specified in this rule are met including:

(a) For all hospital beds:

(A) Primary diagnosis code for the condition necessitating the need for a hospital bed;

(B) The type of bed currently used by the client and why it doesn't meet the medical needs of the client;

(b) For semi-electric beds: Why a variable height bed cannot meet the medical needs of the client;

(c) For heavy duty and extra heavy duty beds: The client's height and weight.

(3) **Table 122-0380** — Hospital Beds.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0662

Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover some ankle-foot orthoses (AFOs) and knee-ankle-foot orthoses (KAFOs) for a covered, treating condition when, for this episode, the device has not been billed to DMAP with a current procedure terminology (CPT) code, healthcare common procedure coding system (HCPCS) code or diagnosis code by any other healthcare provider, and in addition, specifically for:

(a) Non-ambulatory clients:

(A) A static AFO (L4396) when all of the following criteria are met:

(i) The client has a plantar flexion contracture of the ankle with dorsiflexion on passive range of motion (PROM) testing of at least 10 degrees (i.e., a non-fixed contracture);

(ii) There is a reasonable expectation of the ability to correct the contracture;

(iii) The contracture is interfering or expected to interfere significantly with the client's functional abilities;

(iv) The static AFO is used as a component of a therapy program that includes active stretching of the involved muscles or tendons;

(v) If a static AFO is used for the treatment of a plantar flexion contracture, the pre-treatment PROM must be measured with a goniometer and documented in the client's medical records;

(vi) There must be documentation in the client's medical records of an appropriate stretching program carried out by professional staff (in a nursing facility) or caregiver (at home);

(vii) For a covered static AFO, no more than one replacement interface (L4392) may be covered every six months;

(viii) Custom-fabricated AFOs are not covered.

(B) A custom-fabricated AFO (L1940 or L1960) for a client who is able to bear weight for either standing or stand-pivot transferring or when proper foot alignment is required to ensure safe and effective weight bearing transfers when all of the following criteria are met:

(i) A prefabricated (off-the-shelf) AFO (L4396) has been considered and ruled out as the least costly, medically appropriate alternative;

(ii) Without the use of a custom-fitted AFO, dysfunction resulting in loss of ability to maximize level of independence in self-directed care is expected to occur;

(iii) There is a reasonable expectation the client will maintain or improve functional abilities for weight bearing transfers;

(iv) The custom-fitted AFO is used as an adjunct to a formal standing/weight bearing transfer program under the direct supervision of a physical therapist which includes active stretching of the involved muscles or tendons;

(v) A mechanical lift is not used to transfer the client;

(vi) For a covered custom-fabricated AFO, no more than one replacement interface (L4392) may be covered every six months;

(b) AFOs and KAFOs used for ambulatory clients when all of the following criteria are met:

(A) AFOs (L1900-L1990, L2106-L2116, L4350, L4360, L4386) with weakness or deformity of the foot and ankle, which require stabilization for medical reasons, and there is the potential to benefit functionally;

(B) KAFOs (L2000-L2038, L2126-L2136, L4370) with a covered ankle-foot orthosis and when additional knee stability is required;

(C) Custom-made AFOs and KAFOs that are "molded-to-patient-model" when the basic criteria specified in (1)(b)(A)-(B) are met and at least one of the following criteria is met:

(i) The client could not be fit with a prefabricated (off-the-shelf) AFO;

(ii) The condition necessitating the orthosis is expected to be permanent or of longstanding duration (more than six months);

(iii) There is a need to control the knee, ankle or foot in more than one plane;

(iv) The client has a documented neurological, circulatory, or orthopedic status that requires custom fabricating over a model to prevent tissue injury;

(v) The client has a healing fracture that lacks normal anatomical integrity or anthropometric proportions;

(c) Lace-up ankle braces when used for chronically unstable ankles or to prevent ankle re-injuries;

(d) Repairs and replacements:

(A) Repairs to a covered ankle orthosis, AFO, or KAFO due to wear and tear when needed to make the orthosis functional;

(B) Replacement of a covered complete ankle orthosis, AFO, or KAFO or component of these orthoses due to a significant change in the client's condition or irreparable wear;

(C) Replacement braces when the client has outgrown the previous brace or when a change in condition makes the current brace unusable;

(D) Due to wear and tear with normal use, orthotics may need refurbishing periodically, every one or two years;

(E) Replacement of orthotics more frequently than every two years is generally not covered;

(e) Covered AFOs and KAFOs for a client residing in a nursing facility only when the service is not a covered benefit through another payer;

(f) Evaluations, office visits, fittings and materials are included in the service provided;

(g) Evaluations will only be reimbursed as a separate service when the provider travels to a client's residence to evaluate the client's need;

(h) The following services are not covered:

(A) Additions to AFOs or KAFOs (L2180-L2550, L2750-L2830) if either the base orthosis or the specific addition is not medically appropriate;

(B) Elastic ankle sleeves when used for a chronically unstable ankle or to prevent ankle re-injury;

(C) Foot drop splint/recumbent positioning device (L4398) or replacement interface (L4394) for use by a non-ambulatory client for the prevention or treatment of a heel pressure ulcer;

(D) Functional cast-braces: Some examples include: PTB cast brace, PTB fracture brace, molded ankle-foot orthosis (MAFO) fracture brace with pelvic band, Achilles tendon hinged brace;

(E) Identical spare orthotics;

(F) KAFOs, AFOs and any related addition when used solely for the treatment of edema or for the prevention or treatment of a heel pressure ulcer in ambulatory clients;

(G) Orthopedic ankle cast-braces;

(H) Orthoplast ankle stirrups in chronically unstable ankles or to prevent ankle re-injury;

(I) Over-the-counter orthotics when used to replace custom made orthotics which are for chronic, long-term use and for use by children;

(J) Postoperative rehabilitation ankle braces;

(K) Prophylactic orthotics of any kind used for safety reasons and to prevent injury to a previously uninjured site;

(L) Reusable elastic ankle sleeves;

(M) Socks (L2840, L2850) used in conjunction with ankle orthoses, AFOs and KAFOs;

(N) Sports orthotics including, but not limited to ankle orthotics, AFOs and KAFOs used only during participation in sports;

(O) Static AFO (L4396) and replacement interface (L4392) for use by a non-ambulatory client solely for the prevention or treatment of a heel pressure ulcer;

(P) Static AFO and replacement interface (L4392) for use by a non-ambulatory client with a fixed contracture and for foot drop without an ankle flexion contracture.

(2) Guidelines: For dual eligibles, orthotic and prosthetic services generally covered under Medicare Part B (when Medicare Part A coverage is not available) furnished to clients of hospitals and nursing facilities include the following:

(a) Leg braces including adjustments, repairs, and replacements required because of breakage, wear, loss, or a change in the client's physical condition;

(b) A brace includes rigid and semi-rigid devices that are used for the purpose of supporting a weak or deformed body member or restricting or eliminating motion in a diseased or injured part of the body.

(3) Documentation Requirements:

(a) For services that require prior authorization (PA): Submit documentation for review which supports conditions of coverage as specified in this rule are met, including the plan of care, if applicable;

(b) For services that do not require PA: Medical records which support conditions of coverage as specified in this rule are met must be on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request;

(c) The order must include:

(A) The treating diagnosis code that justifies the need for the orthotic;

(B) Detailed description of the item including all options or additional features;

(d) When submitting L2999 for PA, the following information should accompany the request:

(A) Manufacturer's name;

(B) Product name;

(C) Justification of medical appropriateness for the item;

(e) Repair of orthosis (L4210):

(A) An order is not required;

(B) A detailed description of the part that is being repaired or replaced must be on file with the DMEPOS provider;

(f) The client's medical records must support the justification for items billed to DMAP.

(4) Procedure Codes:

(a) For a specific HCPCS code, refer to the DMAP Fee Schedule for information regarding the pricing action code (PAC) and for any PA requirements;

(b) Use an official authoritative source for HCPCS Level II code information.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0678
Dynamic Adjustable Extension/Flexion Device

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover some dynamic adjustable extension/flexion devices for a covered condition when all of the following conditions are met:

(a) As an adjunct to physical therapy for clients with signs and symptoms of persistent joint stiffness in the sub-acute injury or post-operative period (> 3 weeks but < 4 months after injury or surgical procedure) when the device is applied and managed under the direct supervision of a physical therapist;

(b) As an adjunct to physical therapy in the acute post-operative period for clients who are undergoing additional surgery to improve the range

of motion of a previously affected joint when the device is managed under the direct supervision of a physical therapist;

(c) For this episode, the device has not been billed to DMAP with a current procedure terminology (CPT) code, healthcare common procedure coding system (HCPCS) code or diagnosis code by any other healthcare provider;

(d) Reimbursement is limited to a maximum of four months per episode;

(e) Reimbursement is on a month-to-month rental basis only.

(2) Documentation requirements:

(a) Submit medical records which support the conditions of coverage, as specified in this rule have been met, including the treatment plan from the physical therapist;

(b) The treatment plan must include:

(A) Baseline measurements (pre-intervention measurements) of range of motion (ROM) limitations;

(B) Weekly ROM measurements with documented 10 degree improvement.

(3) Table 0678 — Dynamic Adjustable Extension/Flexion Devices

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

410-122-0720

Pediatric Wheelchairs

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a pediatric wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the pediatric wheelchair that is being requested;

(D) Use of a pediatric wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested pediatric wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested pediatric wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a pediatric wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a pediatric wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a pediatric wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of a pediatric wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a pediatric wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair (for one month's rental of a wheelchair). See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing;

(c) A pediatric tilt-in-space wheelchair (E1231- E1234) may be covered when a client meets all of the following conditions:

(A) A standard base with a reclining back option will not meet the client's needs;

(B) Is dependent for transfers;

(C) Spends a minimum of six hours a day in a wheelchair;

(D) The plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(E) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(d) One month's rental for a manual pediatric tilt-in-space wheelchair (E1231-E1234) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less;

(B) The conditions of coverage for a manual tilt-in-space wheelchair as described in (1)(c)(A)-(E) are met;

(C) The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental;

(e) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(f) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(g) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(h) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(i) A Group 5 (Pediatric) power wheelchair (PWC) with Single Power Option (K0890) or with Multiple Power Options (K0891) may be covered when:

(j) The coverage criteria for a PWC (see 410-122-0325, Motorized/Power Wheelchair Base) are met; and

(ii) The client is expected to grow in height; and

(iii) Either of the following criteria is met:

(I) The Group 2 Single Power Option in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(C)(i)(I-II); or

(II) Multiple Power Options in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(D)(i)(I-II);

(iv)The delivery of a PWC must be within 120 days following completion of the face-to-face examination with the physician;

(v) A PWC may not be ordered by a podiatrist;

(k) A pediatric wheelchair for use only outside the home is not covered;

(l) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing.

(2) Coding Guidelines:

(a) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(b) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(c) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(d) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229;

(e) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified;

(f) Pediatric seating system codes E2291-E2294 may only be billed with pediatric wheelchair base codes;

(g) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation:

(A) Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) providers must submit a DMAP 3125 form or other medical documentation which supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned pediatric wheelchairs;

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a physical therapist (PT), occupational therapist (OT) or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the DMEPOS provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and PT or OT.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a PT, OT or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a PT, OT or treating physician about the following elements that support coverage criteria are met for a pediatric wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, pediatric wheelchair, power-operated vehicle (POV), or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a PT, OT or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a pediatric wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options, including growth capabilities; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All HCPCS codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician, identifying the specific type of pediatric wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific pediatric wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For a PWC request: See 410-122-0325, Motorized/Power Wheelchair Base for documentation requirements; and

(e) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(f) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(g) The above documentation must be kept on file by the DMEPOS provider; and

(h) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request; and

(i) For PWC's furnished on a rental basis with dates of services prior to October 1, 2006, use code E1239 as appropriate.

(4) Table 122-0720 — Pediatric Wheelchairs.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08

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Rule Caption: January 2008 Revisions.
Adm. Order No.: DMAP 16-2007
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-127-0060
Subject: The Home Health Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended 410-127-0060 Reimbursement and Limitations, to remove the fee schedule from rule. The fee schedule is found in the Home Health Supplemental Information Guide and is not needed in rule. Text is revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-127-0060
Reimbursement and Limitations

(1) Reimbursement. The Division of Medical Assistance Programs (DMAP) reimburses home health services on a fee schedule (see home health supplemental information guide) by type of visit.

(2) Future reimbursement rate changes, if applicable, will be calculated by applying an administratively determined percentage to each service rate to determine the new rate.

(3) DMAP reimburses only for service, which is medically appropriate.

(4) Limitations:

(a) Limits of covered services:

(A) Skilled nursing visits are limited to two visits per day with payment authorization;

(B) All therapy services are limited to one visit or evaluation per day for physical therapy, occupational therapy or speech and language pathology services. Therapy visits require payment authorization;

(C) DMAP will authorize home health visits for clients with uterine monitoring only for medical problems, which could adversely affect the pregnancy and are not related to the uterine monitoring;

(D) Medical supplies must be billed at acquisition cost and the total of all medical supplies revenue codes may not exceed $75 per day. Only supplies that are used during the visit are billable. Clients visit notes must include documentation of supplies used;

(E) Durable medical equipment must be obtained by the client by prescription through a durable medical equipment provider.

(b) Not covered service:

(A) Service not medically appropriate;

(B) A service whose diagnosis does not appear on a line of the Prioritized List of Health Services which has been funded by the Oregon Legislature (OAR 410-141-0520);

(C) Medical Social Worker Service;

(D) Registered dietician counseling or instruction;

(E) Drug and or Biological;

(F) Fetal non-stress testing;

(G) Respiratory therapist service;

(H) Flu shot;

(I) Psychiatric Nursing Service.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 682, f. 7-19-74, ef. 8-11-74; PWC 798, f. & ef. 6-1-76; PWC 854(Temp), f. 9-30-77, ef. 10-1-77 thru 1-28-78; Renumbered from 461-019-0420 by Chapter 784, Oregon Laws 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1983, f. 5-4-83, ef. 5-5-83; SSD 10-1990, f. 3-30-90, cert. ef. 4-1-90; HR 28-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 411-075-0010; HR 14-1992, f. & cert. ef. 6-1-92; HR 15-1995, f. & cert. ef. 8-1-95; OMAP 19-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 77-2003, f. & cert. ef. 10.1.03; DMAP 16-2007, f. 12-5-07, cert. ef. 1-1-08

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Rule Caption: January 2008 Revisions.
Adm. Order No.: DMAP 17-2007
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-129-0070, 410-129-0200
Subject: The Speech-language pathology, Audiology/Hearing Aid Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended OAR 410-129-0070 Limitations, to clarify that up to four speech therapy re-evaluations in a 12-month period are allowed; and 410-129-0200 Procedure Codes, to add procedure code S9152 Speech Therapy, re-evaluation that allows providers to bill for a speech re-evaluation with the correct procedure code. Text is amended to improve readability and take care of necessary "housekeeping" changes.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-129-0070
Limitations

(1) The rules contained in OAR 410-129-0010 — 410-129-0080 and 410-129-0220 also apply to services delivered by home health agencies and by hospital-based therapists in the outpatient setting. They do not apply to services provided to hospital inpatients. Billing and reimbursement for therapy services delivered by home health agencies and hospital outpatient departments is to be in accordance with Division of Medical Assistance Programs (DMAP) administrative rules.

(2) Speech Pathology:

(a) All speech pathology services will be performed by a licensed speech pathologist or a graduate student in training or a graduate speech pathologist in the Clinical Fellowship Year being supervised by a licensed speech pathologist. Only therapy and evaluation services rendered on-site are billable under the codes listed in the Speech-Language Pathology, Audiology and Hearing Aid Services administrative rules in chapter 410, division 129;

(b) Speech pathology therapy treatments may not exceed one hour per day, either group or individual. Treatment must be either group or individual, and cannot be combined in the authorization period;

(c) Therapy records must include:

(A) Documentation of each session;

(B) Therapy provided and amount of time spent; and

(C) Signature of the therapist;

(d) Documentation (progress notes, etc.) must be retained in the provider's records. All report and clinical notes by graduate students in training or graduate speech pathologists in the clinical fellowship year must be countersigned by the supervising licensed speech pathologist;

(e) Services of a graduate student in training or a graduate speech pathologist during the clinical fellowship year, under direct supervision of a licensed speech pathologist are reimbursable to the licensed supervisor under the following conditions:

(A) Supervision must occur on the same premises and the supervisor must be readily accessible to the resident performing the actual service;

(B) Strict supervision requirements adhering to the American Speech-Language-Hearing Association requirements must be followed, which includes a minimum amount of time the supervisor must be physically present during therapy and evaluation time. Therapy is 15 minutes per hour and evaluation time is 30 minutes per hour;

(C) Documentation of the supervisor must clearly indicate her/his level of involvement in the delivery of each service in order to assure quality of care to the client;

(D) Documentation by the graduate student in training or the Clinical Fellow must demonstrate to the satisfaction of the agency that services are medically appropriate in continuing the treatment plan for the client and the notation must be clear and legible.

(f) Covered services that do not require Payment Authorization (PA):

(A) Two evaluations of speech/language will be reimbursed in a 12-month period;

(B) Two evaluations for dysphagia will be reimbursed in a 12-month period;

(C) Up to four re-evaluations in a 12-month period;

(D) One evaluation for speech-generating/augmentative communication system or device will be reimbursed per recipient in a 12-month period;

(E) One evaluation for voice prosthesis or artificial larynx will be reimbursed in a 12-month period;

(F) Purchase, repair or modification of electrolarynx;

(G) Supplies for speech therapy will be reimbursed up to two times in a 12-month period, not to exceed $5.00 each;

(g) Services That Require Payment Authorization:

(A) All speech pathology therapy treatments;

(B) Speech-generating/augmentative communication system or device, purchase or rental. Rental of a speech-generating/augmentative communication system or device is limited to one month. All rental fees must be applied to the purchase price;

(C) Repair/modification of a speech-generating/augmentative communication system or device ;

(h) Services Not Covered:

(A) Services of a licensed speech pathologist while teaching or supervising students of speech pathology will not be reimbursed;

(B) Maintenance therapy is not reimbursable as described in OAR 410-129-0040.

(3) Audiology and Hearing Aid Services:

(a) All hearing services must be performed by licensed audiologists or hearing aid dealers;

(b) Reimbursement is limited to one (monaural) hearing aid every five years for adults who meet the following criteria: Loss of 45 decibel (dB) hearing level or greater in two or more of the following three frequencies: 1000, 2000, and 3000 Hertz (Hz) in the better ear;

(c) Adults who meet the criteria above and, in addition, have vision correctable to no better than 20/200 in the better eye, may be authorized for two hearing aids for safety purposes. A vision evaluation must be submitted with the prior authorization request;

(d) Two (binaural) hearing aids will be reimbursed no more frequently than every three years for children 19 years of age and under, who meet the following criteria:

(A) Pure tone average of 25dB for the frequencies of 500Hz, 1000Hz and 2000Hz; or

(B) High frequency average of 35dB for the frequencies of 3000Hz, 4000Hz and 6000Hz;

(e) An assistive listening device may be authorized for individuals aged 21 or over who are unable to wear, or who cannot benefit from, a hearing aid. An assistive listening device is defined as a simple amplification device designed to help the individual hear in a particular listening situation. It is restricted to a hand-held amplifier and headphones;

(f) Services that do not require payment authorization:

(A) One basic audiologic assessment in a 12-month period;

(B) One basic comprehensive audiometry (audiologic evaluation) — in a 12-month period;

(C) One hearing aid evaluation/tests/selection — in a 12-month period;

(D) One electroacoustic evaluation for hearing aid; monaural — in a 12-month period;

(E) One electroacoustic evaluation for hearing aid; binaural — in a 12-month period;

(F) Hearing aid batteries — maximum of 60 individual batteries in a 12- month period. Must meet the criteria for a hearing aid;

(g) Services that require payment authorization:

(A) Hearing aids;

(B) Repair of hearing aids, including ear mold replacement;

(C) Hearing aid dispensing and fitting fees;

(D) Assistive listening devices;

(E) Cochlear implant batteries.

(h) Services Not Covered:

(A) FM systems — vibro-tactile aids;

(B) Earplugs;

(C) Adjustment of hearing aids is included in the fitting and dispensing fee, and is not reimbursable separately;

(D) Aural rehabilitation therapy is included in the fitting and dispensing fee, and is not reimbursable separately;

(E) Tinnitis masker(s).

[ED. NOTE: Forms referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 27-1993, f. & cert. ef. 10-1-93; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-2001, f. 9-24-01, cert.e f. 10-1-01; OMAP 14-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 17-2007, f. 12-5-07, cert. ef. 1-1-08

410-129-0200
Speech-Language Pathology Procedure Codes

(1) Inclusion of a current procedural terminology (CPT) or healthcare common procedure coding system (HCPCS) code in the following tables does not imply a code is covered. Refer to OARs 410-141-0480, 410-141-0500, and 410-141-0520 for information on coverage.

(2) Speech Therapy Services codes: Table 129-0200-1.

(3) Other Speech Services codes: Table 129-0200-2.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 11-1992, f. & cert. ef. 4-1-92; HR 27-1993, f. & cert. ef. 10-1-93; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 6-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 20-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 10-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 12-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 14-2005, f. 3-11-05, cert. ef. 4-1-05; OMAP 18-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 17-2007, f. 12-5-07, cert. ef. 1-1-08

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Rule Caption: January 2008 Revisions.
Adm. Order No.: DMAP 18-2007
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-142-0020
Subject: The Hospice Services Program rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP is amended in 410-127-0020, Definitions, in order to be in compliance with federal regulations for state Medicaid hospice services. Text is revised to improve readability and make necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-142-0020
Definitions

(1) Accredited: The Hospice Program has received accreditation by the Oregon Hospice Association (OHA).

(2) Ancillary Staff: Staff who provides additional services to support or supplement hospice care.

(3) Assessment: Procedures by which strengths, weaknesses, problems, and needs are identified and addressed.

(4) Attending Physician: A physician who is a doctor of medicine or osteopathy and is identified by the client, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the client's medical care.

(5) Bereavement Counseling: Counseling services provided to the client's family after the client's death. Bereavement counseling is a required, non-reimbursable hospice service.

(6) 'Client-family unit' includes a client who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the client.

(7) Coordinated: When used in conjunction with the phrase "hospice program", means the integration of the interdisciplinary services provided by client-family care staff, other providers and volunteers directed toward meeting the hospice needs of the client.

(8) Coordinator: A registered nurse designated to coordinate and implement the care plan for each hospice client.

(9) Counseling: A relationship in which a person endeavors to help another understand and cope with problems as a part of the hospice plan of care.

(10) Curative: Medical intervention used to ameliorate the disease.

(11) Dying: The progressive failure of the body systems to retain normal functioning, thereby limiting the remaining life span.

(12) Family: The relatives and/or other significantly important persons who provide psychological, emotional, and spiritual support of the client. The "family" need not be blood relatives to be an integral part of the hospice care plan.

(13) Hospice: A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill clients, and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting standards for Medicare reimbursement; and Accreditation by the Oregon Hospice Association; or Accreditation by the Joint Commission on Accreditation of Healthcare Organizations as a program of hospice services.

(14) Hospice Continuity of Care: Services that are organized, coordinated and provided in a way that is responsive at all times to client/family needs, and which are structured to assure that the hospice is accountable for its care and services in all settings according to the hospice plan of care.

(15) Hospice Home Care: Formally organized services designed to provide and coordinate hospice interdisciplinary team services to client/family in the place of residence. The hospice will deliver at least 80 percent of the care in the place of residence.

(16) Hospice Philosophy: Hospice recognizes dying as part of the normal process of living and focuses on maintaining the quality of life. Hospice affirms life and neither hastens nor postpones death. Hospice exists in the hope and belief that through appropriate care and the promotion of a caring community sensitive to their needs, clients and their families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(17) Hospice Program: A coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a client-family unit experiencing a life threatening disease with a limited prognosis.

(18) Hospice Program Registry: A registry of all certified and accredited hospice programs maintained by the Oregon Hospice Association.

(19) Hospice Services: Items and services provided to a client/family unit by a hospice program or by other clients or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include acute, respite, home care, and bereavement services provided to meet the physical, psychosocial, spiritual and other special needs of the client/family unit during the final stages of illness, dying and the bereavement period.

(20) Illness: The condition of being sick, diseased or with injury.

(21) Interdisciplinary Team: A group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the client-family unit, the client's attending physician or clinician and one or more of the following hospice program personnel: Physician, nurse practitioner, nurse, nurse's aide, occupational therapist, physical therapist, trained lay volunteer, clergy or spiritual counselor, and credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker.

(22) Medical Director: The medical director must be a hospice employee who is a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of the hospice's client care program.

(23) Medicare Certification: Certification by the Oregon Health Division as a program of services eligible for reimbursement.

(24) Pain and Symptom Management: For the hospice program, the focus of intervention is to maximize the quality of the remaining life through the provision of palliative services that control pain and symptoms. Hospice programs recognize that when a client/family are faced with terminal illness, stress and concerns may arise in many aspects of their lives. Symptom management includes assessing and responding to the physical, emotional, social and spiritual needs of the client/family.

(25) Palliative Services: Comfort services of intervention that focus primarily on reduction or abatement of the physical, psychosocial and spiritual symptoms of terminal illness. Palliative Therapy:

(a) Active: Is treatment to prolong survival, arrest the growth or progression of disease. The person is willing to accept moderate side-effects and psychologically is fighting the disease. This person is not likely to be a client for hospice;

(b) Symptomatic: Is treatment for comfort, symptom control of the disease and improves the quality of life. The person is willing to accept minor side-effects and psychologically wants to live with the disease in comfort. This person would have requested and been admitted to a hospice.

(26) Period of Crisis: A period in which the client requires continuous care to achieve palliation or management of acute medical symptoms.

(27) Primary Caregiver: The person designated by the client or representative. This person may be family, a client who has personal significance to the client but no blood or legal relationship (e.g., significant other), such as a neighbor, friend or other person. The primary caregiver assumes responsibility for care of the client as needed. If the client has no designated primary caregiver the hospice may, according to client program policy, make an effort to designate a primary caregiver.

(28) Prognosis: The amount of time set for the prediction of a probable outcome of a disease.

(29) Representative: An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill client who is mentally or physically incapacitated.

(30) Terminal Illness: An illness or injury which is forecast to result in the death of the client, for which treatment directed toward cure is no longer believed appropriate or effective.

(31) Terminally Ill means that the client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(32) Volunteer: An individual who agrees to provide services to a hospice program without monetary compensation.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 409.010
Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 34-2000, f. 9-29-00, cert. ef. 10-1-00; DMAP 18-2007, f. 12-5-07, cert. ef. 1-1-08

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Rule Caption: Clarify policies, including enrollment, covered services and encounter rate determination.
Adm. Order No.: DMAP 19-2007
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-146-0000, 410-146-0020, 410-146-0021, 410-146-0040, 410-146-0060, 410-146-0075, 410-146-0080, 410-146-0100, 410-146-0120, 410-146-0130, 410-146-0140, 410-146-0160, 410-146-0200, 410-146-0220, 410-146-0240, 410-146-0340, 410-146-0380, 410-146-0440, 410-146-0460
Rules Repealed: 410-146-0025, 410-146-0180, 410-146-0400, 410-146-0420
Rules Ren. & Amend: 410-146-0080 to 410-146-0085, 410-146-0080 to 410-146-0086
Subject: The American Indian/Alaska Native (AI/AN) Services Program administrative rules govern DMAP payments for services to certain clients. DMAP revised, repealed and renumbered the rules listed above for the following: to ensure current policies and procedures for AI/AN providers are clear and that Oregon Administrative Rules (OARs) are not open to interpretation by the provider or outside parties; to ensure providers are aware of and can be compliant with DMAP policy direction and program requirements; to allow DMAP to enforce program requirements if a provider is out of compliance; to facilitate providers' compliance with enrollment, payment methodology, service coverage and limitations, clinic reporting and billing requirements; and to remove and reference information found in other DMAP rules. Other OAR references are included to aide the provider in locating information. Text is revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-146-0000
Foreword

(1) The Division of Medical Assistance Programs (DMAP) American Indian/Alaska Native (AI/AN) Oregon Administrative Rules are designed to assist the following providers to prepare claims for services provided to clients with Medical Assistance Program coverage:

(a) Indian Health Service (IHS) facilities; and

(b) Tribal 638 facilities, defined as Tribally–operated health care clinics owned or operated by a Tribe or Tribal organization with funding authorized by Title I or Title V of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended), and recognized by the Centers for Medicare and Medicaid Services (CMS) under the 1996 Memorandum of Agreement (MOA);

(2) Health care facilities not designated an IHS or Tribal 638 facility should refer to Oregon Health Plan (OHP) General Rules (OAR 410 Division 120) and other applicable program-specific rules to enroll and operate as any other provider type recognized under the state plan.

(3) CMS does not recognize Urban Indian Health Program (UIHP) clinics as eligible for reimbursement of services under the MOA. UIHP Clinics should refer to:

(a) Federally Qualified Health Centers (FQHC) and Rural Health Clinics administrative Rules (OAR 410 Division 147) to enroll as a FQHC if the clinic is an urban Indian organization under the Indian Health Care Improvement Act, Public Law 94-437; or

(b) OHP General Rules (OAR 410 Division 120) and other applicable program-specific rules to enroll and operate as any other provider type recognized under the state plan.

(4) The AI/AN administrative rules include important information about general program policy, provider enrollment, maintenance of financial records, special programs, and billing. Unless specifically directed by the AI/AN rules, do not use other DMAP administrative rules to determine appropriate action..

(5) AI/AN DMAP-enrolled providers must use the OHP General Rules (OAR 410 Division 120) and the OHP Administrative Rules (OAR 410 Division 141) as directed in the AI/AN rules and in conjunction with applicable program-specific rules including the AI/AN administrative rules.

(6) The Health Services Commission's Prioritized List of Health Services defines Medicaid-covered services under DMAP. For more information, refer to the OHP Administrative Rules (OAR 410-141-0520).

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0020
Memorandum of Agreement (MOA), AI/AN Reimbursement Methodology

(1) In 1996, a Memorandum of Agreement (MOA) between the Health Care Financing Administration (HCFA, now called the Centers for Medicare and Medicaid Services, or CMS) and the Indian Health Service (IHS) established the roles and responsibilities of CMS and IHS regarding AI/AN individuals. The MOA addresses payment for Medicaid services provided to AI/AN individuals on and after July 11, 1996, through health

care facilities owned and operated by AI/AN tribes and tribal organizations, which are funded through Title I or V of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended).

(2) The IHS and CMS, pursuant to an agreement with the Office of Management and Budget (OMB), developed an all-inclusive rate to be used for billing directly to and reimbursement by Medicaid. This rate is sometimes referred to as the "OMB," "IHS," "All-Inclusive" (AIR), "encounter," or "MOA" rate and is referenced throughout these rules as the "IHS rate." The IHS rate is updated and published in the Federal Register each fall:

(a) The rate is retroactive to the first of the year;

(b) DMAP automatically processes a retroactive billing adjustment each year to ensure payment of the updated rate.

(3) IHS direct health care service facilities, established, operated, and funded by IHS; enroll as an AI/AN provider and receive the IHS rate.

(4) Under the MOA, tribal 638 health care facilities can choose to be designated a certain type of provider or facility for enrollment with DMAP. The designation determines how DMAP pays for the Medicaid services provided by that provider or facility. Under the MOA, a tribal 638 health care facility may do one of the following:

(a) Operate as a Tribal 638 health care facility. The health center would enroll as AI/AN provider and choose reimbursement for services at either:

(A) The IHS rate; or (B) A cost-based rate according to the Prospective Payment System (PPS). Refer to OARs 410-147-0360 Encounter Rate Determinations, 410-147-0440 Medicare Economic Index (MEI), 410-147-0480 Cost Statement (OMAP 3027) Instructions, and 410-147-0500 Total Encounters for Cost Reports; or

(b) If it so qualifies, operate as any other provider type recognized under the State Plan, and receive that respective reimbursement methodology.

(5) AI/AN and Federally Qualified Health Center (FQHC) providers may be eligible to receive the supplemental/wraparound payment for services furnished to clients enrolled with a Prepaid Health Plan (PHP). Refer to AI/AN OAR 410-146-0420 and FQHC/Rural Health Clinic (RHC) administrative rules OAR 410 Division 147.

(6) AI/AN providers may be eligible for an Administrative Match contract with DMAP. AI/AN providers are not eligible to participate in the Medicaid Administrative Claiming (MAC) Program if they:

(a) Receive reimbursement for services according to the cost-based PPS rate methodology; or

(b) Receive financial compensation for Outstationed Outreach Worker activities.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0021
American Indian/Alaska Native (AI/AN) Provider Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (DMAP) requirements for IHS and Tribal 638 clinics to enroll as AI/AN providers. Refer also to OAR 410-120-1260 Provider Enrollment.

(2) An IHS or Tribal 638 clinic that operates a retail pharmacy, provides durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. Refer to OAR 410 Division 121, Pharmaceutical; OAR 410 Division 122, DMEPOS; and OAR 410 Division 138, TCM for specific information.

(3) To enroll with DMAP as an AI/AN provider, a health center must be one of the following:

(a) A Indian Health Service (IHS) direct health care services facility established, operated, and funded by IHS; or

(b) A Tribally-owned and operated facility funded by Title I or V of the Indian Self Determination and Education Assistance Act (Public Law 93-638, as amended) and is referenced throughout these rules as a "Tribal 638" provider;

(A) A Tribal 638 facility that under Self-Determination, contracts with IHS under Title I to have the administrative control, operation, and funding for health programs transferred to AI/AN tribal governments;

(B) A Tribal 638 facility that under Self-Determination has a compact with IHS under Title V and assumes autonomy for the provision of the tribe's own health care services.

(4) Eligible IHS and Tribal 638 providers who want to enroll with DMAP as an AI/AN provider must submit the following information:

(a) Completed DMAP Provider Application Form 3117 for an Agency;

(b) A Tribal facility must submit documentation verifying they are a 638 provider:

(A) A letter from IHS, applicable-Area Office or Central Office, indicating that the facility (identified by name and address) is a 638 facility;

(B) A written assurance from the Tribe that the facility (identified by name and site address) is owned or operated by the Tribe or a Tribal organization with funding directly obtained under a 638 contract or compact. A copy of the relevant provision of the Tribe's current 638 contract or compact must accompany the written assurance;

(c) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker or psychiatric nurse practitioner is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; OAR 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032- 1080, Standards for Community Treatment Services for Children; and 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(d) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(e) A list of all Prepaid Health Plan (PHP) contracts;

(f) A list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the IHS or Tribal 638 Facility; and

(g) A list of all clinics affiliated or owned by the IHS or Tribal 638 Facility.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch.7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0040
ICD-9-CM Diagnosis Codes and CPT/HCPCs Procedure Codes

(1) The Division of Medical Assistance Program (DMAP) requires diagnosis codes on all claims, including those submitted by independent laboratories and portable radiology, including nuclear medicine and diagnostic ultrasound providers. A clinic must always provide the client's diagnosis to ancillary service providers when prescribing services, equipment, and supplies.

(2) The appropriate code or codes from 001.0 through V82.9 must be used to identify:

(a) Diagnoses;

(b) Symptoms;

(c) Conditions;

(d) Problems;

(e) Complaints; or

(f) Other reasons for the encounter/visit.

(3) Clinics must list the principal diagnosis in the first position on the claim. Use the principal diagnosis code for the diagnosis, condition, problem, or other reason for an encounter/visit shown in the medical record to be chiefly responsible for the services provided. Clinics may list up to three additional diagnosis codes on the claim for documented conditions that coexist at the time of the encounter/visit and require or affect client care, treatment, or management.

(4) Clinics must list the diagnosis codes using the highest degree of specificity available in the ICD-9-CM. Use a three-digit code only if the diagnosis code is not further subdivided. Whenever fourth-digit or fifth-digit subcategories are provided, the provider must report the diagnosis at that specificity. DMAP considers a diagnosis code invalid if it has not been coded to its highest specificity.

(5) DMAP requires providers to use the standardized code sets required by the Health Insurance Portability and Accountability Act (HIPAA) and adopted by the Centers for Medicare and Medicaid Services (CMS). Unless otherwise directed in rule, providers must accurately code claims according to the national standards in effect for calendar years 2007 and 2008 for the date the service(s) was provided.

(a) For dental services, use codes on Dental Procedures and Nomenclature as maintained and distributed by the American Dental Association;

(b) For health care services, use Health Care Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) codes. These services include, but are not limited to, the following:

(A) Physician services;

(B) Physical and occupational therapy services;

(C) Radiology procedures;

(D) Clinical laboratory tests;

(E) Other medical diagnostic procedures;

(F) Hearing and vision services.

(6) DMAP maintains unique coding and claim submission requirements for Administrative Exams and Death With Dignity services. Refer to OAR 410 Division 150, Administrative Examination and Billing Services, and OAR 410- 130-0670, Death with Dignity Services for specific requirements.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0060
Prior Authorization

(1) Prior authorization (PA) is not required for covered services provided by AI/AN providers to DMAP clients, with the exception of pharmacy services and hospital dentistry. Refer to OAR 410-146-0200 Pharmacy, OAR 410 Division 121 Pharmaceutical Services and OAR 410 Division 125, Hospital Services.

(2) Most Oregon Health Plan (OHP) clients have prepaid health services, contracted for by the Department of Human Services (DHS) through enrollment in a Prepaid Health Plan (PHP). The current month's Medical Care Identification specifies the client's status.

(3) An OHP client who is a Native American or Alaska Native (AI/AN) with Proof of Indian Heritage is exempt from mandatory enrollment in a PHP, and can request disenrollment from a PHP if mandatorily enrolled. An AI/AN OHP client can choose to remain in the Medicaid fee-for-service (FFS) delivery system for physical, dental and/or mental (including alcohol and chemical dependency) health care and receive services from an Indian Health Service facility, tribal health clinic/program or urban clinic. Refer to OAR 410-141-0060(4)(d).

(4) If a client is enrolled in a PHP there may be PA requirements for some services that are provided through the PHP. It is the AI/AN providers' responsibility to, prior to providing services to any:

(a) Non-AI/AN OHP client enrolled in a PHP and with whom the AI/AN provider has a contract, to comply with the PHP's PA requirements or other policies necessary for reimbursement from the PHP. The AI/AN provider needs to contact the client's PHP for specific instructions;

(b) AI/AN OHP client enrolled in a PHP with whom the AI/AN provider does not have a contract, to comply with PA requirements in these rules, the General Rules and applicable DMAP program rules.

(5) If a client receives services on FFS basis or is an AI/AN PHP-enrolled client with whom the AI/AN provider does not have a contract and plans to bill DMAP directly FFS, a PA may be required from DMAP for certain services. An AI/AN provider assumes full financial risk in providing services to a client prior to receiving authorization, or in providing services that are not in compliance with Oregon Administrative Rules (OARs). Some covered services or items require authorization by DMAP before the service can be provided or before payment will be made. See OAR 410-120-1320 Authorization of Payment.

(6) If the service or item is subject to Prior Authorization, the AI/AN provider must follow and comply with PA requirements in these rules, the General Rules and applicable program rules, including but not limited to:

(a) The service is adequately documented (see OAR 410-120-1360, Requirements for Financial, Clinical and Other Records). Providers must maintain documentation in the provider's files to adequately determine the type, medical appropriateness, or quantity of services provided;

(b) The services provided are consistent with the information submitted when authorization was requested;

(c) The services billed are consistent with the services provided; and

(d) The services are provided within the timeframe specified on the authorization of payment document.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0075
Client Copayments

(1) American Indian/Alaska Native (AI/AN) clients who are members of a Federally recognized Indian Tribe or Tribal Organization and receive Medicaid-covered services rendered through an AI/AN provider or an Urban Tribal Health Clinic are exempt from copayments. Refer to OAR 410-120-1230 Client Copayment.

(2) AI/AN Providers may not charge copayments to eligible non-AI/AN Division of Medical Assistance Program (DMAP) clients receiving care at their facility.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 89-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0080
Professional Ambulatory Services

(1) Professional Ambulatory services for AI/AN providers include Medical, Diagnostic, Screening, Dental, Vision, Physical Therapy, Occupational Therapy, Podiatry, Mental Health, Alcohol and Chemical Dependency, Maternity Case Management, Speech, Hearing, and Home Health services.

(2) Providers must use the following guidelines in conjunction with all individual program-specific DMAP administrative rules to determine service coverage and limitations for Oregon Health Plan (OHP) clients according to their benefit packages:

(a) American Indian/Alaska Native (AI/AN) Services administrative rules (OAR 410 Division 146),

(b) General Rules (OAR 410 Division 120);

(c) OHP Administrative Rules (OARs 410-141-0480, 410-141-0500, and 410-141-0520), and

(d) The Health Services Commission's (HSC) Prioritized List of Health Services (List).

(3) IHS and Tribal 638 facilities are eligible for reimbursement of covered professional services provided within the scope of the clinic and within the individual practitioner's scope of license or certification. See also AI/AN OAR 410-146-0085(8).

(4) Clinics cannot bill DMAP for specific services that do not meet the criteria of a valid encounter when furnished as a stand-alone service. Services include, but are not limited to, the following:

(a) Case management services for coordinating medical care for a client;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported employment, or skills training and activity therapy to promote community integration and job readiness as stand-alone services; and

(d) Services where the client is not present.

(5) The date of service determines the appropriate version of the AI/AN Services Rules, General Rules, and the HSC Prioritized List that AI/AN providers should use to determine coverage.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0085
DMAP Encounter and Recognized Practitioners

(1) AI/AN DMAP-enrolled providers will bill encounters to the Division of Medical Assistance Programs (DMAP) and must meet the definition in Sections (4) and (5) of this rule and are limited to DMAP Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act.

(2) AI/AN providers reimbursed according to a cost-based rate under the Prospective Payment System (PPS) are directed to Oregon Administrative Rule (OAR) 410-147-0120 DMAP Encounter and Recognized Practitioners.

(3) AI/AN providers reimbursed according to the IHS rate are subject to the requirements of this rule.

(4) For the provision of services defined in Titles XIX and XXI, and provided through an IHS or Tribal 638 facility, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. An encounter includes all services, items and supplies provided to a client during the course of an office visit except as excluded in Section (13) of this rule. Section (5) of this rule outlines limitations for telephone contacts that qualify as encounters.

(5) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and 410-130-0190, Tobacco Cessation. See also OAR 410-120-1200(2)(y). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(6) Encounters with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. For exceptions to this rule, refer to OAR 410-146-0086 for reporting multiple encounters.

(7) Refer to Table 146-0085-1 for a list of procedure codes used to report encounters when billing DMAP directly. DMAP will reimburse an AI/AN provider at the IHS all-inclusive encounter rate for the following services when billed as an encounter and include any related medical supplies provided during the course of the encounter. (Refer to individual program administrative rules for service limitations.):

(a) Medical (OAR 410 Division 130);

(b) Diagnostic: DMAP covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, DMAP will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-146-0140);

(d) Dental — Refer to OAR 410-146-0380, Table 146-0085-1, and OAR 410 Division 123;

(e) Vision (OAR 410 Division 140);

(f) Physical Therapy (OAR 410 Division 131);

(g) Occupational Therapy (OAR 410 Division 131);

(h) Podiatry (OAR 410 Division 130);

(i) Mental Health (OAR 309 Division 16);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 415 Divisions 50 and 51). Requires a letter or licensure of approval by the Addictions and Mental Health Division (AMH). Refer to OAR 410-146-0021 (4)(c) and (d);

(k) Maternity Case Management (OAR 410-146-0120);

(l) Speech (OAR 410 Division 129);

(m) Hearing (OAR 410 Division 129);

(n) DMAP considers a home visit for assessment, diagnosis, treatment or Maternity Case Management (MCM) as an encounter. DMAP does not consider home visits for MCM as Home Health Services;

(o) Professional services provided in a hospital setting;

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and DMAP Administrative Rules.

(8) The following practitioners are recognized by DMAP:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Nurse Practitioners;

(d) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by DMAP in this section and who is authorized to independently diagnose and treat according to OAR 851 Division 45);

(e) Nurse Midwives;

(f) Dentists;

(g) Dental Hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. See the section on Limited Access Permits, ORS 680.200 and OAR 818-035- 0065 through 818-035-0100 for more information;

(h) Pharmacists;

(i) Psychiatrists;

(j) Licensed Clinical Social Workers;

(k) Clinical psychologists;

(l) Acupuncturists (refer to OAR 410 Division 130 for service coverage and limitations); and

(m) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(i) Their individual provider's certification or license; or

(ii) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-146-0021 sections (4)(c) and (d).

(9) The clinic must not bill for drugs or medication treatments provided during a clinic visit since they are part of the IHS encounter rate. For example, a hypertensive drug or drug sample dispensed by a clinic to treat a client with high blood pressure during an office visit is included in the all-inclusive IHS encounter rate.

(10) DMAP considers medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace) used during an office visit to be part of the cost of an encounter. Clinics cannot bill these items separately as fee-for-service charges;

(11) Clinics cannot bill case management services for coordinating medical care for a client separately as fee-for-service since such services are included in the cost of an encounter. See also OAR 410-146-0080, Professional Services.

(12) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound AI/AN clients residing on tribal land and any other ambulatory services covered by DMAP are also reimbursable as permitted within the clinic's scope of services (see OAR 410-146-0080).

(13) DMAP excludes the following from the definition of an IHS or Tribal 638 encounter:

(a) Laboratory and/or radiology services as stand alone services are not considered a valid clinic encounter. These services are eligible for reimbursement fee-for-service according to the physician fee schedule and outside the IHS encounter rate;

(b) Clinics cannot bill separately for venipuncture for lab tests. Venipuncture is inclusive of the originating encounter;

(c) Durable medical equipment or medical supplies (e.g. diabetic supplies) not generally provided during the course of a clinic visit.

(d) Pharmaceutical or biologicals not generally provided during the clinic visit. For example, sample medications are part of the encounter but dispensing a prescription is billed separately under the fee-for-service pharmacy program. Clinics cannot bill DMAP or the PHP for samples provided at no cost to the clinic. Prescriptions are not included in the encounter rate and qualified enrolled pharmacy providers must bill DMAP through the pharmacy. Refer to OAR 410 Division 121, Pharmaceutical Services Program Rulebook for specific information;

(e) Administrative medical examinations and report services (See OAR 410 Division 150);

(f) Death with Dignity services (See OAR 410-130-0670);

(g) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) clients. (See OAR 410-120-1210, 461-135-1070 and 410-130-0240);

(h) Services provided to Qualified Medicare Beneficiary (QMB) only clients. Refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System. Specific billing information is located in the AI/AN Services Supplemental Information billing guide;

(i) Targeted Case Management (TCM) services (See OAR 410 Division 138); and

(j) Other services not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act.

(14) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing DMAP. For the purposes of this rule "reasonable efforts" include, but are not limited to:

(a) Asking the client if they have coverage from Medicare, private insurance or another resource;

(b) Using an insurance database such as Electronic Eligibility Verification Services (EEVS) available to the Provider; or

(c) Verifying the client's insurance coverage through the Automated Information System (AIS) or the Medical Care Identification on each date of service and at the time of billing.

(15) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown

as a credit on the claim in the appropriate field. See OARs 410-120-1280 Billing and 410-120-1340 Payment.

(16) Codes for encounters: Due to the unique billing and payment methodology, and implementation of the Health Insurance Portability and Accountability Act (HIPAA), DMAP selected specific CPT and HCPCS codes for IHS and Tribal 638 providers to reportencounters. Providers must bill DMAP with the procedure codes listed in **Table 146-0085-1** for AI/AN services eligible for reimbursement at the IHS encounter rate. This does not apply to ICD-9-CM diagnosis coding. Bill DMAP with the procedure codes indicated in each service category for services included in the AI/AN encounter rate. For services that are not included in the IHS encounter rate, refer to the appropriate DMAP provider rules for billing instructions.

(17) It is the HSC's intent to cover reasonable diagnostic services to determine diagnoses on the HSC Prioritized List, regardless of their placement on the HSC List. See also Section (7)(b) of this rule.

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

Stat. Auth.: 409.050, 404.110, 414.065

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; Renumbered from 410-146-0080, DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0086
Multiple Encounters

(1) An encounter is defined in OAR 410-146-0085.

(2) The following services may be considered as multiple encounters when two or more service encounters are provided on the same date of service with distinctly different diagnoses (Refer to OAR 410-146-0085 and individual program rules listed below for specific service requirements and limitations):

(a) Medical (Section (4) of this rule, and OAR 410 Division 130);

(b) Dental (OAR 410-146-0380, **Table 146-0085-1**, and 410 Division 123);

(c) Mental Health (OAR 309 Division 016). If a client is also seen for a medical office visit and receives a mental health diagnosis, then providers must report only one encounter;

(d) Addiction, Alcohol and Chemical Dependency (OAR 415 Divisions 50 and 51). If a client is also seen for a medical office visit and receives an addiction diagnosis, then providers must report only one encounter;

(e) Ophthalmology - fitting and dispensing of eyeglasses are included in the encounter when the practitioner performs a vision examination. (OAR 410 Division 140);

(f) Maternity Case Management MCM (OAR 410-146-0120);

(g) Physical or occupational therapy (PT/OT) — If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter (OAR 410 Division 131); and

(h) Immunizations — if no other medical office visit occurs on the same date of service.

(3) Division of Medical Assistance Programs (DMAP) expects that multiple encounters will occur on an infrequent basis.

(4) Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and that share the same or like diagnoses constitute a single encounter, except when one of the following conditions exist:

(a) After the first Medical service encounter, the patient suffers a distinctly different illness or injury requiring additional diagnosis or treatment. More than one office visit with a medical professional within a 24-hour period and receiving distinctly different diagnoses may be reported as two encounters. This does not imply that if a client is seen at a single office visit with multiple problems that the provider can bill for multiple encounters;

(b) The patient has two or more encounters as described in Section (2) of this rule.

(5) A mental health encounter and an addiction and alcohol and chemical dependency encounter provided to the same client on the same date of service will only count as multiple encounters when provided by two separate health professionals and each encounter has a distinctly different diagnosis.

(6) Similar services, even when provided by two different health care practitioners is considered a single encounter, and not multiple encounters. Services that would not be considered multiple encounters provided on the same date of service include, but are not limited to:

(a) A well child check and an immunization;

(b) A well child check and fluoride varnish application in a medical setting;

(c) A mental health and addiction encounter with similar diagnoses;

(d) A prenatal visit and a delivery procedure;

(e) A cesarean delivery and surgical assist; and

(f) Any time a client receives only a partial service with one provider and partial service from another provider.

(7) A clinic may not develop clinic procedures that routinely involve multiple encounters for a single date of service.

(8) Clinics may not "unbundle" services that are normally rendered during a single visit for the purpose of generating multiple encounters:

(a) Clinics are prohibited from asking the patient to make repeated or multiple visits to complete what is considered a reasonable and typical office visit, unless it is medically necessary to do so;

(b) Medical necessity must be clearly documented in the patient's record.

Stat. Auth.: 409.050, 404.110, 414.065

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; Renumbered from 410-146-0080, DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0100
Vaccines for Children (VFC)

(1) The Vaccines for Children (VFC) program supplies federally purchased free vaccines for immunizing eligible clients ages 0 through 18 at no cost to participating health care providers. For more information on how to enroll in the VFC program, contact the Department of Human Services Immunization Program. Refer to the AI/AN Supplemental Information for instructions.

(2) The Division of Medical Assistance Programs (DMAP) will reimburse for the administration of vaccines to eligible clients according to the AI/AN provider's IHS or cost-based rate. These services are billed on a CMS-1500 or 837P using diagnoses that meet national coding standards and the appropriate encounter code in **Table 146-0085-1**..

(3) Costs associated with vaccines are included in an AI/AN provider's encounter rate. Do not bill vaccine costs separately to DMAP. AI/AN providers reimbursed a cost-based rate are directed to OAR 410-146-0200(1)(a).

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

Stat. Auth.: 409.050, 404.110, 414.065

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0120
Maternity Case Management Services

(1) The Division of Medical Assistance Programs (DMAP) will reimburse American Indian/Alaska Native (AI/AN) providers for Maternity Case Management (MCM) services according to their encounter rate. Refer to OAR 410-146-0085 Professional Services and Table 146-0085-1.

(2) MCM service is optional coverage for Prepaid Health Plans (PHPs). Before providing MCM services to client enrolled in an PHP, determine if the PHP covers MCM services:

(a) If the PHP does not cover MCM services, the provider can bill DMAP directly per the clinic's encounter rate. Prior authorization is not required if the PHP does not provide coverage for MCM services;

(b) If the PHP does cover MCM services, and services were furnished to a:

(A) Non-AI/AN client, the provider needs to request the necessary authorizations from the PHP;

(B) AI/AN client enrolled with a PHP with which the AI/AN provider does not have an agreement, the AI/AN provider can bill DMAP directly.

(3) Clients records' must clearly document all MCM services provided including all mandatory topics. Refer to Medical/Surgical OAR 410-130-0595 Maternity Case Management (MCM) for specific requirements.

(4) The primary purpose of the MCM program is to optimize pregnancy outcomes including the reduction of low birth weight babies. MCM services are intended to target pregnant women early during the prenatal period and can only be initiated when the client is pregnant.

(a) MCM services cannot be initiated the day of delivery, during postpartum or for newborn evaluation;

(b) Clients are not eligible for MCM services if the provider has not completed the MCM initial evaluation prior to the day of delivery;

(c) No other MCM service can be performed until an initial assessment has been completed.

(5) Multiple MCM encounters in a single day cannot be billed as multiple encounters.

(6) A medical encounter and an MCM encounter can occur on the same day only under the following two circumstances:

(a) The practitioner can bill a prenatal visit and a MCM service on the same day as separate encounters only if the MCM service is the initial evaluation visit;

(b) After the initial evaluation visit, the practitioner can bill the nutritional counseling MCM service if provided on the same day as a prenatal visit as two separate encounters. See Section (7)(c) of this rule for limitations.

(7) MCM Services limitations:

(a) DMAP reimburses the initial evaluation one time per pregnancy per provider;

(b) Providers may bill DMAP for case management visits four times per pregnancy. In addition, if a client is identified as high risk; the practitioner may bill six additional case management visits;

(c) DMAP reimburses Nutritional Counseling one time per pregnancy if a client meets the criteria in OAR 410-130-0595(14); and

(d) DMAP reimburses a Home/Environmental Assessment one time per pregnancy, and is included in the total number of case management visits in Section (7)(b) of this rule.

(8) A client may only participate in a single case management program. DMAP does not allow multiple case management billings. This includes Maternity Case Management (MCM), and any Targeted Case Management (TCM) Program outlined in OAR 410 division 138.

(9) Community Health Representatives (CHR) may be eligible to provide specific MCM services, with the exclusion of the initial assessment (G9001), while working under the supervision of a licensed health care practitioner listed in OAR 410-130-0595 (6)(a). Refer to 410-130-0595(6)(c).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0130
Modifiers

(1) The Division of Medical Assistance Programs (DMAP) uses HIPAA compliant modifiers for many services. The modifiers listed in the American Indian/Alaska Native (AI/AN) rules represent those that are required.

(2) For a list of all required modifiers refer to OAR 410-146-0080, **Table 146-0085-1** American Indian/Alaska Native (AI/AN) Tribal Program Encounter Codes & Modifiers.

(3) When billing for services that are reimbursed outside an AI/AN provider's cost-based or IHS rate, a clinic must use the required modifier(s) listed in the individual program-specific Administrative Rules.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0140
Tobacco Cessation

(1) The Division of Medical Assistance Programs (DMAP) will reimburse AI/AN providers for tobacco cessation services at the AI/AN provider's IHS or cost-based rate.

(2) AI/AN providers will bill services with procedure codes G9016 for tobacco cessation counseling and S9075 for tobacco cessation treatment, with diagnosis code 305.1 (Tobacco Use Disorder). Refer to **Table 146-0085-1**.

(3) Refer to OAR 410-130-0190, Tobacco Cessation for specific requirements and treatment limitations.

(4) Providers may not report Tobacco Cessation, a specific DMAP prevention program, as a separate encounter when a medical, dental, mental health or addiction service encounter occurs on the same date of service.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0160
Administrative Medical Examinations and Reports

(1) The Division of Medical Assistance Programs (DMAP) does not reimburse Administrative Medical Examinations and Reports at an AI/AN provider's IHS encounter rate. Administrative medical examinations and reports are not eligible under the Memorandum of Agreement (MOA). DMAP reimburses providers for Administrative Examinations and Reports on a fee-for-service basis outside the IHS or cost-based encounter rate.

(2) AI/AN Health Care Facilities can be reimbursed for administrative medical examinations and reports when requested by a DHS branch office, or approved by DMAP. The branch office may request an Administrative Medical Examination/Report Authorization (DMAP 729) to establish client eligibility for an assistance program or casework planning.

(3) Refer to OAR 410 division 150, Administrative Examination and Report Billing Services, for specific requirements. See Administrative Exams Supplemental Information guide for more detailed information on procedure codes and descriptions.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0200
Pharmacy

(1) The Division of Medical Assistance Programs (DMAP) excludes pharmaceutical or biologicals not generally provided during a clinic visit from the definition of an encounter:

(a) Providers cannot bill separately for drugs or medication treatments dispensed by a clinic to treat a client during an office visit since they are inclusive of the encounter rate for the office visit;

(b) Pharmacy services are not eligible under the Memorandum of Agreement (MOA) for reimbursement at the IHS or a cost-based encounter rate. Prescriptions are not included in the encounter rate and a qualified enrolled pharmacy must bill DMAP through the pharmacy program.

(2) AI/AN providers may directly bill DMAP only for contraceptive supplies and contraceptive medications outside of the pharmacy program:

(a) AI/AN providers must bill the Prepaid Health Plan (PHP) first for clients enrolled in a PHP. If the PHP will not reimburse for the contraceptive supply or contraceptive medication, then the clinic can bill DMAP fee-for-service at the clinic's acquisition cost. See also OAR 410-130-0585, Family Planning Services;

(b) AI/AN providers can directly bill DMAP fee-for-service at the clinic's acquisition cost for contraceptive supplies and contraceptive medications dispensed by a clinic to a non-PHP-enrolled client. See also OAR 410-130-0585, Family Planning Services.

(3) Refer to OAR 410 Division 121, Pharmaceutical Services Program Rulebook for specific information.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0220
Death With Dignity

(1) Death With Dignity is a covered service, except for those facilities limited by the Assisted Suicide Funding Restriction Act of 1997 (ASFRA), and is incorporated in the "comfort care" condition/treatment line on the Health Services Commission's Prioritized List of Health Services.

(2) All Death With Dignity services must be billed directly to the Division of Medical Assistance Programs (DMAP), even if the client is in a prepaid health plan. Death With Dignity services are not part of the AI/AN encounter rate.

(3) Follow criteria outlined in OAR 410-130-0670.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 22-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 28-1999, f. & cert. ef. 6-4-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0240
Transportation

(1) The Division of Medical Assistance Programs (DMAP) may reimburse American Indian/Alaska Native (AI/AN) providers for medically appropriate transportation services to Oregon Health Plan (OHP) AI/AN clients who receive medical services through an AI/AN provider. (Refer to OAR 410 division 136, Medical Transportation).

(2) Federal regulations in 42 CFR 431.53 require the State to ensure necessary transportation for Medicaid recipients to and from providers. The AI/AN provider must ensure that:

(a) The service to be provided is the most cost-effective method that meets the medical needs of the client; and

(b) The service to be provided at the point of origin and/or destination is a DMAP Medicaid-covered service according to a client's Oregon Health Plan (OHP) benefit package.

(c) In addition, AI/AN OHP clients may be transported to the nearest Tribal Health facility, and are not restricted to the nearest (non-tribal) facility able to meet the client's medical needs.

(3) AI/AN providers do not need to enroll separately as a transportation provider if they furnish either sedan car or wheelchair van transportation. As used in this rule transportation services by AI/AN providers are defined as follows:

(a) Sedan car transport: Transportation provided by a 4-door sedan or mini-van motor vehicle having a seating capacity of not less than 4 and not more than 7 passengers;

(b) Wheelchair van transport: Transportation provided by a wheelchair lift equipped vehicle for a client who uses a wheelchair. Transportation is generally a "door to door" service. At times, an individual being transported must be picked up inside their residence and taken inside their destination (escort by the driver);

(4) DMAP reimburses transportation services fee-for-service, and outside of the IHS encounter rate, when the AI/AN provider meets the following conditions:

(a) The AI/AN provider owns or leases the sedan car of wheelchair van; and

(b) The individual providing the service is an employee of the AI/AN provider.

(5) Under the following conditions, an AI/AN provider is required to separately enroll with DMAP as a provider of medical transportation services:

(a) The AI/AN provider serves all clients as a whole, and does not limit services to the AI/AN community (e.g. Native American clients);

(b) The AI/AN provider owns and operates a taxi service; or

(c) The AI/AN provider owns and operates an ambulance service.

(6) DMAP will reimburse for medically appropriate transportation services according to the approved rate or schedule of maximum allowances for:

(a) Sedan Car, Wheelchair Van:

(A) Base Rate;

(B) Mileage;

(C) Base Rate — each additional client;

(D) Extra Attendant.

(7) Non-emergency ambulance, air ambulance, commercial air, bus, or train requires advance arrangement and prior authorization (PA) through the local Seniors and People with Disabilities Division (SPD) or Children, Adults and Families (CAF) branch office.

(8) For all claims submitted to DMAP, the provider records must contain completed documentation (pertinent to the service provided) that includes but is not limited to:

(a) Trip information including:

(A) Date of service;

(B) If one way, round trip, or three-way and if transportation needs are ongoing;

(C) Point of origin, e.g., client address, Nursing Home name and address, etc.;

(D) Number of actual patient miles traveled; and

(E) Destination point, e.g., hospital name, doctor name, address, etc.;

(b) Client information including:

(A) Client Name;

(B) ID Number; and

(C) Medical assistance needs (e.g. for example, requires wheelchair, walker, cane, needs assistance, requires portable oxygen, etc.); and

(c) Justification for extra attendant beyond one if wheelchair van;

(9) All required documentation must be retained in the provider files for the period of time specified in the General Rules (OAR 410 division 120).(11) Medical transportation services must be billed on the CMS-1500 paper claim form or the 837P electronic transaction using the billing instructions and procedure codes in this rule and in conjunction with OAR 147 division 136 Medical Transportation Program.

(10) Additional Client Transport. If two or more Medicaid clients are transported by the same mode (e.g., wheelchair van) at the same time, DMAP will reimburse at the full base rate for the first client and one-half the appropriate base rate for each additional client. If two or more DMAP clients are transported by mixed mode (e.g., wheelchair van and ambulatory) at the same time, DMAP will reimburse at the full base rate for the highest mode for the first client and one-half the base rate of the appropriate mode for each additional client. Reimbursement will not be made for duplicated miles traveled. If more than one client is transported from a single pickup point to different destinations or from different pickup points to the final destination the total mileage may be billed. The first 10 miles is included in the Base Rate and should be included in the total number of miles on the CMS-1500 (OAR 410-136-0080, Additional Client Transport).

(11) Tribal facility owned/leased Sedan car:

(a) S0215 — Non-emergency transportation; mileage, per mile;

(b) Not eligible for base rate or extra attendant reimbursement;

(12) Tribal facility owned/leased Wheelchair Car/Van. DMAP reimbursement of the first ten miles of a transport is included in the payment for the base rate. A service from point of origin to point of destination (one-way) is considered a "transport."

(13) Tribal facility owned/leased wheelchair van:

(a) If a client is able to transfer from wheelchair to car/van, DMAP will not make payment for wheelchair services for transportation of ambulatory (capable of walking) clients (e.g. base rate, extra attendant);

(b) Wheelchair Van — Bill using the following procedure codes:

(A) A0130 — Non-emergency transportation, wheelchair car/van base rate;

(B) S0209 — Wheelchair Van, ground mileage, per statute mile;

(C) T2001 — Extra Attendant (each).

(14) When billing transportation services use the appropriate place of service (POS) code as listed in the Medical Transportation Services Supplemental Information guidebook.

(15) DMAP may recoup such payments if, on subsequent review, it is found that the provider did not comply with DMAP Administrative Rules. Non-compliance includes, but is not limited to, failure to adequately document the service and the need for the service.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 14-2002, f. & cert. ef. 4-1-02; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0340
Medicare/Medical Assistance Program Claims

(1) If a client has both Medicare and Medical Assistance Program coverage, providers must bill Medicare first.

(2) All claims submitted by AI/AN providers to DMAP for clients who have both Medicare and DMAP coverage must be billed on a CMS-1500 claim form or by 837P transmission. See also Billing for Medicare/Medicaid Clients in the AI/AN Tribal Program Supplemental Information.

(3) If an out-of-state Medicare carrier or intermediary was billed, you must bill DMAP using a CMS-1500 claim form or 837P transmission, but only after that carrier has made payment determination.

(4) When billing on a CMS-1500 claim form or 837P transmission for a client with both Medicare and DMAP coverage:

(a) Bill all services provided to an OHP beneficiary using a procedure code listed in Table 146-0085-1, American Indian/Alaska Native (AI/AN) Tribal Program Encounter Codes & Modifiers;

(b) Bill the clinic's encounter rate; and

(c) Enter the total Medicare payment received in the "Amount Paid" field or use the appropriate Third Party Resources (TPR) explanation. Refer to CMS-1500 or 837P detailed billing instructions.

(5) Claims for Qualified Medicare Beneficiary (QMB)-only clients must be billed on CMS-1500 claim form or 837P transmission. Refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System. Specific billing information and instructions are located in the AI/AN Tribal Program Supplemental Information billing guide:

(a) The total charged amount must equal the total Medicare allowed/covered charges. AI/AN providers are not to bill their encounter rate for services provided to Qualified Medicare Beneficiary (QMB)-only clients;

(b) AI/AN providers must bill each service, treatment or item provided to a QMB-only beneficiary on the CMS-1500 claim form or 837P transmission identical to how Medicare was billed;

(c) AI/AN providers must apply any reductions and/or adjustments by Medicare to the Medicare payment, such that the difference between the Medicare allowed/covered amount and the amount paid by Medicare as reported on the claim equals only the Medicare coinsurance and/or deductible;

(d) For claims to process payment correctly, AI/AN providers billing multiple services need to apply the total charge calculated, according to section (a) above, to the first detail line and zero charge all subsequent lines.

Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0380
OHP Standard Emergency Dental Benefit

(1) The intent of the OHP Standard Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth. Refer to OAR 410-123-1670 OHP Standard Limited Emergency Dental Benefit.

(2) Services are limited to those procedures listed in OAR 410-123-1670, Table 123-1670-1 and are limited to treatment for conditions such as:

(a) Acute infection;

(b) Acute abscesses;

(c) Severe tooth pain; and

(d) Tooth re-implantation when clinically appropriate.

(3) An AI/AN provider billing Division of Medical Assistance Programs (DMAP) directly for dental services provided to an open card OHP Standard client, must bill the covered service(s) in accordance with Section (2) of this rule, using a dental procedure code as listed in Table 146-0085-1, American Indian/Alaska Native (AI/AN) Tribal Program Encounter Codes & Modifiers.

(4) An AI/AN provider is not limited to the AI/AN Tribal Program encounter procedure codes listed in Table 146-0085-1 when billing a Dental Care Organization (DCO), Medicare, or any other Third Party Resource (TPR).

(5) Hospital Dentistry is not a covered benefit for the OHP Standard population except for covered services authorized in accordance with Section (2) of this rule when provided to:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia; or

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia.(6) Any limitations or prior authorization requirements on services listed in OAR 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an AI/AN provider.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 409.050, 404.110, 414.065
Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0440
Managed Care Supplemental Payments

(1) Effective January 1, 2001, the Division of Medical Assistance Programs (DMAP) is required by 42 USC 1396a(bb), to make supplemental payments to eligible Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) that contract with Prepaid Health Plans (PHP). AI/AN providers that are not FQHCs, and that elect to receive payment under Title XIX and XXI according to the IHS rate under the Memorandum of Agreement effective July 11, 1996 will also be eligible to receive a supplemental payment for that service in the same manner as an FQHC under 1902(bb)(5).

(2) AI/AN providers reimbursed according to a cost-based rate under the Prospective Payment System (PPS) are directed to Oregon Administrative Rule (OAR) 410-147-0460 Prepaid Health Plan Supplemental Payments.

(3) The PHP Supplemental Payment represents the difference, if any, between the payment received by the AI/AN provider from the PHP(s) for treating the PHP enrollee and the payment to which the AI/AN provider would be entitled if they had billed DMAP directly for these encounters according to the clinic's IHS rate. Refer to OAR 410-146-0020.

(4) In accordance with federal regulations the Provider must take all reasonable measures to ensure that in most instances, with the exception of IHS, Medicaid will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before submitting claims to the PHP. Refer to OAR 410-146-0085(13).

(5) When any other coverage is known to the provider, the provider must bill the other resource(s) prior to billing the PHP. When a provider receives a payment from any source prior to the submission of a claim to the PHP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See also OAR 410-120-1280 Billing and 410-120-1340 Payment.

(6) Supplemental payment by DMAP for encounters submitted by AI/AN providers for purposes of this rule is reduced by any and all payments received by the AI/AN provider from outside resources, including Medicare, private insurance or any other coverage. Therefore, AI/AN providers are required to report all payments received on the Managed Care Data Submission Worksheet, including:

(a) Medicaid PHPs;

(b) Medicare Advantage Managed Care Organizations (MCO);

(c) Medicare, including Medicare MCO supplemental payments; and

(d) Any Third Party Resource(s) (TPR).

(7) DMAP will calculate the PHP Supplemental Payment in the aggregate of the difference between total payments received by the AI/AN provider, to include payments as listed in Section (5) of this rule and the payment to which the AI/AN provider would have been eligible to claim as an encounter if they had billed DMAP directly according to the IHS encounter rate.

(8) AI/AN providers must submit their clinic's data using the Managed Care Data Submission Template developed by DMAP to report all PHP encounter and payment activity.

(9) To facilitate DMAP processing PHP supplemental payments, the AI/AN must submit the following:

(a) To PHPs:

(A) Claims within the required timelines outlined in the contract with the PHP and in OAR 410-141-0420, Oregon Health Plan Prepaid Health Plan Billing Payment Under the Oregon Health Plan;

(B) The AI/AN provider number must be used when submitting all claims to the PHPs;

(b) To DMAP:

(A) Report total payments for all services submitted to the PHP:

(i) Including laboratory, radiology, nuclear medicine, and diagnostic ultrasound; and

(ii) Excluding any bonus or incentive payments;

(B) Report total payments for each category listed in the "Amounts Received During the Settlement Period" section of the Managed Care Data Submission Template Coversheet;

(C) Payments are to be reported at the detail line level on the Managed Care Data Submission Template Worksheet, except for capitated payments, or per member per month and risk pool payments received from the PHP;

(D) The total number of actual encounters. An encounter represents all services for a like service element (Medical, Dental, Mental Health, or Alcohol and Chemical Dependency) provided to an individual client on a single date of service. The total number of encounters is not the total number of clients assigned to the IHS or Tribal 638 facility or the total detail lines submitted on the Managed Care Data Submission Template Worksheet;

(E) All individual DMAP performing provider numbers assigned to practitioners associated with the IHS or Tribal 638 facility. "Associated" refers o a practitioner who is either subcontracted or employed by the AI/AN provider. A practitioner associated with an AI/AN provider can only retain their individual performing provider number under one of the two situations:

(i) The practitioner maintains a private practice; or

(ii) The practitioner is also employed by a non-IHS or non-Tribal 638 site.

(F) A current list of all PHP contracts. An updated list of all PHP contracts must be submitted annually to DMAP no later than October 31 of each year.

(10) PHP Supplemental Payment process:

(a) DMAP processes PHP Supplemental Payments on a quarterly basis. The quarterly settlement includes a final reconciliation for the reported time period.

(b) Upon processing a clinic's data and the PHP Supplemental Payment, DMAP will:

(A) Send a check to the AI/AN provider for PHP Supplemental Payment calculated from clinic data DMAP was able to process;

(B) Provide a cover letter and summary of the payment calculation; and

(C) Return data that is incomplete, unmatched, or cannot otherwise be processed by DMAP;

(c) The AI/AN provider is responsible for reviewing the data DMAP was unable to process for accuracy and completeness. The clinic has 30 days, from the date of DMAP's cover letter under Section (9)(b) of this rule, to make any corrections to the data and resubmit to DMAP for processing. Documentation supporting any and all changes must accompany the resubmitted data. A request for extension must be received by DMAP prior to expiration of the 30 days, and must:

(A) Be requested in writing;

(B) Accompanied by a cover letter fully explaining the reason for the late submission; and

(C) Provide an anticipated date for providing DMAP the clinic's resubmitted data and supporting documentation;

(d) Within 30 days of DMAP's receipt of the re-submitted data, DMAP will:

(A) Review the data and issue a check for all encounters DMAP verifies to be valid; and

(B) For quarterly data submissions, send a letter outlining the final quarterly settlement including any other pertinent information to accompany the check;

(e) The AI/AN provider should submit data to DMAP within the timelines provided by DMAP.

(11) Clinics must carefully review in a timely fashion the data that DMAP was unable to process and returns to the AI/AN provider. If clinics do not bring any incomplete, inaccurate or missing data to DMAP's attention within the time frames outlined, DMAP will not process an adjustment.

(12) DMAP encourages AI/AN providers to request PHP Supplemental Payment in a timely manner.

(13) Clinics must exclude from a clinic's data submission for PHP supplemental payment, services provided to a PHP-enrolled non-AI/AN client denied by the PHP because the clinic does not have a contract or agreement with the PHP. This may not apply to family planning services, or HIV/ AIDS prevention services. Family Planning and HIV/AIDS prevention services provided to a PHP-enrolled client when a clinic does not have a contract or agreement with the PHP:

(a) Must be reported in the clinic's data submission for PHP Supplemental Payment if the clinic receives payment from the PHP;

(b) Cannot be reported in the clinic's data submission for PHP Supplemental Payment if the clinic is denied payment by the PHP. If the PHP denies payment to the clinic, the clinic can bill these services directly to DMAP. (See also OAR 410-146-0060).

(14) If a PHP denies payment to a contracted AI/AN provider for all services, items and supplies provided to a client on a single date of service and meeting the definition of an "encounter" as defined in OAR 410-146-0085, for the reason that all services, items and supplies are non-covered by the plan, DMAP is not required to make a supplemental payment to the clinic. The following examples are excluded from the provision of this rule:

(a) Encounters that will later be billed to the PHP as a covered global procedure (e.g. Obstetrics Global Encounter);

(b) Had payment received by Medicare, and any other third party resource not have exceeded the payment the PHP would have made, the PHP would have made payment;

(c) At least one of the detail lines reported for all services, items and supplies provided to a client on a single date of service and represents an "encounter," has a reported payment amount by the PHP.

(15) DMAP will not reimburse some Medicaid covered services that are only reimbursed by PHPs, and are not reimbursed by DMAP. DMAP will not make PHP supplemental payment for these services, as DMAP does not reimburse these services when billed directly to DMAP.

(16) It is the responsibility of the AI/AN provider to refer PHP-enrolled non-AI/AN clients back to their PHP if the AI/AN provider does not have a contract with the PHP, and the service to be provided is not family planning or HIV/AIDS prevention. The Provider assumes full financial risk in serving a person not confirmed by DMAP as eligible on the date(s) of service. See OAR 410-120-1140, Verification of Eligibility. It is the responsibility of the Provider to verify:

(a) That the individual receiving medical services is eligible on the date of service for the service provided; and

(b) Whether a client is enrolled with a PHP or receives services on an "open card" or "fee-for-service" basis.

Stat. Auth.: 409.050, 404.110, 414.065

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25

Stats. Implemented: ORS 414.065

Hist.: OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

410-146-0460

Compensation for Outstationed Eligibility Workers

(1) The Division of Medical Assistance Programs (DMAP) may provide reasonable compensation for activities directly related to the receipt and initial processing of applications for individuals, including low-income pregnant women and children, to apply for Medicaid at outstation locations other than state offices.

(2) DMAP may provide reasonable compensation to eligible AI/AN providers for outreach activities performed by Outstationed Outreach Workers (OSOW) equal to 100% of direct costs.

(3) AI/AN Providers must submit a budget each December 1st to the Division of Medical Assistance Programs (DMAP) for review of the clinic OSOW costs for approval before any OSOW compensation is made each January 1st.

(4) AI/AN providers must have a current Outreach Agreement with the State of Oregon, Department of Human Services (DHS), DMAP to be eligible for compensation under this rule.

(5) For staff employed by a clinic and performing outreach activities at less than full time, the clinic must calculate the percent of time spent performing OSOW services and maintain adequate documentation to support the percentage of time claimed. The percent must be used to calculate personnel expenses incurred by an AI/AN provider as outlined in Section (7)(a) of this rule and that are directly attributed to outreach activities performed by the employee.

(6) Case management is excluded from OSOW reimbursement. If an OSOW also does case management, calculate the OSOW expense as outlined in section (5) above.

(7) Direct cost expenses allowed for OSOW reimbursement:

(a) Personnel costs for OSOWs:

(A) Salary/Wages;

(B) Taxes;

(C) Fringe Benefits provided to OSOW;

(D) Premiums paid by the AI/AN Provider for Private Health Insurance;

(b) Travel expenses incurred by the AI/AN provider for DMAP training on OSOW activities;

(c) Phone bills, if a dedicated line. Otherwise an estimate of telephone usage and resulting costs;

(d) Reasonable equipment necessary to perform outreach activities. A Tribal 638 provider reimbursed according to a cost-based rate will not include expenses for replacing equipment if the original cost of the equipment was reported on the cost statement when the clinic's initial cost-based encounter rate was calculated;

(e) Rent or space costs. A Tribal 638 provider reimbursed according to a cost-based rate will not include rent or space costs if 100% of facility costs were reported on the cost statement when the clinic's initial cost-based encounter rate was calculated;

(f) Reasonable office supplies necessary to perform outreach activities; and

(g) Postage.

(8) DMAP excludes indirect costs relating to OSOW activities to Tribal 638 providers reimbursed according to a cost-based rate. Excluded indirect costs include and are not limited to the following:

(a) Any costs included in the initial calculation of a Tribal 638 clinic's cost-based encounter rate;

(b) Contracted interpretation services;

(c) Administrative overhead costs; and

(d) Operating expenses including utilities, building maintenance and repair, and janitorial services

(9) IHS and Tribal 638 Facilities that have a Medicaid Administrative Match contract that includes outreach costs are not eligible for separate outreach payments. IHS and Tribal 638 facilities cannot participate in the Medicaid Administrative Claiming (MAC) program if they are receiving OSOW compensation according to this rule.

Stat. Auth.: 409.050, 404.110, 414.065

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25

Stats. Implemented: ORS 414.065

Hist.: OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08

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Rule Caption: Expand OB APM to RHCs that serve communities from areas of unmet health care need.
Adm. Order No.: DMAP 20-2007
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-147-0365
Subject: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP revised 410-147-0365 to ensure client access to OB services, including labor and delivery services, in frontier and rural areas. Text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0365
Rural Health Clinic (RHC) Alternate Payment Methodology (APM) for Obstetrics (OB) Care Delivery Procedures

(1) The Division of Medical Assistance Programs (DMAP) may reimburse eligible Medicare-certified RHCs an obstetrics (OB) alternate payment methodology (APM) encounter rate for delivery procedures.

(a) The OB APM delivery encounter rate includes additional OB delivery-related costs incurred by a clinic as a cost-based payment, and are costs that were not included in the calculation of the RHC's Prospective Payment System (PPS) medical encounter rate.

(b) The OB APM delivery encounter rate is in addition to the PPS medical encounter rate as outlined in the State Plan, Attachment 4.19B.

(c) Qualification of the OB APM delivery encounter rate is not considered a change of scope;

(2) The intent of the OB APM is to maintain access to OB care, including delivery services, in frontier and remote rural areas and to compensate eligible clinics for professional costs uniquely associated with OB care, not to exceed 100% of reasonable cost.

(3) To be eligible for the OB APM delivery encounter rate, a Medicare-certified RHC must meet all DMAP requirements including:

(a) Qualify as a "frontier" RHC, defined as located in a frontier county as designated by the Oregon Office of Rural Health (ORH); or

(b) Qualify as a "remote rural" RHC, defined as located in a remote rural service area as designated by the ORH; and

(c) A remote rural RHC must be located in either a:

(A) Primary care service area with a qualifying unmet medical need score as determined by the ORH for the year in which the written request for OB APM was made; or

(B) Critical access hospital service area as determined by the ORH and furnishing obstetric services, including delivery, to clients residing in an area that meets the criteria of (3)(c)(A) as determined by the Oregon Office of Rural Health for the year in which the written request for OB APM was made.

(4) If the frontier or remote rural RHC qualifies under section (3) of this rule and other requirements outlined by DMAP, the clinic must submit a written request to DMAP for the OB APM delivery encounter rate. The request must include the following information for the RHC:

(a) Malpractice premiums for all physicians and certified nurses performing OB deliveries for the current and next year;

(b) Total number of delivery encounters, including vaginal and cesarean delivery professional services provided by the RHC;

(A) Clinics that provided delivery services prior to written request for an OB APM delivery encounter rate must provide the most recent full year of claims data for deliveries;

(B) Clinics that have not previously provided delivery services must provide a reasonable projection of delivery encounters for the forecasted year;

(c) On-call time coverage;

(d) The RHC is responsible for providing all documentation necessary for DMAP to calculate an accurate OB APM delivery encounter rate. Failure to provide documentation listed in Section (4)(a)-(c) of this rule may result in a delay of the calculation and effective date of the OB APM delivery encounter rate.

(5) Calculating the OB APM Delivery Encounter Rate. The OB APM delivery encounter rate is the sum of a clinic's PPS medical encounter rate and an OB cost-based payment.

(a) DMAP will calculate an additional projected cost of malpractice (liability) premiums to be included in the OB cost-based payment, outside of costs included and which have already been accounted for in the PPS medical encounter rate, as follows:

(A) For both an existing and new clinic, DMAP will calculate malpractice premiums that are based on the average costs for the current and next year based on the date the clinic applies for the OB APM delivery encounter rate, as projected by the RHC's malpractice carrier. Costs are the premiums the clinic or individual actually pays, accounting for any reductions or credits;

(B) For existing clinics, DMAP will determine the malpractice premiums reported for physicians and certified nurses performing OB deliveries when the RHC initially enrolled with DMAP and the PPS medical encounter rate was calculated. Premium amounts used in the initial PPS medical encounter rate calculation will be adjusted by the (Medicare Economic Index) MEI for each subsequent year of enrollment, up to the year of written request for an OB APM delivery encounter rate. The premium(s) adjusted by MEI is an amount included in the current PPS medical encounter rate;

(C) For new clinics, DMAP will determine the actual malpractice premiums for OB physicians and certified nurses performing OB deliveries for the current year;

(D) DMAP will subtract the premiums calculated in section (5)(a)(B) or (C) of this rule, and accounted for in the calculation of the clinic's PPS medical encounter rate, from the average cost of OB malpractice premiums in section (5)(a)(A), to calculate the projected portion of OB malpractice premiums to be included in calculating the OB payment;

(b) DMAP will calculate the cost of physician on-call time for OB care by multiplying a clinic's adjusted OB on-call hours of coverage by the fixed rate of $20.00 per hour. A clinic's adjusted OB on-call coverage hours will be calculated as follows:

(A) Reducing total clinic coverage hours per year by the clinic's daily office hours, and;

(B) Reduced by physician vacation hours; and

(C) Calculated at 60 percent of adjusted on-call time;

(c) The OB payment will be the sum of the difference of averaged malpractice premiums and current actual premiums in section (5)(a) of this rule, and the cost of on-call coverage in section (5)(b), divided by the total number of OB care delivery encounters:

(A) Reported by the RHC according to section (4)(b); or

(B) For RHCs with actual or projected delivery encounters less than 100, the clinic will have their OB payment calculated using a base number of 100 OB delivery encounters;

(d) The OB APM delivery encounter rate is the sum of the OB payment in section (5)(c) of this rule and the PPS medical encounter rate.

(6) After calculating the initial OB APM delivery encounter rate, DMAP will inform the RHC. The MEI adjustment, as required by PPS, will apply to the OB APM delivery encounter rate once established.

(7) DMAP will establish the effective date for an RHC to bill using the approved OB APM delivery encounter rate as either:

(a) The date DMAP determines the RHC's OB APM delivery encounter rate: For RHCs that meet the requirements in section (3) of this rule after the federal State Plan Amendment (SPA) approval date; or

(b) The date of federal SPA approval: For RHCs that meet the requirements in section (3) of this rule prior to Federal SPA approval, provided DMAP has determined the clinic's OB APM delivery encounter rate.

(8) DMAP reserves the right to review care status changes by requesting periodic review of utilization, cost reporting and compliance with eligibility criteria outlined in section (3) of this rule, to determine the continued need to pay an OB APM delivery encounter rate to the RHC;

(a) DMAP will consider changes to the RHC's status and rate when review indicates the following:

(A) OB care access, including delivery services, in a community has changed; or

(B) The RHC has not met the requirements for the OB APM as outlined in section (3) of this rule for five consecutive years; or

(C) An RHC's agreement with the Secretary of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) is terminated, or

(D) The stability of new providers in the RHC's service area supplying additional OB care access including delivery services.

(b) DMAP will give the RHC 90 days notice of change in status and rate;

(c) If DMAP determines that an RHC no longer meets the OB APM requirements, the RHC has 30 days from the date of notification to request that DMAP review any additional supporting documentation regarding the determination.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05; OMAP 26-2005, f. 4-20-05, cert. ef. 6-1-05; OMAP 48-2005(Temp), f. & cert. ef. 9-15-05 thru 2-15-06; OMAP 64-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 20-2007, f. 12-5-07, cert. ef. .1-1-08

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Rule Caption: Emergency contingency for services and supplies needed in flooded counties.
Adm. Order No.: DMAP 21-2007(Temp)
Filed with Sec. of State: 12-5-2007
Certified to be Effective: 12-5-07 thru 12-10-07
Notice Publication Date:
Rules Adopted: 410-120-0010
Subject: The Division of Medical Assistance Programs' (DMAP) administrative rules govern payments for services provided to clients. DMAP temporarily adopted 410-120-0010 to ensure clients, in all Oregon counties that are declared by the Governor of Oregon to be in the state of emergency due to flooding, receive all appropriate and necessary services during the flooding conditions in these counties.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0010
Suspension of Requirements in Certain Administrative Rules Pertaining to Services Rendered in the Case of a Stated Emergency

(1) The purpose of this rule is to ensure that Department of Human Services (DHS) clients, who reside in Oregon counties that have been declared by the Governor of Oregon to be in a state of emergency due to flooding, receive all appropriate and necessary services during the flooding of those counties. This rule is retroactively effective on December 2, 2007 and expires on December 10, 2007 or whenever the Department suspends the rule, whichever comes first.

(2) To the extent necessary to accomplish the purposes identified in subsection (1) of this rule, the Division of Medical Assistance Programs (DMAP) temporarily suspends requirements outlined in OAR 410-120-0000 et seq. (General Rules) and related provider rules including but not limited to those rules pertaining to:

(a) Eligibility: DMAP will pay for all claims submitted in good faith when usual means of communications are disrupted by providers who render medical services to a person who does not present a DMAP Medical ID but declares that they are an eligible client, and the provider is unable to verify eligibility;

(b) Prior Authorization (PA): DMAP will pay for all claims submitted in good faith on behalf of clients identified in paragraph (a) of this section when usual means of communications are disrupted regardless of PA or placement of the service requested on the Oregon Health Services Commission's Prioritized List of Health Services;

(c) Pharmaceutical Services: DMAP will pay for all claims submitted in good faith on behalf of clients identified in paragraph (a) of this section when usual means of communications are disrupted for appropriate and necessary prescription drugs, including scheduled refills and replacement of lost or damaged items, regardless of PA.

(3) Providers, under this rule, must cooperate with DMAP to appropriately document all services rendered under this authority.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: DMAP 21-2007(Temp), f. & cert. ef. 12-5-07 thru 12-10-07

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Rule Caption: Disclosure or exchange of Specific Protected Health Information for Treatment.
Adm. Order No.: DMAP 22-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-141-0180
Subject: The Oregon Health Plan (OHP) Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP amended OAR 410-141- 180, because Section 2 of SB 163 requires that DHS adopt rule language that defines the protected health information that may be disclosed without individual authorization between DHS and managed care organizations involved in treatment activities of the individual. DMAP amended this rule to provide this information o the disclosure of information may occur in the manner authorized by the statute. Text is revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0180
Oregon Health Plan Prepaid Health Plan Record Keeping

(1) Maintenance and Security: Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act (HIPAA), 42 USC § 1320-d et seq., and the federal regulations implementing the Act, and complete Clinical Records that document the care received by the Division of Medical Assistance Programs (DMAP) Members from the PHP's primary care and referral Providers. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures and take any corrective action necessary to ensure Participating Provider compliance. PHPs shall document all monitoring and corrective action activities. Such policies and procedures shall ensure that records are secured, safeguarded and stored in accordance with applicable Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

(2) Confidentiality and Privacy: PHPs and PHP's Participating Providers shall have written policies and procedures to ensure that Clinical Records related to DMAP Member's Individual Identifiable Health Information and the receiving of services are kept confidential and protected from unauthorized use and disclosure consistent with the requirements of HIPAA and in accordance with ORS 179.505 through 179.507, 411.320, 433.045(3), 42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50, and section 3 of this rule. If the PHP is a public body within the meaning of the Oregon public records law, such policies and procedures shall ensure that DMAP Member privacy is maintained in accordance with ORS 192.502(2), 192.502(8) (Confidential under Oregon law) and 192.502(9) (Confidential under Federal law) or other relevant exemptions:

(a) PHPs and their Participating Providers shall not release or disclose any information concerning a DMAP Member for any purpose not directly connected with the administration of Title XIX of the Social Security Act except as directed by the DMAP Member;

(b) Except in an emergency, PHPs' Participating Providers shall obtain a written authorization for release of information from the DMAP Member or the legal guardian, or the legal Power of Attorney for Health Care Decisions of the DMAP Member before releasing information. The written authorization for release of information shall specify the type of information to be released and the recipient of the information, and shall be placed in the DMAP Member's record. In an emergency, release of service information shall be limited to the extent necessary to meet the emergency

information needs and then only to those persons involved in providing emergency medical services to the DMAP Member;

(c) PHPs may consider a DMAP Member, age 14 or older competent to authorize or prevent disclosure of mental health and alcohol and drug treatment outpatient records until the custodial parent or legal guardian becomes involved in an outpatient treatment plan consistent with the DMAP Member's clinical treatment requirements.

(3) Exchange of Protected Health Information for Treatment Purposes without Authorization: In accordance with ORS 192.518 to 192.526 and with required acknowledgement, DHS and PHP's are allowed to share the following protected health information, without client authorization for the purpose of treatment activities. The protected health information that may be disclosed, commonly found in claims or encounters, includes the following:

(a) Oregon Health Plan Member name;

(b) Medicaid Recipient Number;

(c) Performing Provider number;

(d) Hospital Provider name and attending physician name;

(e) Diagnosis;

(f) Dates of Service;

(g) Procedure code;

(h) Revenue Code;

(i) Quantity of units of service provided;

(j) Medication Prescription and monitoring;

(4) Access to Clinical Records:

(a) Provider Access to Clinical Records:

(A) PHPs shall release health service information requested by a Provider involved in the care of a DMAP Member within ten working days of receiving a signed authorization for release of information;

(B) Mental Health Organizations (MHOs) shall assure that directly operated and subcontracted service components, as well as other cooperating health service Providers, have access to the applicable contents of a DMAP Member's mental health record when necessary for use in the diagnosis or treatment of the DMAP Member. Such access is permitted under ORS 179.505(6);

(b) DMAP Member Access to Clinical Records: Except as provided in ORS 179.505(9), PHPs' Participating Providers shall upon request, provide the DMAP Member access to his/her own Clinical Record, allow for the record to be amended or corrected and provide copies within ten working days of the request. PHPs' Participating Providers may charge the DMAP Member for reasonable duplication costs;

(c) Third Party Access to Records: Except as otherwise provided in this rule, PHPs' Participating Providers shall upon receipt of a written authorization for release of information for the DMAP Member provide access to the DMAP Member's Clinical Record. PHPs' Participating Providers may charge for reasonable duplication costs;

(d) DHS Access to Records: PHPs shall cooperate with DMAP, the Addictions and Mental Health Division (AMH), the Medicaid Fraud Unit, and/or AMH representatives for the purposes of audits, inspection and examination of DMAP Members' Clinical and Administrative Records.

(5) Retention of Records: All Clinical Records shall be retained for seven years after the date of services for which claims are made. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year period, the Clinical Records must be retained until all issues arising out of the action are resolved.

(6) Requirements for Clinical Records: PHPs shall have policies and procedures that ensure maintenance of a Clinical Record keeping system that is consistent with state and federal regulations to which the PHP is subject. The system shall assure accessibility, uniformity and completeness of clinical information that fully documents the DMAP Member's condition, and the Covered and Non-Covered Services received from PHPs' Participating or referred Providers. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) A Clinical Record shall be maintained for each DMAP Member receiving services that documents all types of care needed or delivered in all settings whether such services are delivered during or after normal clinic hours;

(b) All entries in the Clinical Record shall be signed and dated;

(c) Errors to the Clinical Record shall be corrected as follows:

(A) Incorrect data shall be crossed through with a single line;

(B) Correct and legible data shall be added followed by the date corrected and initials of the person making the correction;

(C) Removal or obliteration of errors shall be prohibited;

(d) The Clinical Record shall reflect a signed and dated authorization for treatment for the DMAP Member, his/her legal guardian or the Power of Attorney for Health Care Decisions for any invasive treatments;

(e) The PCP's or clinic's Clinical Record shall include data that forms the basis of the diagnostic impression of the DMAP Member's chief complaint sufficient to justify any further diagnostic procedures, treatments, recommendations for return visits, and referrals. The PCP or clinic's Clinical Record of the DMAP Members receiving services shall include the following information as applicable:

(A) DMAP Member's name, date of birth, sex, address, telephone number, and identifying number as applicable;

(B) Name, address and telephone number of next of kin, legal guardian, Power of Attorney for Health Care Decisions, or other responsible party;

(C) Medical, dental or psychosocial history as appropriate;

(D) Dates of service;

(E) Names and titles of persons performing the services;

(F) Physicians' orders;

(G) Pertinent findings on examination and diagnosis;

(H) Description of medical services provided, including medications administered or prescribed; tests ordered or performed and results;

(I) Goods or supplies dispensed or prescribed;

(J) Description of treatment given and progress made;

(K) Recommendations for additional treatments or consultations;

(L) Evidence of referrals and results of referrals;

(M) Copies of the following documents if applicable:

(i) Mental health, psychiatric, psychological, psychosocial or functional screenings, assessments, examinations or evaluations;

(ii) Plans of care including evidence that the DMAP Member was jointly involved in the development of his/her mental health treatment plan;

(iii) For inpatient and outpatient hospitalizations, history and physical, dictated consultations, and discharge summary;

(iv) Emergency department and screening services reports;

(v) Consultation reports;

(vi) Medical education and medical social services provided;

(N) Copies of signed authorizations for release of information forms;

(O) Copies of medical and/or mental health directives;

(f) Based on written policies and procedures, the Clinical Record keeping system developed and maintained by PHPs' Participating Providers shall include sufficient detail and clarity to permit internal and external clinical audit to validate encounter submissions and to assure Medically Appropriate services are provided consistent with the documented needs of the DMAP Member. The system shall conform to accepted professional practice and facilitate an adequate system for follow up treatment;

(g) The PCP or clinic shall have policies and procedures that accommodate DMAP Members requesting to review and correct or amend their Clinical Record;

(h) Other Records: PHPs' shall maintain other records in either the Clinical Record or within the PHP's administrative offices. Such records shall include the following:

(A) Names and phone numbers of the DMAP Member's prepaid health plans, primary care physician or clinic, primary dentist and mental health Practitioner, if any in the MHO records;

(B) Copies of Client Process Monitoring System (CPMS) enrollment forms in the MHO's records;

(C) Copies of long term psychiatric care determination request forms in the MHO's records;

(D) Evidence that the DMAP Member has received a fee schedule for services not covered under the Capitation Payment in the MHO's records;

(E) Evidence that the DMAP Member has been informed of his or her rights and responsibilities in the MHO records;

(F) ENCC records in the FCHP's or PCO's records;

(G) Complaint and Appeal records; and

(H) Disenrollment Requests for Cause and the supporting documentation.

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

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 22-2007, f. 12-11-07 cert. ef. 1-1-08

Rule Caption: Comply with DMAP Dental program rules.
Adm. Order No.: DMAP 23-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-141-0480
Subject: The Oregon Health Plan (OHP) Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP amended 410-141-0480 to clarify current policies and procedures to ensure these rules are not open to interpretation by the provided or outside parties and to help eliminate confusion, possibly resulting in non-compliance. The revisions coincide with proposed changes to OAR 410-132-1490 in DMAP Dental program and help facilitate provider compliance with payment methodology, service coverage and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0480
Oregon Health Plan Benefit Package of Covered Services

(1) DMAP Members are eligible to receive, subject to Section (11) of this rule, those treatments for the condition/treatment pairs funded on the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are Medically or Dentally appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140. Refer to 410-141-0520 section (4) for funded line coverage information.

(2) Medical Assistance Benefit Packages follow practice guidelines adopted by the Health Services Commission (HSC) in conjunction with the Prioritized List of Health Services unless otherwise specified in rule.

(3) Diagnostic Services that are necessary and reasonable to diagnose the presenting condition of the DMAP Member are Covered Services, regardless of the placement of the condition on the Prioritized List of Health Services.

(4) Comfort care is a Covered Service for a DMAP Member with a Terminal Illness.

(5) Preventive Services promoting health and/or reducing the risk of disease or illness are Covered Services for DMAP Members. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors, (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(6) Ancillary Services are covered, subject to the service limitations of the OHP Program rules, when the services are Medically or Dentally Appropriate for the treatment of a covered Condition/Treatment Pair, or the provision of Ancillary Services will enable the DMAP Member to retain or attain the capability for independence or self-care.

(7) The provision of Chemical Dependency Services must be in compliance with the Addictions and Mental Health Division (AMH) Administrative Rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the requirements in the Chemical Dependency subsection of the Statement of Work in the Fully Capitated Health Plan and Physician Care Organization contracts.

(8) In addition to the coverage available under section (1) of this rule, a DMAP Member may be eligible to receive, subject to section (11), services for treatments that are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The OHP Client has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary Services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded Co-Morbid Conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by DMAP for fee-for-service OHP Clients or a finding by the Prepaid Health Plan (PHP) for DMAP Members that the terms of section (a)(A)–(C) of this rule have been met based upon the applicable:

(i) Treating physician opinion;

(ii) Medical research;

(iii) Community standards; and

(iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any DMAP Member, especially an DMAP Member with a disability or with a Co-Morbid Condition, Providers must determine whether the DMAP Member has a funded Condition/Treatment Pair that would entitle the DMAP Member to treatment under the program and both the funded and unfunded conditions must be represented by an ICD- 9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(9) DMAP shall maintain a telephone information line for the purpose of providing assistance to Practitioners in determining coverage under the Oregon Health Plan Benefit Package of Covered Services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, DMAP shall make a retrospective determination under this subsection, provided DMAP is notified of the emergency situation during the next business day. If DMAP denies a requested service, DMAP shall provide written notification and a notice of the right to an Administrative Hearing to both the OHP Client and the treating physician within five working days of making the decision.

(10) If a Condition/Treatment Pair is not on the Health Services Commission's Prioritized List of Health Services and DMAP determines the Condition/Treatment Pair has not been identified by the Commission for inclusion on the list, DMAP shall make a coverage decision in consultation with the Health Services Commission.

(11) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients.

(12) General anesthesia for dental procedures which are Medically and/or Dentally Appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those DMAP Members as detailed in OAR 410-123-1490.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 23-2007, f. 12-11-07 cert. ef. 1-1-08

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Rule Caption: Reimbursement method for non-contracted Hospitals; definitions, RVU weights and recoupment from providers.
Adm. Order No.: DMAP 24-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-120-0000, 410-120-1200, 410-120-1295, 410-120-1320, 410-120-1340, 410-120-1397, 410-120-1560, 410-120-1570
Subject: The General Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. Rules are amended as follows: 410-120-0000 and 410-120-1200: to add definition to clarify items in other General Rules; 410-120-1295: to comply with a new ORS specifying reimbursement for non-contracted Hospitals; 410-120-1320: to correct codification; 410-120-1340: to update the RVU weights and to clarify DMAP's obligation, under Medicaid law, for reimbursement when a clients has Medicare/Medicaid coverage; 410-120-1397, 410-120-1560 & 410-120-1570: to allow a DHS contractor to perform claim audits and request recoupments from providers. Text

is revised to improve readability and take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0000
Acronyms and Definitions

(1) AAA — Area Agency on Aging.

(2) Abuse — Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Division of Medical Assistance Programs (DMAP), or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes Recipient practices that result in unnecessary cost to DMAP.

(3) Acupuncturist — A person licensed to practice acupuncture by the relevant State Licensing Board.

(4) Acupuncture Services — Services provided by a licensed Acupuncturist within the scope of practice as defined under state law.

(5) Acute — A condition, diagnosis or illness with a sudden onset and which is of short duration.

(6) Acquisition Cost — Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(7) Addiction and Mental Health Division (AMH)- An Office within DHS administering mental health and addiction programs and services.

(8) Adequate Record Keeping — Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual Provider rules.

(9) Administrative Medical Examinations and Reports — Examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department of Human Services (DHS) branch office or requested or approved by DMAP to establish Client eligibility for a medical assistance program or for casework planning.

(10) Adverse Event — An undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

(11) All Inclusive Rate — The Nursing Facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Pharmaceutical Services and the Home Enteral/Parenteral Nutrition and IV Services Provider rules, except as specified in OAR 410-120-1340, Payment.

(12) Allied Agency — Local and regional governmental agencies and regional authorities that contract with DHS to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(13) Ambulance — A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of DHS or the licensing standards of the state in which the Provider is located.

(14) Ambulatory Surgical Center (ASC) — A facility licensed as an ASC by DHS.

(15) American Indian/Alaska Native (AI/AN) — A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(16) American Indian/Alaska Native (AI/AN) clinic — Clinics recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(17) Ancillary Services — Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure); Typically, such medical services are not identified in the definition of a Condition/Treatment Pair, but are Medically Appropriate to support a service covered under the OHP Benefit Package; Ancillary Services and limitations are specified in the OHP Managed Care Rules related to the Prioritized List of Health Services (410-141-0480–410-141-0520), the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(18) Anesthesia Services — Administration of anesthetic agents to cause loss of sensation to the body or body part.

(19) Atypical Provider — Entity able to enroll as a Billing Provider (BP) or performing Provider for medical assistance programs related non-health care services but which does not meet the definition of health care Provider for National Provider Identification (NPI) purposes.

(20) Audiologist — A person licensed to practice Audiology by the State Board of Examiners for Speech Pathology and Audiology.

(21) Audiology — The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(22) Automated Information System (AIS) — A computer system that provides information on Clients' current eligibility status from DMAP by computerized phone or Web-based response.

(23) Benefit Package — The package of covered health care services for which the Client is eligible.

(24) Billing Agent or Billing Service — Third party or organization that contracts with a Provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the Provider.

(25) Billing Provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from DMAP on behalf of a performing Provider and has been delegated the authority to obligate or act on behalf of the performing Provider.

(26) Buying Up — The practice of obtaining Client payment in addition to the DMAP or managed care plan payment to obtain a Non-Covered Service or item. (See 410-120-1350 Buying Up)

(27) By Report (BR) — Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(28) Children, Adults and Families Division (CAF) — An office within DHS, responsible for administering self-sufficiency and child-protective programs.

(29) Children's Health Insurance Program (CHIP) — A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by DMAP.

(30) Chiropractor — A person licensed to practice chiropractic by the relevant State Licensing Board.

(31) Chiropractic Services — Services provided by a licensed Chiropractor within the scope of practice, as defined under State law and Federal regulation.

(32) Citizen/Alien-Waived Emergency Medical (CAWEM) — Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency Services for CAWEM are defined in OAR 410-120-1210(3)(f).

(33) Claimant — a person who has requested a hearing.

(34) Client — A person who is currently receiving medical assistance (also known as a Recipient).

(35) Clinical Social Worker — A person licensed to practice clinical social work pursuant to State law.

(36) Contiguous Area — The area up to 75 miles outside the border of the State of Oregon.

(37) Contiguous Area Provider — A Provider practicing in a Contiguous Area.

(38) Copayments — The portion of a claim or medical, dental or pharmaceutical expense that a Client must pay out of their own pocket to a Provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(39) Cost Effective — The lowest cost health care service or item that, in the judgment of DMAP staff or its contracted agencies, meets the medical needs of the Client.

(40) Current Dental Terminology (CDT) — A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(41) Current Procedural Terminology (CPT) — The Physicians' CPT is a listing of descriptive terms and identifying codes for reporting Medical Services and procedures performed by Physicians and other health care Providers.

(42) Date of Receipt of a Claim — The date on which DMAP receives a claim, as indicated by the Internal Control Number (ICN) assigned to a

claim. Date of Receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(43) Date of Service — The date on which the Client receives Medical Services or items, unless otherwise specified in the appropriate Provider rules. For items that are mailed or shipped by the Provider, the Date of Service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(44) Dental Emergency Services — Dental Services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(45) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a Dentist.

(46) Dentist — A person licensed to practice dentistry pursuant to State law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(47) Denturist — A person licensed to practice denture technology pursuant to State law.

(48) Denturist Services — Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a Denturist.

(49) Dental Hygienist — A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(50) Dental Hygienist with Limited Access Certification (LAC) — A person licensed to practice dental hygiene with LAC pursuant to State law.

(51) Department — DHS or its Division of Medical Assistance Programs (DMAP).

(52) Department of Human Services (DHS) — The Department or DHS or any of its programs or offices means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs or OMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (DMAP). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMHD). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(53) Department Representative — A person who represents the Department in a hearing and presents the Department's position.

(54) Diagnosis 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, unless specifically excluded in individual Provider rule(s). Where they exist, Diagnosis Codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(55) Diagnosis Related Group (DRG) — A system of classification of diagnoses and procedures based on the ICD-9-CM.

(56) Division of Medical Assistance Programs (DMAP) — An Office within DHS; DMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP -Title XXI), and several other programs.

(57) Durable Medical Equipment (DME) and Medical Supplies — Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(58) Electronic Data Interchange (EDI) — The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, such other format as Oregon DHS will designate. (See OARs in chapter 410, division 001)

(59) EDI Submitter — The entity that establishes an electronic connection with Oregon DHS to submit or receive an electronic data transaction on behalf of a Provider.

(60) Electronic Eligibility Verification Service (EEVS) — Vendors of medical assistance eligibility information that have met the legal and technical specifications of DMAP in order to offer eligibility information to enrolled Providers of DMAP.

(61) Emergency Department — The part of a licensed Hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(62) Emergency Medical Services — (This definition does not apply to Clients with CAWEM Benefit Package. CAWEM emergency services are governed by OAR 410-120-1210(3)(f)(B)). If an emergency medical condition is found to exist based on a medical triage screening examination, Emergency Medical Services necessary to stabilize the condition must be provided. This includes all treatment that may be necessary to assure, within reasonable medical probability, that no material deterioration of the patient's condition is likely to result from, or occur during, discharge of the Client or transfer of the Client to another facility.

(63) Emergency Transportation — Transportation necessary when a sudden, unexpected Emergency Medical Service creates a medical crisis requiring a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a Hospital, where appropriate emergency medical service is available.

(64) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (also Medicheck) — The Title XIX program of EPSDT Services for eligible Clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required Medically Appropriate health care services and to help DMAP Clients and their parents or guardians effectively use them.

(65) Evidence based medicine is the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996;312:71-72 (13 January))

(66) False Claim — A claim that a Provider knowingly submits or causes to be submitted that contains inaccurate, misleading or omitted information, and such inaccurate, misleading or omitted information would result, or has resulted, in an Overpayment.

(67) Family Planning — Services for Clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(68) Federally Qualified Health Center (FQHC) — A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by CMS upon recommendation of the U.S. Public Health Service.

(69) Fee-for-Service Provider — A medical Provider who is not reimbursed under the terms of an DMAP contract with a Prepaid Health Plan (PHP), also referred to as a Managed Care Organization (MCO). A medical Provider participating in a PHP may be considered a Fee-for-Service Provider when treating Clients who are not enrolled in a PHP.

(70) Fraud — An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes Fraud under applicable federal or state law.

(71) Fully Dual Eligible — For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare Clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage.

(72) General Assistance (GA) — Medical Assistance administered and funded 100% with State of Oregon funds through OHP.

(73) Healthcare Common Procedure Coding System (HCPCS)- A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level l — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. DMAP uses HCPCS codes; however,

DMAP uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(74) Health Maintenance Organization (HMO) — A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(75) Hearing Aid Dealer — A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(76) Home Enteral Nutrition — Services provided in the Client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services Provider rules.

(77) Home Health Agency — A public or private agency or organization which has been certified by Medicare as a Medicare Home Health Agency and which is licensed by DHS as a Home Health Agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(78) Home Health Services — Part-time or intermittent skilled Nursing Services, other therapeutic services (Physical Therapy, Occupational Therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the Client's home.

(79) Home Intravenous (IV) Services — Services provided in the Client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(80) Home Parenteral Nutrition — Services provided in the Client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(81) Hospice — 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.

(82) Hospital — A facility licensed by the Office of Public Health Systems as a general Hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. DMAP does not consider facilities certified by the Centers for Medicare and Medicaid (CMS) as Long Term Care Hospitals, Long Term Acute Care Hospitals or Religious non medical facilities as Hospitals for reimbursement purposes. Out-of-state Hospitals will be considered Hospitals for reimbursement purposes if they are licensed as a short term acute care or general Hospital by the appropriate licensing authority within that state, and if they are enrolled as a Provider of Hospital services with the Medicaid agency within that state.

(83) Hospital-Based Professional Services — Professional services provided by licensed Practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (DMAP 42) report for DMAP.

(84) Hospital Laboratory — A Laboratory providing professional technical Laboratory Services as outlined under Laboratory Services, in a Hospital setting, as either an Inpatient or Outpatient Hospital service whose costs are reported on the Hospital's cost report to Medicare and to DMAP.

(85) Indian Health Program — Any Indian Health Service facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(86) Individual Adjustment Request (DMAP 1036) Form used to resolve an incorrect payment on a previously paid claim, including underpayments or Overpayments.

(87) Inpatient — a Hospital patient who is not an Outpatient.

(88) Inpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an Inpatient. (See Hospital Services rules for Inpatient covered services.)

(89) Institutional Level of Income Standards (ILIS) — Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a Nursing Facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(90) Institutionalized — A patient admitted to a Nursing Facility or Hospital for the purpose of receiving nursing and/or Hospital care for a period of 30 days or more.

(91) International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) — Diagnosis Codes including volumes 1, 2, and 3, as revised annually.

(92) Laboratory — A facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide Laboratory Services within or a part from a Hospital. An entity is considered a Laboratory if materials are derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one Laboratory test, including waived tests for these purposes, it is considered under the Clinical Laboratory Improvement Act (CLIA), to be a Laboratory.

(93) Laboratory Services — Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a Physician or other licensed Practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a Physician or appropriate licensed Practitioner in an office or similar facility, Hospital, or independent Laboratory.

(94) Licensed Direct Entry Midwife — A practitioner licensed by DHS' Public Health Division as a Licensed Direct Entry Midwife.

(95) Liability Insurance — Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile Liability Insurance, uninsured and underinsured motorist insurance, homeowner's Liability Insurance, malpractice insurance, product Liability Insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(96) Managed Care Organization (MCO) — Contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(97) Maternity Case Management — A program available to pregnant Clients. The purpose of Maternity Case Management is to extend prenatal services to include non-Medical Services, which address social, economic and nutritional factors. For more information refer to the Medical-Surgical Services rules.

(98) Medicaid — A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by DHS.

(99) Medical Assistance Eligibility Confirmation — Verification through the AIS, an authorized DHS representative, an EEVS vendor or through presentation of a valid Medical Care Identification that a Client has an open assistance case, which includes medical benefits.

(100) Medical Services — Care and treatment provided by a licensed medical Provider directed at preventing, diagnosing, treating or correcting a medical problem.

(101) Medical Transportation — Transportation to or from covered Medical Services.

(102) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which 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 an OHP 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 which can be safely provided to an DMAP Client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(103) Medicare — A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a Hospital or skilled Nursing Facility, home health care, and Hospice care; and

(b) Medical Insurance (Part B) for Physicians' services, Outpatient Hospital services, home health care, end-stage renal dialysis, and other Medical Services and supplies;

(c) Prescription drug coverage (Part D) — Covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). (See OAR 410, Division 121 for limitations).

(104) Medicheck for Children and Teens — See EPSDT.

(105) National Provider Identification (NPI) — Federally directed Provider number mandated for use on HIPAA covered transactions; individuals, Provider Organizations and Subparts of Provider Organizations that meet the definition of health care Provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(106) Naturopath — A person licensed to practice naturopathy pursuant to State law.

(107) Naturopathic Services — Services provided within the scope of practice as defined under State law.

(108) Non Covered Services — Services or items for which DMAP is not responsible for payment. Non-Covered Services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and,

(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 DMAP Provider rules.

(109) Nurse Anesthetist, C.R.N.A. — A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(110) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(111) Nurse Practitioner Services — Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(112) Nursing Facility — A facility licensed and certified by the DHS' SPD defined in 411-070-0005.

(113) Nursing Services — Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(114) Nutritional Counseling — Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(115) Occupational Therapist — A person licensed by the State Board of Examiners for Occupational Therapy.

(116) Occupational Therapy — The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(117) Optometric Services — Services provided, within the scope of practice of optometrists as defined under State law.

(118) Optometrist — A person licensed to practice optometry pursuant to State law.

(119) Oregon Youth Authority (OYA) — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(120) Out-of-State Providers — 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.

(121) Outpatient — a Hospital patient who:

(a) Is treated and released the same day or is admitted to the Hospital and discharged before midnight and is not listed on the following day's census, excluding a patient who:

(A) Is admitted and transferred to another Acute care Hospital on the same day;

(B) Expires on the day of admission; or

(C) Is born in the Hospital.

(b) Is admitted for ambulatory surgery, to a birthing center, a treatment or observation room, or a short-term stay bed;

(c) Receives observation services provided by a Hospital, including the use of a bed and periodic monitoring by Hospital nursing or other staff for the purpose of evaluation of a patient's medical condition for a maximum of 48 hours; or

(d) Receives routine preparation services and recovery for diagnostic services provided in a Hospital Outpatient department.

(122) Outpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an Outpatient. (See Hospital rules for Outpatient covered services).

(123) Overdue Claim — A Valid Claim that is not paid within 45 days of the date it was received.

(124) Overpayment — Payment(s) made by DMAP to a Provider in excess of the correct DMAP payment amount for a service. Overpayments are subject to repayment to DMAP.

(125) Overuse — Use of medical goods or services at levels determined by DMAP medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(126) Panel — The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(127) Payment Authorization — Authorization granted by the responsible DHS agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(128) Peer Review Organization (PRO) — An entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(129) Pharmaceutical Services — Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(130) Pharmacist — A person licensed to practice pharmacy pursuant to state law.

(131) Physical Capacity Evaluation — An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(132) Physical Therapist — A person licensed by the relevant State licensing authority to practice Physical Therapy.

(133) Physical Therapy — Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(134) Physician — A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(135) Physician Assistant — A person licensed as a Physician Assistant in accordance with ORS 677. Physician Assistants provide Medical Services under the direction and supervision of an Oregon licensed Physician according to a practice description approved by the Board of Medical Examiners.

(136) Physician Services — Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a Physician.

(137) Podiatric Services — Services provided within the scope of practice of Podiatrists as defined under state law.

(138) Podiatrist — A person licensed to practice podiatric medicine pursuant to state law.

(139) Post-Payment Review — Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(140) Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the Practitioner's license and/or certification.

(141) Premium Sponsorship — Premium donations made for the benefit of one or more specified DMAP Clients (See 410-120-1390).

(142) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, or mental health organization that contracts with DMAP and/or AMH on a case managed, prepaid, capitated basis under OHP. PHP's may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(143) Primary Care Physician — A Physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating Referrals for consultations and specialist care, and maintaining the continuity of patient care.

(144) Primary Care Provider (PCP) — Any enrolled medical assistance Provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified Clients. PCPs initiate Referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of Medically Appropriate Client care.

(145) Prior Authorization (PA) — Payment Authorization for specified Medical Services or items given by DMAP staff, or its contracted agencies prior to provision of the service. A Physician Referral is not a PA.

(146) Prioritized List of Health Services — Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of Ancillary Services and 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 Prioritized List governs medical assistance programs' health services and Benefit Packages pursuant to these General Rules (OAR 410-120-0000 et seq.) and 410-141-0480–410-141-0520.

(147) Private Duty Nursing Services — Nursing Services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's Physician to an individual who is not in a health care facility.

(148) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing Provider, or bills, obligates and receives reimbursement on behalf of a performing Provider of services, also termed a Billing Provider (BP). The term Provider refers to both Performing Providers and BPs unless otherwise specified.

(149) Provider Organization — a group practice, facility, or organization that is:

(a) An employer of a Provider, if the Provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the Provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the Provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with DHS, and payments are made to the group practice, facility or organization.

(e) If such entity solely submits billings on behalf of Providers and payments are made to each Provider, then the entity is an agent. (See Subparts of Provider Organization)

(150) Public Health Clinic — A clinic operated by county government.

(151) Public Rates — The charge for services and items that Providers, including Hospitals and Nursing Facilities, made to the general public for the same service on the same date as that provided to DMAP Clients.

(152) Qualified Medicare Beneficiary (QMB) — A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(153) Qualified Medicare and Medicaid Beneficiary (QMM) — A Medicare Beneficiary who is also eligible for DMAP coverage.

(154) Quality Improvement Organization (QIO) — 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.

(155) Radiological Services — Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a Physician or other licensed Practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a Physician or appropriate licensed Practitioner in an office or similar facility, Hospital, or independent radiological facility.

(156) Recipient — A person who is currently eligible for medical assistance (also known as a Client).

(157) Recreational therapy — recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(158) Recoupment — An accounts receivable system that collects money owed by the Provider to DMAP by withholding all or a portion of a Provider's future payments.

(159) Referral — The transfer of total or specified care of a Client from one Provider to another. As used by DMAP, the term Referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of Clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a Referral is required before non-emergency care is covered by the PHP or DMAP.

(160) Remittance Advice (RA) — The automated notice a Provider receives explaining payments or other claim actions. It is the only notice sent to Providers regarding claim actions.

(161) Request for Hearing — A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department decision or action and wishes to have the decision considered by a higher authority.

(162) Retroactive Medical Eligibility — Eligibility for medical assistance granted to a Client retroactive to a date prior to the Client's application for medical assistance.

(163) Sanction — An action against Providers taken by DMAP in cases of Fraud, misuse or Abuse of DMAP requirements.

(16) School Based Health Service — A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a Physician or other licensed Practitioner.

(165) Seniors and People with Disabilities Division (SPD) — An Office of DHS responsible for the administration of programs for seniors and people with disabilities.

(166) Service Agreement — An agreement between DMAP and a specified Provider to provide identified services for a specified rate. Service Agreements may be limited to services required for the special needs of an identified Client. Service Agreements do not preclude the requirement for a Provider to enroll as a Provider.

(167) Sliding Fee Schedule — A fee schedule with varying rates established by a Provider of health care to make services available to indigent and low-income individuals. The Sliding Fee Schedule is based on ability to pay.

(168) Social Worker — A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(169) Speech-Language Pathologist — A person licensed by the Oregon Board of Examiners for Speech Pathology.

(170) Speech-Language Pathology Services — The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(171) Spend-Down — The amount the Client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the Client's total countable income and Medically Needy program income limits.

(172) State Facility — A Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(173) Subparts (of a Provider Organization) — For NPI application, Subparts of a health care Provider Organization would meet the definition of health care Provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(174) Subrogation — Right of the State to stand in place of the Client in the collection of Third Party Resources (TPR).

(175) Supplemental Security Income (SSI) — A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(176) Surgical Assistant — A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(177) Suspension — A Sanction prohibiting a Provider's participation in DHS medical assistance programs by deactivation of the Provider's

DMAP assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the Suspension. The number will be reactivated automatically after the Suspension period has elapsed.

(178) Targeted Case Management (TCM) — Activities that will assist the Client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services often provided by Allied Agency Providers.

(179) Termination — A Sanction prohibiting a Provider's participation in DMAP's programs by canceling the Provider's DMAP assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of Termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by DMAP at the time of Termination.

(180) Third Party Resource (TPR) — A medical or financial resource which, under law, is available and applicable to pay for Medical Services and items for an DMAP Client.

(181) Transportation — See Medical Transportation.

(182) Type A Hospital — A Hospital identified by the Office of Rural Health as a Type A Hospital.

(183) Type B AAA Unit — A Type B Area Agency on Aging (AAA) funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(184) Type B Hospital — A Hospital identified by the Office of Rural Health as a Type B Hospital.

(185) Usual Charge (UC) — 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;

(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 federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources (TPR) are to be considered.

(186) Utilization Review (UR) — The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(187) Valid Claim — An invoice received by DMAP or the appropriate Department office for payment of covered health care services rendered to an eligible Client which:

(a) Can be processed without obtaining additional information from the Provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(188) Vision Services — Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

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

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007 f. 12-11-07 cert. ef. 1-1-08

410-120-1200

Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of eligible Clients. If the Client accepts financial responsibility for a Non-Covered Service, payment is a matter between the Provider and the Client subject to the requirements of OAR 410-120-1280.

(2) The Division of Medical Assistance Programs (DMAP) will make no payment for any expense incurred for any of the following services or items:

(a) That are not expected to significantly improve the basic health status of the Client as determined by DMAP staff, or its contracted entities, for example, the DMAP Medical Director, medical consultants, dental consultants or Quality Improvement Organizations (QIO);

(b) That are not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) That are determined not medically or dentally appropriate by DMAP staff or authorized representatives, including Acumentra or any contracted Utilization Review organization.

(d) That are not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) That are for routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the Client. Examples include exams for employment or insurance purposes;

(f) That are provided by friends or relatives of eligible Clients or members of his or her household, except:

(A) When the friend, relative or household member is a health professional, acting in a professional capacity; or

(B) When the friend, relative or household member is directly employed by the Client under the Department of Human Services (DHS) Seniors and People with Disabilities Division (SPD) Home and Community Based Waiver or the SPD OARs 411-034-000–411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) When the friend, relative or household member is directly employed by the Client under the Children, Adults and Families Division (CAF) OARs 413-090-0100–413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family member of a minor Client (under the age of 18) must not be legally responsible for the Client in order to be a Provider of personal care services;

(g) That are for services or items provided to a Client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under DMAP administrative rules;

(h) When the need for purchase, repair or replacement of materials or equipment is caused by adverse actions of Clients to personally owned goods or equipment or to items or equipment that DMAP rented or purchased;

(i) That are related to a non-covered service; some exceptions are identified in the individual Provider rules. If DMAP determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at the discretion of DMAP and with DMAP Prior Authorization (PA), be covered;

(j) That are considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) That are identified in the appropriate program rules including the Hospital rules, Revenue Codes Section, as Non- Covered Services.

(l) That are requested by or for a Client whom DMAP has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) That are for copying or preparing records or documents excepting those Administrative Medical Reports requested by the branch offices or DMAP for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearance;

(o) That are similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the Client will be essentially the same;

(p) That are for the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

(q) Items or services which are for the convenience of the Client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a Physician certifies that the use of autologous blood or blood from a selected donor is Medically Appropriate and surgery is scheduled;

(s) Educational or training classes that are not Medically Appropriate (Lamaze classes, for example);

(t) Outpatient social services except Maternity Case Management services and other social services described as covered in the individual Provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a Client;

(w) Radial keratotomies;

(x) Recreational therapy;

(y) Telephone calls, including but not limited to telephone conferences between physicians or between a physician or other practitioner and a Client or representative of the Client, with the exception of telephone calls for the purpose of:

(A) Tobacco cessation counseling, as described in OAR 410-130-0190;

(B) Maternity Case Management as described in OAR 410-130-0595;

(C) Telemedicine as described in OAR 410-130-0610; and

(D) Services specifically identified as allowable for telephonic delivery when appropriate in the Mental Health and Chemical Dependency procedure code and reimbursement rates published by the DHS Addiction and Mental Health Division;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the Client fails to keep or an item of equipment which has not been provided to the Client);

(ee) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5);

(ff) Transportation to meet a Client's personal choice of a Provider;

(gg) Pain center evaluation and treatment;

(hh) Alcoholics Anonymous (AA) and other self help programs;

(ii) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible Clients, even if the Fully Dual Eligible Client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for Benefit Package.

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

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Division of Medical Assistance Programs (DMAP) that does not have a contract with an DMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3) or (4) below, must accept from the DMAP-contracted PHP, as payment in full, the amount that the provider would be paid from DMAP if the client was fee-for-service (FFS).

(3) For covered services provided on and after January 1, 2008, the DMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full, the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) The FCHP will reimburse inpatient and outpatient services in all other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, will be based upon 80 percent of the Medicare rate. Emergency services must be consistent with 42 USC 1396u-2(b)(2)(D),

(4) For covered services provided through and including December 31, 2007, the DMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) The FCHP will reimburse inpatient and outpatient services in all other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital according to the following method:

(A) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925;

(Bi) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(5) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (4)(b)(A) and for outpatient service rates for subsection (3)(b)(Bi), are calculated by the Department's contracted actuarial firm. The FCHP Non-Contracted DRG Hospital Reimbursement Rates are on the Department's Web site at: www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html, archived data is available on request from DMAP. Each document shows rates for a specific date range. The document dated:

(a) October 1, 2005, is effective for dates of service October 1, 2005 through December 31, 2005; (corrected December 23, 2005);

(b) January 1, 2006, is effective for dates of service January 1, 2006 through December 31, 2006 (corrected December 23, 2005);

(c) January 1, 2007, is effective for dates of service January 1, 2007 through December 31, 2007.

(6) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package

(d) The FCHP contract and DMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

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

Stats. Implemented: ORS 414.743
Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35 2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 2-2007, f. & cert. ef. 4-5-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

410-120-1320
Authorization of Payment

(1) Some of the services or items covered by the Division of Medical Assistance Programs (DMAP) require authorization before payment will be made. Some services require authorization before the service can be provided. See the appropriate Provider rules for information on services requiring authorization and the process to be followed to obtain authorization. Services (except Medical Transportation) for Clients identified by DMAP as "medically fragile children," shall be authorized by the Department of Human Services (DHS) Medically Fragile Children's Unit.

(2) Documentation submitted when requesting authorization must support the medical justification for the service. A complete request is one that contains all necessary documentation and meets any other requirements as described in the appropriate Provider rules.

(3) The authorizing agency will authorize for the level of care or type of service that meets the Client's medical need. Only services which are Medically Appropriate and for which the required documentation has been supplied may be authorized. The authorizing agency may request additional information from the Provider to determine medical appropriateness or appropriateness of the service.

(4) The Department and its authorizing agencies are not required to authorize services or to make payment for authorized services under the following circumstances:

(a) The Client was not eligible at the time services were provided. The Provider is responsible for checking the Client's eligibility each time services are provided;

(b) The Provider cannot produce appropriate documentation to support medical appropriateness, or the appropriate documentation was not submitted to the authorizing agency;

(c) The service has not been adequately documented (see 410-120-1360, Requirements for Financial, Clinical and Other Records); that is, the documentation in the Provider's files is not adequate to determine the type, medical appropriateness, or quantity of services provided and required documentation is not in the Provider's files;

(d) The services billed or provided are not consistent with the information submitted when authorization was requested or the services provided are determined retrospectively not to be medically appropriate;

(e) The services billed are not consistent with those provided;

(f) The services were not provided within the timeframe specified on the authorization of payment document;

(g) The services were not authorized or provided in compliance with the rules in these General Rules and in the appropriate Provider rules.

(5) Payment made for services described in subsections (a)–(g) of this rule will be recovered (see also Basis for Mandatory Sanctions and Basis for Discretionary Sanctions).

(6) Retroactive Eligibility:

(a) In those instances when Clients are made retroactively eligible, authorization for payment may be given if:

(A) The Client was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules, and;

(C) The request for authorization is received by the appropriate DHS branch or DMAP within 90 days of the date of service;

(b) Services provided when a Title XIX Client is retroactively disenrolled from a Prepaid Health Plan (PHP) or services provided after the Client was disenrolled from a PHP may be authorized if: (A) The Client was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules;

(C) The request for authorization is received by the appropriate DHS branch or DMAP within 90 days of the date of service;

(c) Any requests for authorization after 90 days from date of service require documentation from the Provider that authorization could not have been obtained within 90 days of the date of service.

(7) Payment 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 will terminate on the date coverage ends.

(8) Payment Authorization for Clients with other insurance or for Medicare beneficiaries:

(a) When Medicare is the primary payer for a service, no Payment Authorization from DMAP is required, unless specified in the appropriate program Provider rules;

(b) For Clients who have private insurance or other Third Party Resources (TPRs), such as Blue Cross, CHAMPUS, etc., DMAP requires Payment Authorization as specified above and in the appropriate Provider rules when the other insurer or resource does not cover the service or when the other insurer reimburses less than the DMAP rate;

(c) For Clients in a Medicare's Social Health Maintenance Organization (SHMO), the SHMO requires Payment Authorization for some services. DMAP requires Payment Authorization for services which are covered by DMAP but which are not covered under the SHMO as specified above and in the appropriate Provider rules.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 14-1979, f. 6-29-79, ef. 7-1-79; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060; AFS 13-1981, f. 2-27-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; Renumbered from 461-013-0041, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 7-1984(Temp), f. 2-28-84, ef. 3-15-84; AFS 11-1984(Temp), f. 3-14-84, ef. 3-15-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 38-1986, f. 4-29-86, ef. 16-1-86; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0106 & 461-013-0180; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0180; HR 22-1994, f. 5-31-94, cert. ef. 6-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96, cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

410-120-1340
Payment

(1) The Division of Medical Assistance Programs (DMAP) will make payment only to the enrolled Provider who actually performs the service or to the Provider's enrolled Billing Provider for covered services rendered to eligible Clients. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Department of Human Services (DHS) Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et.seq. DMAP may require that payment for services be made only after review by DMAP.

(2) DMAP or the Department of Human Services (DHS) office administering the program under which the billed services or items are provided sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the DMAP maximum allowable amount or the reimbursement specified in the individual program Provider rules:

(a) Amount billed may not exceed the Provider's Usual Charge (see definitions);

(b) DMAP's maximum allowable rate setting process uses the following methodology. The rates are posted on the DMAP web site at http://www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/main.shtml, and updated periodically:

(A) For all CPT/HCPCS codes assigned a Relative Value Unit (RVU) weight DMAP converted to the 2007 Fully Implemented Non-Facility Total RVU weights published in the Federal Register, Vol 71, December 1, 2006 to be effective January 1, 2008, except in cases where the Fully Implemented Non-Facility Total RVU weight was a significant change from the previous year's RVU Total. In those cases the transitional year RVU Total will be adopted:

(i) The conversion factor for labor and delivery (59400-59622) is $40.20;

(ii) CPT codes 92340-92342 and 92352-92353 remain at a flat rate of $25.90;

(iii) All remaining RVU weight based CPT/HCPCS codes have a conversion factor of $26.88;

(B) Surgical assist reimburses at 20% of the surgical rate;

(C) The base rate for anesthesia services 00100-01996 is $24.19 and is based on per unit of service;

(D) Non-RVU weight based Lab are paid at 97% of 62% or Medicare's rates or as minimally required by Medicare. Other non-RVU Lab services are priced based on the Centers for Medicare and Medicaid Service (CMS) mandates;

(E) All approved Ambulatory Surgical Center (ASC) procedures are priced using Medicare's Group assignment for each surgical procedure;

(F) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate will be based upon Average Wholesale Price (AWP). Pricing information for AWP is provided by First Data Bank. These rates may change periodically based on drug costs;

(G) All procedures used for vision materials and supplies are based on contracted rates which include acquisition cost plus shipping and handling;

(c) Individual Provider rules may specify reimbursement rates for particular services or items.

(4) DMAP reimburses Inpatient Hospital service under the DRG methodology, unless specified otherwise in the Hospital services rules. Reimbursement for services, including claims paid at DRG rates, will not exceed any Upper Limits established by federal regulation.

(5) DMAP reimburses all out-of-state Hospital services at Oregon DRG or fee-for-service rates as published in the Hospital Services rules (OAR 410 division 125) unless the Hospital has a contract or Service Agreement with DMAP to provide highly specialized services.

(6) Payment rates for in-home services provided through DHS Seniors and People with Disabilities Division (SPD) will not be greater than the current DMAP rate for Nursing Facility payment.

(7) DHS sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate:

(a) That is consistent with similar services provided in the State of Oregon; and

(b) Is the lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) Is the rate established by SPD for out-of-state Nursing Facilities.

(8) DMAP will not make payment on claims that have been assigned, sold, or otherwise transferred or on which the Billing Provider, Billing Agent or Billing Service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a Provider for accounts receivable.

(9) DMAP will not make a separate payment or copayment to a Nursing Facility or other Provider for services included in the Nursing Facility's All-Inclusive Rate. The following services are not included in the All-Inclusive Rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services (OAR 410 division 121) and Home Enteral/Parenteral Nutrition and IV Services Provider rules, (OAR 410 division 148);

(b) Physical Therapy, Speech Therapy, and Occupational Therapy provided by a non-employee of the Nursing Facility within the appropriate program Provider rules, (OAR 410 division 131 and 129);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment and Medical Supplies Provider rules, (OAR 410 division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services Provider rules, (OAR 410 division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services Provider rules, (OAR 410 division 130);

(f) Medical services provided by Physician or other Provider of medical services, such as radiology and Laboratory, as outlined in the Medical-Surgical Services Provider rules, (OAR 410 division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment and Medical Supplies Provider rules, (OAR 410 division 122).

(10) DMAP reimburses Hospice services on a per diem basis dependent upon the level of care being provided. A separate payment will not be made for services included in the core package of services as outlined in OAR 410 division 142.

(11) Payment for DMAP Clients with Medicare and full Medicaid:

(a) DMAP limits payment to the Medicaid allowed amount less the Medicare payment up to the Medicare co-insurance and deductible, whichever is less. DMAP payment cannot exceed the co-insurance and deductible amounts due;

(b) DMAP pays the DMAP allowable rate for DMAP covered services that are not covered by Medicare.

(12) For Clients with Third-Party Resources (TPR), DMAP pays the DMAP allowed rate less the TPR payment but not to exceed the billed amount.

(13) DMAP payments, including contracted Prepaid Health Plan (PHP) payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For DMAP such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding DMAP's allowable payment; and

(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 individual Provider rules.

(14) Payment by DMAP does not limit DHS 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 review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

410-120-1397
Recovery of Overpayments to Providers — Recoupments and Refunds

(1) The Department of Human Services (DHS) requires Providers to submit true, accurate, and complete claims or encounters. DHS treats the submission of a claim or encounter, whether on paper or electronically, as certification by the Provider of the following: "This is to certify that the foregoing information is true, accurate, and complete. I understand that payment of this claim or encounter will be from federal and state funds, and that any falsification or concealment of a material fact maybe prosecuted under federal and state laws."

(2) DHS staff or a designee may review or audit a claim before or after payment for assurance that the specific care, item or service was provided in accordance with DHS the rules and policies, the terms applicable to the agreement or contract and the generally accepted standards of a Provider's field of practice or specialty:

(a) "Designee" for the purposes of these rules includes, but is not limited to, a medical, behavioral, drug or dental utilization and review or a post-payment review contractor;

(b) "Claim" for the purposes of these rules includes requests for payment under a Provider enrollment agreement or contract, whether submitted as a claim or invoice or other method for requesting payment authorized by administrative rule, and may include encounter data.

(3) DHS may deny payment or may deem payments subject to recovery as an Overpayment if a review or audit determines the care, item, drug or service was not provided in accordance with DHS policy and rules applicable agreement, intergovernmental agreement or contract, including but not limited to the reasons identified in section (5) of this rule. Related Provider and Hospital billings will also be denied or subject to recovery.

(4) If a Provider determines that a submitted claim or encounter is incorrect, the Provider is obligated to submit an Individual Adjustment Request and refund the amount of the Overpayment, if any, consistent with the requirements of OAR 410-120-1280. When the Provider determines that an Overpayment has been made, the Provider must notify and reimburse the Department immediately, following one of the reimbursement procedures described below:

(a) Submitting a Medicaid adjustment form (DMAP 1036-Individual Adjustment Request) will result in an offset of future payments. It is not

necessary to refund with a check if an offset of future payments is adequate to repay the amount of the Overpayment; or

(b) Providers preferring to make a refund by check must attach a copy of the remittance statement page indicating the Overpayment information, except as provided by subsection (c) of this section. If the Overpayment involves an insurance payment or another Third Party Resource, Providers will attach a copy of the remittance statement from the insurance payer:

(A) Refund checks not involving Third Party Resource payments will be made payable to DMAP Receipting — Checks in Salem;

(B) Refunds involving Third Party Resource payments will be made payable and submitted to DMAP Receipting — MPR Checks in Salem;

(c) Providers making a refund by check based on audit or post-payment review will follow the reimbursement procedures described in the Overpayment notice or order in the audit or on post-payment review, if specified.

(5) DHS 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) DHS paid the Provider an amount in excess of the amount authorized under the state plan or DHS rule, agreement or contract;

(b) A third party paid the Provider for services (or a portion thereof) previously paid by DHS;

(c) DHS paid the Provider for care, items, drugs or services that the Provider did not perform or provide;

(d) DHS paid for claims submitted by a data processing agent for whom a written Provider or Billing Agent/Billing Service agreement or other applicable contract or agreement was not on file at the time of submission;

(e) DHS paid for care, items, drugs or services and later determined they were not part of the client's benefit package;

(f) Coding, processing submission or data entry errors;

(g) The care, items, drugs or service was not provided in accordance with DHS rules or does not meet the criteria for quality of care, item, drug or service, or medical appropriateness of the care, item, drug, service or payment;

(h) DHS paid the Provider for care, items, drugs or services, when the Provider did not comply with DHS rules and requirements for reimbursement.

(6) Prior to identifying an Overpayment, the Department or designee may contact the Provider for the purpose of providing preliminary information and requesting additional documentation. Provider must provide the requested documentation within the time frames requested.

(7) When an Overpayment is identified, DHS will notify the Provider in writing, as to the nature of the discrepancy, the method of computing the dollar amount of the Overpayment, and any further action that the Department may take in the matter:

(a) The DHS notice may require the Provider to submit applicable documentation for review prior to requesting an appeal from DHS, and may impose reasonable time limits for when such documentation must be provided in order to be considered by DHS.

(b) The Provider may appeal a DHS notice of Overpayment in the manner provided in OAR 410-120-1560.

(8) DHS may recover Overpayments made to a Provider by direct reimbursement, offset, civil action, or other actions authorized by law:

(a) The Provider must make a direct reimbursement to DHS within thirty (30) calendar days from the date of the notice of the Overpayment, unless other regulations apply;

(b) DHS may grant the Provider an additional period of time to reimburse DHS upon written request made within thirty (30) calendar days from the date of the notice of Overpayment if the Provider provides a statement of 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 repayment 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 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;

(v) Affidavits containing evidence relied upon in support of the request for stay:

(vi) DHS 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, DHS may require conditions acceptable to DHS before agreeing to a repayment plan. DHS must issue an order granting or denying a repayment delay request within thirty (30) calendar days after receiving it.

(c) Except as otherwise provided in subsection (b) a request for a hearing or administrative review does not change the date the repayment of the Overpayment is due, and if the outcome of the appeal reduces the amount of the Overpayment, that amount previously paid by the Provider in response to the notice of Overpayment will be refunded to the Provider;

(d) DHS 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 Section (7)(a);

(e) DHS may file a civil action in the appropriate Court and exercise all other civil remedies available to DHS in order to recover the amount of an overpayment.

(9) In addition to any Overpayment, DHS may impose a Sanction on the Provider in connection with the actions that resulted in the Overpayment. DHS may, at its discretion, combine a notice of Sanction with a notice of Overpayment.

(10) Voluntary submission of an Individual Adjustment Request or Overpayment amount after notice from the Department does not prevent the Department from issuing a notice of Sanction, but DHS may take such voluntary payment into account in determining the Sanction.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.025, 414.105, 414.106, 414.805
Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

410-120-1560
Provider Appeals

(1) An enrolled Provider may appeal a claim payment, claim decision including Prior Authorization (PA) decisions, Overpayment determination, Sanction decision or other decision in which the Provider is directly adversely affected in the manner provided in this rule:

(a) Client appeals of Actions must be handled in accordance with OAR 140-120-1860 and 410-120-1865;

(b) A Division of Medical Assistance Programs (DMAP) denial of or limitation of payment allowed, claim decision including PA decision, or DMAP Overpayment determination (other than Overpayment determinations made on post-payment review or in a audit report) for services or items provided to a Client must be appealed as Claim Reconsideration under OAR 410-120-1570;

(c) A DMAP denial of a Provider's application for participation in the Department's medical assistance programs must be appealed as an administrative review under OAR 410-120-1580; or

(d) A notice of Sanctions imposed, or intended to be imposed, on a Provider, or denial of continued participation as an enrolled Provider, must be appealed as administrative review under OAR 410-120-1580, unless the effect of the notice of Sanction is, or will be, to suspend or revoke a right of privilege of the Provider which must be appealed as a contested case hearing under OAR 410-120-1600. A Provider that is entitled to appeal a notice of Sanction as a contested case may request administrative review instead of contested case hearing under the following circumstances:

(A) The Provider submits a written request for administrative review of the notice of Sanction and agrees in writing to waive the right to a contested case hearing; and

(B) DMAP agrees to review the appeal of the notice of Sanction as an administrative review;

(e) Post-payment review determinations must be appealed to DHS as an administrative review. Failure to timely request administrative review, withdrawal of a request for administrative review, or failure to appear constitutes acceptance of The Department of Human Services (DHS) post-payment review Overpayment determination, and the Overpayment notice will become a final order in other than a contested case by default. The designated record for purposes of default is the files and records held by DHS for the Overpayment. A final order on administrative review is effective immediately upon being signed or as otherwise provided in the order; and final orders resulting from a default are effective the date of the default;

(f) Final audit report Overpayment determinations as a result of an audit may be appealed as a contested case hearing or an administrative review. If a final audit report is combined with a notice of Sanction, the procedure in subsection (d) will apply to the appeal of the audit report and the notice of Sanction;

(g) Some decisions that adversely affect a Provider may be made by other program areas within DHS such as the audits unit or the information security office, or by DHS contractors such as DMAP's pharmacy benefits manager, or by entities performing statutory functions related to the medical assistance programs such as the Drug Use Review Board, in the conduct of program integrity activities applicable to the administration of the medical assistance programs. However, other program areas within DHS that have responsibility for administering medical assistance funding, such as nursing home care or community mental health and developmental disabilities program services, may make decisions that adversely affect a Provider. Those Providers are subject to the Provider grievance or appeal processes applicable to those program areas. Only if DMAP has legal authority to make the final decision in the matter, a Provider may appeal such a decision to DMAP as an administrative review and DMAP may accept such review.

(2) For Prepaid Health Plan (PHP) Providers of care, items, drugs or servicesto Clients in a PHP, the PHP Provider must exhaust all levels of the appeals process outlined by the Participating Provider's contract, or the rules applicable to claims submission or payment by a Non-Participating Provider, with the PHP prior to submitting an appeal to DMAP. PHP Provider appeals to DMAP must be appealed as an administrative review under OAR 410-120-1580.

(3) This rule does not apply to contract administration issues that may arise solely between DMAP and a PHP. Such issues shall be governed by the terms of the applicable contract.

(4) A Provider appeal is initiated by filing a request for review with DMAP on time:

(a) A request for review does not have to follow a specific format as long as it provides a clear written expression from a Provider or Provider applicant expressing disagreement with a DMAP decision or from a PHP Provider expressing disagreement with a decision by a PHP. The request should identify the decision made by DMAP or a PHP that is being appealed and the reason the Provider disagrees with that decision;

(b) A request for review should specify the type of appeal being requested, such as claim reconsideration, administrative review, or contested case hearing as provided for in these Provider appeal rules. Failure to correctly identify the proper type of appeal will not be used to invalidate a request for review. If DMAP determines at any time prior to a claim reconsideration, administrative review meeting or contested case hearing that a different type of appeal applies to the request, DMAP will notify the Provider and refer the appeal to the appropriate procedure as long as the request for review is otherwise timely filed and eligible for appeal.

(5) In the event a request for review is not timely, DMAP will determine whether the failure to file the request was caused by circumstances beyond the control of the Provider, and enter an order accordingly. In determining whether to accept a late request for review, DMAP requires the request to be supported by a written statement that explains why the request for review is late. DMAP may conduct such further inquiry as DMAP deems appropriate. In determining timeliness of filing a request for review, the amount of time that DMAP determines accounts for circumstances beyond the control of the Provider is not counted. DMAP may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(6) For purposes of these Provider appeal rules, the following terms have these meanings:

(a) "Provider" means a person or entity enrolled with DMAP, or under contract with DHS that is subject to these DMAP rules, that has requested an appeal in relation to health care, items, drugs or services provided or requested to be provided to a Client on a fee-for-service basis or under contract with DHS where that contract expressly incorporates these rules;

(b) "Provider Applicant" means a person or entity that has submitted an application to become an enrolled Provider with DMAP but the application has not been approved;

(c) "Prepaid Health Plan" has the meaning in OAR 410-141-0000, except to the extent that Mental Health Organizations (MHO) have separate procedures applicable to Provider grievances and appeals;

(d) "Prepaid Health Plan Provider" means a person or entity providing health care services, supplies or items to a Client enrolled with a PHP, including both Participating Providers and Non-participating Providers as those terms are defined in OAR 410-141-0000, except that services provided to a Client enrolled with an MHO shall be governed by the Provider grievance and appeal procedures administered by the Office of Mental Health and Addiction Services;

(e) The "Provider Appeal Rules" refers to the rules in OAR 410-120-1560 to 410-120-1700, describing the availability of appeal procedures and the procedures applicable to each appeal procedure.

(7) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position. Consistent with OAR 410-120-1360, payment on a claim will only be made for services that are adequately documented and billed in accordance with OAR 410-120-1280 and all applicable administrative rules related to covered services for the Client's benefit package and establishing the conditions under which services, supplies or items are covered, such as the Prioritized List, medical appropriateness and other applicable standards.

(8) Administrative review and contested case hearings will be held in Salem, unless otherwise stipulated to by all parties and agreed to by DMAP.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 409.010
Hist.: AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-44, ef. 9-1-84; AFS 51-1985, f. 8-16-85, ef. 9-1-85; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0191; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0780; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

410-120-1570
Provider Appeals — Claims Reconsideration

(1) A Provider disputing a Division of Medical Assistance Programs (DMAP) claim payment, or claim decision, including Prior Authorization issues, or DMAP overpayment notice (other than Overpayment determinations made in an audit report or a post-payment review notice) may request claim reconsideration. The Provider must submit a request for review in writing to DMAP, Provider Services Unit within one year from DMAP's decision. If the request for claim reconsideration is filed late, DMAP will determine whether to accept a late filing in accordance with OAR 410-120-1560(5).

(2) The request for review must include the specific service, supply or item for which claim reconsideration is being requested and why the Provider disagrees with that determination. The Provider should include a copy of the denial decision or Remittance Advice that describes the basis for the claim denial under reconsideration, and any information pertinent to the resolution of the dispute.

(3) DMAP will complete an additional review, which may include such further inquiry as DMAP deems appropriate. DMAP will respond back to the Provider in writing.

(4) If the Provider disagrees with the results of the claim reconsideration on the basis of the application of law or policy to the claim or authorization denial, the Provider may request an administrative review as outlined in OAR 410-120-1580 if the request for administrative review is made within 30 calendar days of the date the decision on claim reconsideration is issued.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08

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Rule Caption: January 2008 revisions to clarify text.
Adm. Order No.: DMAP 25-2007
Filed with Sec. of State: 12-11-2007
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Notice Publication Date: 11-1-2007
Rules Amended: 410-123-1000, 410-123-1060, 410-123-1100, 410-123-1160, 410-123-1200, 410-123-1220, 410-123-1240, 410-123-1260, 410-123-1490, 410-123-1620, 410-123-1670
Rules Repealed: 410-123-1040
Subject: The Dental Services Program administrative rules govern of Medical assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended rules and repealed one rule to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance.

DMAP clarified current OARs to help facilitate provider compliance with payment methodology, service coverage and limitations,

prior authorizations, and billing requirements. Text is revised to improve readability and take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1000
Eligibility

(1) Before providers bill the Division of Medical Assistance Programs (DMAP) or any Oregon Health Plan (OHP) Prepaid Health Plan (PHP) for services, eligibility must be verified before providing any service. It is the responsibility of the provider to verify the client's eligibility. DMAP will not pay for services provided to an ineligible client even if services were authorized. Always check the client's DMAP Medical Care ID or call the Automated Information System (AIS) to verify eligibility.

(2) The DMAP Medical Care ID guarantees eligibility only for the time period listed on the ID. Refer to the front of the DMAP Dental Services rules for instructions on reading a DMAP Medical Care ID.

(3) Providers must follow DMAP rules in effect on the date of service. All DMAP rules are intended to be used in conjunction with the DMAP General Rules (chapter 410, division 120), the OHP Administrative Rules (chapter 410, division 141), Pharmaceutical Services Rules (chapter 410, division 121) and other relevant DMAP OARs applicable to the service provided, where the service is delivered, and the qualifications of the person providing the service including the requirement for a signed provider enrollment agreement.

(4) Billing of Third Party Resources:

(a) A third party resource (TPR) is an alternate insurance resource, other than DMAP, available to pay for medical services and items on behalf of Medical Assistance Program clients. Any alternate insurance resource must be billed before DMAP or any OHP PHP can be billed. Indian Health Services or Tribal facilities are not considered to be a TPR pursuant to General Rules (OAR 410-120-1280);

(b) If other health insurance is named in the "Managed Care/TPR" section of the client's DMAP Medical Care ID, it means that the client has other resources that must be billed prior to billing any OHP PHP or DMAP.

(5) Fabricated Prosthetics: If a dentist or denturist provides an eligible client with fabricated prosthetics that require the use of a dental laboratory, and the fabrication is expected to extend beyond the period of eligibility listed on the client's DMAP Medical Care ID, the dentist/denturist should use the date of final impression as the date of service, but also indicate the date of delivery. This is the only exception to General Rules (OAR 410-120-1280). All other services must be billed using the date the service was provided.

(6) Treatment Plans: Being consistent with established dental office protocol and the standard of care within the community, scheduling of appointments is at the discretion of the dentist. The agreed upon treatment plan established by the dentist and patient will establish appointment sequencing. Possession of a DMAP Medical Care ID does not entitle a client to any services or consideration not provided to all clients.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1060
Definition of Terms

(1) Central Nervous System Anesthesia — An induced controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method. Refer to Oregon Board of Dentistry administrative rules (OAR chapter 818 — division 026) for further details.

(a) Conscious Sedation — An induced controlled state of minimally depressed consciousness in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(b) Deep Sedation — An induced controlled state of depressed consciousness in which the patient experiences a partial loss of protective reflexes, as evidenced by the inability to respond purposefully either to physical stimulation or to verbal command but the patient retains the ability to independently and continuously maintain an airway.

(c) General Anesthesia — An induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command.

(d) Nitrous Oxide Sedation — An induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) — Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services — Services on the Health Services Commission's (HSC) Prioritized List of Health Services (List) that have been funded by the Legislature and identified in specific program rules. Services are limited as directed by General Rules — Excluded Services and Limitations (OAR 410-120-1200), the Dental Services Rules (chapter 410, division 123) and the HSC List. Services that are not considered emergency dental services as defined by OAR 410-123-1060(12) are considered routine services.

(4) Dental Hygienist — A person licensed to practice dental hygiene pursuant to State law.

(5) Dental Hygienist with Limited Access Permit (LAP) — A person licensed to practice dental hygiene with a LAP and within the scope of a LAP pursuant to State law.

(6) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a dentist or dental hygienist, or denture services provided within the scope of practice as defined under State law by a denturist.

(7) Dental Services Documentation — Must meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, "Requirements for Financial, Clinical and Other Records;" and any other documentation requirements as outlined in the Dental rules.

(8) Dentally appropriate — In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental 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 OHP Member or a Provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division of Medical Assistance Program (DMAP) Member.

(9) Dentist — A person licensed to practice dentistry pursuant to State law.

(10) Denturist — A person licensed to practice denture technology pursuant to State law.

(11) Direct Pulp Cap — The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(12) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. DMAP recognizes that some non-covered services may meet the criteria of treatment for the emergency condition, however this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(d) The OHP Standard Benefit Package includes a limited emergency dental benefit. Refer to OAR 410-123-1670.

(13) Hospital Dentistry Dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR 410-123-

1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(14) Standard of Care — What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1100
Services Reviewed by the Division of Medical Assistance Programs (DMAP)

(1) The Division of Medical Assistance Programs (DMAP) will not give prior authorization (PA) for payment when the prognosis is unfavorable, the treatment impractical, or a lesser-cost procedure would achieve the same ultimate results.

(2) Consultants: For certain services and billings, DMAP contracts with a general practice consultant and an oral surgery consultant for professional review before PA of payment. DMAP will deny PA if the consultant decides that the clinical information furnished does not support the treatment or services.

(3) By Report Procedures: Request for payment for dental services listed as By Report, or services not included in the procedure code listing must be submitted with a full description of the procedure, including relevant operative or clinical history reports and/or radiographs. Payment for By Report procedures will be approved in consultation with a DMAP dental consultant.

(4) Treatment Justification: DMAP may request the treating dentist to submit appropriate radiographs or other clinical information that justifies the treatment:

(a) Before issuing PA;

(b) In the process of utilization/post payment review; or

(c) In determining responsibility for payment of dental services.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1160
Prior Authorization

(1) Prior authorization (PA) for services and supplies listed in the Dental Services administrative rules are intended for clients who are not enrolled in a Dental Care Organization (DCO). Contact the client's DCO for their policy governing PA requirements.

(2) Covered services requiring PA from the Division of Medical Assistance Programs (DMAP) for clients receiving dental benefits under fee-for-service (FFS) are:

(a) Crowns;

(b) Complete dentures;

(c) Immediate dentures;

(d) Partial dentures;

(e) Denture repairs; and

(f) Orthodontics (when covered pursuant to OAR 410-123-1260).

(3) Hospital Dentistry — Refer to OAR 410-123-1490 for PA for routine (non-emergency) dental services performed in an Ambulatory Surgical Center (ASC), outpatient or inpatient setting. The client's clinical record must document any appropriate clinical information that supports the need for the hospitalization.

(4) Life-threatening Emergencies — PA for outpatient or inpatient services is not required for any life-threatening emergencies. The client's clinical record must document any appropriate clinical information that supports the need for the hospitalization.

(5) Oral Surgical Services — PA is required for oral surgical services performed in an Ambulatory Surgical Center (ASC), outpatient or inpatient hospital setting and related anesthesia. Refer to OAR 410-123-1260(15) and the current Medical Surgical Services administrative rules (OAR 410-130-0200) for information.

(6) Maxillofacial Surgeries — PA for some maxillofacial surgeries may be required. Refer to the current Medical Surgical Services administrative rules for information (OAR 410-130-0200).

(7) DMAP will provide PA for services when:

(a) The prognosis is favorable;

(b) The treatment is practical;

(c) The services are dentally appropriate; and

(d) A lesser-cost procedure would not achieve the same ultimate results.

(8) PA does not guarantee eligibility or reimbursement. It is the responsibility of the provider to check the client's eligibility on the date of service:

(9) Treatment Justification: DMAP may request the treating dentist to submit appropriate radiographs or other clinical information that justifies the treatment.

(a) When radiographs are required they must be:

(A) Readable copies;

(B) Mounted or loose;

(C) In an envelope, stapled to the PA form;

(D) Clearly labeled with dentist's name and address and client's name; and

(E) If digital x-ray, they must be of photo quality.

(b) Do not send in radiographs unless required by the Dental Services administrative rules or requested during the PA process.

(10) Requests to DMAP for PA must be made through the DMAP Dental Program Coordinator in writing on an ADA form, listing the specific services requested. No phone calls requesting PA will be accepted.

(11) Upon approval of the request for payment, a nine-digit PA number will be entered on the requesting form and the form will be returned to the treating provider. Claims cannot be paid without this PA number.

(12) DMAP will issue a decision on PA requests within 30 days of receipt of the request.

(13) For certain services and billings, DMAP will seek a general practice consultant or an oral surgery consultant for professional review before PA. DMAP will deny PA if the consultant decides that the clinical information furnished does not support the treatment of services.

(14) PA for clients receiving services through a DCO for services other than hospital dentistry:

(a) Contact the client's DCO for PA requirements for individual services and/or supplies listed in the Dental Services administrative rules. DCOs may not have the same PA requirements for dental services;

(b) If a client is enrolled in a Fully Capitated Health Plan (FCHP) or in a Physician Care Organization (PCO) and is responsible for hospital services, the FCHP or PCO may require PA for Ambulatory Surgical Center (ASC), outpatient or inpatient hospital dental services. It is the responsibility of the provider to check with the FCHP for any required authorization prior to the service being rendered;

(c) If a client is enrolled in a DCO and is FFS for medical, DMAP requires PA for ASC, outpatient or inpatient hospital dental services. It is the responsibility of the provider to contact DMAP for PA prior to the service being rendered;

(d) If a client is enrolled in a DCO and is assigned to a Primary Care Manager (PCM) through FFS, the client must have a referral from the PCM prior to any hospital service being approved by DMAP.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1200
Services Not To Be Billed Separately

(1) Services that are not to be billed separately may be included in the Current Dental Terminology (CDT) codebook and may not be listed as combined with another procedure, however they are considered to be either minimal, included in the examination, part of another service, or included in routine post-op or follow-up care.

(2) The following services do not warrant an additional fee:

(a) Alveolectomy/Alveoloplasty in conjunction with extractions;

(b) Cardiac and other monitoring;

(c) Curettage and root planing — per tooth;

(d) Diagnostic casts;

(e) Dietary counseling;

(f) Direct pulp cap (exception: direct pulp cap is covered separately for OHP Standard clients; the Standard benefit plan does not cover restorations);

(g) Discing;

(h) Dressing change;

(i) Electrosurgery;

(j) Equilibration;

(k) Gingival curettage — per tooth;

(l) Indirect pulp cap;

(m) Local anesthesia;

(n) Medicated pulp chambers;

(o) Occlusal adjustments;
(p) Occlusal analysis;
(q) Odontoplasty;
(r) Oral hygiene instruction;
(s) Periodontal charting, probing;
(t) Polishing fillings;
(u) Post extraction treatment for alveolaritis (dry socket treatment) if done by the provider of the extraction;
(v) Pulp vitality tests;
(w) Smooth broken tooth;
(x) Special infection control procedures;
(y) Surgical procedure for isolation of tooth with rubber dam;
(z) Surgical splint;
(aa) Surgical stent; and
(bb) Suture removal.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1220
Services Not Funded on the Health Services Commission's Prioritized List of Health Services

(1) **Table 123-1260-1** contains all covered dental services. This table is subject to change if there are funding changes to the Health Services Commission's (HSC) List of Prioritized Services (posted on DHS' website at: http://egov.oregon.gov/DAS/OHPPR/HSC/current_prior.shtml). In the event of an alleged variation between a Division of Medical Assistance Program (DMAP)-listed code and a national code, DMAP will apply the national code in effect on the date of request or date of service.

(2) The following general categories of Dental Services are not included/funded on the HSC List and are not covered for any client. Several of these services are considered "cosmetic" in nature (i.e., done for the sake of appearance):

(a) Desensitization;
(b) Implant and implant services;
(c) Mastique or veneer procedure;
(d) Orthodontia (except when it is treatment for cleft palate with cleft lip);
(e) Overhang removal;
(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;
(g) Temporomandibular Joint Dysfunction treatment; and
(h) Tooth bleaching.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1240
The Dental Claim Invoice

(1) The Division of Medical Assistance Programs (DMAP) will only accept claims for professional dental services, in the following formats (Refer to the Dental Supplemental Guide for additional information):

(a) Electronic claims:
(A)The "837" dental claim;
(B) The "835" professional claim for services (identified in OAR 410-123-1260) which are billed as medical;
(C) Submission of an electronic claim directly or through a Billing Agent must comply with the DHS Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et.seq;
(b) Paper claims:
(A) American Dental Association (ADA) paper claims (2006 version only);
(B) CMS-1500 paper claims (8/05 version only) for services (identified in OAR 410-123-1260) which are billed as medical.

(2) Effective August 1, 2005, claims received by DMAP that are not in the correct format will be returned to the provider unprocessed.

(3) The provider will be responsible for making corrections and submitting a valid claim in accordance with these rules.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 36-2005, f. & cert. ef. 8-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1260
Dental Exams, Diagnostic and Procedural Services

(1) Refer to OAR 410-123-1160 for information regarding dental services requiring prior authorization (PA) and refer to Table 123-1260-1 for requirements to submit surgical reports as shown by "BR" (By Report). Procedure codes listed in Table 123-1260-1 are subject to change by the American Dental Association (ADA) without notification.

(2) Services funded on the Health Services Commission (HSC) Prioritized List of Health Services may change and may not be immediately reflected in OARs 410-123 until the following rule change period.

(3) The client's records must include appropriate documentation to support the service and level of care rendered.

(4) Dental services that are not dentally appropriate as defined in OAR 410-123-1060, or are for the convenience of the client or practitioner, are not covered.

(5) Restorative, periodontal and prosthetic treatments must be consistent with the prevailing standard of care and documentation must be included in the client's charts to support the treatment. Restorative, periodontal and prosthetic treatments are limited as follows:

(a) When prognosis is unfavorable;
(b) When treatment is impractical;
(c) Until rampant progression of caries is arrested;
(d) Until a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic;
(e) A lesser-cost procedure would achieve the same ultimate result; or
(f) The treatment has specific limitations outlined in this rule.

(6) Exams:

(a) The Division of Medical Assistance Programs (DMAP) will reimburse exams (billed as D0120, D0150, D0160 or D0180) by the same practitioner once every twelve months;

(b) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(c) Oral exams are not covered when provided by a medical practitioner unless the practitioner is an oral surgeon.

(7) Radiographs:

(a) DMAP will reimburse for routine radiographs once every 12 months;

(b) DMAP will reimburse for panoramic (D0330) or intraoral complete series (D0210) once every five years, but both cannot both be done within the five-year period;

(c) Clients must be a minimum of six years for billing code D0210. For clients under age six, radiographs may be billed separately every 12 months as follows:

(A) D0220 -- once;
(B) D0230 — a maximum of five times;
(C) D0270 — a maximum of twice, or D0272 once.

(d) The minimum standards for payment of intraoral complete series are:

(A) For clients age six through 11- a minimum of 10 periapicals and two bitewings for a total of 12 films;

(B) For clients ages 12 and older - a minimum of 10 periapicals and four bitewings for a total of 14 films.

(e) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), DMAP will pay for the complete series;

(f) DMAP will reimburse bitewing radiographs for routine screening once every 12 months;

(g) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(h) If DMAP determines the number of radiographs excessive, payment for some or all radiographs of the same tooth or area may be denied:

(i) DMAP will reimburse a maximum of six radiographs for any one emergency;

(j) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(k) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

(8) Preventive Services:

(a) Prophylaxis — Limited to once every 12 months. Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(b) Topical Fluoride Treatment — Limited to once every 12 months. Additional topical fluoride treatments may be available, up to a total of 4 treatments within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients:

(A) With high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(B) Who are pregnant with a high-risk oral condition(s) limited to periodontal disease or rampant caries;

(C) With physical disabilities that cannot perform adequate, daily oral health care;

(D) Who have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care;

(E) Who are six years old or younger with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc.

(c) Topical fluoride varnish treatments by medical practitioners:

(A) Are covered as part of a medical visit for those high-risk young children that do not have access to a dental practitioner;

(B) Are limited to children six years old and younger in accordance with the limitations detailed in OAR 410-123-1260(8)(b) herein;

(C) Are billed on the CMS-1500 form, using the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(D) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(d) Sealants:

(A) Are covered for permanent molars only for children 15 or younger;

(B) Are limited to one treatment per tooth every five years except for visible evidence of clinical failure;

(e) Topical fluoride varnish and/or sealants by Dental Hygienists in limited access locations:

(A) For clients who receive services on an open-card/fee-for-service basis:

(i) Are reimbursed by DMAP based on the physician fee schedule in accordance with the limitations detailed in OAR 410-123-1260(8)(b) and (d); and

(ii) As the CDT codebook specifies that the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, DMAP does not reimburse dental exams when furnished by a Dental Hygienist (with or without a limited access permit);

(B) For clients enrolled in a DCO, it is the responsibility of the Dental Hygienist to coordinate all dental services with the client's Dental Care Organization (DCO) prior to providing services;

(C) Regardless of whether a client is receiving services fee-for-service or through a DCO, if provided through a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC), refer to OAR 410 Division 147 for specific details.

(f) Space Management – Removable space maintainers will not be replaced if lost or damaged.

(9) Tobacco Cessation:

(a) Use CDT code D1320 on an American Dental Association (ADA) claim form when billing for tobacco cessation services;

(b) A maximum of 10 services is allowed within a three-month period;

(c) Follow criteria outlined in OAR 410-130-0190.

(10) Restorations — Amalgam and Composite:

(a) Payment for restorations is limited to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) Current Dental Terminology (CDT) codebook for definitions of restorative procedures;

(b) All surfaces must be combined and billed one line per tooth using the appropriate code. For example, tooth #30 has a buccal amalgam and a MOD amalgam — bill MOD, B, using code D2161;

(c) Payment for an amalgam or composite restoration and a crown on the same tooth will be denied;

(d) Payment is made for a surface once in each treatment episode regardless of the number or combination of restorations;

(e) Payment for occlusal adjustment and polishing of the restoration is included in the restoration fee;

(f) Posterior composite restorations will be paid at the same rate as amalgam restorations;

(g) Replacement of posterior composite restorations is limited to once every five years;

(10) Crowns:

(a) Acrylic Heat or Light Cured Crowns — allowed for anterior permanent teeth only;

(b) Prefabricated Plastic Crowns — allowed for anterior teeth only, permanent or primary;

(c) Permanent crowns — allowed for anterior permanent teeth only. Clients must be 16 years or older. Radiographs required; history, diagnosis, and treatment plan may be requested;

(d) Payment for crowns for posterior teeth, permanent or primary is limited to stainless steel crowns;

(e) Payment for preparation of the gingival tissue is included in the fee for the crown;

(f) Payment for retention pins is limited to four per tooth;

(g) Crowns are covered only when there is significant loss of clinical crown and no other restoration will restore function. The following is not covered:

(A) Endodontic therapy alone (with or without a post) is not covered;

(B) Aesthetics (cosmetics);

(h) Crown replacement is limited to one every five years per tooth. Exceptions to this limitation may be made for crown damage due to acute trauma, based on the following factors:

(A) Extent of crown damage;

(B) Extent of damage to other teeth or crowns; and

(C) Extent of impaired mastication;

(i) Crowns are not covered in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(j) Crowns will be covered if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures.

(11) Endodontics:

(a) Pulp Capping:

(i) Direct and indirect pulp caps are included in the restoration fee; no additional payment will be made for clients with the OHP Plus Benefit Package;

(ii) Direct pulp caps are covered as a separate service for clients with the OHP Standard benefit coverage package because restorations are not a covered benefit under this benefit package.

(b) Endodontic Therapy:

(A) Endodontics is covered only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(B) Retreatment is not covered for bicuspid or molars;

(C) Retreatment is limited to anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(D) Separate reimbursement for open-and-drain as a palliative procedure is allowed only when the root canal is not completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice did not complete the procedure;

(E) The client's record must include appropriate documentation to support the services and level of care rendered;

(F) Root canal therapy is not covered for third molars;

(F) Endodontic Therapy is covered if the tooth is restorable within the OHP benefit coverage package.

(c) Endodontic Therapy on Permanent Teeth — Apexification is limited to a maximum of five treatments on permanent teeth only.

(12) Periodontics:

(a) D4210 and D4211 — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia;

(b) D4240, D4241, D4260 and D4261 -- allowed once every three years unless there is a documented medical/dental indication;

(c) D4341 and D4342 — allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(d) D4910 — limited to following periodontal therapy and allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(e) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(f) Surgical procedures include six months routine postoperative care;

(g) Note: DMAP will not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4260 (Osseous surgery, including flap entry and closure — four or more contiguous teeth or bounded teeth spaces per quadrant);

(F) D4261 (Osseous surgery, including flap entry and closure — one to three contiguous teeth or bounded teeth spaces per quadrant);

(G) D4341 (Periodontal scaling and root planning – four or more teeth per quadrant);

(H) D4342 (Periodontal scaling and root planning – one to three teeth per quadrant);

(I) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(J) D4910 (Periodontal maintenance).

(13) Removable Prosthodontics:

(a) Removable cast metal prosthodontics and full dentures are limited to clients 16 years or older;

(b) Adjustments to removable prosthodontics during the six-month period following delivery to clients are included in the fee;

(c) Replacement:

(A) Replacement of dentures and partials, when it cannot be made clinically serviceable by a less costly procedure (reline, rebase, repair, tooth replacement, etc.), is limited to once every five years and only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every five years, but only when dentally appropriate;

(B) The limitation of once every five years applies to the client regardless of whether the denture or partial was received while the client was on the Oregon Health Plan and regardless of Dental Care Organization (DCO) or Fee-for-Service (FFS) enrollment status. This includes clients that move from FFS to DCO, DCO to FFS, or DCO to DCO. For example: a client receives full dentures on February 1, 2007, while FFS and a year later enrolls in a DCO. The client would not be eligible for another full denture until February 2, 2012, regardless of DCO or FFS enrollment;

(C) Replacement of partial dentures with full dentures is payable five years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant replacement;

(d) Relines:

(A) Reline of complete or partial dentures is allowed once every two years;

(B) Exceptions to this limitation may be made under the same conditions warranting replacement;

(C) Laboratory relines are not payable within five months after placement of an immediate denture;

(e) Tissue Conditioning:

(A) Tissue conditioning is allowed once per denture unit in conjunction with immediate dentures;

(B) One tissue conditioning is allowed prior to new prosthetic placement;

(f) Cast Partial Dentures:

(A) Cast partial dentures will not be approved if stainless steel crowns are used as abutments;

(B) Cast partial dentures must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) Teeth to be replaced and teeth to be clasped are to be noted in the "remarks" section of the form;

(g) Denture Rebase Procedures:

(A) Rebase should only be done if a reline will not adequately solve the problem. Rebase is limited to once every three years;

(B) Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant rebasing.

(h) Laboratory Denture Reline Procedures — Limited to once every two years.

(14) Maxillofacial Prosthetics:

(a) For clients enrolled in managed care, maxillofacial prosthetics are to be billed using CPT or HCPCS coding on a CMS-1500 to the client's medical managed care organization (FCHP). Provision of maxillofacial prosthetics is included in the FCHP capitation and is not the DCO's responsibility;

(b) For fee-for-service clients, bill DMAP using CPT or HCPCS codes on a CMS-1500. Payment is based on the physician fee schedule;

(c) Table 123-1260-1 lists the maxillofacial prosthetics procedures as "medical."

(15) Oral Surgery:

(a) Oral surgical procedures that are directly related to the teeth and supporting structures that are not due to a medical condition must be billed on an ADA claim form, using CDT codes;

(b) Oral surgical services that are included in a dental plan benefit package which are performed in a dental office setting (including an oral surgeon's office):

(A) Do not require prior authorization (PA), and include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(B) Are billed on an American Dental Association (ADA) dental claim form, using CDT codes, except when the procedures are a result of a medical condition (i.e., fractures, cancer) which must be billed using a CMS-1500 claim form with the appropriate American Medical Association (AMA) CPT procedure/ICD-9 diagnosis codes;

(C) For clients enrolled in a Dental Care Organization (DCO), the DCO is responsible for payment of those services in the dental plan package;

(c) Oral surgical services performed in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting:

(A) Oral surgical services in a hospital setting and related anesthesia services require PA;

(B) If the hospital setting oral surgical procedures are directly related to the teeth and supporting structures, the procedures must be billed on an ADA claim form, using CDT codes;

(C) If the services requiring hospital dentistry are the result of a medical condition/diagnosis (i.e., fracture, cancer), use appropriate AMA CPT procedure codes/ICD-9 diagnosis codes and bill procedures on a CMS-1500 claim form;

(D) For clients enrolled in a Fully Capitated Health Plan (FCHP), the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a Physician Care Organization (PCO), the outpatient facility charge (including ambulatory surgical centers) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410 — division 130 for more information;

(d) All codes listed as "By Report" require an operative report;

(e) Payment for tooth reimplantation is covered only in cases of traumatic avulsion where there are good indications of success;

(f) Biopsies collected are reimbursed by the dental plan. Reimbursement for laboratory services of biopsies must be arranged through the medical plan;

(g) Surgical excisions of soft tissue lesions (D7410 — D7415) are not covered services;

(h) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(i) Surgical Extractions:

(A) Includes local anesthesia and routine post-operative care;

(B) Surgical removal of impacted teeth or removal of residual tooth roots are limited to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums.

(C) Alveoloplasty in conjunction with extractions (D7310 and D7311) are not services that are covered separately from the extraction. Alveoplasty not in conjunction with extractions (D7320) is a covered service.

(j) **Table 123-1260-1** in this rule lists CDT procedure codes on the Health Services Commission's (HSC) Prioritized List of Health Services (List) that also have CPT medical codes. The procedures listed as "medical" on the table may be covered as medical procedures, the table may not be all-inclusive of every dental code that has a corresponding medical code;

(A) If billed as a medical procedure in accordance with these rules, the procedure must be billed on a CMS-1500, using CPT coding. Refer to the Medical-Surgical administrative rules for additional information (OAR chapter 410 — division 130);

(B) If a client is enrolled in a Fully Capitated Health Plan (FCHP) or a Physician Care Organization (PCO), it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered.

(16) Orthodontia:

(a) Orthodontia services and extractions are limited to eligible clients:

(A) With the ICD-9-CM diagnosis of cleft palate with cleft lip; and

(B) When orthodontia treatment began prior to 21 years of age; or

(C) When surgical corrections of cleft palate with cleft lip was not completed prior to age 21;

(b) Prior authorization (PA) is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontia treatment for cleft palate/cleft lip is evaluated as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). Each phase is reimbursed individually (separately);

(f) Payment for orthodontia will be made in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to DMAP any unused amount of payment, after applying the following formula: Total payment minus $300.00 (for Banding) multiplied by the percentage of treatment remaining;

(g) The length of the treatment plan from the original request for authorization will be used to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment no refund will be required even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8999 — PA required.

(17) Anesthesia:

(a) General anesthesia or IV sedation is to be used only for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(b) General anesthesia or IV sedation is paid using codes D9220 or D9241, respectively, for the first 30 minutes and using codes D9221 or D9242, respectively, for each additional 15-minute period, up to three hours on the same day of service. When using codes D9221 or D9242, use care when entering quantity. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(c) Nitrous oxide is paid per date of service, not by time;

(d) Oral pre-medication anesthesia for conscious sedation:

(A) Limited to clients through 12 years of age;

(B) Limited to four times per year;

(C) Monitoring and nitrous oxide included in the fee; and

(D) Use of multiple agents is required to receive payment;

(e) Upon request, providers must submit to DMAP a copy of their permit to administer anesthesia, analgesia and/or sedation;

(f) Anesthesia — For the purpose of Title XIX and Title XXI, code D9630 is limited to those oral medications used during a procedure and is not intended for "take home" medication.

(18) Office visit for observation — Code D9430 is limited to three visits per year. **Table 123-1260-1**

[ED. NOTE: Tables are available from the Agency.]

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1490

Hospital Dentistry

(1) Hospital Dentistry is defined as routine dental services provided in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting under general anesthesia (or intravenous (IV) conscious sedation, if appropriate).

(2) The purpose of Hospital Dentistry is to provide safe, efficient dental care for clients who present special challenges requiring general anesthesia (or IV conscious sedation, if appropriate).

(3) The use of general anesthesia (or IV conscious sedation, if appropriate) is sometimes necessary to provide quality dental care for the client. Depending on the client, this can be done in an ASC, a day surgery center, outpatient hospital or inpatient hospital setting with the use of pre- and/or postoperative patient admission to the hospital.

(4) Refer to OAR 410-123-1060 for definitions of general anesthesia and conscious sedation.

(5) The need to diagnose and treat, as well as the safety of the client and the practitioner, must justify the use of general anesthesia (or IV conscious sedation, if appropriate). The decision to use general anesthesia or IV conscious sedation must take into consideration:

(a) Alternative behavior management modalities;

(b) Client's dental needs;

(c) Quality of dental care;

(d) Quantity of dental care;

(e) Client's emotional development;

(f) Client's physical considerations;

(g) Client's requiring dental care for whom the use of general anesthesia (or IV conscious sedation, if appropriate) may protect the developing psyche.

(6) Client, parental or guardian written consent must be obtained prior to the use of general anesthesia (or IV conscious sedation, if appropriate).

(7) The following information must be included in the client's dental record:

(a) Informed consent;

(b) Justification for the use of general anesthesia (or IV conscious sedation, if appropriate).

(8) Indications for the use of general anesthesia (or IV conscious sedation, if appropriate) for children 18 or younger are limited to:

(a) Children through age 3 with extensive dental needs;

(b) Children 4 years of age or older after treatment is attempted in the office setting with some type of sedation or nitrous oxide. If treatment in an office setting is not possible, documentation in the client's dental record as to why, in the estimation of the dentist, the client will not be responsive to office treatment;

(c) Acute situational anxiety, fearfulness, extreme uncooperative behavior, uncommunicative such as a client with developmental or mental disability, a client that is pre-verbal or extreme age where dental needs are deemed sufficiently important that dental care cannot be deferred;

(d) Requiring dental care for whom the use of general anesthesia (or IV conscious sedation) is to protect the developing psyche;

(e) Client who has sustained extensive orofacial or dental trauma;

(f) Physical, mental or medically compromising conditions;

(g) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate);

(h) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate).

(9) The intent to cover Hospital Dentistry in adults is limited to:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate);

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that

prevents dental care without general anesthesia (or IV conscious sedation, if appropriate);

(c) Client who has sustained extensive orofacial or dental trauma; or

(d) Clients who are medically fragile, have complex medical needs, contractures or other significant medical conditions potentially making the dental office setting unsafe for the client (not for the convenience of the client or the dentist) that prevent dental care without general anesthesia (or IV conscious sedation, if appropriate).

(10) Contraindications for Hospital Dentistry under general anesthesia (or IV conscious sedation, if appropriate):

(a) Client convenience. Refer to OAR 410-120-1200;

(b) A healthy, cooperative client with minimal dental needs;

(c) Medical contraindication to general anesthesia (or IV conscious sedation, if appropriate).

(11) Hospital Dentistry requires prior authorization (PA) regardless of whether or not a client is enrolled in a Fully Capitated Health Plan (FCHP) or Dental Care Organization (DCO). All requests for PA require the DMAP 3301 form to be completed.

(12) Obtaining PA:

(a) If a client is enrolled in an FCHP and a DCO:

(A) The attending dentist is responsible for contacting the FCHP for PA requirements and arrangements when provided in an inpatient hospital, outpatient hospital or ambulatory surgical center;

(B) The attending dentist is responsible for submitting documentation to the FCHP and simultaneously to the DCO on the DMAP 3301 form;

(C) The medical and dental plans should review the DMAP 3301 form and raise any concerns they have to the other, in addition to contacting the attending dentist. This allows for mutual plan involvement and monitoring;

(D) The total response turn around time should not exceed 20 calendar days from the date of submission of all required documentation for routine dental care and should be processed according to the urgent/emergent dental care timelines;

(E) The FCHP is responsible for payment of all facility and anesthesia services. The DCO is responsible for payment of all dental professional services.

(b) If a client is fee-for-service for medical services and enrolled in a DCO:

(A) The attending dentist is responsible for faxing the DMAP 3301 form and a completed ADA form to the Division of Medical Assistance Programs (DMAP) Dental Program Coordinator;

(B) DMAP is responsible for payment of facility and anesthesia services. The DCO is responsible for payment of all dental professional services.

(C) DMAP will issue a decision on PA requests within 30 days of receipt of the request.

(c) If a client is enrolled in an FCHP and is fee-for-service dental:

(A) The individual dentist is responsible for contacting the FCHP, obtaining PA and arrangement for Hospital Dentistry;

(B) It is the responsibility of the individual dentist to submit required documentation on the DMAP 3301 form to the FCHP;

(C) The FCHP is responsible for all facility and anesthesia services. DMAP is responsible for payment of all dental professional services.

(d) If a client is fee-for-service for both medical and dental:

(A) The individual dentist is responsible for faxing the DMAP 3301 form and a completed ADA form to the DMAP Dental Program Coordinator;

(B) DMAP is responsible for payment of all facility, anesthesia services and dental professional charges.

(13) DMAP will not approve any subsequent Hospital Dentistry requests without clinical documentation as to why the treatment plan provided, as outlined in the prior authorization request, was not completed.

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1620
ICD-9-CM

(1) ICD-9-CM diagnosis codes are not required for dental services submitted on an American Dental Association (ADA) form. If Oregon Administrative Rule (OAR) 410-123-1260 requires dental services to be billed on a CMS-1500 claim form, ICD-9-CM diagnosis codes are required.

(2) The appropriate code or codes from 001.0 through V82.9 must be used to identify diagnoses, symptoms, conditions, problems, complaints, or other reason(s) for the encounter/visit. Diagnosis codes are required on all claims, including those submitted by independent laboratories and portable x-ray providers. Always provide the client's diagnosis to ancillary service providers when prescribing services, equipment and supplies.

(3) The principal diagnosis is listed in the first position; the principal diagnosis is the code for the diagnosis, condition, problem, or other reason for an encounter/visit shown in the medical record to be chiefly responsible for the services provided. Up to three additional diagnoses codes may be listed on the claim for documented conditions that co-exist at the time of the encounter/visit and require or affect patient care, treatment, or management.

(4) The diagnosis codes must be listed using the highest degree of specificity available in the ICD-9-CM. A three-digit code is used only if it is not further subdivided. Whenever fourth or fifth-digit subcategories are provided, the provider must report the diagnosis at that specificity. A code is invalid if it has not been coded to its highest specificity.

(5) DMAP requires providers to use the standardized code sets required by the Health Insurance Portability and Accountability Act (HIPAA) and adopted by the Centers for Medicare and Medicaid Services (CMS). Unless otherwise directed in rule, providers must accurately code claims according to the national standards that are in effect for calendar years 2007 and 2008 for the date the service(s) was provided.

(a) For dental services, use codes on Dental Procedures and Nomenclature as maintained and distributed by the American Dental Association;

(b) For physician services and other health care services, use Health Care Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) codes.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

410-123-1670
OHP Standard Limited Emergency Dental Benefit

(1) The definition of Dental Emergency is limited to section (2) in this rule for clients who are eligible for OHP Standard.

(2) The intent of the OHP Standard Limited Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth.

(3) Covered services are those procedures listed for the OHP Standard Benefit Package in OAR 410-123-1260 (Table 123-1260-1) and are limited to treatment for conditions such as:

(a) Acute infection;

(b) Acute abscesses;

(c) Severe tooth pain;

(d) Tooth re-implantation when clinically appropriate; and

(e) Extraction of teeth, limited only to those teeth that are symptomatic.

(4) Hospital Dentistry is not a covered benefit for the OHP Standard population, with the following exceptions:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia; or

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia.

(5) Any limitations or prior authorization requirements on services listed in OAR 410-123-1260 will also apply to services in the OHP Standard benefit.

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08

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Rule Caption: 1-1-2008 Pharmacy Policy Updates.
Adm. Order No.: DMAP 26-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 11-1-2007
Rules Amended: 410-121-0040, 410-121-0135, 410-121-0140, 410-121-0146, 410-121-0148, 410-121-0150, 410-121-0155, 410-121-0160, 410-121-0300
Subject: DMAP amended the rules regarding dispensing medication for Long Term Care, Community Based facilities, and Immediate care facilities to update and be consistent with the Board of Phar-

macy, across DHS divisions and follow current prescribing practices for those institutions. DMAP amended rules as follows: LTC dispensing policy, rule 410-121-0140: to cover the changes in dispensing and rule 410-121-0160 to change reimbursement. Rule 410-121-0140: to provide updated definitions for community based care living facility, long term care facility, intermediate care facility, and Average manufacturers Price(AMP). Rule 410-121-0155: to reflect the change from modified unit dosing. Rule 410-121-0135: so all clients will not be required to use a designated pharmacy. Clients with patterns of over-utilization pursuant to 42 CFR 431.54 that meet certain criteria may be required to use a single pharmacy; 410-121-0150: to correct a billing address; 410-121-0300: for updates to federal changes regarding the definition of AMP and how FUL is calculated. Text is updated to take care of "housekeeping" corrections. **Rules Coordinator:** Darlene Nelson—(503) 945-6927

410-121-0040
Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining Prior Authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by OHP in a manner consistent with the Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a noncovered diagnosis, the medication will not be covered unless there is a comorbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited.

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these Pharmacy Provider rules, including PA requirements imposed in this rule.

(3) The Department of Human Services (DHS) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs for which DHS requires PA for this purpose are listed in Table 410-121-0040-1, with their approval criteria.

(4) DHS may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Drug Use Review (DUR) Board and adopted by the Department in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which DHS requires PA for this purpose are included in Table 410-121-0040-2, with their approval criteria.

(5) PA is required for brand name drugs that have two or more generically equivalent products available. Criteria for approval are:

(a) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria.

(b) If (5)(a) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(6) PA will not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by DHS; or,

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP.

(7) Psychotropic prescriptions for children under the age of six cannot be processed when a default 999999 provider number has been entered. If such a default provider number is used, the drug may not be dispensed until PA has been obtained. The PA process will include providing the correct provider number.

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

Stat. Auth.: 409.050, 404.110, 414.065, Other: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, Oregon Administrative Rule (OAR) 410 Division 120, 42USC1396a(bb), 1396d (United States Code 42, Chapter 7, Subchapter 19). Public Law 93 -638. Section 1603 of Title 25

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0135
Pharmacy Management Program

(1) Pursuant to 42 CFR 431.54, the Pharmacy Management Program limits some fee-for-service clients to receiving their prescription drugs through the following sources:

(a) A single retail pharmacy to pick up prescriptions;

(b) The Division of Medical Assistance Program (DMAP) mail order pharmacy contractor; and

(c) A specialty pharmacy.

(2) DMAP will not include the following clients in the Pharmacy Management Program:

(a) Prepaid Health Plan (PHP) DMAP members;

(b) Clients with Medicare drug coverage in addition to OHP fee-for-service and no other third party pharmacy insurance coverage;

(c) Children in the care and custody of the Department of Human Services;

(d) Inpatients or residents in a hospital, nursing facility, or other medical institution.

(3) DMAP will consider referrals of potential Pharmacy Management Program clients from the following sources:

(a) Providers;

(b) Retro Drug Utilization Review (DUR) staff;

(c) Department of Human Services (DHS) staff; and

(d) DHS contractors.

(4) Reasons for referring a client to DMAP for review and enrollment in the Pharmacy Management Program include, but are not limited to concern for patient safety or risk of drug misuse, where the client:

(a) Used 3 or more pharmacies during the prior 6 months;

(b) Uses multiple prescribers to obtain prescriptions of the same or comparable medications;

(c) Has altered a prescription; or

(d) Exhibits patterns of prescription drug use involving the drug use review factors listed in ORS 414.360 (a) through (h), as those terms are defined in ORS 414.350.

(5) When DMAP identifies a client meeting the criteria in subsection (4) that is appropriate for the Pharmacy Management Program, DMAP will send the client a notice that provides the following information:

(a) DMAP plans to require that the client use a designated pharmacy for an 18-month period and the date when that requirement will begin;

(b) The client's right to request the following, within 45 days of the date of the notice:

(A) A different designated pharmacy;

(B) An administrative hearing to appeal DMAP's decision to enter the client into the Pharmacy Management Program.

(6) Changing the Pharmacy Management Program client's enrolled pharmacy:

(a) Clients may change their enrolled pharmacy if they:

(A) Move out of area;

(B) Are reapplying for OHP benefits; or

(C) Are denied access to pharmacy services by their selected pharmacy for reasons other than the Pharmacy Management Program factors identified by DMAP;

(b) Clients cannot change their choice of pharmacy more than once every 3 months.

(7) Pharmacy Management Program clients may receive drugs from a different pharmacy if the client urgently needs to fill a prescription and the enrolled pharmacy:

(a) Is not available;

(b) Does not have the prescribed drug in stock; or

(c) Is more than 50 miles away from the client's location at the time the prescription needs to be filled.. However, DMAP may deny coverage if the client frequently fills prescriptions out of the area of the enrolled pharmacy.

(8) Call the Pharmacy Benefits Administrator Point of Sale Technical Help Desk for authorization to fill a prescription in the situations described in (7)(a-c) above.

(9) The client's appeal rights and the process for appealing a DMAP decision to lock a client into use of a single pharmacy is found in Oregon Administrative Rule (OAR) 410-120-1860.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 26-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0140
Definition of Terms

(1) Actual Acquisition Cost: The net amount paid per invoice line item to a supplier. This net amount does not include separately identified discounts for early payment.

(2) Automated Information System (AIS): A computer system that provides on-line Medicaid eligibility information. AIS is accessed through the provider's touch-tone telephone by dialing 800-522-2508.

(3) Average Manufacturer's Price (AMP): The average price at which manufacturers sell medication to wholesalers and retail pharmacies, as further clarified in 42 CFR 447.

(4) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules.

(5) Community Based Care Living Facility: For the purposes of the Division of Medical Assistance Programs (DMAP) Pharmacy Program, a home, facility, or supervised living environment licensed or certified by the state of Oregon which provides 24 hour care, supervision, and assistance with medication administration. These include, but are not limited to:

(a) Supportive Living Facilities;

(b) 24-Hour Residential Services;

(c) Adult Foster Care;

(d) Semi-independent Living Programs;

(e) Assisted Living and Residential Care Facilities;

(f) Group Homes and other residential services for people with developmental disabilities or needing mental health treatment; and

(g) Inpatient hospice.

(6) Compounded Prescriptions:

(a) A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient that must be a reimbursable item or a legend drug in a therapeutic amount;

(b) Compounded prescription is further defined to include the Oregon Board of Pharmacy definition of Compounding (see OAR 855-006-0005).

(7) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist.

(8) Drug Order/Prescription:

(a) A medical practitioner's written or verbal instructions for a patient's medications; or

(b) A medical practitioner's written order on a medical chart for a client in a nursing facility.

(9) Durable Medical Equipment and supplies (DME): Equipment and supplies as defined in OAR 410-122-0010, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies.

(10) Estimated Acquisition Cost (EAC): The estimated cost at which the pharmacy can obtain the product listed in OAR 410-121-0155.

(11) Intermediate Care Facility: A facility providing regular health-related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels as defined in ORS 442.015.

(12) Long Term Care Facility: Includes skilled nursing facilities and intermediate care facilities with the exclusions found in ORS 443.400 to 443.455.

(13) Maintenance medication: Drugs that have a common indication for treatment of a chronic disease and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "Y" or "1".

(14) Managed Access Program (MAP): The Managed Access Program (MAP) is a system of determining, through a series of therapeutic and clinical protocols, which drugs require authorizations prior to dispensing:

(a) OAR 410-121-0040 lists the drugs or categories of drugs requiring prior authorization (PA);

(b) The practitioner, or practitioner's licensed medical personnel listed in OAR 410-121-0060, may request a PA.

(15) Nursing Facility: An establishment that is licensed and certified by the DHS Seniors and People with Disabilities Division (SPD) as a Nursing Facility.

(16) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies that provides on-line, real-time claims adjudication.

(17) Prescription Splitting: Any one or a combination of the following actions:

(a) Reducing the quantity of a drug prescribed by a licensed practitioner for prescriptions not greater than 34 days (see OAR 410-121-0146);

(b) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing fee for the quantity billed;

(c) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients, with the exception of compounded medications (see OAR 410-121-0146); or

(d) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice.

(18) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the Oregon Board of Pharmacy.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 28-1982, f. 6-17-81, ef. 7-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 11-1987, f. 3-3-87, ef. 4-1-87; AFS 2-1989(Temp), f. 1-27-89, cert. ef. 2-1-89; AFS 17-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 42-1989, f. & cert. ef. 7-20-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0010; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0190; HR 52-1991(Temp), f. 11-29-91, cert. ef. 12-1-91; HR 6-1992, f. & cert. ef. 1-16-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 14-1993, f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 49-2001, f. 9-28-01, cert. ef. 10-1-01 thru 3-15-02; OMAP 59-2001, f. & cert. ef. 12-11-01; OMAP 37-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 9-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 18-2003(Temp), f. 3-14-03, cert. ef. 4-1-03 thru 9-1-03 (Suspended by OMAP 27-2003, f. 3-31-03, cert. ef. 4-1-03 thru 4-15-03); OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 42-2003(Temp), f. 5-30-03, cert. ef. 6-1-03 thru 11-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 72-2003(Temp), f. 9-23-03, cert. ef. 11-1-03 thru 4-15-04; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0146
Dispensing Limitations

(1) The Division of Medical Assistance Programs (DMAP) will reimburse the pharmacy for dispensed medication the lesser of:

(a) The quantity indicated by the prescriber on the prescription; or

(b) The quantity indicated by DMAP's dispensing limitations as outlined in this rule.

(2) The pharmacy may only dispense less than the prescribed quantity when the prescribed quantity exceeds DMAP's dispensing limitations.

(3) The following Standard Therapeutic Classes (according to First DataBank) cannot exceed a 34-day supply:

(a) Ataractics, Tranquilizers — 07;

(b) Muscle Relaxants — 08;

(c) CNS Stimulants — 10;

(d) Psychostimulants, Antidepressants — 11;

(e) Amphetamine Preps — 12;

(f) Narcotic Analgesics — 40;

(g) Sedative Barbiturate — 46;

(h) Sedative Non-Barbiturate — 47.

(4) The following types of dispensed medication cannot exceed a 100-day supply:

(a) Drugs dispensed by the DMAP mail order pharmacy contractor; or

(b) Preferred PDL generics and generics in non-PDL classes that cost less than $10 per month and are maintenance medications.

(5) After stabilization of a diabetic, the pharmacy should provide a minimum of a one-month supply of insulin per dispensing.

(6) For vaccines available in multiple dose packaging, DMAP will allow a dispensing fee for each multiple dose. When vaccines are administered at the pharmacy, refer to Oregon Administrative Rule (OAR) 410-121-0185.

(7) Splitting prescriptions:

(a) For compounded prescriptions, bill components of the prescription separately. Third party payments for compounded prescriptions must be split and applied equally to each component;

(b) DMAP will consider any other form of prescription splitting as a billing offense and take appropriate action as described in the General Rules (OAR 410 Division 120).

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065
Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0090; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0210; HR 16-1992, f. & cert. ef. 7-1-92; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; HR 20-1997, f. & cert. ef. 9-12-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 74-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0148
Dispensing in a Nursing Facility or Community Based Care Living Facility

A pharmacy serving Division of Medical Assistance Programs (DMAP) clients in a nursing facility or a Community Based Care Living Facility must dispense medication in a manner consistent with Board of Pharmacy rules as set out in OAR 855-041.

(1) For the purposes of this rule, "Long term care facility" includes skilled nursing facilities and intermediate care facilities consistent with the definitions in ORS 443.400 to 443.455.

(2) An intermediate care facility is a facility providing regular health related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels ORS 442.015.

Stat. Auth.: 409.050, 404.110, 414.065, Other: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, Oregon Administrative Rule (OAR) 410 Division 120, 42USC1396a(bb), 1396d (United States Code 42, Chapter 7, Subchapter 19). Public Law 93 -638. Section 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 83-1982 (Temp), f. & ef. 9-2-82; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 58-1983, f. 11-30-83, ef. 1-1-84; AFS 16-1985, f. 3-26-85, ef. 5-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0070; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0230; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0150
Billing Requirements

(1) When billing the Division of Medical Assistance Programs (DMAP) for drug products, the provider must:

(a) Not bill in excess of the usual and customary charge to the general public;

(b) Indicate the National Drug Code (NDC), as it appears on the package from which the prescribed medications are dispensed;

(c) Bill the actual metric decimal quantity dispensed;

(d) When clients have other insurances, bill the other insurances as primary and DMAP as secondary;

(e) When clients have Medicare prescription drug coverage, bill Medicare as primary and DMAP as secondary.

(2) When submitting a paper claim, the provider must accurately furnish all information required on the 5.1 Universal Claims Form.

(3) The prescribing provider's Medicaid Provider Identification (ID) number or National Provider Number is mandatory on all fee-for-service client drug prescription claims. Claims will deny for a missing or invalid prescriber Medicaid Provider ID Number or National Provider Number.

(a) Exceptions to this include, but are not limited to, the following:

(A) A miscellaneous Medicaid provider number of 999999 may be used for:

(i) Out-of-state prescribing providers; and

(ii) Inactive Oregon Medicaid providers;

(B) A Medicaid Provider ID number of BBBBBB must be used in order for a pharmacy to be reimbursed for distributing the emergency contraceptive drug product Plan B over-the-counter to women who are 18 years old or older and who are Medicaid eligible.

(C) Prescribing providers who do not have a Medicaid Provider ID Number for billing, but who prescribe for fee-for-service prescriptions for clients under prepaid health plans (PHP), long-term care, or other capitated contracts are to be identified with the:

(i) Non-billing Provider ID Number assigned for prescription writing only;

(ii) Clinic or facility Medicaid Provider ID Number until an individual Non-billing Provider ID Number is obtained; or

(iii) Supervising physician's Provider ID Number when billing for prescriptions written by the physician assistant, physician students, physician interns, or medical professionals who have prescription writing authority;

(b) The miscellaneous Medicaid Provider ID Number of 999999 may not be used for psychotropic prescriptions for children under the age of six.

(4) Billing for Death With Dignity services:

(a) Claims for Death With Dignity services cannot be billed through the Point-of-Sale system;

(b) Services must be billed directly to DMAP, even if the client is in a PHP;

(c) Prescriptions must be billed on a 5.1 Universal Claims Form paper claim form using an NDC number. Claims should be submitted to the address indicated at the DMAP Supplemental Information for Pharmaceutical Services.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0093; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0240; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 44-1998(Temp), f. 12-1-98, cert. ef. 12-1-98 thru 5-1-99; OMAP 11-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 25-1999, f. & cert. ef. 6-4-99; OMAP 5-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 7-2002, f. & cert. ef. 4-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0155
Reimbursement

(1) Definitions. For the purposes of this rule:

(a) "Billed amount" is the usual and customary amount billed by the provider; and

(b) "Estimated Acquisition Cost" (EAC) is the lesser of:

(A) The Centers for Medicare and Medicaid Services' (CMS) federal upper limits (FUL) for payment;

(B) The Oregon Maximum Allowable Cost (OMAC);

(C) Discounted Average Wholesale Price (AWP);

(i) For retail pharmacies: eighty-five percent of AWP of the drug;

(ii) For institutional pharmacies: eighty-nine percent of AWP for long-term care clients in a nursing facility or community based living facility; or

(iii) For contracted mail order pharmacy: seventy-nine percent of AWP for single-source drugs, forty percent of AWP for multiple-source drugs and eighty-two percent of AWP for injectable drugs.

(c) "Applicable copayments" are defined in Oregon Administrative Rule (OAR) 410-120-1230.

(2) The Division of Medical Assistance Programs (DMAP) will revise its EAC file weekly. Pharmacies must make available to DMAP any information necessary to determine the pharmacy's actual acquisition cost of drug products dispensed to DMAP clients.

(3) Payment for covered fee-for-service drug products will be the lesser of the billed amount or the EAC of the generic form, minus applicable copayments, plus a professional dispensing fee.

(4) Payment for trade name forms of multiple source products:

(a) Will be the lesser of the billed amount or the Discounted AWP of the trade name form, minus applicable copayments, plus a professional dispensing fee;

(b) DMAP will only pay if the prescribing practitioner has received a prior authorization for the trade name drug.

(6) No professional dispensing fee is allowed for dispensing pill splitters/cutters.

(7) Payment for pill splitters/cutters with a National Drug Code (NDC) number will be the lesser of the billed amount or the EAC.

(a) A practitioner prescription is not required.

(b) DMAP will only pay for one pill splitter/cutter per client in a twelve-month period.

Stat. Auth.: ORS 184.750, 184.770, 409.050, ,411,414.065
Stats. Implemented: ORS 414.065
Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 846(Temp), f. & ef. 7-1-77; PWC 858, f. 10-14-77, ef. 11-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 15-1979(Temp), f. 6-29-79, ef. 7-1-79; AFS 41-1979, f. & ef. 11-1-79; AFS 15-1981, f. 3-5-81, ef. 4-1-81; AFS 35-1981(Temp), f. 6-26-81, ef. 7-1-81; AFS 53-1981(Temp), f. & ef. 8-14-81; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices. AFS 74-1982 (Temp), f. 7-22-81, ef. 8-1-82; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 113-1982(Temp), f. 12-28-82, ef. 1-1-83; AFS 13-1983, f. & ef. 3-21-83; AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 18-1984, f. 4-23-84, ef. 5-1-84; AFS 53-

1985, f. 9-20-85, ef. 10-1-85; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0100; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0250; HR 20-1991, f. & cert. ef. 4-16-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 32-2002, f. & cert. ef. 8-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0160
Dispensing Fees

Unless otherwise provided, the professional dispensing fee allowable for services is as follows:

(1) $3.50 — Retail Pharmacies.

(2) $3.91 — Institutional Pharmacies that are enrolled with DMAP as an institutional pharmacy by sending a copy of its institutional pharmacy license with its provider application.

(3) $7.50 — Compound prescriptions with two or more ingredients.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 41-1984(Temp), f. 9-24-84, ef. 10-1-84; AFS 1-1985, f. & ef. 1-3-85; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85; AFS 66-1985, f. 11-5-85, ef. 12-1-85; AFS 13-1986(Temp), f. 2-5-86, ef. 3-1-86; AFS 36-1986, f. 4-15-86, ef. 6-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 28-1987(Temp), f. & ef. 7-14-87; AFS 50-1987, f. 10-20-87, ef. 11-1-87; AFS 41-1988(Temp), f. 6-13-88, cert. ef. 7-1-88; AFS 64-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0101; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 20-1990, f. & cert. ef. 7-9-90, Renumbered from 461-016-0260; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 21-1993(Temp), f. & cert. ef. 9-1-93; HR 12-1994, f. 2-25-94, cert. ef. 2-27-94; OMAP 5-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 22-1998, f. & cert. ef. 7-15-98; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 50-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 60-2001, f. & cert. ef. 12-11-01; OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; OMAP 21-2004, f. 3-15-04, cert. ef. 4-15-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

410-121-0300
CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993 and the DRA 2005.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to 250 percent of the Average Manufacturer's Price (AMP). CMS will post the AMP to a Website available to the public on a quarterly basis.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact DMAP for most current website address). The FUL price listing will be updated approximately every three months.

(4) Retroactive effective dates: The CMS FUL Drug Listing experiences changes and often this information is submitted to DMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(5) The most current CMS Federal Upper Limits for Drug Payments Listing includes changes to Transmittal #37, included in the January 20, 2005 Title XIX State Agency Letter, effective for February 14, 2005; the March 10, 2006 Title XIX State Agency Letter, effective for services rendered on or after April 10, 2006; the June 23, 2006 Title XIX State Agency Letter, effective for services rendered on or after July 23, 2006 and are available for downloading on DMAP's Website (contact DMAP for most current website address). To request a hard copy, call DMAP.

Stat. Auth.: ORS 409.010, 409.110, 409.050

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05; OMAP 56-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 59-2005(Temp), f. 11-8-05, cert. ef. 11-12-05 thru 5-1-06; OMAP 68-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 8-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06; OMAP 13-2006, f. 5-26-06, cert. ef. 6-1-06; OMAP 50-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08

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Department of Justice
Chapter 137

Rule Caption: Sexual Assault Victims' Emergency Medical Response Fund Rule Amendments.
Adm. Order No.: DOJ 13-2007
Filed with Sec. of State: 12-11-2007
Certified to be Effective: 12-11-07
Notice Publication Date: 11-1-2007
Rules Amended: 137-084-0001, 137-084-0005, 137-084-0010, 137-084-0020, 137-084-0500
Subject: The proposed rule amendments clarify language within the OARs for the Sexual Assault Victims' Emergency Medical Response Fund.
Rules Coordinator: Carol Riches—(503) 947-4700

137-084-0001
Definitions

(1) "Application Form" means the most current version of the Application for Payment Sexual Assault Victims' Emergency Medical Response Fund form issued by the Department of Justice. (A copy of the Application Form is set out as an Appendix to these administrative rules.)

(2) "Complete Medical Assessment" means use of an Oregon State Police SAFE Kit in conjunction with a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider and the offering and, if requested, provision of prescriptions for emergency contraception and sexually transmitted disease prevention.

(3) "Department" means the Oregon Department of Justice.

(4) "Eligible Medical Services Provider" means a person who has the facilities and supplies necessary to provide the complete medical assessment as provided in these rules and who is currently licensed in Oregon, Washington, Idaho or California in one of the following categories: a SANE certified nurse, a registered nurse acting under the direct supervision of a Doctor of Medicine or a Doctor of Osteopathy, a nurse practitioner, a Doctor of Medicine, or a Doctor of Osteopathy.

(5) "Eligible victim" means a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a medical examination by an eligible medical services provider within the time periods established in OAR 137-084-0010(4) and (5).

(6) "Emergency Contraception" means administering prophylactic drugs to prevent pregnancy, or providing a prescription for such medication to be filled on-site, in conjunction with a complete medical assessment or a partial medical assessment.

(7) "Fund" means the Sexual Assault Victims' Emergency Medical Response Fund.

(8) "Medical Examination" means a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider.

(9) "Oregon State Police SAFE Kit" means the sexual assault forensic evidence collection kit, including protocol guidelines, approved by and distributed by the Oregon Department of State Police.

(10) "Partial Medical Assessment" means a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider and the offering and, if requested, provision of prescriptions for emergency contraception and sexually transmitted disease prevention.

(11) "SANE Certified Sexual Assault Nurse" means a nurse who has received certification as a SANE from the International Association of Forensic Nurses or from the Oregon Attorney General's Sexual Assault Task Force.

(12) "Sexually Transmitted Disease Prophylaxis" means administering prophylactic drugs to prevent sexually transmitted disease, or providing a prescription for such medication to be filled on-site, in conjunction with a complete medical assessment or a partial medial assessment.

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

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 14-2004, f. & cert. ef. 11-22-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0005

Contributions to the Fund

(1) The sexual assault victim assistance fund may receive state general fund appropriations, gifts, grants, federal funds, or other public or private funds or donations.

(2) Any contribution to the Fund should be given to the Department accompanied by notice in writing from the contributor stating the intention to have the contribution deposited into the Fund.

(3) Any contributions to the Fund received by the Department shall be deposited in the Fund as soon as practicable.

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0010

Claims Processing

(1) A victim of a sexual assault who wants the Fund to pay for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis must submit a completed Application Form to the victim's medical services provider. (A copy of the Application Form is set out as an Appendix to these administrative rules).

(2) To obtain payment from the Fund, an eligible medical services provider must submit the Application Form to the Department within one year of the date the medical services are provided.

(3) All medical services invoices must be submitted by the eligible medical services provider with the Application Form. Invoices submitted separately will not be processed.

(4) To be paid for by the Fund, a complete medical assessment using the Oregon State Police SAFE Kit must be completed within 84 hours (three and one-half days) of the sexual assault. The Kit must have been released to appropriate law enforcement personnel in a timely manner after its use for collection of information.

(5) To be paid for by the Fund, a partial medical assessment must be completed within 168 hours (seven days) of the sexual assault of the victim.

(6) Completed Application Forms submitted with medical services invoices will be processed for payment by the Fund within 60 days of submission.

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

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0020

Maximum Amounts Paid for Medical Services

(1) The Fund will pay eligible medical services providers the actual costs incurred for providing medical services to sexual assault victims up to the following maximum amounts:

(a) $380 for a medical examination plus collection of forensic evidence using the Oregon State Police SAFE Kit;

(b) $175 for a medical examination without collection of forensic evidence using the Oregon State Police SAFE Kit;

(c) $55 for emergency contraception (including urine pregnancy test);

(d) $100 for sexually transmitted disease prophylaxis.

(2) An additional payment of $75 will be made to eligible medical services providers who document that the medical examination, as part of either a partial or complete medical assessment, was conducted by a SANE certified nurse.

(3) The payment amounts set out in this rule will be reviewed at least every two years by the Attorney General or the Attorney General's designee to determine whether they should be adjusted to meet current circumstances.

(4) An eligible medical services provider (including subcontractor or other designee) who submits a bill to the Fund under these rules may not bill the victim or the victim's insurance carrier for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis, except to the extent the Department is unable to pay the bill due to lack of funds or declines to pay the bill for reasons other than untimely or incomplete submission of the bill to the Fund under OAR 137-084-0030(2)(e).

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04; DOJ 13-2007, f. & cert. ef. 12-11-07

137-084-0500

Sexual Assault Examiner (SAE) and Nurse Examiner (SANE) Certification Commission

(1) The Attorney General establishes a Sexual Assault Examiner and Nurse Examiner (SANE) Certification Commission. The Commission is established to help ensure that registered nurses, physicians and physician assistants who provide sexual assault medical forensic examinations in Oregon and receive compensation through the Sexual Assault Victims' Emergency Medical Response Fund established by Oregon Laws 2003 c. 789 have the necessary training and qualifications to do so in accordance with the best standards of care, after consultation with the Attorney General's Sexual Assault Task Force.

(2) Commission members shall be appointed by the Attorney General and shall serve a period of two years from time of appointment. Terms may be renewed upon approval by the Attorney General.

(3) The Commission shall consist of seven (7) members, one each from the following groups:

(a) One (1) Oregon Certified Sexual Assault Examiner or Nurse Examiner;

(b) One (1) Oregon Certified Sexual Assault Nurse Examiner representing the Oregon Nurses Association (ONA);

(c) One (1) Representative from the Oregon State Board of Nursing (OSBN);

(d) One (1) Emergency Room Physician representing the Oregon Chapter of Emergency Physicians (OCEP);

(e) One (1) Emergency Room Physician (at large);

(f) One (1) Advocate; and

(g) One (1) At-large position.

(4) A majority of a quorum of the Commission may take action and make recommendations to the Attorney General. A quorum shall be established by a simple majority of Commission members.

(5) The Attorney General delegates to the Commission the following powers and duties:

(a) Make recommendations to the Attorney General for rules deemed necessary to implement the Sexual Assault Nurse Examiners Program, including standards for certification and renewal of certification by the Commission;

(b) Evaluate and act upon applications for certification; and

(c) Identify, update, and publicize best practices related to sexual assault examinations.

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2007, f & cert. ef. 3-16-07; DOJ 13-2007, f. & cert. ef. 12-11-07

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

Rule Caption: Implement permeant rules for Oregon's Fire Safer Cigarette program.

Adm. Order No.: OSFM 3-2007

Filed with Sec. of State: 11-16-2007

Certified to be Effective: 11-16-07

Notice Publication Date: 10-1-2007

Rules Adopted: 837-035-0000, 837-035-0020, 837-035-0040, 837-035-0060, 837-035-0080, 837-035-0100, 837-035-0120, 837-035-0140, 837-035-0160, 837-035-0180, 837-035-0200, 837-035-0220, 837-035-0240, 837-035-0260, 837-035-0280, 837-035-0300, 837-035-0320, 837-035-0340

Subject: Implementation of Oregon's Fire Safer Cigarette Program permanent Administrative Rules 837-035-0000 thru 837-035-0340.
Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-035-0000
Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures for *fire standard compliant* (*reduced ignition propensity*) cigarettes.

(2) The scope of these rules applies to the implementation of the statutes of 2007 House Bill 2163, relating to *fire standard compliant* (*reduced ignition propensity*) cigarettes.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0020
Effective Dates

OAR 837-035-0000 through 837-035-0340 are effective upon date of filing.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0040
Definitions

For the purpose of these rules, the following definitions apply to OAR 837-035-0000 through 837-035-0340:

(1) "Authorized Representative of the State Fire Marshal" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(2) "Cigarette" means a roll for smoking:

(a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made of paper or other non tobacco materials; and

(b) That, because of its appearance, the type of tobacco used in the filler or its *packaging* and labeling, is likely to be offered to or purchased by consumers as a *cigarette*.

(3) "Distribute" means to do any of the following:

(a) *Sell cigarettes* or deliver *cigarettes* for sale by another person to consumers;

(b) Receive or retain more than 199 *cigarettes* at a place of business where the person receiving or retaining the cigarettes customarily *sells cigarettes* or offers *cigarettes* for sale to consumers;

(c) Place *cigarettes* in vending machines;

(d) *Sell* or accept orders for *cigarettes* to be transported from a point outside this state to a consumer within this state;

(e) Buy *cigarettes* directly from a *manufacturer* or *wholesale dealer* for resale in this state;

(f) Give *cigarettes* as a sample, prize, gift or other promotion.

(4) "Fire standard compliant" (FSC) *cigarette* means a *cigarette* that has been tested and meets the fire safety performance standard described in 2007 House Bill 2163.

(5) "Manufacturer" means:

(a) Any entity that produces, or causes the production of, *cigarettes* for sale in this state;

(b) An importer or first purchaser of *cigarettes* that intends to resell within this state *cigarettes* that were produced for sale outside this state; or

(c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this subsection.

(6) "Packaging" means, but is not limited to, *cigarette* soft packs, boxes, cartons and cases.

(7) "Quality control and assurance program" means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing.

(8) "Reduced ignition propensity" means meeting the fire safety performance standard described in 2007 House Bill 2163, when tested as described in 2007 House Bill 2163.

(9) "Reduced ignition propensity cigarette" means a *cigarette* that has been tested as described in 2007 House Bill 2163, and meets the fire safety performance standard described in 2007 House Bill 2163.

(10) "Repeatability" means the range of values within which the repeat results of ignition propensity testing by a single laboratory will fall 95 percent of the time.

(11) "Retail dealer" means a person, other than a *manufacturer* or *wholesale dealer* that engages in distributing *cigarettes*.

(12) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-monetary consideration.

(13) "Transporter" means any person importing or transporting into this state, or transporting in this state, *cigarettes* obtained from a source located outside this state, or from any person not licensed as a distributor under ORS 323.005 to 323.482. It does not include a licensed distributor, a common carrier to whom is issued a certificate or permit by the United States Surface Transportation Board to carry commodities in interstate commerce, or to a carrier of federal tax-free *cigarettes* in bond, or any person transporting no more than 199 *cigarettes* at any one time.

(14) "Variety" means a type of *cigarette* marketed by the *manufacturer* as being distinct from other types of *cigarettes* on the basis of brand name, length, filter, wrapping, flavoring or other characteristics.

(15) "Wholesale dealer" means a person that *distributes cigarettes* to:

(a) A retail dealer or other person for resale; or

(b) A person that owns, operates or maintains *cigarette* vending machines on premises owned or operated by another person.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0060
General

(1) All *cigarettes* sold or offered for sale in Oregon on or after January 1, 2008, must be *fire standard compliant* (*reduced ignition propensity*) as required by 2007 House Bill 2163.

(2) Initial written certification attesting the *cigarette variety* has been subjected to ignition propensity testing under 2007 House Bill 2163 and meets the fire safety performance standard under 2007 House Bill 2163, must be provided to the Oregon State Fire Marshal (OSFM) prior to selling *cigarettes*, unless the *cigarettes* were included on certification submitted to the State of New York before April 17, 2007. Refer to OAR 837-035-0080 for certification requirements.

(3) Re-certification of *cigarettes* is required after three years. Refer to OAR 837-035-0100 for re-certification requirements.

(4) In addition to the above listed requirements, *cigarette manufacturers*, wholesaler dealers and retailers who sell *cigarettes* in Oregon must also comply with:

(a) 2007 House Bill 2163;

(b) OAR 837-035-0000 through 837-035-0340;

(c) All applicable federal, state and local laws, rules and regulations pertaining to cigarettes.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0080
Certification Requirements

(1) *Cigarette manufacturers* must submit written certification to the OSFM attesting the *cigarette variety* has been subjected to ignition propensity testing under *2007 Hous*e Bill 2163, and meets the fire safety performance standard under 2007 House Bill 2163 as proof that *cigarette* varieties have *reduced ignition propensity*, if the *cigarette* varieties were not included on a certification submitted to the State of New York before April 17, 2007.

(2) Certifications are valid for three years from the date of receipt by the OSFM.

(3) Written certifications must fulfill the requirements of 2007 House Bill 2163, for each *cigarette variety*. In particular, certifications must contain the following information for each *variety* of *cigarette* listed:

(a) The brand name shown on the *cigarette* packaging;

(b) The style, such as light or ultralight;

(c) The length in millimeters;

(d) The circumference in millimeters;

(e) The flavor, such as menthol or chocolate, if applicable;

(f) Whether the *cigarette* is filtered or nonfiltered;

(g) A *packaging* description, such as soft pack or box;

(h) A description of the *packaging* marking approved by the OSFM under 2007 House Bill 2163;

(i) The name, address and telephone number of the laboratory conducting the ignition propensity testing, if other than the laboratory of the *manufacturer*;

(j) The date of the ignition propensity testing.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0100
Recertification Requirements

(1) *Manufacturers* must provide written re-certification to the OSFM by either April 17, 2010, (if the OSFM accepted the *cigarette variety* as *fire standard compliant* (*reduced ignition propensity*) because the *variety* was certified to the State of New York before April 17, 2007) or three years after the certification was received by the OSFM, and each three year period afterward.

(2) The re-certification must fulfill the requirements of 2007 House Bill 2163, for each *cigarette variety*.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0120
Test Method

(1) *Cigarette* varieties must be tested using the American Society for Testing & Materials (ASTM) International specification E2187-04, Standard Test Method for Measuring the Ignition Strength of *Cigarettes* or another test method approved by the OSFM consistent with 2007 House Bill 2163.

(2) The laboratory conducting ignition propensity testing must have a *quality control and assurance program*. The program must ensure the testing *repeatability* value for all test trials used to certify a cigarette variety. The repeatability value of ignition propensity testing may not be greater than 0.19.

(3) Ignition propensity testing used in a *manufacturer* certification submitted to the OSFM must be conducted in a laboratory accredited under:

(a) The International Organization for Standardization/International Electrotechnical Commission ISO/IEC 17025 Standard of International Organization for Standardization, or

(b) A standard recognized by the OSFM consistent with 2007 House Bill 2163.

(4) Refer to 2007 House Bill 2163 for all testing and quality control requirements.

(5) A *cigarette manufacturer* may propose a test method and performance standard if OSFM determines that a *variety* of *cigarettes* cannot be tested as described in OAR 837-035-0120(1). Upon approval by the OSFM, the *manufacturer* may use the test method and performance standard to certify the cigarette.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0140
Performance Standard

(1) As required by 2007 House Bill 2163, no more than 25 percent of the *cigarettes* tested in a complete test trial conducted in accordance with an ignition propensity testing method described in 2007 House Bill 2163, may exhibit full length burns.

(2) Each *cigarette* listed in a certification using lowered permeability bands in the *cigarette* paper to achieve compliance must have (for *cigarettes* on which the bands are not positioned by design):

(a) At least two nominally identical bands on the paper surrounding the tobacco column; and

(b) At least one complete band must be located at least 15 millimeters from the lighting end of the *cigarette*.

(3) For *cigarettes* on which the bands are positioned by design, there must be:

(a) At least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column; or

(b) 10 millimeters from the labeled end of the tobacco column for a non-filtered *cigarette*.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0160
Packaging Marking

(1) *Manufacturers* must mark all *packaging* for *cigarettes* to indicate that cigarettes sold in this state are *fire standard compliant* (reduced *ignition* propensity). A *manufacturer* must submit to the State Fire Marshal a proposal for marking *cigarette packaging*. Proposed *packaging* marking must be in eight-point font or larger and consist of one of the following:

(a) Modification of the universal product code to indicate a visible mark printed at or around the universal product code. The mark may consist of alphanumeric or symbolic characters permanently printed, stamped, engraved or embossed in conjunction with the universal product code;

(b) A visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the *packaging* or cellophane wrapping;

(c) Printed, stamped, engraved or embossed test indicating the *cigarettes* meet the fire safety performance standard established in 2007 House Bill 2163.

(2) The OSFM will approve or disapprove the proposal for *packaging* marking, and *packaging* marking proposals not approved or denied by the OSFM within 10 days of receipt are deemed approved. In determining whether to approve or disapprove a proposal for *packaging* marking, the OSFM must:

(a) Give preference to *packaging* marking that is consistent with the *packaging* marking in use and approved for that *cigarette variety* in the State of New York; and

(b) Approve *packaging* marking with the letters "FSC" (signifying *fire standard compliant*).

(3) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0180
Modification of Packaging Markings

(1) Any proposed modifications to *packaging* markings must be submitted to the OSFM for approval before use.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0200
Manufacturer Requirements

(1) In addition to the requirements of this division, effective July 1, 2007, *manufacturers* may *sell* only *cigarettes* that are *fire standard compliant* (*reduced ignition propensity*) to Oregon wholesaler and retailer dealers.

(2) *Manufacturers* of any cigarette varieties not on a certification submitted to the State of New York before April 17, 2007, must submit written certification to the OSFM and their *wholesale dealers* ensuring their *cigarettes* are *fire standard compliant* (*reduced ignition propensity*).

(3) If a *manufacturer* makes any changes to a *cigarette* that are likely to alter the *cigarette's* compliance with the fire safety performance standard described in 2007 House Bill 2163, the *manufacturer* must retest to ensure the *cigarette* still is *fire standard compliant* (*reduced ignition propensity*) before distributing.

(4) *Manufacturers* must retain copies of all test data for at least three years, and provide test data to the OSFM or Attorney General upon request.

(5) *Manufacturers* must submit proposals for *packaging* marking to the OSFM for approval. Refer to OAR 837-035-0160 for *packaging* marking requirements.

(6) *Manufacturers* must provide enough copies of the *packaging* marking illustration to *wholesale dealers* to allow them to provide one copy to each *retail dealer*.

(7) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0220
Wholesale Dealer Requirements

(1) *Wholesale dealers* must provide one copy of the *manufacturer's cigarette packaging* marking illustration to each *retail dealer*.

(2) Effective January 1, 2008, *wholesale dealers* may *sell* only *fire standard compliant/reduced ignition propensity cigarettes*.

(3) *Wholesale dealers* may house non-compliant *cigarettes* in Oregon, provided they are not to be sold in Oregon.

(4) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0240
Retail Dealer Requirements

(1) Effective January 1, 2008, *retail dealers* may *sell* only *fire standard compliant/reduced ignition propensity cigarettes*.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0260
Inspections

The OSFM or an *authorized representative* may inspect Oregon *wholesale dealers, agents, and retailers for compliance with 2007 House Bill 2163,* and this division. Inspections include *packaging*, certification, *cigarettes*, and any other documents to determine compliance with 2007 House Bill 2163.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0280
Cooperative Agreements

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an *authorized representative* of the OSFM for enforcement purposes of this division.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0300
Seizure of Non-Compliant Product

(1) The OSFM, or an *authorized representative*, may seize and make subject to forfeiture any *cigarette* that:

(a) Is not *fire standard compliant/reduced ignition propensity*;

(b) Bears a *packaging* marking not approved by the OSFM.

(2) If seized *cigarettes* are determined to be non-compliant, the *manufacturer* will be given the opportunity to inspect the *cigarettes* and *packaging*.

(3) Non-compliant *cigarettes* that have been forfeited must be destroyed by the OSFM only after allowing the *manufacturer* to inspect the *cigarettes* and *packaging*.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0320
Civil Penalties

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of 2007 House Bill 2163, or OAR 837-035-0000 through 837-035-0340. Refer to the following penalty matrix for penalties established by 2007 House Bill 2163:

(a) Distributing or offering to *sell* non-compliant *cigarettes* to a wholesale or *retail dealer*: $10,000 or five times the wholesale invoice cost of the *cigarettes* involved in the violation, whichever is greater;

(b) Distributing or offering to *sell* not more than 1,000 non-compliant *cigarettes* to consumers: $500;

(c) Distributing or offering to *sell* more than 1,000 non-compliant *cigarettes* to consumers: $1,000 or five times the retail value of the *cigarettes* involved in the violation, whichever is greater.

(2) Each day a person *distributes* or offers to *sell cigarettes* after being notified by the OSFM that the distribution or offer to *sell cigarettes* is in violation of 2007 House Bill 2163, constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the Cigarette Fire Safety Fund of the OSFM.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

837-035-0340
Procedures, Hearings and Judicial Review

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violatio;

(b) Recover civil penaltie;

(c) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: Ch. 34, 2007 OL
Stats. Implemented: Ch. 34, 2007 OL
Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07; OSFM 3-2007, f. & cert. ef. 11-16-07

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Rule Caption: Update language in definitions to allow electronic initial documents, and add language clarifying dedicated funding of fees collected.
Adm. Order No.: OSFM 4-2007(Temp)
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 11-30-07 thru 5-27-08
Notice Publication Date:
Rules Amended: 837-020-0035, 837-020-0115
Subject: The previous rules required cardlock applicants to provide a copy of an original document to prove the customer was engaged in business. Electronic documentation was acceptable only when providing renewal proof of business. These rules are being changed to allow electronic documentation to be used when applying or renewing.

Another change to these rules is at the request of the Cardlock Advisory Committee. Although the cardlock fees are statutorily dedicated funds to support the cardlock program, the advisory committee requested this be denoted in the Cardlock Administrative Rules. The new verbiage in OAR 837-020-0115 satisfies the Cardlock Advisory Committee's request.

Lastly, the fire code is being updated to the 2007 edition.
Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-020-0035
Definitions

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0125 only, the following definitions apply:

(1) "Business Use" means that all Class 1 flammable liquids dispensed into motor vehicles and containers must be used only in the course of business activities.

(2) "Class 1 Flammable Liquid" means any liquid with a flash point below 25 degrees Fahrenheit, closed cup tester. Note: Diesel fuel is not a Class 1 flammable liquid.

(3) "Container" means all types of portable containers.

(4) "Conditional Use Customer" means a person who may dispense Class 1 flammable liquids at a licensed conditional nonretail facility, and meets the requirements of OAR 837-020-0045 through 837-020-0125.

(5) "Conditional Nonretail Facility" means a nonretail facility licensed by the State Fire Marshal, where conditional use customers may dispense Class 1 flammable liquids.

(6) "Dispensing" means the transfer of a Class 1 flammable liquid from a facility to a motor vehicle or container.

(7) "Documentation" means a verifiable Federal Employer Identification Number or documentation that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. [Initial documents may be photocopies or facsimiles of the original documents. Subsequent d] Documentation may be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the business is currently licensed to operate.

(8) "Dual Operations" means a nonretail facility where Class 1 flammable liquids are dispensed at retail and nonretail with either a time separation of the retail and nonretail operations or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.

(9) "Emergency" means any man-made or natural element or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.

(10) "Emergency Management Agency" means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and ensure the conduct and coordination of functions for comprehensive emergency program management.

(11) "Emergency Service Agency" means an agency defined in ORS 401.025 or an entity authorized by an emergency service agency to provide services during an emergency.

(12) "Emergency Service Worker" means an individual who, under the direction of an emergency service agency or emergency management agency, performs emergency services and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the emergency management agency of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the emergency service system.

(13) "Emergency Services" means and includes those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 22520).

(14) "Employee" means an individual who works for an operator or an owner.

(15) "Equivalent Documentation" means verifiable documentation that meets or exceeds the requirements of documentation required under ORS 480.345. The final decision as to what is acceptable as equivalent documentation rests with the State Fire Marshal.

(16) "Facility" means a site where Class 1 flammable liquids are dispensed. A facility can be either retail, non-retail or a combination or both.

(17) "General Public" means someone other than a nonretail customer or a conditional use customer.

(18) "Individual" means a single human being.

(19) "License" means the official document issued by the State Fire Marshal that authorizes the operation of a nonretail facility or a conditional nonretail facility when otherwise in compliance with all applicable requirements of OAR 837-020-0040.

(20) "License Application" means the form and accompanying documentation required to be completed and submitted to the State Fire Marshal for approval prior to the issuance of a nonretail facility or a conditional nonretail facility license.

(21) "May" means a regulation of conduct and implies probability or permission.

(22) "May not" means a prohibition of conduct.

(23) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.

(24) "Must" means a mandatory requirement.

(25) "Nonretail Customer" means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345

(26) "Nonretail Facility" means a facility licensed by the State Fire Marshal, where Class 1 flammable liquids are dispensed through a fuel dispensing device that limits access to qualified nonretail customers.

NOTE: A dual operation facility is also a nonretail facility.

(27) "Operator" means a person that operates a nonretail facility or a conditional nonretail facility.

(28) "Oregon Fire Code (OFC)" means the Oregon Fire Code, 2007 Edition.

(29) "Owner" means any person that is the owner of a nonretail facility or a conditional nonretail facility. An owner may also be an operator.

(30) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(31) "Retail Facility" means a facility that sells Class 1 flammable liquids to the general public in compliance with ORS 480.330.

(32) "Verifiable Documentation" means documentation that can be verified by the State Fire Marshal as true and accurate.

Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.310 - 480.385
Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08

837-020-0115
Application, License Renewals, and Annual Fees

(1) Any owner or operator engaged in, or intending to engage in, the operation of a nonretail facility or a conditional nonretail facility must apply for and obtain a license issued by the State Fire Marshal. The application, fees, and supporting documents for new facilities must be submitted and received by the State Fire Marshal 45 days prior to the start of the operation.

(2) A separate license must be applied for and obtained for each nonretail facility or conditional nonretail facility.

(3) The license must be obtained prior to start of the nonretail facility or conditional nonretail facility operation, or the owner or operator may be assessed a civil penalty and be subject to closure of the Nonretail or conditional nonretail facility.

(4) The application fee for each nonretail facility and conditional nonretail facility license is $250 per facility. Licenses are valid for one year from the date of issue.

(5) In accordance with ORS 183.705, the license renewal date of a facility may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(6) License fees may be either paid at, or mailed to, the State Fire Marshal. The license application may be either delivered to or mailed to the State Fire Marshal.

(7) Payment may be made by personal check, business check, cashier's check or money order made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal may not take any action on the license application until the check has cleared the bank.

(8) In addition to the application and renewal fees assessed by this section, owners or operators of nonretail facilities and conditional nonretail facilities must pay to the State Fire Marshal an annual account fee of $5 for each nonretail customer and conditional use customer who has access to dispense Class 1 flammable liquids at any time during the applicable license year.

(9) License renewal applications, accompanying documentation, and payment must be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the license expiration for a license renewal valid for the following license. If the 30 days prior to the license expiration date falls on a day when a postmark cannot be obtained, the applications must be postmarked or received by the Office of State Fire Marshal on the preceding business day.

(10) License application renewals postmarked or received after the deadline set forth under subsection (8) of this rule may be subject to a civil penalty.

(11) License and customer fees received by the Office of State Fire Marshal are deposited with the State Treasurer, placed in the State Fire Marshal Fund, and used to fund the non-retail fuel dispensing program.

Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.350 & 480.355
Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08

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Department of State Lands
Chapter 141

Rule Caption: Adopts provisions necessary to implement 2007 legislation related to fees and clarifies certain provisions in OARs.
Adm. Order No.: DSL 6-2007
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 10-1-2007

Rules Adopted: 141-085-0068, 141-089-0157, 141-089-0192, 141-089-0302, 141-089-0423, 141-089-0572, 141-089-0607, 141-090-0032

Rules Amended: 141-085-0005, 141-085-0006, 141-085-0010, 141-085-0015, 141-085-0018, 141-085-0020, 141-085-0022, 141-085-0023, 141-085-0025, 141-085-0028, 141-085-0029, 141-085-0034, 141-085-0036, 141-085-0064, 141-085-0066, 141-085-0070, 141-085-0075, 141-085-0079, 141-085-0085, 141-085-0090, 141-085-0095, 141-085-0096, 141-085-0115, 141-085-0121, 141-085-0126, 141-085-0131, 141-085-0136, 141-085-0141, 141-085-0146, 141-085-0156, 141-085-0161, 141-085-0166, 141-085-0171, 141-085-0176, 141-085-0256, 141-085-0257, 141-085-0421, 141-085-0425, 141-085-0430, 141-089-0100, 141-089-0105, 141-089-0110, 141-089-0115, 141-089-0120, 141-089-0135, 141-089-0140, 141-089-0150, 141-089-0155, 141-089-0170, 141-089-0175, 141-089-0180, 141-089-0185, 141-089-0190, 141-089-0205, 141-089-0215, 141-089-0225, 141-089-0230, 141-089-0245, 141-089-0260, 141-089-0265, 141-089-0280, 141-089-0285, 141-089-0290, 141-089-0295, 141-089-0300, 141-089-0400, 141-089-0405, 141-089-0415, 141-089-0420, 141-089-0500, 141-089-0505, 141-089-0515, 141-089-0520, 141-089-0550, 141-089-0555, 141-089-0560, 141-089-0565, 141-089-0570, 141-089-0585, 141-089-0595, 141-089-0600, 141-089-0605, 141-090-0005, 141-090-0010, 141-090-0015, 141-090-0020, 141-090-0025, 141-090-0030, 141-090-0035, 141-090-0040, 141-090-0045, 141-090-0050, 141-090-0055, 141-102-0000, 141-102-0020, 141-102-0030

Rules Repealed: 141-085-0021, 141-102-0045

Subject: These rules implement a new fee for general authorizations and increased fees for removal-fill permits, as well as a new fee for wetland delineation reviews and new timelines for agency review, as provided for in HB 2105 and HB 2106, which were passed by the 2007 Legislature. In addition, amendments were made to the above-listed rules to provide clarification in accordance with HB 2105 and HB 2106.

Rules Coordinator: Elizabeth Bott—(503) 986-5239

141-085-0005
Purpose/Applicability

These rules:

(1) Apply to removal, fill and/or alteration of material within the waters of this state as expressed in ORS 196.668 to 196.692, 196.800 to 196.990, and 390.835.

(2) Establish procedures for applying for an individual removal-fill permit, a general authorization or an emergency authorization (referred to in these rules as either "permits" or "authorizations") and the Department's process for reviewing applications for any of these permits and authorizations.

(3) Establish standards and criteria that an applicant must meet to obtain a permit or an authorization.

(4) Establish general conditions and mitigation requirements to be applied to each approved authorization.

(5) Establish the procedures for enforcing ORS 196.800 to 196.990, 390.825 and 390.835.

(6) Define the "waters of this state" that are subject to removal-fill permit requirements.

(7) Define the activities that are subject to (refer to OAR 141-085-0015) or exempt from (refer to OAR 141-085-0020) these rules. Generally, the following activities are subject to removal-fill authorization requirements if conducted in waters of this state. However, this is not an inclusive list and it does not address exemptions from permit requirements. Consult the rules to determine whether a particular activity is subject to authorization requirements. This list is solely for the purpose of giving general examples:

(a) Stream bank stabilization;

(b) Wetland restoration;

(c) Road, bridge or transportation structure construction (including culverts, road fills);

(d) Utility line construction including pipelines and overhead lines;

(e) Sand and gravel removal (commercial and non-commercial);

(f) Water diversion works/structures (permanent and temporary) including water intakes, weirs and push-up dams;

(g) Fish habitat enhancement (e.g., large rock placement, pool and pond construction, gravel placement, side channel construction, barrier removal, placement of large wood material and stream bank rehabilitation).

(h) Temporary construction works (e.g., cofferdams);

(i) Dredge material disposal;

(j) Stream gauging station construction;

(k) Waterfront structure construction (e.g., bulkheads, sheet piling, backfilling, filling);

(l) Boat ramp construction and improvement;

(m) Fill placement for the purpose of land development for institutional, public facilities, residential, commercial or industrial uses;

(n) Piling, dolphins;

(o) Access channel dredging including maintenance dredging;

(p) Underwater blasting;

(q) Stream bank excavation (e.g., bank sloping, reshaping);

(r) Stormwater, wastewater, or sewer outfall construction;

(s) Channel or streambed relocation;

(t) Tidegate or other water control structure (e.g., levees, dikes, canals or irrigation ditches or drainage ditches) construction;

(u) Mining (e.g., placer mining); and

(v) Water storage improvement construction (e.g., ponds, reservoirs).

(8) Govern the basics of the removal-fill program. They must be used in conjunction with other Department rules, which address specific subjects relating to removal and fill, including but not limited to:

(a) Wetland delineation report requirements and jurisdictional determinations for the purpose of regulating fill and removal within waters of this state (OAR 141-090-0005 to 141-090-0055).

(b) Wetland conservation plans (OAR 141-086-0005 to 141-086-0100 and 141-120-0000 to 141-120-0230).

(c) The 1992 Lower Willamette River Management Plan as promulgated by the State Land Board and the Department and adopted by reference (OAR 141-080-0105).

(d) Essential Indigenous Anadromous Salmonid Habitat (OAR 141-102-0000 to 141-102-0045).

(e) Oregon Scenic Waterways (OAR 141-100-0000 to 141-100-0090).

(f) General Authorizations (OAR 141-089).

Stat. Auth.: ORS 196.600 - 196.692, 196.800 - 196.990 & 390.805 - 390.925
Stats. Implemented: ORS 196.600 -196.692, 196.800-196.990, 390.805-390.925
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0103; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0006
Policy

(1) No authorization to place fill or remove material from the waters of this state shall:

(a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation uses; or

(b) Be inconsistent with the protection, conservation and best use of the water resources of this state.

(2) To the extent possible, the Department shall administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.

(3) The Department shall actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness and enhance protection of water resources.

(4) The Department shall recognize the interests of adjacent landowners, Tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies, and shall provide notice to such interests prior to issuance of an individual removal-fill permit or adoption of a general authorization.

(5) In regard to the regulation of wetlands, the Department shall administer these rules to ensure that:

(a) The protection, conservation and best use of the state's wetland resources, including their functional attributes, are promoted through the integration and coordination of the local comprehensive land use plans and the Department permitting process.

(b) A stable wetland resource base is maintained through adverse effect avoidance and compensation for unavoidable wetland losses.

(6) The restoration of wetlands and other waters through voluntary restoration and conservation programs is encouraged and facilitated.

(7) The Department shall administer the removal-fill program in a manner consistent with and in support of:

(a) The Oregon Plan as described in ORS 541.405;

(b) The applicable Oregon Wetlands Benchmark; and

(c) The Oregon Coastal Management Program.

(8) The Department shall carry out its responsibilities under these rules in compliance with the coordination procedures established in its State Agency Coordination Program (OAR 141-095-0000).

(9) The Department shall coordinate administration of the Scenic Waterway Act (ORS 390.805) under OAR 141-0100 with these rules.

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0010

Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905:

(1) "Activities customarily associated with agriculture" are those commonly and usually associated with the raising of livestock or the growing of crops in Oregon. Removal and/or fill covered by this exemption is limited to less than 50 cubic yards of material, and includes, but is not limited to, such activities as the following:

(a) Maintenance of an existing irrigation structure at an existing point of diversion as defined in OAR 690-380-0100; or

(b) Maintenance of previously constructed agricultural drainage or irrigation channels; or

(c) Maintenance or replacement of any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices; or

(d) Maintenance of culverts under farm or ranch roads; or

(e) Construction of push-up dams.

(2) "Adverse Effect" means the same as "reasonably expected adverse effects or impacts."

(3) "Applicant" means a landowner or person authorized by a landowner seeking a permit or authorization to conduct a removal-fill under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization as evidenced by their signature on the application.

(4) "Department" means the Oregon Department of State Lands and the Director or designee.

(5) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(6) "Artificially Created" means constructed by artificial means.

(7) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(8) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and 196.850.

(9) "Authorization Holder" or "permittee" means the person holding a valid authorization from the Department.

(10) "Bank" means:

(a) For perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and

(b) For intermittent streams, the bank extends to the ordinary high water line; the line between the bed and bank may be indistinguishable during dry months.

(11) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(12) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change by the applicant is made.

(13) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(14) "Beds" means:

(a) For the purpose of OAR 141-089-0245 to 141-089-0275, the land within the wet perimeter and any adjacent non-vegetated dry gravel bar; and

(b) For all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(15) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(16) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.

(17) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g., streambed) and used at another location.

(18) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(19) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(20) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of this state.

(21) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(22) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(23) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(24) "Channelized or Relocated Stream" means a natural stream that has been diverted, dredged, straightened or diked. Channelized or relocated streams can be characterized by the following:

(a) Have headwaters and may transport water from a spring or natural drainage;

(b) Is an integral part of a natural drainage;

(c) Have straight channels which may show signs of natural channel processes (e.g., meandering, pool and raffle development) if left undisturbed for a number of years;

(d) Typically flow along property or field boundaries; and

(e) May be perennial or intermittent.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30)"Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "To establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "The vegetated areas will have 3 (three) acres each of emergent, scrub-shrub and forested wetland."

(33) "Compensatory Wetland Mitigation" means activities conducted by an authorization holder, permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects

of project development or to resolve violations of ORS 196.800 to 196.905 or these rules.

(34) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail proposed compensatory wetland mitigation.

(35) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(36) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(37) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(38) "Consent Agreement" means an informal legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(39) "Consent Order" means a formal, legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(40) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(41) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(42) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(43) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of non-aquatic vegetation when alteration work begins.

(44) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(45) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(46) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085), any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(47) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(48) "Degraded Wetland" refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(49) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g., pumping).

(50) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(51) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation, road construction and maintenance, harvesting of forest tree species, application of chemicals, disposal of slash, site preparation, pre-commercial thinning, pruning, development of rock pits for forest road use, collecting cones and seeds, tree protection such as bud capping, and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

(52) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters. Drainage ditches can be characterized by the following:

(a) Typically have no headwaters;

(b) Carry water from local surface areas or subsurface drains;

(c) May be permanently or intermittently wet;

(d) Primarily constructed to remove excess water;

(e) Dry ditches are typically dry in summer or early fall and are constructed primarily to carry away water during winter storm events; and

(f) Wet ditches are wet all year round and carry water for drainage or irrigation purposes.

(53) "Dolphin" is a cluster of piles or piling which is bound together.

(54) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(55) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

(56) "Dredging" means removal of bed material using other than hand held tools.

(57) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(58) "Emergency Letter of Authorization" is an expedited authorization that the Department may issue for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(59) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(60) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland or other waters of this state.

(61) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

(62) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(63) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(64) "Estuarine Resource Replacement" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality.

(65) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters form the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(66) "Expiration Date" means the date the authorization to conduct the removal-fill specified in the authorization has ended. The authorization holder's obligation to comply with the Department's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

(67) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet Mean Lower Low Water.

(68) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominately for agricultural purposes.

(69) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(70) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and

selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(71) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(72) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(73) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(74) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards placed at any one location by any one person in any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat areas (OAR 141-102-0000 to 141-102-0045) and in designated Scenic Waterways (OAR 141-100-0000 to 141-100-0090) "fill" means any deposit by artificial means.

(75) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(76) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(77) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(78) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen of the stream and is covered with water when the waterway overflows its banks at flood stage.

(79) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(80) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) are those stream reaches that flow during a portion of every year, that contain food and game fish and all tributaries one stream order classification upstream. For example, if food and game fish are present in a second order stream, then all its first order upstream tributaries would be classified under this definition.

(81) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

(a) Reforestation;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals; and

(e) Disposal of slash.

(82) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(83) "Free and Open Connection" as used in OAR 141-085-0015(8) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other navigable and non-navigable bodies of water that allows the interchange of surface flow at bankfull stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(84) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as "values." For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; storm water retention and controlled release. Values associated with those functions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(85) "General Authorization" means a rule adopted by the Department authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(86) "General Permit" means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

(87) "Geographic Region" for the purposes of the payment in lieu option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(88) "Gravel" is loose rounded rock, particle size between 2 and 64 mm in diameter.

(89) "Groins" is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(90) "Habitat Enhancement" means to improve habitat areas through habitat manipulation and management.

(91) "Harvesting" means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(92) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(93) "Headwater" means the source of a stream or river (e.g., a spring).

(94) "Hearing Officer Panel" means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(95) "Herbaceous Plants" are non-woody vegetation including forbs, grasses, rushes and sedges.

(96) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(97) "Highbanking" means the use of a highbanker for the recovery of minerals.

(98) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(99) "Hydraulicing" means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(100) "Hydric Soil" is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(101) "Hydrophytic Vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(102) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.

(103) "Impact" or "Effect" means the actual, expected or predictable results of an activity upon waters of this state including water resources, navigation, fishing and public recreation uses. Impacts or effects may be either adverse or beneficial.

(104) "Impounded Waters," means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(105) "Individual Removal-Fill Permit" is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(106) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between government entities.

(107) "Intermittent Stream" means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(108) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation (Figure 1, Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 8).

(109) "Invasive Plants" mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(110) "Irrigation Ditches" are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(111) "Jetty or Jetties" means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(112) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended. (16 U.S.C. Section 460-L et seq.)

(113) "Large Woody Material" means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including root wads.

(114) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(115) "Letter of Authorization" is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(116) "Levee" means a human-made feature that restricts movement of water into or through an area.

(117) "Line of Non-aquatic Vegetation" means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary.

(118) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(119) "Location" as used in OAR 141-085-0010(74) means a physical place where a project is proposed, authorized or conducted.

(120) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original use. Maintenance includes expansion of a structure within waters of this state by not more than (20) twenty percent of its original footprint at any specific location, regardless of volume.

(121) "Maintenance Dredging" means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(122) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(123) "Maximum Pool Elevation" means the highest operating level of a reservoir.

(124) "Mining Access Road" means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(125) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by replacing or providing comparable substitute wetlands or other waters.

(126) "Mitigation Bank" or "Bank" means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(127) "Mitigation Bank Credit" or "Credit" means the measure of the increase in wetland functional attributes achieved at a mitigation bank site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600(2) further defines this term.

(128) "Mitigation Bank Instrument" or "Instrument" means the legally binding and enforceable agreement between the Director and a mitigation bank sponsor that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Department makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

(129) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Department. The Department uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(130) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Department and the Corps on wetland mitigation bank projects.

(131) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(132) "Movement by Artificial Means" means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(133) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(134) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface within the waters of this state.

(135) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(136) "Natural Waterways," as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of this state, and certain artificially created waterways as described in "other navigable and non-navigable bodies of water" (OAR 141-085-0015(6)).

(137) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(138) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020) are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(139) "Non-Motorized Methods or Activities" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheel-

barrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(140) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Department for the latest listing of navigable waterways.

(141) "Non-Water Dependent Uses" means uses that do not require location on or near a waterway to fulfill their basic purpose.

(142) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(143) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(144) "Off-site compensatory wetland mitigation" or "off-site CWM" means activities conducted away from the project site to restore, create or enhance wetland function attributes in order to compensate for the adverse effects to wetlands from project development.

(145) "On-site compensatory wetland mitigation" or "on-site CWM" means activities conducted at the project site to restore, create or enhance wetland functional attributes in order to compensate for the adverse effects to wetlands from project development.

(146) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation from riparian (e.g., willows) to upland (e.g., oak, fir) dominated;

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(147) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to ORS 496.192, administered by ODFW, and ORS 564.010 to ORS 564.994 administered by the Oregon Department of Agriculture (ODA).

(148) "Oregon Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(149) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(150) "Other Waters" means waters of this state other than wetlands.

(151) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(152) "Payment in lieu of mitigation" means compensatory wetland mitigation performed using cash paid to the Department or by agreement of the Department to an approved third party.

(153) "Perennial Stream" means a stream with flow that lasts throughout the year.

(154) "Person" means a person, a public body, as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(155) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jetted into the beds or banks of a water of the state.

(156) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(157) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(158) "Plant Community" is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(159) "Plowing" means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

(160) "Pond" means an artificially confined body of water.

(161) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(162) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(163) "Prior Converted Cropland" means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(164) "Private Operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(165) "Project" means the primary development or use intended to be accomplished (e.g., retail shopping complex, residential development, stream bank stabilization or fish habitat enhancement).

(166) "Project Area" means the physical space in which the removal-fill takes place including any on site or off-site mitigation site. "Project Area" includes the entire area of ground disturbance, even though not within waters of this state, including all staging areas and access ways, both temporary and permanent.

(167) "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Department to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(168) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using non-motorized methods from among small quantities of aggregate.

(169) "Protection" means to prevent human activities from destroying or degrading functions of waters of this state.

(170) "Public Body" as used in the statutes of this state means state government bodies, local government bodies and special government bodies (ORS 174.109).

(171) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(172) "Push-up Dam" is a berm of streambed material that is excavated or bulldozed (i.e., pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a 'removal'). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(173) "Rare Plant Communities" means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(174) "Reasonably Expected Adverse Impacts or Effects" means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of this state including water resources and navigation, fishing and public recreation uses.

(175) "Recreational and Small Scale Placer Mining" includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include "prospecting" as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Department.

(176) "Reconstruction" means to rebuild; to construct again.

(177) "Reference Site" means a site or sites that have similar characteristics as those proposed for compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular compensatory wetland mitigation plan.

(178) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount

of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(179) "Removal-Fill Law" means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(180) "Restoration" means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(181) "Restoration of an Estuarine Area" means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins. NOTE: Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system.

(182) "Restoration Order" means a legally binding order that requires a violator to restore water resources of the state or provide compensatory mitigation, and in addition may include payment of a civil penalty to the Common School Fund.

(183) "Revetment" is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or preformed concrete blocks.

(184) "Riparian" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(185) "Riprap" means facing a stream bank with rock or similar substance to control erosion in accordance with these regulations.

(186) "Road Prism" means the excavation and embankment areas of roadbed within the waters of this state.

(187) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(188) "Sediment" is material that originated from the weathering of rocks and decomposition of organic material that is transported by, suspended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g., sand, silt).

(189) "Seeding" means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(190) "Serviceable" means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(191) "Service Area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map, 1794, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project development. Service areas for mitigation banks are not mutually exclusive.

(192) "Shellfish" are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(193) "Showing Before the Department " means to prove, make apparent, or make clear by presenting evidence to the Director of the Department of State Lands or designee.

(194) "Siltation/Deposition" means the settlement or accumulation of material out of the water column and into the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(195) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(196) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(197) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(198) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(199) "Stream" means a body of running water moving over the surface of the land in a channel or bed including stream types classified as perennial, intermittent and channelized or relocated streams.

(200) "Stream Order Classification" means a system to categorize streams. A small, unbranched headwater tributary is a first order stream. Two first order streams join to make a second order stream. A third order stream has only first and second order tributaries and so forth.

(201) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(202) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(203) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(204) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation, compensatory wetland mitigation or permit conditions objectives have been met (e.g., The cover of native emergent species will be at least 80% as measured by belt transects). Also called "performance standards" or "success targets."

(205) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(206) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(207) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(208) "Temporary Impacts or Effects" means those impacts or effects that do not result in the permanent loss of function and/or area and are rectified within twelve (12) months of project completion.

(209) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(210) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(211) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

(212) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(213) "Uplands" are any land form that does not qualify as waters of this state.

(214) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

(215) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers.

(216) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(217) "Violation" means removing material from or placing fill in any waters of this state without an authorization or order or in a manner contrary to the conditions set out in an authorization issued under the Removal-Fill law or these rules.

(218) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(219) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(220) "Waters of this State" means all natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(221) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(222) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

(a) Measure or regulate the flow of water;

(b) Divert fish into a trap; or

(c) Raise the level of the waterway or divert stream flow into a water distribution system.

(223) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(224) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hyrdrophytic vegetation.

(225) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(226) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(227) "Woody Plants" means trees and shrubs.

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

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of this state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

(2) Estuaries, and tidal bays and rivers, to the elevation of the highest measured tide or upper edge of wetland, whichever is higher. The highest measured tide elevation on a parcel may be determined by a land survey referenced to the Tidal Elevations in Oregon Estuaries tidal datum tables (OAR 141-085-0266), or based on actual tide gauge measurements during a wintertime spring tide. In lieu of surveyed elevations, subject to approval by the Department, highest measured tide elevation may be based upon observation of the highest of the field indicators in paragraphs (a) through (f) of this subsection. These field indicators are often not observable within the upper riverine portion of an estuary, in which case a land survey is required:

(a) The uppermost drift or wrack line containing small driftwood, mats of filamentous algae, seaweeds, seagrasses, pieces of bulrush or other emergent vascular plants, styrofoam or other buoyant plastic debris, bivalve shells, crab molts, or other aquatic invertebrate remains; or

(b) The uppermost water mark line on an eroding bank; or

(c) The uppermost water mark line (e.g., discoloration; sediment, barnacles, snails, or algae growth) visible on a hard shoreline or bank consisting of bedrock, boulders, cobbles, riprap or a seawall; or

(d) The uppermost intertidal zone inhabited by a community of barnacles, limpets, and littorine snails along shorelines composed of bedrock, riprap, boulders, and/or cobble; or

(e) The uppermost tidal marsh/upland boundary, as indicated by a dominant plant community characteristic of saltwater, brackish, or freshwater tidal plant communities (e.g., as described in OAR 141-085-0252 or by Christy, J.A. 2007. Estuarine and Freshwater Tidal Plant Associations in Oregon. Oregon Natural Heritage Information Center, Oregon State University) changing to a dominant plant community typical of uplands (the line of non-aquatic vegetation); or

(f) The intertidal/upland boundary along sandy shores as indicated by the appearance of a distinct dune plant community.

(3) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea.

(4) Rivers, intermittent and perennial streams, lakes, ponds and all other navigable and non-navigable bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage.

(5) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.

(6) "All other navigable and non-navigable bodies of water," as used in ORS 196.800(14) are the following artificially created waters, which are considered "waters of this state."

(7) Wetlands and ponds artificially created from uplands, unless specified in OAR 141-085-0015(4) or (5) that are:

(a) Equal to or greater than (1) one acre in size; or

(b) Identified in a removal-fill authorization as a compensatory mitigation site.

(8) Except as described in OAR 141-085-0015(3) and (6), channels or ditches that are artificially created from upland that:

(a) Contain food and game fish; and

(b) Have free and open connection to waters of this state.

(9) "Other navigable and non-navigable bodies of water" do not include existing irrigation canals and ditches that meet the following requirements:

(a) Are operated and maintained for the primary purpose of conveying water for irrigation; and

(b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the canal/ditch or for stock water runs, provision of water for fire services or storm water runoff.

(10) "Other navigable and non-navigable bodies of water" do not include wetlands artificially created from uplands of up to one acre in size for the purpose of controlling, storing or maintaining storm water (ORS 196.687).

(11) "Other navigable and non-navigable bodies of water" do not include channels, wetlands or ponds of any size artificially created entirely from uplands for the purpose of:

(a) Wastewater treatment;

(b) Farm or stock watering (including crop irrigation);

(c) Settling of sediment;

(d) Fire suppression;

(e) Cooling water;

(f) Surface mining, where the site is managed for interim wetlands use or not protected as a significant wetland in the comprehensive plan (pursuant to ORS 196.672(10));

(g) Log storage; or

(h) Aesthetic purposes, including golf course features.

(12) "Other navigable and non-navigable bodies of water" do not include drainage ditches alongside roads and railroads where the ditch is:

(a) Ten (10) feet wide or less at the ordinary high water line;

(b) Artificially created from upland or from wetlands (e.g. in mapped hydric soils);

(c) Not adjacent and connected or contiguous with other wetlands; and

(d) Do not contain food or game fish.

(13) Even if located within an area described in OAR 141-085-0015(2), to be subject to the removal-fill law and these rules the removal-fill must also be of a volume that meets one of the following thresholds and must not be exempt from removal fill authorization as described in OAR 141-085-0020:

(a) Oregon Scenic Waterways, the threshold volume is any amount greater than (0) zero, except for recreational prospecting, as defined in ORS 390.835(18)(c)) and OAR 141-0100, and any non-motorized activities;

(b) Streams designated as Essential Indigenous Salmonid Habitat under OAR 141-102, the threshold volume is one cubic yard at any one site for prospecting and non-motorized activities, and cumulatively no more than five cubic yards (for prospecting and non-motorized activities), or an authorization is required annually (unless exempted under OAR 141-085-0020);

(c) The threshold volume is any amount greater than (0) zero for jurisdictional portions of previously approved compensatory wetland mitigation sites; and

(d) All other waters of this state subject to these rules, the threshold amount is no more than 50 cubic yards of material removed or filled, or an authorization is required (unless exempted under OAR 141-085-0020).

(14) Fill volume is measured to the elevation of jurisdiction for all waters of this state; removal volume for all waters includes the full extent of the excavation within the jurisdictional area. For wetlands, fill volume is measured to the height of the fill excluding buildings.

(15) When calculating the volume for channel relocation the threshold is met if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(16) Removal-fill activities that are exempt under state law may nonetheless be regulated under applicable federal laws, including the federal Endangered Species Act (16 U.S.C. 1531 et seq.), section 404 of the federal Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), as amended.

Stat. Auth.: ORS 196.800, 196.810 & 390.835
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0105; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0018
Required Authorizations; Permits and Authorizations Generally

(1) Unless exempt as provided in OAR 141-085-0020, no person may conduct any removal-fill in waters of this state and within the thresholds (OAR 141-085-0015) without first being authorized by the Department by one of the following authorization types as appropriate:

(a) An individual removal-fill permit; or

(b) A letter of authorization issued under a General Authorization as defined in OAR 141-085-0070; or

(c) An emergency letter of authorization issued in accordance with OAR 141-085-0066 ; or

(d) A General Permit issued in accordance with OAR 141-085-0068.

(2) The Department shall prescribe the type of authorization to be issued.

(3) Each type of authorization, when issued, shall include, but not be limited to, the following:

(a) Project description.

(b) Expiration date. The date of expiration shall be no more than five years from the date of issue, unless authorized by the Department in accordance with OAR 141-085-0031 or 141-089.

(c) Permit or authorization holder information. Name, address and telephone number of the authorization holder and the person responsible for complying with the permit conditions;

(d) Authorization conditions. A comprehensive, specific listing of all performance requirements to be met by the authorization holder in order to complete the removal-fill activity in a manner that complies with these rules or any general authorization; and

(e) Compensatory mitigation plan. Compensatory freshwater or estuarine mitigation plans for all wetlands and compensatory mitigation plans for other waters as applicable.

Stat. Auth.: ORS 196.800, 196.810, 196.825 & 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0020
Activities Exempt From Removal-Fill Authorization Requirements

The following activities, uses or structures are exempt and not subject to the removal-fill law or these rules. These exemptions do not apply to removal-fill activities in Oregon Scenic Waterways. The Department shall determine if a project is exempt from the requirements of OAR 141-085-0018 by applying the standards described in this section.

(1) Exempt forest management practices. These rules do not apply to removal-fill directly connected (as defined in OAR 141-085-0010) with a forest management practice when conducted within the beds and banks of non-navigable waterways on forestlands and in accordance with the Oregon Forest Practices Act (ORS Chapter 527). Contact the Department for the latest list of state-owned navigable waterways.

(2) Exempt fills for certain dams and water diversion structures. These rules do not apply to fills within waters of this state for the construction, operation and maintenance of dams or other water diversions for which authorizations or certificates have been or shall be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or shall be issued under ORS 543 or 543A (hydropower). These rules also do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of this state as specifically permitted by WRD. These exemptions apply only when the dam or diversion is referenced in the water permit or certificate. A removal-fill authorization is required for construction of certain structures associated with a dam or water diversion facility (such as but not limited to: fishways, stream bank enhancement, fish habitat enhancement, access roads and erosion protection) and for removal activities for projects authorized by ORS 537, 539, or 543.010 to 543.620.

(3) Navigational Servitude. These rules do not apply to removal fill within waters of this state conducted by any agency of the Federal Government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel (i.e., channel dredging within navigational servitude channel). Disposal of dredged material within the ordinary high water line of the waterway containing the federally authorized navigation channel is considered to be an activity covered by this exemption.

(4) These rules do not apply to "normal farming and ranching activities" on converted wetlands, as defined in OAR 141-085-010. Such activities include the following:

(a) Plowing;

(b) Grazing;

(c) Seeding;

(d) Cultivating;

(e) Conventional crop rotation;

(f) Harvesting for the production of food and fiber; and

(g) Upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(5) These rules do not apply to the following activities conducted on exclusive farm use zoned land as designated in the city or county comprehensive plan and zoning ordinance:

(a) Drainage or maintenance of farm or stock ponds;

(b) Maintenance of farm roads where such roads are maintained in accordance with construction practices that avoid significant adverse affect to wetlands. Up to fifty (50) cubic yards of borrowed material for exempt road maintenance annually may come from waters of this state. Maintenance activities shall be confined to the same limits of the originally approved structure(s); and

(c) Subsurface drainage, by deep ripping, tiling or moling on converted wetlands;

(d) Any activity described as a farm use in OAR 141-085-0010, including farm road construction and maintenance, that is conducted on prior converted cropland as defined in OAR 141-085-0010, so long as agricultural management of the land has not been abandoned for five or more years.

(6) Exemptions do not apply to non-farm uses. The exemptions in subsections (4) and (5) of this section (OAR 141-085-0020) shall not apply to any fill or removal that involves changing any wetlands to a non-farm use.

(7) These rules do not apply to fill or removal activities involving less than 50 cubic yards of material for "activities customarily associated with agriculture", as defined in OAR 141-085-0010(1), within Essential Indigenous Anadromous Salmonid Habitat streams (as designated under OAR 141-102-0030).

(8) Exempt maintenance or reconstruction of certain structures: Maintenance, or reconstruction of certain structures within waters of this state such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, irrigation structures, culverts, pilings and tile drain systems are exempt from the requirements of these rules, provided that:

(a) The structure was serviceable within the past five (5) years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures;

(9) Exempt maintenance, repair, replacement or removal of culverts. These rules do not apply to removal-fill activities within waters of this state for the maintenance, reconstruction or removal of culverts as defined in OAR 141-085-0010. This exemption includes culvert replacement (without regard to the size of the replacement culvert) when all of the following apply:

(a) The removal fill is limited to the extent of the existing road prism (as defined in OAR 141-085-0010) and may, consistent with OAR 141-085-0010(120), expand the original footprint of the structure by up to 20 percent if fish passage design requires removal or fill outside the road prism in order to successfully pass fish, the removal/fill volume and area of impact is limited to the minimum necessary to restore the function of the structure and provide fish passage but not more than 20 percent of the original footprint;

(b) The culvert was serviceable within the past five (5) years;

(c) The removal-fill does not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction and placement of the culvert; and

(d) The culvert is replaced in a manner that assures fish passage and complies with the design guidelines of the Oregon Department of Fish and Wildlife (e.g. counter sinking the new culvert to accommodate the natural

bank full width and replicating the stream's natural streambed configuration).

(10) Pre-1967 push-up dams. A push-up dam, as defined in OAR 141-085-0010, within waters of this state, that was first built prior to the effective date of the Removal-Fill Law in 1967 (September 13, 1967) is exempt from the authorization requirements under these rules if:

(a) It has been reconstructed, serviceable and used within the past five (5) years; and

(b) It has the same effect as when it was first constructed (i.e., size, extent and location); and

(c) It is operated in a manner consistent with the water right certificate and ORS 540.510(5).

(11) Post-1967 push-up dams. Once authorized by the Department, a post-1967 push-up dam within waters of this state may be maintained during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the push-up dam's adverse effects to the stream is no more than when it was first authorized (i.e., it still has to allow for fish passage).

(12) Exempt maintenance including emergency reconstruction of roads and transportation structures. These rules do not apply to removal-fill for maintenance or emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches. Volumes and area of impact should be limited to the minimum necessary to restore the serviceability and function of the structure.

(13) Exempt small-scale prospecting and non-motorized activities within Essential Indigenous Anadromous Salmonid Habitat. Prospecting or other non-motorized activities within waters of this state resulting in the removal, fill or alteration of less than one (1) cubic yard of material at any one site and, cumulatively not more than five (5) cubic yards of material, from within an Essential Indigenous Anadromous Salmonid Habitat stream segment (as designated in OAR 141-102) in a single calendar year do not require authorization under these rules. Such exempt prospecting or non-motorized activity must remain within the bed or wet perimeter of the waterway. This exemption does not allow removal or fill within waters of this state at any site where fish eggs are present.

(14) Exempt fish passage, and fish screening structures in Essential Indigenous Anadromous Salmonid Habitat only. The construction and maintenance, involving less than fifty (50) cubic yards of fill or removal, of fish passage, and fish screening structures built, operated and maintained in Essential Indigenous Anadromous Salmonid Habitat under ORS 498.311, 498.316, 498.326, or 509.580 to 509.645 do not require authorization under these rules. This exemption includes removal of material or gravel bars that inhibit passage or prevent screens from functioning properly.

(15) Any removal-fill not exempt under this section (OAR 141-085-0020) is subject to authorization requirements.

Stat. Auth.: ORS 196.810 & 196.805
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0022
Removal-Fill Permits Authorized in Site Selection or Site Certificate Proceedings; Hazardous Substances

(1) Upon submission by the applicant of complete applications and payment of the proper fees, the Department shall issue the permits authorized by the authorized siting entity, subject to the conditions set forth by the siting entity (including conditions supplied to the siting authority by the Department). The Department will continue to exercise enforcement authority over a permit issued pursuant to this section. This section applies to:

(a) The decisions of the Corrections Facility Siting Authority, pursuant to ORS 421.628, relating to siting corrections facilities;

(b) The decisions of the Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and

(c) The decisions of the Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

(2) The standards contained in these removal-fill program rules do not govern complete applications received by any of the agencies listed above before the effective date of these removal-fill program rules. For all such applications, the standards in effect as of the date of receipt apply to consideration of whether the applicable agency shall approve or deny the application.

(3) Under ORS 465.315, no removal-fill authorization is required for the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the Department of Environmental Quality. The responsible party must notify the Department of its intended action, pay applicable fees in accordance with OAR 141-085-0064, and must comply with protective measures that the Department would otherwise apply

Stat. Auth.: ORS 421.628, 459.047 & 469.300
Stats. Implemented: ORS 421.628, 459.047 & 469.300
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0023
Expedited Process for Industrial or Traded Sector Sites

(1) The Department shall offer an expedited process of planning and authorizing removal-fill within waters of this state for certain industrial or traded sector sites identified by the Economic Revitalization Team (ERT) or having the potential to be certified by the Oregon Economic and Community Development Department.

(2) The Director shall, upon the request of ERT or the Oregon Economic and Community Development Department, designate a site for expedited planning and processing as described in OAR 141-085-0023 of this rule. ERT or the OECDD shall provide the contact information for the project proponent or sponsor. The proponent or sponsor shall have authority to authorize the Department or its agents physical access to the site.

(3) The Director shall assign a project leader from the Department to work with the sponsor and the other applicable regulatory and natural resource agencies. Such work includes assistance and guidance in the preparation of reports, plans and permits application documents necessary to expedite issuance of an authorization under these rules or to avoid the need to obtain an authorization by planning the project in such a way so as to not be within the jurisdiction of these rules.

(4) The project sponsor, the Department and any other parties, public or private, deemed appropriate by the primary partners (i.e. the Department and the project sponsor(s)) will enter into a partnership agreement for the project that outlines the roles and responsibilities of each party and the performance requirements of all involved including a projected schedule for completion and approval of all work.

(5) The work to be accomplished by the Department through the partnership could include, but is not limited to, the following:

(a) Coordination and direction of contracts for:

(A) The determination and delineation of waters of this state within the project site or mitigation site, if needed;

(B) The completion of functional assessments for the waters of this state within the project site or mitigation site if needed; and/or

(C) The completion of removal-fill authorization application materials (including but not limited to: alternatives analysis; compensatory mitigation plans)

(b) Review and concurrence with jurisdictional determinations in accordance with OAR 141-090;

(c) Technical assistance and guidance in the development of the site master plan with an emphasis on the mitigation (as defined in OAR 141-085-0115) of project adverse effects to waters of this state;

(d) Technical assistance in the preparation of removal-fill authorization application materials including guidance on the most appropriate and expedient removal-fill authorization to seek from the Department;

(e) Assistance with the early identification and resolution of issues raised by other agencies and the public; and/or

(f) Expedited review of removal-fill authorization application and prompt permit decision in accordance with these rules.

(6) The Department will endeavor to provide the assistance as described in OAR 141-085-0023 to the maximum extent possible taking into account budget constraints and limitations.

(7) The Department recognizes that time is of the essence in fulfilling the requirements of any partnership agreement and will carry out its responsibilities as expeditiously as possible.

Stat. Auth.: ORS 421.628, 459.047 & 469.300
Stats. Implemented: ORS 421.628, 459.047 & 469.300
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0025
Application for Individual Removal-Fill Permits

(1) Any person planning a project subject to the Removal-Fill Law or these rules must obtain an individual permit or other authorization from the Department before conducting the removal fill. Persons may submit an application in order for the Department to determine if a removal fill is subject to these rules and requires an authorization. Failure to provide complete and accurate information may be grounds for suspension or revocation of the permit, pursuant to OAR 141-085-0079.

(2) To obtain an individual permit, a complete application is required in order for the Department to process the application and issue the permit. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the determinations and decisions required by these rules. The same level of documentation and analysis will not be required for all types of projects. The intensity of the analysis and therefore the amount and quality of information needed, will vary depending upon the size of the project and related severity of the expected adverse impacts. For example, projects with minimal impacts on small areas of waters of this state and not involving any listed species will require less documentation than will projects with major impacts on large areas of waters of this state that involve listed species.

(3) A completed and signed application on forms provided by the Department along with any maps, photos and drawings, as required, that includes the following information:

(a) Applicant and property owner information including name, address and phone number;

(b) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s); latitude and longitude, street location if any; and location map with site location indicated;

(c) Location of any off-site disposal or borrow sites if these sites contain waters of this state;

(d) Project information including proposed activity, specific project description, project plan and section views, fill and/or removal volumes expressed in cubic yards (total in waters of this state), and, for wetlands, also the size in acres (to the nearest 0.01 acre);

(e) Description of the purpose and need for the project;

(f) Identification of the limits (area) of the waters of this state (e.g. wetland delineation or determination) and the proposed effect to waters of this state associated with the project;

(g) A written description of any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer stream flow volumes) of the waters of this state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes. Adverse effects to be considered include but are not limited to:

(A) Impeding or restricting the passage of normal or expected high flows (unless the project purpose is for fill to impound water);

(B) Increasing water flows from the project;

(C) Relocating water or redirecting water flow;

(D) Causing flooding or erosion downstream of the project.

(h) A description of the existing biological and physical characteristics and condition of the water resource and identification of the adverse effects of project development;

(i) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(j) A written analysis of alternatives that were evaluated to determine the practicable alternative to avoid and minimize effects to waters of this state, including water resources and navigation, fishing and public recreation uses. A practicable alternative is one that is capable of being done (i.e., feasible) and proposed on a site that is available to the applicant for the project purpose. Sites that are not presently owned or controlled by the applicant, but could be reasonably obtained, utilized, expanded, or managed to fulfill the project purpose may be considered if otherwise feasible. The analysis must explain why the applicant chose the option identified in the application. An alternatives analysis is needed for any estuarine fills. Circumstances when an alternatives analysis is required in an application include but are not limited to projects involving conversion to upland of rare wetland types (such as forested bogs and vernal pools). An application for a removal-fill that meets the following criteria need not include an elaborate explanation of the applicant's process to determine the practicable alternative:

(A) Those located in waters of this state with limited aquatic life and habitats and limited navigation, fishing and public recreation uses.

(B) Small in size; in relationship to the affected waters of this state.

(C) Those that cause only temporary effects.

(k) Names and addresses of adjoining property owners (including those across a stream or street from the project as required by the Department);

(l) Local government land use information (as shown on the application form);

(m) Coastal zone certification statement, if project is in the coastal zone (as shown on the application form);

(n) Any information, known by the applicant, concerning the presence of any listed species. Information may include but is not limited to:

(A) A site survey;

(B) A database query completed by the Oregon Natural Heritage Program; or

(C) A project-specific or programmatic Biological Assessment and/or approved Biological Opinion and/or a letter from the pertinent state or federal agency;

(o) Any information, known by the applicant, concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with affected Tribal governments and/or the Oregon State Historic Preservation Office.

(4) If reasonably expected adverse effects to the water resources cannot be avoided, minimized, rectified or reduced, a complete application must also include a compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will meet the requirements in OAR 141-085-0121 thru 0176, or a compensatory mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary effects to waters of this state, as required in OAR 141-085-0171.

(5) If the proposed removal fill involves a wetland, a wetland determination or delineation report that meets the requirements in OAR 141-090-005 thru -0055 shall be submitted by the applicant or required by the Department:

(a) A wetland delineation is generally needed to determine precise wetland boundaries and to accurately identify proposed effects (fill and/or excavation) and determine Compensatory Wetland Mitigation ratio requirements. In some circumstances, the Department may conclude that a wetland determination is sufficient to identify wetland effects or to establish the extent, if any, of wetland effects.

(b) Whenever possible, wetland determination or delineation reports should be submitted to the Department for a jurisdictional determination well in advance of a permit application (i.e., within 90 days of submitting an application) to ensure that the project design is based upon approved wetland boundaries and to ensure that the application will not need to be revised and resubmitted if, during the evaluation process, the wetland delineation report is found to be inaccurate.

(6) If the proposed removal fill involves a wetland, the application shall include a functional attribute assessment of the wetland as described in OAR 141-085-0121.

(7) If the proposed removal fill will directly affect an estuary as defined in OAR 141-085-0010, a complete application must include:

(a) An estuarine resource replacement plan that meets the requirements in OAR 141-085-0240 to 0266 (rather than the compensatory mitigation plan requirements cited in (4); and

(b) For any project involving the placement of fill for a non-water dependent use as defined in OAR 141-085-0010, a written statement that analyzes the following criteria:

(A) The public use of the proposed project;

(B) The public need for the proposed project;

(C) The availability of alternative, non-estuarine sites for the proposed use; and

(D) The proposed project's identified adverse effects on public navigation, fishery and recreation.

(8) An applicant for fill and removal of material at locations not more than one mile apart shall combine them into one application. Applicants for linear transportation or utility corridor projects shall apply on a single application if the projects:

(a) Consist of integrally-related activities; and

(b) Are planned, phased, designed and budgeted as a discrete construction unit.

(9) The Department may require additional information necessary to make an informed decision on whether or not the application and project complies with these rules and ORS 196.800 to 196.990.

(10) A complete application shall include the fee as described in OAR 141-085-0064.

Stat. Auth.: ORS 196.815, 196.825, 196.830
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0028
Individual Removal-Fill Permit Review Process Including the Public Review and Notice Process

(1) General Description. The Department shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received. Within the ninety (90) day time period, the Department will do one of the following:

(a) Approve the application and issue an individual removal-fill permit with conditions; or

(b) Approve the application with modifications and issue an individual removal-fill permit with special conditions; or

(c) Request of the applicant an extension of the permit decision deadline to a time certain. No extension shall be made without the applicant's written approval; or

(d) If the project is inconsistent with these rules (e.g. OAR 141-085-0029), deny the application; or

(e) Determine the project is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020; or

(f) Determine that the project is eligible for approval under a general authorization as described in OAR 141-089 and process the application in accordance with the applicable general authorization, if requested to do so by the applicant.

(2) If the Department determines that the project is not subject to these rules, it shall notify the applicant, in writing, and state the reasons for the determination.

(3) In the event that the applicant and the Department agree to postpone and extend the removal-fill permit issuance decision, the applicant and the Department shall agree on a new permit decision deadline. The new schedule must be in writing and agreed upon before the expiration of the ninety (90) day period described in OAR 141-085-0028(1). If no agreement is reached, the Department shall take any action described in OAR 141-085-0028(1)(a) (b) or (d) deemed appropriate.

(4) Modifications to permit applications may be accepted by the Department at any time prior to the permit decision. If the modification is determined by the Department to be substantially different in nature or effect from the original application (e.g. large increase in area of development, or large increase of volume of fill/removal), the Department shall treat the modified application as a new application and process it in accordance with these rules. The Department shall make a decision on the treatment of the modified application based on the information provided by the applicant, within the ninety (90) day time requirement established in OAR 141-085-0028(1). It is a normal and acceptable practice to modify an application in order to address concerns and comments offered during the public review process or at the applicant's own initiative. The Department will give consideration to this fact as it determines whether or not to treat the modified application as a new application.

(5) An applicant may withdraw an application at any time prior to the permit decision. The notice of withdrawal must be in writing to the Department.

(6) Public Review Notice Process. Once the application has been deemed complete in accordance with OAR 141-085-0027 and the fee has been received, the Department shall provide notification of the availability of the application for review to:

(a) Adjacent property owners;

(b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;

(c) Affected local government land use planning and zoning departments;

(d) Public bodies, federal agencies and tribal governments affected by the permit.

(7) The notification of the availability of the application for review may be provided by U.S. mail or electronically (e.g. facsimile, e-mail, posting on the Internet).

(8) The Department shall furnish to any member of the public (persons not listed in OAR 141-085-0028(8)) upon written request and at the expense of the member of the public a printed copy of any application. The application will also be available for review at the Department office nearest the project location.

(9) The Department will review and consider substantive comments of local, state, and federal agencies, adjacent property owners, public interest groups, Tribal governments and individuals as well as conduct any necessary investigations to develop a factual basis for a permit decision. The Department may schedule a permit review coordination meeting with interested agencies/groups and the applicant to: clarify the review standards and process requirements; provide the applicant an opportunity to explain the project; and to identify issues. At the Department's discretion, the Department may hold a public hearing when necessary to gather information necessary to make a decision.

(10) All recommendations and comments regarding the application shall be submitted in writing to the Department within the period established by the Department, but not more than thirty (30) calendar days from the date of the notice. However, the Department of Environmental Quality shall comment within seventy-five (75) calendar days from the date of notice to comment if the application requires certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended (i.e. 401 certification), unless the Department, based on a written request from the Director of the Department of Environmental Quality, grants an extension of time or as otherwise agreed to in an intergovernmental agreement between Department of Environmental Quality and the Department. In no case shall the extension granted be in excess of one year. If a public body, federal agency or tribe fails to comment on the application within the comment period, the Department shall assume the public body, federal agency or tribe has no objection to the project.

(11) Applicant Response to Comments

(a) Comments resulting from the public review process shall be forwarded to the applicant within seven (7) calendar days of the conclusion of the comment period.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of:

(A) Additional information to support the application; and/or

(B) Revisions to the project that address the comments and become part of the application.

(c) If no response is received from the applicant the Department will presume that the applicant intends to provide no additional supporting information or revisions to the application.

(d) The applicant may make a request, either orally or in writing, for additional time to respond to comments, and the Department shall agree to any extension of the time allowed to make a permit decision as described in OAR 141-085-0028(1).

(12) Supplemental Information. The Department may, as a result of the public review process and/or the Department's investigations, request that the applicant voluntarily submit supplemental information prior to the Department making the permit decision. The Department shall state the reason for requesting the additional information and why it is relevant to the permit decision.

(13) All documents in the applicant's permit file kept by the Department, unless otherwise restricted by law, shall be available for review by the applicant upon request and at reasonable times and location.

Stat. Auth.: ORS 196.815, 196.825 & 196.845
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0029
Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS196.805 and 196.825 the Department shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards. The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval. To issue an individual removal-fill permit the Department must determine that the proposed removal-fill activity will be consistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Department may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Department will not issue an individual removal-fill permit for a project that is not consistent or compatible with the local comprehensive land use plan and/or land use regulations. The Department may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of this state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands;

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering practicable mitigation (including compensatory mitigation) for all reasonably expected adverse effects of project development, as required by subsection (5).

(4) Alternatives Analysis The Department will issue a permit only upon the Department's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses.

(5) In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Department will consider the type, size and relative cost of the project, the condition of the water resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The applicant bears the burden of providing the Department with all information necessary to make this determination.

(6) An alternatives analysis is required for all estuarine fills. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and

(c) The project meets all other review standards of these rules.

(7) Mitigation. The Department will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Department's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse effects of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Department shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of this state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Department determines that the project cannot be accomplished without adverse effects to water resources and/or navigation, fishing and public recreation uses, the Department shall then consider whether limiting the degree or magnitude of the removal fill and its implementation can minimize adverse effects (e.g., bio-engineered and non-structural stream bank stabilization techniques, such as bank sloping and re-vegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technically feasible, suitable and environmentally preferable);

(c) Rectification. If the Department determines that project's adverse effects to the waters of this state cannot be further minimized, the Department shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the removal fill effect area can rectify the adverse effects;

(d) Reduction or elimination. When removal fill effects have been minimized and rectified to the maximum extent practicable, the Department will consider whether the effects can be further reduced or eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively re-vegetated the site); and

(e) Compensation. The Department shall then consider how the applicant's project would compensate for reasonably expected adverse effects of project development by replacing or providing comparable substitute wetland or water resources and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental effects in the evaluation of practicable alternatives.

(8) Direct and Indirect Effects. The Department shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse effects of project development to waters of this state.

(9) Permit Conditions. If the project meets the requirements of this section, the Department shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse effects of project development to waters of this state. The Department may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order mitigate for the reasonably expected adverse effects of project development to waters of this state. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The removal fill shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. removal fill conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize effects to fish and wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be authorized by the Department based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse effects to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Department.

(e) The removal fill shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction to waters of this state, the permit holder shall immediately cease work at the discovery site and contact the Department and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Department, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Department may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill in waters of this state any material defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use in waters of this state any fill material such as chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse effects of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wetland or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0034
Transfer of Authorization/Waiver or Modification of Authorization Conditions

(1) The person or party listed on the authorization is responsible for complying with the conditions of the authorization, unless the authorization is transferred in writing by the Department to a different person or party through the following process:

(a) A transfer form shall be submitted by the authorization holder.

(b) If the original authorization has not expired, the authorization may be transferred by issuing a modification to the original authorization.

(c) If the authorized activity has been completed and/or the authorization expired, but mitigation monitoring is still required as a condition of the original authorization, that obligation shall be transferred to the new authorization holder.

(d) If a bond was required for the mitigation, a new bond must be provided prior to the transfer.

(2) Upon the written request of the authorization holder, the Department may grant a waiver or modification of any condition. The authorization holder shall have the burden to prove, to the satisfaction of the Department, that the waiver or modification will not result in adverse effects on the water resources or otherwise be contrary to the policies in OAR 141-085-0006. Significant modifications of individual removal-fill permit conditions may require public review as specified in OAR 141-085-0028(6) thru (12).

(3) Exceptions to a permit condition regarding the in-water work period shall be authorized by the Department as described in OAR 141-085-0029(9)(C).

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0036
Renewal and Extension of Individual Removal-Fill Permits

Permits may be renewed or extended by the Department under the following conditions:

(1) At least ninety (90) calendar days prior to the expiration of a valid removal or fill permit, the Department shall notify the permit holder of the expiration date and request that the applicant report to the Department in writing the status of project completion and the permit holder's desire to renew the permit.

(2) If the applicant submits a request in writing for renewal with the appropriate fee at least forty-five (45) calendar days prior to the permit expiration date, the Department may:

(a) Renew the permit, with or without modified conditions (consistent with OAR 141-085-0029); or

(b) Extend the permit for an additional time period but less than the original term, one time only, without modified conditions; or

(c) Extend the term of the permit with new or modified conditions for up to an additional one-hundred and twenty (120) calendar days, one time only; or

(d) Deny the request for permit renewal.

(3) In the event a permit holder does not respond forty-five (45) days prior to the date of permit expiration, the Department may extend the expiration date of the permit for not more than 120 days, if:

(a) The permit holder makes a written request to the Department prior to the expiration date of the permit;

(b) There is a reasonable likelihood that the project can be completed prior to the new expiration date; and

(c) All other conditions of the original permit are met or can be fulfilled.

(4) The Department may require a new permit application or additional information if:

(a) There is a proposed change in the project that may increase the reasonably expected adverse effects of the project on the water resources;

(b) There is a change in the method of operation of the project that may increase the reasonably expected adverse effects of the activity on the water resources of the state;

(c) There is a change in natural conditions at the project site that may increase the reasonably expected adverse effects than previously identified in the application review process;

(d) New information becomes available indicating that additional adverse effects may accrue as a result of the project; or

(e) Substantial adverse comments or comments requesting a change in substantive conditions are received.

(5) Requests for renewals shall be reviewed pursuant to the standards contained in the applicable rules in effect at the time of the request.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.825
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0064
Removal-Fill Authorization Fees; Disposition of Fees

(1) Any application for an individual removal-fill authorization submitted as described in OAR 141-085-0025 of these rules must be accompanied with the current base fee posted on the Department's website pursuant to ORS 196.815.

(2) In addition to the base fee for fill established under OAR 141-085-0064(1) of these rules each applicant shall also pay as part of the application a fee based on the volume of fill or removal material in accordance with the current fee schedule posted on the Department's website.

(3) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher, per ORS 196.815(3), according to the current fee schedule.

(4) The annual fee for an individual removal-fill authorization is equivalent to the base fee according to the schedule set forth in section (1) of this rule. Fees for a multi-year period permit, in accordance with ORS 196.815(6), shall be paid annually on the anniversary date of the permit. Any authorization may be suspended during any period of delinquency of payment and shall be treated as though no authorization had been issued.

(5) An applicant who receives an Emergency Authorization (OAR 141-085-0010(58) to remove material from the waters of this state or to fill any waters of this state shall, within 45 days after receiving the authorization, submit a fee to the department according to the current fee schedule.

(6) For erosion-flood repair, including riprap, no fee is required.

(7) The Department may waive the fees specified in the current fee schedule for a permit that will be used to perform a voluntary habitat restoration project directed solely at habitat improvement.

(8) Any person proposing to conduct an action under a general permit pursuant to OAR 141-085-0068 shall pay the applicable fee according to the current fee schedule posted on the Department's website for individual permits. Upon approval of a General Permit, the permittee shall pay the applicable fee for each action authorized under the General Permit according to the current base and volume fee for each action.

(9) The director shall issue an order revising the fees specified in OAR 141-086-0064(1) on January 1 of each year, beginning in 2009, based on changes in the Portland-Salem, OR-WA consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. The Director shall round the amount of each fee to the nearest dollar. The revised fees shall take effect January 1 and apply for that calendar year.

(10) Fees received under this section shall be credited to the Common School Fund for use by the Department in administration of these rules and ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

Stat. Auth.: ORS 196.815
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2007(Temp), f. & cert. ef. 8-1-07 thru 1-27-08; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0066
Emergency Authorization for Removal-Fill

(1) In the event an emergency exists, as described in OAR 141-085-0010, the Department may issue an emergency authorization. Activities covered by OAR 141-085-0020 are exempt from this section.

(2) Any person requesting an emergency authorization may apply orally or in writing. Written applications may be submitted in the same manner as described in OAR 141-085-0025 and sent via facsimile, e-mail or via U.S. mail. Any request submitted orally must be documented, in writing, by the Department and provided to the applicant.

(3) The application and review requirements described in OAR 141-085-0025, 0027, and 0028 do not apply to emergency authorizations. An application for an emergency authorization shall be reviewed pursuant to the standards in the applicable rules in effect at the time of the request.

(4) Applications for an emergency authorization shall contain enough information for the Department to determine:

(a) The applicant and responsible party planning and carrying out the activity;

(b) The physical area of the project;

(c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);

(d) The approximate volume of material to be removed and/or filled;

(e) The schedule for doing the work;

(f) The date and approximate time when the event that caused the emergency took place;

(g) The area of effect of the emergency and the proposed emergency action;

(h) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and

(i) A description of how the work will be accomplished.

(5) In order to make a timely and legally defensible determination, the Department may request additional information from the applicant. The Department may authorize an Department employee or other person to act as a representative of the Department to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(6) In determining whether or not to approve the application, the Department shall determine, as quickly as is reasonable and feasible, whether:

(a) An emergency, as defined in OAR 141-085-0010 exists, and the factual circumstances indicate:

(A) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, farm or cropland;

(B) Some prompt removal-fill is required to reduce or eliminate the threat; and

(C) The nature of the threat does not allow the time necessary to obtain some other form of authorization as described in these rules.

(b) The removal-fill is planned for waters of this state, including wetlands and is an activity subject to these rules; and

(c) The planned minimizes, to the extent practicable, adverse effects to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of this state; and

(7) Based upon the review of the application as described in OAR 141-085-0066(6) the Department may:

(a) Approve the emergency authorization as requested;

(b) Approve the emergency authorization with conditions;

(c) Request additional information from the applicant and make a decision to reject, approve with conditions or approve the application without conditions; or

(d) Deny issuance of the emergency application.

(8) An emergency authorization shall contain conditions designed to minimize the reasonably expected adverse effects of the activity to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of this state while taking into account the effect of the emergency on persons and property. The Department may also require compensatory mitigation or compensatory wetland mitigation in some cases where significant loss of water resources and/or navigation, fishing and public recreation uses has resulted directly from the authorized removal fill.

(9) All conditions of an emergency authorization are enforceable on the permit holder beyond the expiration date of authorization.

(10) If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authorization or general authorization in accordance with the procedures set out in these rules.

(11) If an emergency authorization is issued orally, the written form of the emergency authorization shall be sent to the applicant within five (5) calendar days confirming the issuance and setting forth the conditions of operation.

(12) The term of the emergency authorization shall be limited to the time necessary to complete the planned removal-fill activity and be specifically stated in the authorization. In no case shall the term exceed 60 days. A permit holder may request issuance of a new emergency authorization for the same activity upon expiration of the original emergency authorization.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0068

General Permits; Standards and Criteria; Process for Establishing General Permits

(1) The purpose of the General Permit is to allow an applicant or group of applicants to obtain one permit that will authorize a group of activities that:

(a) Are similar in nature;

(b) Are recurring or ongoing; and

(c) Have predictable effects and outcomes.

(2) A General Permit may be issued statewide or for a regional area.

(3) General Permit activities may not be located within a designated State Scenic Waterway.

(4) Prior to applying for a General Permit the applicant shall contact the Department to determine if use of a General Permit is appropriate.

(a) The Department reserves the right to accept an application for a General Permit based on staff or resource considerations.

(b) The Department may require pre-application meetings, interagency meetings, or other such coordinating effort prior to accepting an application for a General Permit.

(c) In the event a dispute arises as to the applicability of this General Permit, the Department shall make the final determination.

(5) An application for a General Permit under this rule shall be submitted on an application form available from the Department in accordance with the guidelines described in OAR 141-085-0025.

(a) The level of detail provided in the application shall be commensurate with the scope and complexity of the proposed activities.

(b) The Department shall review the application for completeness according to the criteria set forth in OAR 141-085-0027.

(c) When appropriate the Department may modify or waive specific completeness requirements as described in OAR 141-085-0027.

(d) The Department may require a pre-project notice for each activity to obtain any information waived under 141-085-0068(5)(c) that is deemed necessary to make a final determination that the standards, described in OAR 141-085-0027 to 0029, are met.

(6) For each type of activity, the applicant must provide, at a minimum, the following information in the application:

(a) Activity description and purpose,

(b) Estimated range of removal and fill volumes within waters of the state,

(c) Estimated range of area of fill and removal within waters of the state,

(d) Proposed number of projects to be covered on an annual basis,

(e) Proposed geographic extent of area to be covered by the General Permit,

(f) Anticipated adverse effects to waters of the state (including cumulative effects) and proposed measures to minimize effects,

(g) Criteria for selecting of project sites,

(h) Location information on all known project locations, and

(i) Adjacent landowner information for all known locations.

(7) The Department shall review the application according to the guidelines described in OAR 141-085-0028 to 0029.

(8) Permanent impacts to wetlands will only be allowed under a General Permit if the effects are fully described and accounted for in the initial application.

(9) For known activities that will involve permanent impacts to wetlands, the applicant must provide the following:

(a) A wetland delineation report that meets the requirements in OAR 141-090-0005 to 0055, and

(b) A compensatory wetland mitigation plan that meets the requirements in OAR 141-085-0121 to 0161.

(10) For activities that will involve permanent impacts to waters other than wetlands, the applicant must provide a compensatory mitigation plan.

(11) The Department shall send the complete application out for public review in accordance with the process described in OAR 141-085-0028, unless the Department determines that additional notice or another appropriate method is necessary to meet the obligations for the public review. The Department reserves the right to require additional public review and notify affected parties following receipt of a pre-project notice, consistent with the process set forth in OAR 141-085-0028.

(12) Activities conducted under a General Permit shall be in compliance with the general and project-specific conditions described in the Permit.

(13) Failure to comply with any conditions or submit any required project reporting (e.g. pre-project notifications, mitigation monitoring reports, project completion reports) may result in suspension or revocation

of the General Permit as well as subject the violator to other administrative or legal actions available under law.

Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0070
General Authorizations; Standards and Criteria; Process for Establishing General Authorizations (see OAR 141-089)

(1) A person may be exempt from the requirement to obtain an individual removal-fill permit through the use of an applicable general authorization. Any person proposing to conduct a removal-fill under a general authorization shall first notify the Department in writing in accordance with the requirements of the specific general authorizations being sought, and pay any applicable fee to the Department

(2) General authorizations, are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550). A general authorization may be granted on a statewide or other geographic basis.

(3) The Department may propose to adopt a general authorization upon a finding that the category of removal-fill, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental effect;

(c) Will not result in long-term harm to the water resources of the state; and

(d) Are consistent with the policies of these rules as described in OAR 141-085-0006.

(4) The Department may amend or rescind any general authorization, through rulemaking, upon a determination that the removal-fill conducted under the general authorization has resulted in or would result in more than minimal environmental effect or long-term harm to the water resources of this state. Any person may request the Department invoke this provision. Such a request must include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request. The Department may process the request in the same manner as described in OAR 141-085-0070(2).

(5) No general authorization is valid where the removal-fill is prohibited by the local comprehensive land use plan or implementing regulations or other applicable ordinance.

(6) The rule promulgating the general authorization shall be effective for up to a five-year term and shall be reviewed, every five years. Upon review, the general authorization shall be reissued in a similar or amended form or repealed.

(7) Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 6-1984, f. & ef. 12-17-84; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0075
Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Department may request the Department enter into an alternative dispute resolution process. The Department and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been deemed incomplete, denied, or who objects to any of the conditions imposed by the Department under OAR 141-085-0029, may, within twenty-one (21) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Department. The request shall include the reasons for the appeal hearing.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Department may file a written request for a hearing with the Department within twenty-one (21) calendar days after the date the authorization was granted. The request shall include the reasons for the appeal hearing.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/ permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Department's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill to the Department.

(5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which

is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

(6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Department shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Department.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of this state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Department may take official notice under ORS 183.450(3) in removal-fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Department delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Department.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Department shall consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Department may be suspended by the Department during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Department and will be either granted or denied by the Department. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Department by clear and convincing evidence that commencement or continuation of the fill would cause irremediable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Department 's decision on a permit will be notified at the time of issuance or denial. The Department's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally be held at the Department offices in Salem, Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-

03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0079
Revoking or Suspending an Authorization; Allowing Corrective Action

(1) The Department may revoke or suspend an authorization if an alleged violator is not in compliance with any conditions of an authorization, or if the applicant failed to provide complete and accurate information in the permit application as set forth in OAR 141-085-0025.

(2) The Department shall give notice of suspension to the permit holder and advise them as to the reasons and terms of the suspension.

(3) The Department may initiate the following proceedings to revoke an authorization:

(a) The Department shall issue a preliminary order to the alleged violator indicating the intent to revoke the authorization; and

(b) The preliminary order shall include, but not be limited to, the following information:

(A) A statement of the alleged violator's right to a contested case hearing, as provided in ORS 196.865 before a hearings officer before the authorization may be revoked, and the time period in which such a request may be made;

(B) A statement of the authority and jurisdiction under which the contested case hearing is to be held;

(C) A reference to the particular portions of the removal-fill law and these rules involved; and

(D) A short and plain statement of the matters asserted or charged as constituting the violation(s).

(c) The preliminary order may include a statement of the action, if any, that may be taken by the alleged violator to correct or offset the effects of the violation including, but not limited to, removal of filled material:

(A) If such action is specified in the preliminary order, the order shall include a reasonable time period of not less than twenty (20) calendar days in which to complete the corrective action;

(B) If the alleged violator completes such action within the specified time period, the revocation procedure shall be terminated.

(d) If the authorization holder fails to request a contested case hearing as allowed under ORS 196.865, the Department may issue a final order revoking the authorization after presenting a prima facie case demonstrating that a violation has occurred.

Stat. Auth.: ORS 196.865
Stats. Implemented: ORS 196.800 - 196.990
Hist: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0085
Enforcement Actions and Procedures

(1) The Department is authorized to take such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules (OAR 141-085) including, but not limited to the following (ORS 196.870 and 196.890):

(a) Consent orders;

(b) Consent agreements (used for violations that do not require compensatory mitigation or compensatory wetland mitigation and are easily resolved);

(c) Cease and desist orders;

(d) Restoration orders;

(e) Civil penalties; and

(f) Liens.

(2) The Department shall give notice of any proposed order (except Consent Agreements or Consent Orders) relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or public body affected. Any person aggrieved by a proposed order of the Department may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(3) Any notice of violation shall describe the nature and extent of the violation.

(4) The Department may take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the Department under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Department may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the Department shall set forth if applicable the dates of notice and hearing and the specific rule or order of the Department, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(5) In addition to the actions described in OAR 141-085-0085(4) and 141-085-0090 the Department may enter an order requiring any person to cease and desist from any violation if the Department determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the Department shall hold a contested case hearing before a hearings officer according to the applicable provisions of ORS 183.310 to 183.550. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the Department nor any duly authorized representative of the Department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the Department's order in the same manner as with an order of that court.

(6) Proposed Order to Restore, Cease and Desist Order and/or Civil Penalties. Any written request for a hearing concerning a proposed enforcement order shall admit or deny all factual matters stated in the proposed enforcement order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

Stat. Auth.: ORS 196.860, 196.870 & 196.875
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0090
Civil Penalties

(1) In addition to any other remedy allowed by law or these rules (OAR 141-085), the Department may assess a civil penalty for any violation of the removal-fill law, these rules, an authorization or an order issued pursuant to these rules (OAR 141-085).

(2) Each day a violation continues constitutes a separate offence for which the Department may assess a separate penalty.

(3) More than one civil penalty may be assessed for an unauthorized removal or fill activity.

Example: A civil penalty assessed on an initial violation may be followed by a separate civil penalty for failure to comply with a restoration order issued on the same violation.

(4) Required notice; contents of notice. The Department shall give written notice of Intent to Assess a civil penalty by personal service or by registered or certified mail to the permit holder or person (hereinafter referred to as 'party') incurring the civil penalty. The notice shall include, but not be limited to, the following:

(a) The particular section of the statute, rule, order or authorization involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within twenty (20) calendar days of receiving the notice; and

(d) A statement of the amount of civil penalty assessed and terms and conditions of payment.

(e) The party may request a contested case hearing in accordance with procedures described in OAR 141-085-0075.

(5) Calculating the civil penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, shall be determined by the Department using the following formula: F = BPCI.

(A) B is the base fine factor of $ 1,000;

(B) "P" is the prior knowledge factor to be determined as follows:

(i) A value of 1 shall be applied if the alleged violator was unaware of the removal-fill law at the time of the alleged violation; or

(ii) A value of 2 shall be applied if the alleged violator was aware of the removal-fill law at the time of the alleged violation (e.g., permit noncompliance, prior penalties or other exposure to the Removal-Fill Law);

(iii) A value of 5 shall be applied if the alleged violator had a previous violation. A previous violation exists, for example, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent order or consent agreement. This value shall not be imposed if the previous violation occurred more than (5) five years prior to the current incident.

(C) The cooperation value (C) shall be determined by the Department after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assessed as follows:

(i) A value of 1 shall be applied where the person complies with restoration as requested by the Department without the need for an enforcement order or court action by the Department, or where the Department determines that restoration efforts would be unlikely to benefit the resource;

(ii) A value of 2 shall be applied where the person does not, after receiving oral or written notification from the Department, cease the activity alleged to constitute a violation.

(iii) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the Department and the Department must issue an enforcement order or obtain a court order to restore.

(D) "I" is water resource effect factor to be determined as follows:

(i) A value of 1 shall be applied if the damaged resource is expected to naturally self-restore within one year; or

(ii) A value of 3 shall be applied if the adverse effects are not expected to naturally self-restore within one year.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, as determined by applying the calculation methods described in OAR 141-085-0090(4) shall be doubled, not to exceed $10,000 per day.

(c) In determining whether to assess a separate penalty for each day a violation continues, the Department may consider the number of days during which the activity alleged to constitute a violation occurred, as well as the number of days the adverse effect of this activity continues unabated.

(6) Failure to pay civil penalty. Once the final adjudication of any civil penalty calculated in the manner described in OAR 141-085-0090(5) has been noticed in accordance with OAR 141-085-0090(3), the amount of the civil penalty shall increase by the amount of the original civil penalty for every twenty (20) calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case shall the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid as required by OAR 141-085-0090(5), interest shall accrue at the rate of nine percent per annum pursuant to ORS 82.010 on the unpaid balance.

(7) Civil penalty relief. The alleged violator may request from the Department a reduction or revocation of the civil penalty by showing evidence of financial hardship. The request shall be received within twenty (20) calendar days from the date of personal service or mailing of the notice of civil penalty as described in OAR 141-085-0090(3). Evidence provided as to the alleged violator's economic and financial condition may be presented without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS 196.890
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 4-1986, f. & ef. 4-8-86; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0095

Request to Close Specified Waters of the State to the Issuance of Removal-Fill Authorizations

(1) The Department may request the Oregon Water Resources Commission (OWRC) to close, by administrative rule, specified waters of this state to the issuance of removal-fill authorizations (ORS 196.840).

(2) Any state resource agency listed in ORS 196.825 may make such a request of the Department. In determining whether or not to submit a request to the OWRC the Department shall consider:

(a) The reasons for requesting a closure;

(b) The specific waters of this state to be affected;

(c) The effect, including economic effects, of the proposed closure on potential future applicants;

(d) The effect, including benefits, of the proposed closure on aquatic life, water quality and public use of the waters; and

(e) The time period the closure should be recommended to be in effect.

(3) Prior to submitting a closure request to the OWRC, the Department shall hold at least one public hearing within the affected watershed. Interested and affected parties, including local government and watershed councils are to be notified at least thirty (30) calendar days prior to the hearing date. Public comment on the proposal shall be accepted at least fourteen (14) calendar days following the last hearing. The Department shall issue a report explaining the proposal and outlining the reasons for considering a closure. Notice of the Department's final decision shall be provided all participating parties and parties of interest as identified by the Department.

Stat. Auth.: ORS 196.840
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0096

Monitoring; Annual Report; Public Information and Education

(1) Program Monitoring. Pursuant to ORS 196.910, the Department will monitor removal and fill authorized under these rules to determine:

(a) Compliance with permit conditions;

(b) The effectiveness of permit conditions in achieving the policies of these rules; and

(c) The adverse effects of authorized activities on salmonid spawning and rearing habitat and wetland functional attributes.

(2) Annual Reporting. Pursuant to ORS 196.885, commencing with fiscal year 2002–2003 and continuing each fiscal year thereafter, the Department shall submit an annual report to the State Land Board on the activities conducted under these rules. The report shall be delivered to the State Land Board and posted on the Department's website no later than 120 days after the end of the fiscal year. The report shall also be provided to the appropriate legislative committee(s). The annual report shall include the following:

(a) The number of removal-fill authorizations applied for, denied and authorized. For all authorizations granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body that shows:

(A) The total number of authorizations, the number of new authorizations and the number of renewal authorizations.

(B) The volume and/or wetland acreage of removals and fills authorized during the past year, and to the extent possible, the volume and/or wetland acreage of fills and removals completed during the past year.

(C) The areal extent of wetlands lost, by habitat type, and the areal extent of wetlands gained, by habitat type, through compensatory wetland mitigation.

(b) A summary of compensatory mitigation measures, including a description of each compensatory mitigation project approved during the past year including the location and size of each compensatory mitigation project, whether creation, enhancement or restoration, and a report on the status of all compensatory mitigation projects pending or completed during the past year.

(c) A summary of enforcement activities, including:

(A) The number of complaints reported.

(B) The number of compliance investigations conducted.

(C) The results of compliance actions, including:

(i) The number of cases resolved by either voluntary compliance, administrative hearings or judicial enforcement proceedings;

(ii) The penalties assessed; and

(iii) The penalties recovered.

(d) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.

(e) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 196.640 and 196.655.

(f) The number of and average time for responding to notices received by local governments and the number of responses that took more than thirty (30) calendar days.

(g) The number of wetland conservation plans approved by the Department and a description of each, including the issues raised during the approval process.

(3) Public Information. The Department shall develop and maintain a public information program to educate permit applicants and the general public about:

(a) Wetland functions and values;

(b) The status and trends of Oregon's wetlands;

(c) The Statewide Wetlands Inventory; and

(d) Wetland identification, regulations and permit requirements.

(4) Technical Assistance and Cooperation. Upon request, within the limits of staffing ability and available resources, the Department shall provide technical assistance to other state agencies, local governments and the public in identifying wetlands.

Stat. Auth.: ORS 196.885, 196.910 & 196.688
Stats. Implemented: ORS 196.800 - 196.990 & 196.600 - 196.692
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0115
Compensatory Mitigation

(1) The Department may require compensatory mitigation as a condition of an authorization to compensate for reasonably expected adverse effects to water resources of the state and navigation, fishing and public recreation uses on waters of this state other than freshwater wetlands or estuarine areas. Such conditions impose obligations on the permit holder beyond the expiration of the authorization.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Offsite or onsite enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Offsite or onsite improvements to enhance navigation, fishing or public recreation uses of waters of this state; or

(c) Compensation to a third party, as approved by the Department, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of this state. A permit holder, with the approval of the Department, may contract with a third party to construct, monitor or maintain the compensatory mitigation site. The permit holder remains responsible for compliance with the compensatory mitigation conditions unless the authorization is transferred to another entity in accordance with these rules.

(3) The Department may approve of compensatory mitigation for effects to waters of this state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

(4) The Department may require some form of long term protection for the compensatory mitigation site.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0121
Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR-141-085-0121 to 141-085-0151, apply to removal-fill that occur within freshwater wetlands and do not apply to removal-fill:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR-141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for effects to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse effects to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reasonably expected adverse effects of the project by replacing the functional attributes of the wetland impacted by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland. The requirements to provide CWM impose obligations on the permit holder that extend beyond the expiration date of the authorization.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, there is a rebuttable presumption that on-site CWM is impracticable. The applicant may propose to fulfill CWM requirements through off-site CWM without first considering on-site CWM.

(4) For projects described in (2) requiring CWM involving project development effects greater than 0.2 (two-tenths) of an acre, the applicant shall first consider on-site CWM to provide the replacement of the functional attributes of the lost wetland. If on-site CWM is impracticable as documented by the applicant, off-site CWM shall be utilized. In considering off-site CWM, the applicant may create, restore, conserve or enhance a wetland or if the project development occurs within the service area of an established wetland mitigation bank, the applicant may purchase credits, if available, from the bank to fulfill CWM requirements so long as the functional attributes of the lost wetland are replaced. If no mitigation bank is available, CWM may be fulfilled through payment in lieu of mitigation as described in OAR 141-085-0131.

(5) The Department will review the CWM plan for sufficiency and compliance with these rules. The Department may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Department will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Department may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Department shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes. The assessment shall assess:

(a) Existing functional attributes of the entire wetland at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely effected, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed CWM site, if the site is currently wetland; and

(d) The projected net gain or loss of specific functional attributes at the CWM site as a result of the proposed CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(10) HGM is the preferred, but not required, functional assessment method. When HGM is used, the appropriate HGM guidebook should be used . Until the Department develops additional guidebooks or methods, the "Judgmental Method" in the Willamette Valley Guidebook may be adapted and used to assess wetland functions in other regions.

(11) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(12) Additional assessments or data may be required by the Department if the functional assessment results, public/agency review comments, or the Department's review indicate that there may be reasonably expected adverse effects to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0126
Requirements for All CWM

(1) CWM shall replace:

(a) Wetland habitat type(s) effected by the project, as classified per Cowardin system and class (e.g., palustrine forested);

(b) HGM class/subclass(es) effected by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Department of State Lands 2001); and

(c) The functional attributes of the lost wetland (effected wetland).

(2) The Department may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:

(a) Is environmentally preferable;

(b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;

(c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or

(d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.

(3) A permit holder, with the approval of the Department, may at any time contract with a third party to construct, monitor or maintain the CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.

(4) For linear projects (e.g., roads or utility lines with wetland effects in several watersheds), the applicant may compensate for all wetland effects at a single CWM site.

(5) CWM:

(a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Department may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR-141-085-0136;

(b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants; and

(c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.

(6) CWM sites may fulfill multiple purposes including storm water retention or detention provided:

(a) The requirements of OAR 141-085-0126(1) and (2) are met;

(b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.

(7) CWM using wetland enhancement must conform to the following additional requirements. The CWM shall:

(a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010;

(b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site;

(c) Not replace or diminish existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so;

(d) Not consist solely of the conversion of one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so;

(e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a CWM plan.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0131
Requirements for CWM Involving Wetland Mitigation Banks, Payment In Lieu of Mitigation or Conservation

(1) The requirements in this section are in addition to the general requirements in OAR 141-085-0121.

(2) Mitigation Bank Credits. Purchase of mitigation bank credits from an appropriate and approved mitigation bank is preferable to payment in lieu of mitigation. The Department will approve the bank option only after on-site mitigation has been examined and found to be impracticable. Documentation of the purchase of the required number of mitigation bank credits must be received by the Department prior to issuance of the authorization.

(3) Payment in lieu of mitigation:

(a) The individual removal-fill permit or letter of authorization for an activity shall not be issued until payment has been made in the amount identified in the CWM plan as approved by the Department. Once an approved removal-fill permit activity has begun as proposed, the payment in lieu of mitigation payment shall be considered as non-refundable.

(b) The amount to pay to the Department to provide CWM shall be the average cost of credits available from all active mitigation banks in the state as compiled annually by the Department.

(4) Conservation:

(a) Conservation of wetlands may be used for meeting the CWM requirement when the wetland proposed for conservation:

(A) Supports a significant population of rare plant or animal species; and/or

(B) Is a rare wetland type (S1 or S2 according to the Oregon Natural Heritage Program); or

(C) Is a vernal pool, fen or bog.

(b) Conservation should be encouraged as the preferred CWM option when the effect site is a wetland type that is exceptionally difficult to replace, such as vernal pools, fens and bogs.

(c) There is no established ratio for CWM using conservation. The acreage needed under conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Department.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0136
Ratio Requirements for CWM

(1) The purpose of CWM ratios is to:

(a) Ensure that the state's wetland resource base is maintained as required in ORS 196.672;

(b) Offset the temporal loss of wetland functions as compensatory mitigation sites mature (i.e., become fully functional replacement of the lost, effected wetland);

(c) Replace wetland functions that may be size dependent; and

(d) Compensate for the likelihood of success in the different CWM methods (creation, restoration and enhancement). The methods are techniques used to achieve the replacement of functional attributes lost from the effected wetland.

(2) Except as provided in Sections (3) through (6) of this section, the following minimum ratios shall be used in the development of CWM plans:

(a) Restoration: One (1) acre of restored wetland for one (1) acre of effected wetland.

(b) Creation: One and one-half (1.5) acres of created wetland for one (1) acre of effected wetland.

(c) Enhancement: Three (3) acres of enhanced wetland for one (1) acre of effected wetland.

(d) Enhancement of cropped wetland as determined by the Department: Two (2) acres of enhanced cropped wetland for one (1) acre of effected wetland. Cropped wetland is converted wetland that is regularly plowed, seeded and harvested in order to produce a crop for market. Pasture, including lands determined by the Natural Resources and Conservation Service to be "farmed wetland pasture," is not cropped wetland.

(e) Conservation: Variable: See OAR 141-085-0131(4).

(3) The Department shall double the minimum ratio requirements for project development effecting existing CWM sites; for example, using enhancement to compensate for effects to an existing CWM site will require a ratio of six (6) acres enhanced for every one (1) acre effected.

(4) The Department may increase the ratios when:

(a) Mitigation is proposed to compensate for an unauthorized removal or fill activity; and/or

(b) Mitigation is not proposed for implementation concurrently with the authorized effect.

(5) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):

(a) One (1) acre of wetland and open water habitat, with depths less than thirty-five (35) feet, for one (1) acre of wetland effected;

(b) Three (3) acres of wetland and open water habitat, with depths greater than thirty-five (35) feet, for one (1) acre of wetland effected;

(c) One (1) acre of a combination of restored, created or enhanced wetland and upland, comprising at least fifty percent (50%) wetland, for one (1) acre of wetland effected.

(6) The Department may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(a) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(b) Based on the value the Department determines under OAR 141-085-0131(3), allow the applicant, upon approval by the Department, to pay the entire cost of CWM:

(A) On an annual basis for a period not to exceed twenty (20) years over the life expectancy of the operation, whichever is less; or

(B) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0141
Requirements for All CWM Plans/Application Requirements

(1) On-site or off-site CWM involving the creation, restoration and/or enhancement of wetlands by the applicant. A CWM plan shall, at a minimum, include:

(a) CWM site information including:

(A) Area (size) of the CWM wetland proposed for effect relative to the total area of the wetland.

(B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Legal description (Township, Range, Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the effected site, longitude and latitude, physical address (e.g., 512 Elm Street), and road milepost (e.g., mp 25.21).

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment, except when PTP or purchase of credits from a wetland mitigation bank is proposed, of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the effected wetland are replaced.

(C) A description of the rationale for the CWM site selection using a method approved by the Department.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Planting plan (with species, size, number, spacing and installation methods).

(vii) Monitoring plan (schedule, timetable, methods).

(viii) Contingency plan for CWM failures.

(ix) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR-141-085-0176), if the effect is greater than .2 (two-tenths) of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(M) Plans for vegetated buffers, if needed, to protect the viability and functions of the CWM site.

(N) Plans for the long-term protection of the CWM site:

(i) Compensatory mitigation sites and compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(ii) The applicant shall offer a preferred method and justification.

(iii) The Department will make the final determination for the need and type of long-term protection.

(2) Other CWM. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR 141-085-0131(4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A legally binding long term protection instrument (e.g. conservation easement); and

(F) A long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0146
Removal-Fill Authorization Conditions for CWM Plans

(1) For permits involving CWM:

(a) The approved CWM plan shall become part of the removal fill authorization and, by reference, all portions of the CWM plan shall become conditions of the authorization.

(b) Additional compensatory mitigation conditions may be included in the authorization.

(c) All compensatory mitigation conditions shall be enforceable until the CWM is deemed successful by the Department in accordance with OAR 141-085-0151, regardless of the authorization expiration date.

(2) Conditions for authorizations shall also state:

(a) If applicable, the amount of the payment in lieu of mitigation made by the applicant and how it was calculated; and

(b) If applicable, the mitigation bank utilized; and

(c) The loss of wetland by area, Cowardin and HGM class(es), and function(s) of wetland(s) expected to be lost or impaired; and

(d) The applicant's remaining responsibility after payment in lieu of mitigation payment was made, if any, and;

(e) No removal or fill of any amount of material shall be permitted within compensatory wetland mitigation sites without prior authorization of the Department.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0156

Payments; Expenditure of Funds for Compensatory Wetland Mitigation Payment in lieu of Mitigation; Agency Department Accounting of Payment in lieu of Mitigation Funds and Expenditures

(1) The Department shall utilize the Oregon Wetlands Mitigation Revolving Fund Account authorized pursuant to ORS 196.640 et seq. to hold and disperse money collected from the program.

(a) The Department shall expend funds collected under the payment in lieu of mitigation option of compensatory wetland mitigation only to:

(A) Restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to compensate or replace wetland functional attributes lost or diminished as result of an approved removal-fill authorization activity;

(B) Purchase credits from an approved wetland mitigation bank for the purpose of fulfilling the CWM requirements of an approved removal-fill authorization activity;

(C) Monitor the compensatory wetland mitigation; or

(D) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful.

(2) The Department shall expend funds collected under the payment in lieu of option of compensatory wetland mitigation only within the geographic region, as defined by OAR-141-085-0010 of these rules, in which the wetland functional attributes occur, unless the Department determines, in writing that expending the funds is not feasible or appropriate within a respective region.

(3) The Department shall expend funds collected from specific approved removal-fill activities within two (2) years from the authorization issuance date unless the Department determines, in writing, that meeting the two year time limit is not feasible.

(4) Third party recipients of funds collected under the payment in lieu of mitigation option of a compensatory wetland mitigation plan shall sign a written agreement provided by the Department that requires the recipient(s) to utilize the funds for specific wetland compensatory mitigation that has been reviewed and approved by the Department. Such review and approval will also be contingent on the submission of a specific monitoring program that is acceptable to the Department.

(5) All payment-in-lieu monies collected and expended, as well as the success of the compensatory wetland mitigation, authorized by the Department in accordance with these rules, shall be recorded by the Department and shall include:

(a) A description of the compensatory wetland mitigation funded and including an evaluation of the success of these projects in meeting project goals.

(b) A description of the wetland functional attributes lost or diminished from approved removal-fill activities summarized individually and cumulatively by basin.

(c) A summary of the amount of payments collected and expended on individual compensatory wetland mitigation projects as well as cumulatively by basin.

(d) A description of the wetland functions expected to accrue as a result of compensatory wetland mitigation projects funded in accordance with these rules and summarized by basin and statewide.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0161

Department Responsibilities Under Payment in lieu of mitigation Option

The Department, by eliminating the applicant's responsibility for compensatory wetland mitigation by approving a removal-fill authorization including a payment in lieu of mitigation option, assumes the following responsibilities to:

(1) Defend the sufficiency of the compensatory wetland mitigation plan to compensate or replace the wetland functional attributes lost or diminished; and

(2) Monitor, manage, and otherwise assure the success of the compensatory wetland mitigation project performed by the Agency Department or designated third party(ies) under these rules.

(2) The Department, as part of an intergovernmental agreement, may transfer or extend the Department's responsibility for the compensatory wetland mitigation plan to another person or governmental agency.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0166

Advance Mitigation

(1) As part of an existing, active individual removal-fill permit application process, an applicant may request that the Department consider the possibility that the applicant's proposed CWM project, if successful, could result in producing potential mitigation credits in excess of those needed to satisfy the requirements of OAR 141-085-0029(7).

(2) If the applicant desires to preserve the option of possibly receiving additional mitigation credit for future projects from the excess credits identified under subsection (1) above, then the following additional information shall be submitted as a part of the applicant's Compensatory Wetland Mitigation Plan:

(a) Identify the specific area(s) of the CWM site that compensates for the specific permitted effect, and identify the specific areas of the CWM site that are proposed for credit in future projects;

(b) Include separate protection instruments for each area of the CWM site (existing and proposed);

(c) Provide a separate monitoring program for each section of the CWM site (existing and proposed);

(d) Provide a table showing how much credit, in acres under suitable mitigation ratios, is being claimed at the CWM site.

(3) If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that the proposed future wetland effect is a permittable action, or that the CWM will be authorized as suitable CWM for any application. A separate alternatives analysis conducted under OAR 141-085-0029(4) shall be required for each and every separate individual removal-fill permit application.

(4) Monitoring to determine if success criteria are met shall continue for five (5) years or until the success criteria is achieved, whichever is longer. Such success criteria monitoring requirements shall apply to each designated mitigation area or the entire mitigation site, if constructed at one time.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0171

Mitigation for Temporary Impacts

Projects that do not result in the permanent loss of wetland functions and values, must, as part of the application, provide a rehabilitation plan for temporary effects, including:

(1) Plans and specifications for rehabilitating the area of temporary effects, including grading plans and planting plans, timeline and location of fill disposal areas; and

(2) Planting plans shall specify species, number and spacing. Such plans shall be designed to re-establish the pre-effect conditions of the site as rapidly as is reasonably possible.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0176
Security Bonding and Instruments

(1) Financial Security Instruments are required for CWM projects. DSL may waive the requirement for a financial security instrument for impacts less then two tenths of an acre where the low risk of mitigation project failure does not justify the expense of such an instrument. Financial security instruments are not required when CWM is satisfied by purchase of credits from wetland mitigation bank or payment in lieu of mitigation is utilized. To ensure compliance with CWM requirements, the Department may allow for any of the following types of financial security instruments:

(a) Surety bond;

(b) Certificate of Deposit;

(c) Irrevocable letter of Credit; or

(d) Such other financial instrument as the Department deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

(2) No financial security instrument is required for projects conducted by government agencies.

(3) Financial Security Form: The applicant shall file the financial security instrument's on a form prescribed and furnished by the Department. The financial security instruments(s) shall be made payable to the Oregon Department of State Lands.

(4) Commencement of the liability period. The period of liability shall begin at the time of authorization issuance. The liability period shall be established by the Department and be clearly stated in the removal-fill authorization.

(5) Determining the financial security instrument amount. The Department shall annually set the amount of the financial security instrument based on the greater of the statewide average for in lieu of mitigation or the cost of mitigation bank credit(s) in the applicants' bank service area.

(6) General terms and conditions of financial security instruments.

(a) The instrument shall be in an amount determined by the Department as provided in OAR 141-085-0176(5) of these rules and be made payable to the "Oregon Department of State Lands".

(b) The financial security instrument shall be conditioned upon faithful performance of all of the requirements of these rules as well as the conditions of the removal-fill authorization.

(c) Liability period. The permit holder's liability under the financial security instrument shall be for the duration of responsibility for the CWM as set out in the approved removal-fill authorization and these rules. Except as approved by the Department, a financial security instrument shall be posted to guarantee specific phases of the required CWM provided the sum of the bonds authorized for the phases equals or exceeds the total amount required to complete the CWM. The scope of work to be guaranteed and the liability assumed under each phase of the instrument shall be specified in detail in the authorization and financial security instrument form.

(7) Surety bonds: Surety bonds shall be executed by the permit holder and a corporate surety licensed to do business in Oregon. Such surety bonds shall be not be cancelable during their term.

(8) Certificates of Deposit; certificates of deposit shall be assigned to the Department, in writing, and upon the books of the bank issuing such certificates.

(9) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the state of Oregon.

(b) The letter must be irrevocable prior to release by the Department.

(c) The letter must be payable to the "Department of State Lands" in part or in full upon demand by and receipt from the Department of a notice of forfeiture issued in accordance with OAR 141-085-0176 of this rule.

(10) Financial Security Instrument Replacement. The Department may allow a permit holder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Department shall not release an existing financial security instrument until the permit holder has submitted and the Department has approved the replacement. Replacement of a financial security instrument shall not constitute a release under OAR 141-085-0176 of these rules.

(11) Financial Security Instrument Release. The Department shall authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and conditions of the removal-fill authorization. The permit holder shall file a request with the Department for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area.

(b) The permit holder's name.

(c) The removal-fill authorization number and the date it was approved.

(d) The amount of the financial security instrument filed and the portion sought to be released.

(e) The type and appropriate dates of CWM work performed.

(f) A description of the results achieved relative to the permit holder's approved CWM plan.

(12) Forfeiture of financial security instruments. The Department shall declare forfeiture of all or part of a financial security instrument for any removal-fill authorization project area or an increment of a project area if CWM activities are not conducted in accordance with the approved CWM plan or the permit holder defaults on the conditions under which the financial security instrument was posted. The Department shall identify, in writing, the reasons for the declaration.

(13) Determination of Forfeiture Amount and Utilization of Funds. The permit holder shall forfeit the amount of the financial security instrument for which liability is outstanding and DSL shall either utilize funds collected from bond forfeiture to complete the CWM on which bond coverage applies or deposit the proceeds thereof in the Oregon Wetlands Mitigation Revolving Fund Account for use in the payment of costs associated with wetland mitigation activities.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0256
Estuarine Mitigation Policy Generally

Mitigation means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality:

(1) No mitigation proposal may be inconsistent with an acknowledged comprehensive land use plan and implementing ordinances for the area where the removal-fill activity will occur or where the mitigative action is located.

(2) Mitigation must occur in the same estuary as the intertidal removal or fill activity except when the alternative is a partial waiver of mitigation under ORS 196.830(4).

(3) Mitigation shall restore or enhance estuarine lands and resources in an area proportionate to the area affected by the intertidal removal or fill activity. The area affected shall include the actual area where material is removed or filled and any surrounding intertidal or tidal marsh area adversely affected by the activity. At minimum, the mitigation action shall offset the adverse affects of the intertidal or tidal marsh removal-fill activity.

(4) Mitigation shall "maintain" (replace) the natural biological productivity and diversity of native species of the intertidal removal-fill site by creation, restoration or enhancement of an appropriate area of another estuarine habitat. Any shallow subtidal or intertidal or tidal marsh estuarine habitat may be used to "replace" the habitat lost to intertidal removal-fill, but the area will be proportionate to the Relative Value of the habitats involved. As an alternative to the Relative Value method described below, another method of determining the amount of mitigation area necessary may be approved by the Director if it meets the objectives of this section. The surface area of a mitigation site may not be smaller than the surface area of the development site.

NOTE: The purpose of this policy statement is to ensure conservation of estuarine surface area. However, a mitigation proposal shall not fail because the mitigation surface area is slightly less than the intertidal removal-fill area and no other mitigation area is available or the next alternative would be far more expensive.

(5) Habitat types found in Oregon estuaries have been evaluated and compared in terms of natural biological productivity and diversity of native species by trained scientists and natural resource managers knowledgeable and familiar with the physical, biological, and chemical processes of estuaries. The result of this evaluation is a set of Relative Values that can be used to determine how much area of one habitat is needed to mitigate each acre of another habitat lost to intertidal removal-fill. Figures 3 and 3A (Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 16) are a matrix of habitat characteristics and Relative Values for habitats found in Oregon estuaries:

(a) The base Relative Values for estuarine habitats shall range from 1.0 to 6.0;

(b) The Department may adjust the Relative Value of any habitat type (except for relative values already established in a mitigation bank agreement) if site conditions and characteristics such as very low or exceptionally high resource values warrant such adjustment to carry out the provi-

sions of the Removal-Fill Law. Such adjustment may not exceed 25 percent of base Relative Value in either direction.

(6) The equation for determining how much intertidal or tidal marsh area is required for mitigation shall be:

AM = (RVd/RVm) (AD) where
AM = Area of mitigation site
RVd = Adjusted Relative Value of the development site
RVm = Adjusted Relative Value of the mitigation site
AD = Area of development site

(7) The equation for determining how much shallow subtidal area is required for mitigation shall be: AM = 2.0(RVd/RVm) (AD)

(8) Note that if shallow subtidal habitats are offered as mitigation, the required surface area is twice the size of the surface area required if an intertidal or tidal marsh area of equal Relative Value is offered. The surface area of the mitigation site (AM) may not be smaller than the surface area of the development site (AD).

(9) Figure 4 (Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 17) shows the relationship between the adjusted Relative Values of the development and mitigation sites and the ratio of the Mitigation Area to the Development Area (AM/AD) when the habitat replacement occurs under OAR 141-085-0256(4) of this rule.

(10) The Mitigation Credits attributable to any created or restored habitat may be obtained by multiplying the adjusted Relative Value of the created or restored habitat by the number of acres affected.

(11) The Mitigation Credits attributable to any enhanced habitat may be obtained as follows:

(a) Obtain the base Relative Value of the existing habitat from Figures 3 or 3A (Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 16) and adjust appropriately;

(b) Estimate or otherwise determine what the adjusted Relative Value of the affected habitat will be after mitigation occurs;

(c) Subtract (a) from (b) to obtain enhancement Relative Value;

(d) Multiply the enhancement Relative Value (c) times the number of acres enhanced.

(12) Mitigation shall "maintain" the unique features of estuaries that may be affected by intertidal removal-fill projects. The term "unique features" is defined in OAR 141-085-0010;

(a) The Department intends to rely upon acknowledged comprehensive land use plans for guidance in identifying "unique features" for mitigation purposes. Proposed intertidal removal-fill activities involving unique features shall be scrutinized carefully to determine whether or not a permit should be issued. If a permit is issued, mitigation shall be in-kind to the maximum extent possible and shall include the habitat replacement required under OAR 141-085-0256(4) of this rule;

(b) The objective of mitigation involving unique features shall be to replace lost habitat by substituting and, additionally, to replace or relocate as much of the unique feature as possible.

(13) Mitigation shall "maintain" habitats and diversity of native species. The law does not mandate that every habitat and species affected by intertidal removal and fill be replicated in the mitigation proposal. However, the law does require consideration of whether or not habitat or diversity of native species of an estuary generally will be adversely affected by an intertidal removal or fill, and if so, what mitigation will offset the effect. The Department will maintain habitats and diversity of native species through habitat replacement required under OAR 141-085-0256(4) of this rule;

(a) "In-kind" or "like-kind" mitigation will be encouraged whenever possible by approving mitigation proposals and mitigation banks that involve a diversity of resource-habitat types. The Department will maintain a record, by estuary, of the amounts and types of habitats involved in intertidal removal-fill sites and mitigation sites. No additional mitigation is required under this subsection unless the Department determines that a mitigation proposal under OAR 141-085-0256(4) of this rule would reduce or impair habitats and diversity of native species.

(14) Mitigation shall maintain "water quality" through enhancement of physical, chemical, and biological characteristics of the waters at and near the site;

(a) Oregon has stringent water quality standards that the Department routinely incorporates into removal-fill permits. The Department will not approve a development activity that reduces water quality to a persistent level below state water quality standards, nor will the Department approve a mitigation proposal that would degrade water quality. The Department will rely on state and federal resource agencies, primarily DEQ for guidance on water quality issues;

(b) A mitigation proposal that produces an identifiable enhancement in estuarine water quality may be used to offset a portion of the resource losses of an intertidal removal-fill activity provided that the mitigation proposal also includes habitat replacement under OAR 141-085-0256(4) of this rule in an amount at least equal to the area affected by the intertidal removal and fill;

(c) A mitigation proposal claiming water quality enhancement as a mitigative action shall describe the action in detail and explain why and how the project will enhance water quality. The proposal shall identify the nature and areas extent of habitats affected by the water quality enhancements. A water quality enhancement activity mandated by a state or federal agency to raise water quality to state or federal standards is not mitigation under this section;

(d) If the Department determines that the water quality enhancement proposal will significantly enhance water quality, mitigation credits may be determined as provided in OAR 141-085-0256(9) of this rule.

NOTE: An acceptable mitigation must include creation, restoration, or enhancement of an estuarine area approximately equal to the intertidal removal-fill area. Mitigation that enhances water quality may serve as mitigation once sufficient estuarine area has been created, restored, or enhanced to meet the conservation of surface area requirement.

(15) Activities that do not require mitigation even though they may involve intertidal removal include:

(a) Maintenance dredging — Provided that the applicant can show that the site has been dredged before and is part of a regularly used project. First time dredging activities that remove intertidal lands to obtain water depth will require mitigation;

(b) Aggregate mining -- Provided that the site has been used historically for aggregate removal on a periodic basis.

(16) Examples of activities that are not considered mitigation within the meaning of ORS 196.830 except when mitigation would otherwise be waived in part under ORS 196.830:

(a) The transfer of private intertidal estuarine lands to public ownership (Att. Gen. Op. 3774, 1976);

(b) The dedication of intertidal estuarine lands for natural uses;

(c) Large scale piling and dolphin removal unless associated habitats would be enhanced by the removal through increased circulation;

(d) Creation of subtidal lands except when the area was originally upland. In general, creation, restoration, and enhancement of subtidal lands produce less mitigation credit than similar actions relating to intertidal lands. Less credit is given because habitat replacement is not "in-kind," i.e., not intertidal as are the lands affected by the removal-fill activity. For purposes of these rules, the creation, restoration, or enhancement of a subtidal habitat will produce one-half the mitigation credits produced by an intertidal area of the Relative Value.

NOTE: The Relative Values for subtidal habitats may be adjusted up to 25 percent up or down in the same manner as intertidal habitats.

(17) Examples of areas and activities considered suitable for restoration and enhancement activities include:

(a) Areas where poor water quality, or similar degradation, limits fish and shellfish production and harvest or public recreation;

(b) "Dredge spoil islands" which could be lowered to create or restore intertidal surface area;

(c) Tide flat or tidal marsh areas suitable for restoration;

(d) Areas where circulation or flushing can be restored or enhanced by breaching dikes or roadfills or removing pile groups or structures.

(18) Mitigation sites and activities need not be fully developed biologically at the time of acceptance, but there must be a high probability of success associated with the proposed action. There is no penalty assessed for a mitigative action that takes time to produce the anticipated resources and habitats;

(a) The Department may require bonding in an amount sufficient to cover the costs of site acquisition, any necessary physical alterations, monitoring and contingencies. The need for bonding will be considered especially carefully in cases where mitigation actions will be taken after the development project, or in cases where the results of the mitigation action will not occur for several years.

NOTE: Late maturing projects are not as acceptable as those where good results may be anticipated in one or two years.

(19) The Department will require monitoring of a mitigative action to determine performance over time in the same manner as described in OAR 141-085-0151.

(20) The Department may require funding for research in cases where the ramifications of a given mitigation action are uncertain. Such requirement shall be set out in detail in the authorization.

(21) The procedures described in this section are suitable for estimating the mitigation liabilities and credits of a proposed intertidal or tidal marsh removal-fill project and the attendant mitigative action. In most cases, these guidelines will produce a mitigation proposal acceptable to the Department and interested parties;

(a) However, estuarine habitats are diverse and dynamic, and the circumstances of any given application may require the Department to amend or adjust mitigation proposals to carry out the provisions of the Removal-Fill Law. Such right is reserved to the Department.

(22) The Department shall require security bonding for estuarine mitigation in the same manner as described in OAR 141-085-0176.

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

Stat. Auth.: ORS 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0257

Estuarine Resource Replacement

(1) As used in this section, "estuarine resource replacement" means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features and water quality.

(2) Except as provided in OAR 141-085-0257(4) of this section, the Department shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the Department requires estuarine resource replacement, the Department shall consider:

(a) The identified adverse affects of the proposed activity;

(b) The availability of areas in which replacement activities could be performed;

(c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;

(d) The recommendations of any interested or affected state or local agencies; and

(e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS Chapter 195, 197 or the statewide planning goals adopted there under to the contrary, the Department may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the Department determines that:

(A) There is no alternative manner in which to accomplish the purpose of the project;

(B) There is no feasible manner in which estuarine resource replacement could be accomplished;

(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

(D) The project is for a public use; and

(E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological effect on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the Department to impose conditions on a permit under ORS 196.825(4).

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0421

Requirements to Establish a Mitigation Bank

(1) All persons proposing to establish a mitigation bank shall:

(a) Meet with the Department to discuss their proposed bank and the content of their Mitigation Bank Prospectus.

(b) Prepare and submit a Mitigation Bank Prospectus to the Department.

(2) The Mitigation Bank Instrument shall contain the following elements, as applicable:

(a) The physical location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).

(b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.

(c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.

(d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.

(e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas where grading will be required, location of buffers, vegetation planting plan, etc.

(f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.

(g) Description of the ecological goals and objectives of the bank.

(h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.

(i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.

(j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.

(k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.

(l) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.

(m) A site assessment of the proposed bank area providing information on the:

(A) Hydrogeomorphic and Cowardin wetland classes;

(B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), using a standardized regionally-appropriate function assessment method (such as the Willamette HGM) as well as vegetation, soils, hydrology, and wildlife habitat and usage; and

(C) Results of a wetland determination or delineation.

(n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.

(o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and legal fees, maintenance and monitoring over the long-term, and contingency fund).

(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085-0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Department will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Department that does not provide sufficient information for review, or that appears to present a proposal in which the Department will not participate, will be returned to the sponsor with a written explanation.

(5) The Department reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

(a) Need for the mitigation credits; or that

(b) The bank is technically feasible and ecologically desirable.

(6) Upon determining that the Prospectus is sufficient, the Department shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be posted on the agency's official web site for 30-days.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), federal natural resources and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that comments must be received for thirty (30) calendar days from the date of the public notice.

(7) The Department shall consider but is not bound by comments received during the public notice period in (6). If comments are not received from a state agency or from an affected local government or special district within the 30 day comment period, the Department shall assume the entity does not desire to provide comments.

(8) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Department and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Department may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Department and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

(A) Oregon Department of Environmental Quality;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Land Conservation and Development;

(D) U.S. Fish and Wildlife Service;

(E) U.S. Environmental Protection Agency;

(F) Soil and Water Conservation District; and

(G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Department and the Corps in development of the Instrument.

(9) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Department concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Department throughout the life of the bank.

(10) A sponsor may begin construction of a bank prior to developing an Instrument by:

(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Department, which assumes no liability for the sponsor's actions.

(11) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Department.

(b) Be approved and signed by the Department and the sponsor, at the discretion of the Department.

(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(12) Upon approval of the Instrument, the Department shall notify city and county planning departments where the bank is located and affected state agencies, adjacent landowners, and persons who have requested to be notified.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; DSL 4-2007, f. & cert. ef. 10-12-07; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0425
Establishment of Mitigation Credits

(1) Credits can be established by using:

(a) The ratios stipulated in OAR 141-085-0136; or

(b) Any other wetland and habitat functional assessment and evaluation methodology approved by the Department, which provides that credits within a bank are determined by the difference between the baseline conditions of the bank prior to restoration, enhancement, or creation activities, and the increased wetland functional attributes that result, or are expected to result, from those activities.

(2) Additional credits within the bank may be realized contingent on achievement of the performance standards contained in the Instrument over time and subject to the discretion of the Department. These credits are derived from the increased wetland functions that accrue as wetlands in the bank improve over time. Wetlands that are enhanced should exhibit a measurable increase in wetland function more readily than those that are created. Credits created by restoration may be subject to certification at an earlier date. Adjustments in credits shall be calculated based on superior performance as follows:

(a) For banks utilizing ratios provided in OAR 141-085-0136(2) or 141-085-0256:

(A) After five (5) years, the remaining enhanced wetland credits within the bank may be increased by no more than one-third and after ten (10) years, remaining enhanced wetland credits may be increased by no more than two-thirds;.

(B) After ten (10) years or more, the remaining created wetland credits within the bank may be increased by no more than one-half.

(C) For the purpose of calculating available credits by these rules, the new number of credits is determined by multiplying the relative proportion of restored, enhanced, created, and/or protected wetlands and buffers present at the time of bank establishment by the total number of credits remaining.

(b) For banks using wetland assessment methods other than the ratios provided in OAR 141-085-0136(2) or 141-085-0256, remaining credits within the bank may be reevaluated at five (5), and ten (10) year intervals at the discretion of the Department. A new number of available credits may be realized using the same assessment method as originally employed to determine credits expected to be produced from the bank. OAR 141-085-0425(4) of these rules does not apply when the chosen assessment method evaluates the included upland buffers along with the wetlands because credits for inclusion of upland buffers in the bank shall not be counted twice.

(3) Credits may be granted on an area basis for upland buffers at the discretion of the Department. The calculation provided here is only for banks using ratios provided in OAR 141-085-0136(2) or 141-085-0256 and wetland functional assessment methods that do not evaluate buffers. However, such credits can only be established if the buffers are included as an integral part of the bank, a majority of credits are produced by the bank are from wetland restoration, enhancement, or creation, and all performance standards required in the Instrument are met. Credits for buffers will be determined as follows:

(a) Five (5) years after construction, credits for buffers may be granted. Depending on the quality of the buffer, between 10 to 20 acres of buffer will produce one (1) acre of wetland credit.

(b) Ten (10) years after construction, credits for buffers may again be calculated. Depending on the quality of the buffer, between 5 to 10 acres of buffer will produce one (1) acre of wetland credit.

(4) Credit for the protection of existing wetlands shall be considered only if:

(a) The area(s) to be preserved exhibit(s) healthy wetland functional attributes that are not likely to be increased appreciably by restoration or enhancement. The existence of "healthy wetland functional attributes" may be evaluated partly through comparison of the level of each function in the wetlands with the levels of the same functions in wetlands (of the same hydrogeomorphic class) identified as being among the least altered in the region or basin;

(b) The functional attributes of the wetlands proposed for protection are clearly threatened by human activities outside of the control of the bank sponsor;

(c) Additional protections such as upland buffers, fencing, and removal of contaminated soils, in addition to appropriate long-term protection measures that will substantially reduce the threat are proposed; and

(d) The applicant provides proof of ownership of, or explicit legal and recordable permission granted by the landowner, to perpetually dedicate the protection of wetland(s) and buffer(s) through any mechanism that unequivocally preserves the functional attributes of the wetland(s);

(e) The applicant provides documentation of the signed and recorded perpetual protection mechanisms.

(5) Mitigation bank credits for conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Department, in compliance with the criteria in OAR 141-085-0131(4).

(6) All adjustments in credits shall be applied only to those credits remaining in, or newly added to, the bank.

(7) The Department reserves the right to allow a bank sponsor to create credits by improving nonwetland ecological resources such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components provided that a bank producing credits in such a manner has produced a majority of its credits by wetland restoration, enhancement, or creation. Sponsors seeking to derive credits for non-wetland ecological resources shall develop a method to quantify and compare the derived credits. The method proposed must be acceptable to the Department, the Federal action agency, and the MBRT.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-085-0430
Use and Sale of Mitigation Credits

(1) Mitigation credits may only be purchased from a sponsor to offset permitted wetland losses or to resolve violations under the removal-fill law. Credit sales and purchases for future anticipated adverse affects not part of removal-fill permit applications are prohibited.

(2) The Department may purchase credits from an approved bank with funds received from payment in lieu of mitigation payments where such purchases will provide off-site CWM.

(3) The maximum number of credits that may be sold in advance of certification of the bank credits by the Department shall be clearly specified in the Instrument. In no case shall more than thirty (30) percent of the total credits expected to be produced initially by the bank be sold prior to their certification.

(4) The Department shall not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the Instrument, the Removal-Fill Law, and all rules governing freshwater and estuarine resource replacement in OAR 141-085-0121 through 141-085-0266. The Department may consult with the MBRT for the bank in order to determine noncompliance and appropriate remedies, including enforcement action.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03 ; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0100
Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department place or remove material within waters of this state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement as defined by OAR 141-085-0010.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(6) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085 except a single application, for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0105
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the sole purpose of improving habitat conditions for fish;

(b) Consist of fill or removal of material as:

(A) Randomly placed rock

(B) Deflectors

(C) Rock and log weirs

(D) Gravel placement

(E) Pool and pond construction

(F) Back/side channel construction

(G) Channel reconstruction

(H) Barrier removal and placement of fish passage ways

(I) Woody material

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements;

(b) The project is not for the sole purpose of improving habitat conditions for fish or other aquatic habitat restoration in wetlands; or

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085; except as provided for in 141-089-0205 Wetland Restoration and Enhancement.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990

Hist: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0110
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) Be consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.

(2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.

(3) Fills shall be of a size appropriate to the stream, and not exceed 150 cubic yards per site unless otherwise recommended by the Oregon Department of Fish and Wildlife for purposes of providing or improving fish passage (e.g., a simulated stream bottom or reconstructed channel). For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.

(4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel, as practicable.

(5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.

(7) Deflectors may be placed only if they add stream structure and increase habitat complexity.

(8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.

(9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed the depth of adjacent pools.

(10) Gravel and bed materials may be removed to create or clear side or back channels.

(11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085-0020) may be removed and fish passage structures may be placed within the bed and banks of waters of this state.

(12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse effects to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless exempt) in accordance with OAR 141-100.

(14) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0115
Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0120
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall demonstrate that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall obtain a water right or reservoir permit, if needed, from the Oregon Department of Water Resources if the project involves a water diversion or impoundment.

(15) The authorization holder may use streambed gravels from the trench excavation for a filter blanket.

(16) Upon completion of the project the authorization holder shall report to the Oregon Watershed Enhancement Board on Restoration Inventory Report forms provided by the Department.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.

(22) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(23) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0135
Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit, place or remove material within waters of this state, except estuaries and the Pacific Ocean, for stream bank stabilization.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and -0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0140
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be an active erosion area.

(b) Involve not more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of this state for a single project or more than two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(2) A project is not eligible for this general authorization if:

(a) The project is not for stream bank stabilization;

(b) The project area is not currently subject to active erosion;

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085;

(d) The project includes channel relocation and gravel bar alteration;

(e) The project consists entirely of structural stream bank stabilization methods (e.g. riprap, bulkheads);

(f) The project involves fill in wetlands exceeding 0.2 (two-tenths) acres; or

(g) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0150
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0155
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% slope).

(B) One 4-hour period in slow moving water (<2% slope).

(b) Turbidity shall be monitored at least 100 feet up current of work area to obtain a natural background level and 100 feet down current of work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down current of the work area is considered an exceedance of the standard.

(c) Compliance monitoring shall take place during daylight hours each day of in-water activity every 2 hours in fast moving waters and every 4 hours in slow moving waters. A written record of monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(15) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0157
General Authorization Fees; Disposition of Fees

(1) For actions that result in moving 50 or more cubic yards of material, a flat fee of $250 shall be included with the application.

(2) The Department shall credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 to 196.905.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0170
Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, may place or remove material from waters of this state (as described in OAR 141-085-0016), except within the Pacific Ocean, for certain transportation related structures including roads, railroads, culverts, bridges, bicycle lanes and trails.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0175
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must:

(a) Be for one of the following purposes:

(A) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(B) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(C) Widening, realigning, replacing, or removing existing railroad beds;

(D) Widening, realigning, replacing, or removing existing roads;

(E) Widening, realigning, replacing, or removing existing bridges or similar structures;

(F) Widening, realigning, replacing, or removing existing bicycle, pedestrian or other lanes or trails;

(G) Widening, realigning, replacing, or removing existing boat ramps.

(H) Constructing new bicycle, pedestrian or other lanes or trails;

(I) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(J) Construction of new culverts;

(K) Extension of existing culverts beyond the existing road prism;

(L) Stream bank stabilization associated with projects listed in (A) through (K); and

(M) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation.

(b) In waters other than wetlands, no more than a total of five thousand (5000) cubic yards of material filled, removed, or altered in waters of this state for a single and complete project. Exceeding five thousand (5,000) cubic yards may be authorized only where necessary to improve or restore fluvial processes on a project specific basis (i.e. removal of constrictive fill).

(c) Be for stream bank stabilization associated with a transportation-related project as listed above, with no more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of this state for a single project or two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(d) Involve fill in wetlands of 0.5 acres or less for projects as described above in (a).

(e) Be for test holes, borings and similar activities associated with planning and design of transportation structures.

(f) Be for an activity that is incidental to the project necessary to provide fish passage or needed for the structural integrity of the project (i.e. compensatory mitigation, relocate or add utilities, etc.).

(2) A project is not eligible for this general authorization if:

(a) The project is not a transportation-related structure as described above;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project is located within the Pacific Ocean.

(d) The project involves stream channel relocation, other than temporary diversions approved by the Department.

(e) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0180
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100; and,

(2) If wetlands may be affected by the proposed activity, a previously approved, unexpired wetland delineation report, less than five (5) years old, that meets the requirements in OAR 141-090-0005 to 0055 is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days in advance of the anticipated GA application submittal.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse effects to water resources of the state or navigation, fishing and public recreation uses.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0185
Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0190
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval,, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) Stormwater from any authorized activity, conveyed or discharged to a water of the state, including wetlands, must be treated by a facility specifically designed to remove stormwater contaminants before entering streams, wetlands, or other waters of this state, including mitigation wetlands, so as to minimize pollutants entering those water bodies.

(15) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(16) The authorization holder shall ensure that nonstructural approaches to bank stabilization such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, are utilized unless otherwise approved by Department. Where, riprap and/or other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used.

(17) In the case of road removal, the authorization holder shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(18) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(19) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(20) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(21) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(22) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(23) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(24) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0192
General Authorization Fees; Disposition of Fees

(1) For actions that result in moving 50 or more cubic yards of material, a flat fee of $250 shall be included with the application.

(2) The Department shall credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 to 196.905.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0205
Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual permit from the Department, place or remove material within waters of this state for the purposes of wetland restoration or enhancement as defined in OAR 141-085-0010.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085, except a single application for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0215
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The project shall have only minimal adverse effect to existing wetlands and result in a measurable increase in wetland functional attributes;

(2) The project may not include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands, unless the resultant wetland type was historically abundant but currently scarce within the basin;

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(4) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat

Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0225
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0230
Conditions for Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval,, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above list-

ed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(15) The authorization holder shall provide a vegetated buffer of at least 50 feet to be maintained on uplands adjacent to the wetland enhancement or restoration project area, unless otherwise authorized by the Department.

(16) Upon completion of the project, the project shall be reported to the Oregon Watershed Enhancement Board and the Department on a Restoration Inventory Report form provided by the Department.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.

(22) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(23) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0245
Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place (fill), remove (removal), alter material in waters of this state within areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for the purposes of recreational and small scale placer mining.

(2) "Prospecting" as defined by law and OAR 141-085-0010; "nonmotorized methods" as defined in OAR 141-085-0010; and "Highbanking" as defined in OAR 141-085-0010, conducted beyond the jurisdiction of the removal-fill law, as described in OAR 141-085-0015 are all activities exempt from regulation under the removal-fill law, OAR 141-085 and this general authorization.

(3) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. This letter of authorization is not transferable to another person.

(4) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(5) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(6) This general authorization is exclusive to recreational and small scale placer mining.

(7) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(8) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(9) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(10) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0260
Application Requirements; Review and Approval Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) Within ten (10) calendar days of receipt of an application, the Department will review the application for eligibility and compliance with the mandatory requirements and notify the applicant of approval, denial, or modification.

(3) If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application meets all the requirements for this general authorization, it shall do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0265
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) An authorization holder may construct a temporary low rise dam if the structure:

(a) Does not extend across the entire width of waterway, and allows the free passage of water in an amount sufficient to enable fish to travel unimpeded up and down the stream;

(b) Creates only the minimal area of impounded water necessary to operate the dredge; and

(c) Is removed upon completion of the mining activity unless otherwise instructed by the Department.

(2) The general authorization does not allow nozzling, sluicing, or digging to occur outside the wet perimeter, nor extend the wet perimeter.

(3) The general authorization does not allow disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars).

(4) The general authorization does not allow movement of boulders, logs, stumps, or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(5) The general authorization requires that the authorization holder upon completion of the project, and to the greatest extent possible, level all piles outside the main channel of the waterway created by the activity. In addition, all furrows, potholes, or other depressions outside the main chan-

nel of the waterway created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls.

(6) The authorization holder shall obtain landowner permission before operating on public or private property.

(7) If the authorization holder intends to use a motorized suction dredge, a suction dredge waste discharge permit (700 PM) from the Department of Environmental Quality, must be obtained, as applicable.

(8) The authorization holder shall conduct the activity only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(9) The authorization holder shall not allow petroleum products, chemicals or deleterious materials to enter the water.

(10) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(11) The authorization holder must ensure that the activity complies with other applicable local, state, and federal laws and regulations, including the state and federal Endangered Species Act.

(12) The authorization holder shall not allow the project to interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(13) The authorization holder shall adhere to the following conditions:

(a) The activity shall not impede recreational boating.

(b) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site.

(c) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(14) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed, or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

(15) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during the authorized activity, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(16) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0280
Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, dispose (fill), and place (fill), remove (removal), or alter material in waters of this state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of this state (e.g. wetlands) removed as a result of ditch maintenance/cleaning in drainage ditches upstream of tidegates; and/or

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) below.

(3) Drainage ditches that have a free and open connection (as defined in OAR 141-085-0010) to other natural waterways (as defined in OAR 141-085-0010) and are presumed to contain food and game fish are waters of this state.

(4) The regular maintenance of legally constructed or altered ditches upstream of tidegates is exempt from regulation under the removal-fill law, OAR 141-085-0020 and this general authorization if:

(a) The drainage ditch was serviceable within the past five (5) years; and

(b) The maintenance would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of the drainage ditches.

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the removal-fill law, OAR 141-085 and this general authorization.

(6) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(7) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(8) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(9) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(11) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(12) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0285
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be conducted for the specific purpose of disposal of sediments within waters of this state (e.g. wetlands) removed as a result of maintenance/cleaning of drainage ditches upstream of tidegates; and/or

(b) Be conducted for the specific purpose of the removal of material (cleaning) from drainage ditches upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) above; and

(c) Remove, fill or alter more than fifty (50) cubic yards of material from waters of this state unless the activity is within an Essential Salmon Habitat stream or State Scenic Waterway where no amount of material is to be removed, filled or altered without prior authorization of the Department.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0290
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The removal of sediments from drainage ditches shall be kept to the minimum amount necessary to remove recently deposited materials. Additional channel widening or deepening beyond that amount is not allowed under this general authorization.

(2) The sediments removed from drainage ditches may be spread in a thin layer (three inches or less) on farmed wetland or wet pasture provided the effects are temporary and there is no permanent conversion from wetland to upland. Freshwater wetland (other than farmed wetland or wet pasture mentioned above), salt marsh, tidal flats or permanent or semi-permanent open water areas shall not be used for sediment disposal.

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0295
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0300
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is

located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) For drainage ditch cleaning activities, the authorization holder shall comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (i.e., drainage ditch banks and work areas) shall be minimized through revegetation with grass and/or planting of trees and shrubs; and

(d) Removal shall be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department.

(e) At any time excavated material is placed on adjacent dikes it shall be stabilized to eliminate erosion back into the drainage ditch.

(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture, or farmed wetland, it is to be spread prior to the onset of winter rains, and controlled from eroding back into the drainage ditch.

(15) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0302
General Authorization Fees; Disposition of Fees

(1) For actions that result in moving 50 or more cubic yards of material, a flat fee of $250 shall be included with the application.

(2) The Department shall credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 to 196.905.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0400
Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove piling in waters of this state including areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for such purposes as over-water structure support or navigational aid.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0016 and 0021.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0011.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0405
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be placement of no more than five (5) piles or one (1) dolphin consisting of three (3) to five (5) piles;

(b) Be individual piles and piles placed for over-water structure support (e.g., pile associated with docks, piers), mooring and turning dolphins, or navigational aids not otherwise exempt from the removal-fill law as described in OAR 141-085-0015 and 0020);

(c) Be untreated wood, steel, fiberglass or plastic piles;

(d) Be piles fitted with devices to effectively prevent perching by piscivorous bird species;

(e) Be placed from a barge-mounted or above top-of-bank position. If barge-mounted, barge shall not at any time be grounded on the bed or banks.

(f) Be placed by means of effect or vibratory methods or removed (to the extent regulated as material pursuant to OAR 141-085-0010(126)) by means of vibratory method only.

(2) A project is not eligible for this general authorization if:

(a) Piling is placed to construct headwalls or other bank treatment structure;

(b) Piling is placed to create new uplands;

(c) Piling is sheetpile;

(d) Piling is placed or removed by excavation (including hydraulic jet method) of streambed or banks;

(e) Piling is placed in wetlands;

(f) Piling is placed so as to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;

(g) Piling is placed so as to interfere with, or create hazard to, recreational or commercial navigation;

(h) Piling is placed as poured-in-place concrete;

(i) The project includes placement of footings or other support structure for piling;

(j) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085; or

(k) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0415
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0420
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Department designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall not disturb or destroy woody vegetation to complete the project.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(10) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% slope).

(B) One 4-hour period in slow moving water (<2% slope).

(b) Turbidity shall be monitored at least 100 feet up current of work area to obtain a natural background level and 100 feet down current of work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down current of the work area is considered an exceedance of the standard.

(c) Compliance monitoring shall take place during daylight hours each day of in-water activity every 2 hours in fast moving waters and every 4 hours in slow moving waters. A written record of monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(11) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are

adhered to and permits and certifications are obtained prior to commencing construction activities.

(12) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(13) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0423
General Authorization Fees; Disposition of Fees

(1) For actions that result in moving 50 or more cubic yards of material, a flat fee of $250 shall be included with the application.

(2) The Department shall credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 to 196.905.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0500
Purpose and Applicability

(1) These rules set forth the conditions under which an applicant may, without an individual removal-fill permit from the Director, place or remove very small quantities of material within designated essential indigenous anadromous salmonid habitat areas for projects that have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects. For purposes of this General Authorization "project" means the same as defined in OAR 141-085-0010(165).

(2) An authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. An applicant is required to submit a complete application on a form provided by the Department and must agree to the eligibility requirements (OAR 141-089-0505), mandatory requirements (141-089-0510) and the conditions for issuance (131-089-0520). The term and conditions of issuance shall be stated in the authorization. The term shall not exceed the expiration date of this general authorization. The authorization is not transferable to another person.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0505
Eligibility Requirements; Ineligible Projects

(1) In order to authorize an activity under this general authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects;

(b) Place or remove not more than two cubic yards of material at any individual site and, cumulatively, not more than ten cubic yards of material within a designated essential indigenous anadromous salmonid habitat stream in a single project year;

(c) Have no effect on any listed species; and

(d) Have no effect on known archeological sites.

(2) Examples of eligible projects include, but are not limited to, the following:

(a) Investigative drilling to gather necessary technical data for designing building and/or road foundations;

(b) Installation of scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures;

(c) Limited surveys for historic resources.

(d) ODFW-approved fish trapping structures used for research purposes and population management purposes.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0515
Application Requirements; Review and Approval Process

(1) Any person proposing to conduct an activity covered by this general authorization shall submit an application to do so on a form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department will review the application for eligibility and compliance with the mandatory requirements.

(3) If the application is deemed incomplete or ineligible, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application does not meet all the requirements for this general authorization, it shall deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0520
Conditions for Issuance of General Authorization

All persons conducting activities under this general authorization shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown listed species are encountered during the project, the authorization holder shall immediately cease work and contact the Department as soon as possible.

(6) When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0550
Purpose and Applicability

(1) This rule sets forth conditions under which the Oregon Department of Transportation (ODOT) may, with a letter of authorization from the Director, place or remove material from waters of this state for the purposes of replacing and repairing highway bridges. This rule is put forth to promote a bridge replacement program that is heavily influenced by sustainable development practices. A goal of the performance standards under this rule is to guide the design and construction of environmentally sound bridges that improve the condition and performance of natural systems.

(2) A letter of authorization from the Department verifying compliance with this general authorization is required prior to any person commencing an activity authorized by this general authorization. The terms and conditions of issuance shall be stated in the letter of authorization. A letter of authorization is transferable from ODOT to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0020.

(5) Unless otherwise specified below, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Bridge replacement and repair activities that qualify for this General Authorization are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0555
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization, the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must be a bridge replacement or repair and shall be limited to the following purposes:

(a) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(b) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(c) Widening, replacing, realigning or removing existing railroad beds;

(d) Widening, replacing, realigning or removing existing roads;

(e) Widening, replacing, realigning, removing or replacing existing bridges or similar structures;

(f) Widening, replacing, realigning or removing existing bicycle, pedestrian or other lanes or trails;

(g) Constructing new bicycle, pedestrian or other lanes or trails;

(h) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(i) Construction of new culverts;

(j) Extension of existing culverts beyond the existing road prism;

(k) Stream bank stabilization associated with projects listed in (a) through (j);

(l) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation;

(m) Temporary structures;

(n) Staging areas for equipment that will be restored at time of project completion;

(o) Test holes, boring and similar activities associated with planning and design of transportation structures; and

(p) Other activities that within the discretion of the Department are determined to be necessary to:

(A) Provide fish passage;

(B) Ensure the structural integrity of the project; or

(C) Relocate utilities spanning the original bridge structure or similar activities that are integrally related to accomplishing the bridge repair or replacement.

(2) A project is not eligible for this general authorization if:

(a) The project is not primarily a bridge replacement or repair;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

(3) Permanent fill in wetland is limited to 0.5 acres or less. In waters other than wetlands, no more than a total of five thousand (5,000) cubic yards of material may be filled, removed or altered in waters of this state for a single and complete project. Exceeding five thousand (5,000) cubic yards is authorized only where necessary to improve or restore fluvial processes on a project specific basis.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0560
Mandatory Requirements

(1) The applicant must be ODOT or a party approved by ODOT to be qualified as an applicant as defined in OAR 141-085-0010(3).

(2) If the activity is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085-0115 to 141-085-0176 to mitigate for any reasonably expected adverse effects to water resources of the state or navigation, fishing and public recreation uses.

(a) Prior to initiating construction, ODOT shall provide a project notification form that documents how compensatory wetland mitigation or compensatory mitigation for waters other than wetlands is to be achieved for the individual project;

(b) ODOT shall develop and implement a comprehensive compensatory mitigation site monitoring, reporting, and corrective action program as approved by the Department.

(4) Prior to expiration of this General Authorization, ODOT shall calculate total acres of permanent wetland effect for those projects authorized under this rule and determine if the functional attributes of the compensatory wetland mitigation has compensated for functions lost through project development in accordance with OAR 141-085-0136. If a deficit exists, the balance shall be achieved through additional on-site or off-site mitigation including payment-to-provide options in accordance with OAR 141-085-0131.

(5) If wetlands may be affected by the proposed activity, a previously-approved, unexpired wetland delineation report, less than five (5) years old that meets the requirements OAR 141-090-0005 to 0055, is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0565
Application Requirements; Review Process

(1) To qualify for a General Authorization under this rule, ODOT shall, before beginning construction, submit to the Department an application, on a form provided by the Division that includes the following information:

(a) Location of project;

(b) Map of project area with removal-fill effect area clearly identified;

(c) Dates of expected work;

(d) References to documents previously reviewed and approved by the Department (e.g., environmental assessments);

(e) Project design information, including plan and section view of proposed new structures;

(f) Locations of temporary access areas, staging areas, and other areas of disturbance;

(g) Wetland delineation concurrence letter, if applicable;

(h) Location of ordinary high water, if applicable;

(i) Jurisdictional effect acreage and volume (in cubic yards) of removal and/or fill;

(k) List of ODOT performance standards applicable to the project;

(l) Documentation demonstrating how and when compensatory mitigation will be achieved;

(m) Documentation demonstrating how project complies with applicable ODOT Performance Standards, and any other relevant information requested by the Department.

(n) Documentation of local government land use approval; and

(o) Documentation of coordination with adjacent property owners, Tribal governments (as applicable) and state and federal natural resource agencies.

(2) Within fifteen (15) calendar days of receipt of a completed application, the Division will review the application for compliance with the conditions in OAR 141-089-0570 of these rules and notify ODOT whether the project is eligible, eligible with new or modified conditions, or ineligible. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0570
Conditions of Issuance of General Authorization

ODOT shall adhere to the conditions of the General Authorization.

(1) ODOT shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project.

(2) ODOT shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of construction activities for a project authorized under this general authorization.

(3) ODOT shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(4) When listed species are present, ODOT shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, ODOT shall contact the Department as soon as possible.

(5) ODOT shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, ODOT shall immediately cease work at the discovery site and contact the Department.

(6) ODOT shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(7) ODOT shall implement and comply with all relevant ODOT Bridge Program Performance Standards.

(8) ODOT shall flag the boundaries of clearing limits associated with site access and construction to prevent ground disturbance of critical riparian vegetation, wetlands and other sensitive sites beyond the flagged boundary.

(9) ODOT shall prepare and carry out a site restoration plan as necessary to ensure that all habitats (e.g., stream banks, soils and vegetation) disturbed by the project are cleaned up and restored. Site restoration shall be conducted using a diverse assemblage of species native to the project area or region, including grasses, forbs, shrubs and trees as appropriate. Grass and forb seed mixes containing exotic species are permitted, if they will hold the soil, not persist, and are certified to be free of noxious weeds.

(10) ODOT shall locate vehicle staging, cleaning, maintenance, refueling, and fuel storage facilities (a) in areas that have been previously compacted, disturbed, and cleared (if available) and (b) in areas where delivery of contaminants to the soil and waters can be prevented, contained, and cleaned rapidly.

(11) ODOT shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) ODOT shall eliminate direct discharge of storm water from bridge decks to waters.

(14) ODOT shall prepare and carry out a pollution and erosion control plan to prevent pollution caused by surveying or construction operations. The pollution and erosion control plan will meet requirements of all applicable laws and regulations.

(15) ODOT shall ensure that other structures, uses or activities not associated with the application for the proposed project (i.e., vehicle maintenance, construction of storage buildings, parking lots) are not permitted.

(16) ODOT shall comply with the following bank stabilization guidelines:

(a) Unless precluded by flow conditions, channel and bank stabilization efforts should use a vegetative stabilization approach such as one of the following methods:

(A) Woody plantings and variations (e.g., live stakes, brush layering, facines, brush mattresses), where appropriate.

(B) Herbaceous cover, where analysis of available records (e.g., historical accounts and photographs) shows that trees or shrubs did not exist on the site within historic times.

(C) Deformable soil reinforcement, consisting of soil layers or lifts strengthened with fabric and vegetation that are mobile ('deformable') at approximately two- to five-year recurrence flows.

(D) Coir logs (long bundles of coconut fiber), straw bales and straw logs used individually or in stacks to trap sediment and provide growth medium for riparian plants.

(E) Bank reshaping and slope grading, when used to reduce a bank slope angle without changing the location of its toe, increase roughness and cross-section, and provide more favorable planting surfaces.

(F) Floodplain roughness, e.g., floodplain tree and large woody debris rows, live siltation fences, brush traverses, brush rows and live brush sills; used to reduce the likelihood of avulsion in areas where natural floodplain roughness is poorly developed or has been removed.

(G) Floodplain flow spreaders, consisting of one or more rows of trees and accumulated debris used to spread flow across the floodplain.

(b) Flow-redirection structures known as barbs, vanes, or bendway weirs may be used for bank stabilization, when designed as follows or otherwise approved in writing by DSL:

(A) No part of the flow-redirection structure may exceed bank full elevation, including all rock buried in the bank key.

(B) The flow-redirection structure shall be composed primarily of wood or otherwise shall incorporate large wood at a suitable elevation in an exposed portion of the structure or the bank key. Placing the large woody debris near stream banks in the depositional area between flow direction structures to satisfy this requirement is not approved, unless those areas are likely to be greater than 1 meter in depth, sufficient for salmon rearing habitats.

(C) The trench excavated for the bank key above bankfull elevation shall be filled with soil and topped with native vegetation.

(D) The maximum flow-redirection structure length shall not exceed 1/4 of the bankfull channel width.

(E) Rock shall be placed individually, without end dumping.

(F) If two or more flow-redirection structures are built in a series, the flow-redirection structure farthest upstream shall be placed within 150 feet or 2.5 bankfull channel widths, from the flow-redirection structure farthest downstream.

(G) Woody riparian plantings shall be included as a project component where appropriate.

(c) When used for bank stabilization, rock will be class 350 metric, or larger, wherever feasible, but may not impair natural stream flows into or out of secondary channels or riparian wetlands. Whenever feasible, topsoil shall be placed over the rock and planted with woody vegetation. Rock may be used instead of wood for the following purposes and structures:

(A) As ballast to anchor or stabilize large woody debris components of an approved bank treatment.

(B) To fill scour holes, as necessary to protect the integrity of the project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.

(C) To construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of, or fill slope erosion or failure at, an existing flow control structure (e.g., a culvert, water intake), utility line, or bridge support.

(D) To construct a flow-redirection structure as described above.

(d) If flow conditions require the use of riprap to achieve bank stabilization, adequate fines and substrate materials must be incorporated to sustain the growth and survival of native herbaceous vegetation and shrubs.

(17) In the case of road removal, ODOT shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(18) If temporary roads are required through wetlands, ODOT shall install culverts to maintain connectivity between wetland areas.

(19) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(20) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(21) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(22) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(23) The Division may, at any time, by notice to ODOT revoke or modify any project approval granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental effects.

(24) ODOT is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

(25) ODOT shall keep a copy of all relevant permits and approvals available at the work site whenever the activity is being conducted.

(26) The General Authorization applies only to the permit requirements of the Removal-Fill Law. Any activity on designated State Scenic Waterways must still obtain prior approval from the Director as required by the Oregon Scenic Waterway Law and Scenic Waterway Removal-Fill Rules (OAR 141-100).

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0572
General Authorization Fees; Disposition of Fees

(1) For actions that result in moving 50 or more cubic yards of material, a flat fee of $250 shall be included with the application.

(2) The Department shall credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 to 196.905.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990, 390.805-390.925
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0585
Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, place or remove material from certain freshwater wetlands within waters of this state (as described in OAR 141-085-0016), for all types of activities within designated Urban Growth Boundaries (UGB) or Urban Unincorporated Communities (UUC).

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0595
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(2) A wetland delineation report has been approved by the Department in accordance with OAR 141-090-0040.

(3) A compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse effects to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wetland effects to areas less than 0.1-acre (one-tenth) may use off-site compensatory wetland mitigation.

(4) If wetlands may be affected by the proposed activity, a previously approved, unexpired wetland delineation report, less than five (5) years old, that meets the requirements in OAR 141-090-0005 to 0055, is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days in advance of the anticipated GA application submittal.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0600
Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term

harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0605
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown state or federal listed species are encountered during the project, the authorization holder shall cease work immediately and contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(8) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(10) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (< 2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-089-0607
General Authorization Fees; Disposition of Fees

(1) For actions that result in moving 50 or more cubic yards of material, a flat fee of $250 shall be included with the application.

(2) The Department shall credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 to 196.905.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990, 390.805-390.925
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0005
Purpose

The purpose of these rules is to establish standards and procedures by which the Department of State Lands makes jurisdictional determinations of wetlands and other waters of the state. These rules also establish minimum standards for wetland delineation reports submitted to the Department for review and the procedures for Department review and approval.

Stat. Auth.: ORS 196.845 & 196.692
Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279
Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0010
Applicability

(1) These rules establish the standards and procedures used by the Department of State Lands to identify waters of the state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990).

(2) These rules are supplemental to administrative rules for issuance and enforcement of removal and fill authorizations (OAR 141-085; 141-0102); rules pertaining to wetland conservation plans and local wetlands inventories (141-086; 141-120); rules pertaining to the identification of significant wetlands (141-086); rules pertaining to General Authorizations (141-089); and rules pertaining to Oregon Scenic Waterways (141-100).

(3) Agencies such as the U.S. Army Corps of Engineers (Corps of Engineers) and the Natural Resources Conservation Service (NRCS) have separate regulatory authority over waters of the United States and separate jurisdictional determination procedures.

Stat. Auth.: ORS 196.845 & 196.692
Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279
Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0015
Policy

(1) It is the policy of the State of Oregon that the protection, conservation and best use of the water resources of this state are matters of the utmost public concern (ORS 196.805) and that the state use a single definition of wetlands and a single, uniform methodology of delineating wetland boundaries (ORS 196.672).

(2) In accord with these policies the Department shall, to the greatest extent possible:

(a) Provide a clear process for making, modifying or reissuing jurisdictional determinations, including wetland boundary delineations;

(b) Make jurisdictional determinations using the best available science, technical guidance and documents;

(c) Use sound professional judgment in interpreting maps, aerial photographs, environmental data and other relevant documents;

(d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners and developers and that help ensure that fill or removal of material in waters of the state does not occur without a required removal or fill permit; and

(e) Encourage landowners and developers to utilize wetland delineation reports at the earliest stage of site development planning in order to incorporate measures to avoid and minimize impacts to wetlands and other waters and thus prevent unnecessary regulatory delays.

(3) Because wetlands and other waters of the state can be affected over time by both natural changes and human activities, jurisdictional determinations are not valid for an indefinite period of time.

(4) The Director of the Department of State Lands shall designate employees responsible for making jurisdictional determinations as described in these rules.

(5) Final authority for determining the adequacy of the procedures, methods, application of technical documents, interpretation and analysis of maps and data, and conclusions regarding the identification of waters of the state and jurisdictional determinations rests with the Department (ORS 196.815(1); 196.845).

Stat. Auth.: ORS 196.845 & 196.692
Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692 & 197.279
Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0020
Definitions

For the purpose of these rules:

(1) "Agent" means a business partner, attorney or any individual who is legally authorized to represent the landowner's interests.

(2) "Applicant" means a person who has applied to the Department for a wetland delineation report approval, a jurisdictional determination and/or a removal or fill authorization.

(3) "Atypical Situation" means a site or situation where the usual methods of making a jurisdictional determination cannot be employed due to human-caused activities or alterations of the "normal circumstances," or natural events, such as a flood, that have recently altered a site.

(4) "Authorization Application" means the written application for an authorization to place fill in or remove material from waters of the state as required by OAR 141-085, 141-089, 141-0100 and 141-0102.

(5) "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators that support the Department 's jurisdictional determination.

(6) "Change in Circumstances" means a change in site conditions that fundamentally alters the hydrology and/or substrate to the extent that the "normal circumstances" of waters of the state are changed. The change in circumstances may be due to alterations on a site or alterations offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage system failure that restores former hydrologic conditions to a site, placement of fill material, or a water source diversion.

(7) "Consultant" means a private individual or firm whose business is to provide professional services to the public.

(8) "Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods.

(9) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of the state, including wetlands. A determination does not include the precise location or boundaries of any wetlands or waterways determined to be present.

(10) "Director" means the Director of the Department of State Lands or his or her designate.

(11) "Department " means the Oregon Department of State Lands, including the Director.

(12) "Final Order" means a final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency statement, including a "preliminary jurisdictional determination," and does not preclude further agency consideration of the subject matter of the final order.

(13) "Global Positioning System" (GPS) means a navigation system which consists of a network of satellites and earth receiver stations which allows a person to determine, via a receiver, their respective position in latitude, longitude, and altitude.

(14) "Indicator" means soil characteristics, vegetation, hydrology evidence or other field data that indicate, by their presence or absence, the existence of certain environmental conditions. Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction over waters of the state.

(15) "Jurisdictional Determination" (JD) means a written decision by the Department that waters of the state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100 and 141-0102 are present or not present on a land parcel. The JD may include a determination of the geographic boundaries of the water area subject to state jurisdiction. For example, a JD may include the location of a wetland boundary or the location of the ordinary high water line of a waterway. A JD may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to authorization requirements. The decision record includes the basis of the jurisdictional determination and is a final order subject to reconsideration according to the provisions in 141-090-0050.

(16) "Landowner" means the legal owner of the parcel(s) for which a JD is requested or made.

(17) "Local Wetlands Inventory" (LWI) means a wetland inventory map and supporting data that is conducted according to the requirements in OAR 141-086 and has been approved by the Department.

(18) "Manual" means the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual (see 141-090-0030).

(19) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.

(20) "New Information" means data, reports, photographs, observations or similar information that is provided to or obtained by the Department after the Department has issued a jurisdictional determination or issued an authorization.

(21) "Non-wetland" means an area that does not meet the wetland definition and criteria.

(22) "Normal Circumstances" means the hydrology, soil and vegetative conditions that are naturally present, regardless of whether or not the soil or hydrology has been recently altered or the natural vegetation has been removed or altered. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if several feet of fill material are placed on a wetland the new "normal circumstances" may be non-wetland. In such a situation, the Department may determine if the placement of fill material required a fill permit.

(23) "Offsite Determination" means a determination by the Department or any other person that is conducted without a site visit using maps, aerial photographs, observations from adjacent areas, and/or interviews with persons familiar with the site. An offsite determination is considered to be a Preliminary Jurisdictional Determination unless otherwise stated in writing by the Department.

(24) "Onsite Determination" means a determination by the Department or any other person that includes a site visit to collect relevant data. An onsite determination may be either a Preliminary Jurisdictional Determination or a JD.

(25) "Other Waters" means waters of the state other than wetlands.

(26) "Person" means an individual, corporation, firm, partnership, estate, association, body of government or other legal entity.

(27) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued orally or in writing stating that wetlands or other waters of the state are present or not present on a parcel of land. Because a PJD is advisory in nature it has no specified duration or expiration and is not subject to appeal. PJDs include all wetland determinations by any person other than the Department, and also include wetlands mapped on the NWI or on a LWI.

(28) "Primary Contact" means the person or firm designated by the landowner, agent or applicant to serve as the Department's contact for the purpose of the review and approval of a wetland delineation report.

(29) "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder relating to the filling and/or the removal of material in waters of the state.

(30) "Report" means a wetland delineation report.

(31) "Sample Plot" means an area on a parcel of land within which environmental data (e.g., soils, hydrology and vegetation) are collected that is representative of that area.

(32) "Site-specific methods" means what the field investigator actually did in order to conduct the wetland determination or delineation and prepare the wetland delineation report; for example, the offsite resources actually consulted, why certain portions of a study area were or were not selected for field sampling, actual plot sizes for vegetation sampling, and explanation of best professional judgment relied upon. A generic description of methods the field investigator generally employs is not site-specific.

(33) "Study Area" means the area that was investigated for the presence of waters of the state (e.g., usually a portion of a tax lot(s), parcel or other legally defined geographic area).

(34) "Waters of the state" means all natural waterways, all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605. (ORS 196.800(14) and OAR 141-085-0010 and 141-085-0015).

(35) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800(16) and OAR 141-085-0010).

(36) "Wetland Boundary" means a line marked on the ground and/or on a map that identifies the boundary line between wetlands and non-wetlands.

(37) "Wetland Delineation Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes and maps their location and geographic extent. A wetland determination report documenting wetland presence or absence is included within this definition.

(38) "Wetland Map" means a map included in a Wetland Delineation Report or provided with a JD by the Department that shows the parcel(s) and/or study area(s) investigated and the location, size and boundaries of any wetlands and other waters.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0025

Procedures for Determinations Conducted Entirely by the Department

(1) The Department shall make a determination (PJD or JD) according to the procedures in this section.

(2) The Department may make a determination for a number of reasons, including but not limited to:

(a) A written request from any person (e.g., a landowner or their agent) requesting a determination for a particular parcel or parcels;

(b) A Wetland Land Use Notice from a local government as required by ORS 196.676;

(c) A site development notice from a local government;

(d) A request from a local government or other government entity acting in its capacity to conduct site assessments for project or planning purposes;

(e) A removal-fill authorization application, request for a pre-application meeting or a compliance investigation;

(f) A request to review and approve a wetland delineation report (see additional requirements and procedures in 141-090-0030, 141-090-0032 and 141-090-0035); or

(g) In conjunction with its authority and responsibilities under ORS 196.600 to 196.962, 196.800 to 196.990 and any applicable rules of the Department.

(3) The Department may prioritize the completion of determinations based upon the availability of staff and budget resources.

(4) A request to the Department to provide a wetland determination apart from an authorization application, wetland delineation report submittal or local government notice shall include:

(a) A written request on a form provided by the Department;

(b) Landowner/agent permission to conduct a site visit if an onsite determination is desired;

(c) Landowner or agent name, company or agency, mailing address and phone number;

(d) A location map such as a city map showing the precise parcel location with respect to nearest streets and parcel address, if any;

(e) A detailed site map such as a tax map or hand drawn parcel map showing, as appropriate, such features as the location of streets, roads, buildings, streams, and area of any planned development or fill or excavation, if known; and

(f) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).

(5) A request for a determination may include additional helpful information, such as:

(a) A large scale topographic map of the site (e.g., 1 inch = 50 feet);

(b) A large scale aerial photograph of the site; or

(c) Photographs of the site.

(6) A wetland determination request as described in section (4) and (5) of this rule may not be used to obtain agency review and approval of a wetland delineation report (see 141-090-0032 and 141-090-0040).

(7) The Department will review the information provided with the request along with other available maps and information and provide a PJD or a JD.

(8) The Department may request additional information and/or conduct a site visit to ensure an accurate determination. The Department shall contact the applicant or primary contact prior to conducting a site visit.

(9) An onsite determination conducted by the Department to make a JD or PJD shall include at a minimum:

(a) A location map showing the location of the parcel(s) with respect to major roads;

(b) A parcel map showing property boundaries;

(c) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers);

(d) The NWI map or, if available, the LWI map with the site located;

(e) The county soil survey map with site located and soil type(s) mapped on the site identified;

(f) A sketch map showing the approximate location of any waters of the state on the parcel(s);

(g) At least one data form (or equivalent notes) documenting any wetlands identified or possible wetlands determined not to meet wetland criteria; and

(h) Conclusions and recommendations regarding additional requirements (e.g., the need for a delineation or permit), as appropriate to the determination request and the situation.

(10) After review of the information and the site visit, if conducted, the Department may:

(a) Provide a written PJD or JD in accordance with section (11) of this rule; or

(b) Provide a written PJD and recommend that the landowner, agent or applicant obtain a wetland determination and/or delineation that meets the requirements in 141-090-0030 and 141-090-0035.

(11) A written PJD or JD by the Department shall include at a minimum:

(a) A letter or form addressed to the applicant, landowner or agent that includes the location of the parcel(s) investigated, a file number for future reference, and the expiration date of the JD, or a response on or attached to a wetland land use notice form or other site development notice submitted by a local government;

(b) Comments regarding the precision or use of the PJD or JD, as appropriate;

(c) Additional requirements or recommendations, such as the need for a wetland delineation;

(d) A determination of the requirements or exemptions in accordance with OAR 141-085, 141-089, 141-0100 and 141-0102 that apply to any waters of the state identified on the parcel(s) and/or the proposed activity, if the information provided to or obtained by the Department is sufficient to make such determination; and

(e) A map or reference to a map showing the parcel(s) investigated and the approximate location of any waters of the state identified on the parcel(s), unless the information provided to or obtained by the Department is not sufficient to make or refer to such a map.

Stat. Auth.: ORS 196.845 & 196.692
Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279
Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0030
Technical Requirements

(1) Wetland determinations and delineations shall be conducted in accordance with the *1987 U.S. Army Corps of Engineers Wetlands Delineation Manual* ("the manual"), including regional supplements and applicable guidance, and any supporting technical or guidance documents issued by the Department.

(2) The jurisdictional limits of other waters (e.g., streams, estuaries) are described in OAR 141-085-0015.

(3) In addition to the requirements in this section, wetland delineation reports submitted to the Department for review and approval shall meet the standards and requirements in 141-090-0035.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.845 & 196.692
Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279
Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0032
Fees for Wetland Delineation Report Review

(1) Any person submitting a wetland delineation report to the Department for review and approval must pay to the Department a nonrefundable fee in the amount as determined under Chapter 850, OL 2007.

(2) If the person submitting a report withdraws the report from agency review after it has been submitted and the fee paid, or if the Department withdraws the report according to 141-090-0040(3)(d), any resubmittal is subject to a new fee.

(3) If a person wishes to change information in or expand the geographic area covered by a report that is pending initial review by the Department, a revised report may replace the previous report in its entirety, without incurring an additional fee. This provision does not apply to changes requested by the Department.

(4) A report that has been rejected by the Department per 141-090-0040(3)(f) may be revised and resubmitted along with an additional nonrefundable fee of $100.00.

Stat. Auth.: ORS 196.845 & 196.692
Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692, 197.279
Hist.: DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0035
Standards and Requirements for Wetland Delineation Reports Submitted to the Department

(1) **General Requirements**: All wetland delineation reports ("reports") submitted to the Department for review, approval and a JD shall meet the technical requirements in 141-090-0030 as well as the minimum standards and requirements in this rule. Reports must conform to the report format provided by the Department and must be unbound.

(2) All wetlands or other waters on the parcel or study area shall be included; the Department will determine whether or not they are "waters of the state" subject to jurisdiction under OAR 141-085, 141-089, 141-0100 and 141-0102.

(3) All reports shall include the following sections:

(a) A fully completed and signed "Wetland Delineation Report Cover Form" (current form provided by the Department);

(b) Text as described in section (7) of this rule;

(c) Maps as described in sections (8) through (13) of this rule;

(d) Data forms as described in sections (14) and (15) of this rule;

(e) At least one recent aerial photograph (at least three aerial photos for farmed sites), including the month and year of the photos;

(f) Ground level color photographs of the site; and

(g) Appendices, as needed.

(4) All report text, maps, aerial photographs and data forms must be legible and, with the exception of photographs, must copy legibly on a black and white copier.

(5) A wetland function and condition evaluation should not be included.

(6) Reports may include, or the Department may in some circumstances require:

(a) Additional aerial photographs;

(b) A detailed topographic survey of the site; and

(c) Additional information regarding site history or field indicators helpful to evaluating the site and making a JD.

(7) **Text Requirements**: The report text shall include:

(a) A detailed description of the site, its landscape setting, and previous and current land uses;

(b) A description of any wetlands, including whether or not they extend offsite, and the characteristics of the wetland/non-wetland boundaries on the site;

(c) A description, approximate year, and analysis of any site alterations that likely affected the presence, location or geographic boundaries of any waters of the state on the site (e.g., surface drainage ditches or fill material);

(d) The site-specific methods used to conduct the field investigation, select sample plot locations, and make the PJDs;

(e) The site-specific methods and rationale used to determine the boundaries of any wetlands on the site;

(f) An explanation of whether the location of the parcel boundaries and waters of the state depicted on the delineation map(s) are approximated, measured from permanent features identified on the map or on an aerial photo included with the report, mapped using a resource grade GPS, or professionally land surveyed. Also provide the wetland map precision (see sections 11 and 12 of this rule); if mapping was done using a GPS, provide the post-processing error estimate for the mapping precision;

(g) The methods used to determine the geographic extent of other waters of the state (e.g., ordinary high water);

(h) The date(s) of the field investigation(s);

(i) The precipitation on the day of and immediately preceding (approximately 1 to 2 weeks) the date(s) of the field investigation(s), percent of normal rainfall for the water year to date, and monthly percent of normal precipitation (using the appropriate NRCS WETS table) for each of the three months preceding the field investigation;

(j) The results and conclusions of the investigation; and

(k) The following statement: "This report documents the investigation, best professional judgment and conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands in accordance with OAR 141-090-0005 through 141-090-0055."

(8) **Map Requirements**: All reports shall include the following maps:

(a) A location map, such as city map, showing the precise site location and boundaries;

(b) A tax lot map showing the entire parcel(s);

(c) The appropriate LWI map showing the site location and boundaries, or if no LWI has been completed, the NWI map(s), including map name(s), showing the site location and boundaries;

(d) The county soil survey map showing the site location and boundaries and including a legend identifying the sheet number, if applicable, and all soil series mapped on the site; and

(e) One or more wetland maps comprising the wetland determination and/or delineation that shows parcel and/or study area boundaries and tax lot number(s), includes all waters of the state on the site, and meets the additional requirements in sections (9) through (13) of this rule.

(9) The wetland map(s) shall be at a scale suitable for the study area size and for legibility. For most purposes, an appropriate map scale is 1 inch = 100 feet. For large study areas, a scale of 1 inch = 200 feet may be sufficient. Minimum map scale for a JD and/or for permitting purposes is subject to Department approval.

(10) The wetland map(s) shall at a minimum include:

(a) The boundaries of the entire parcel(s) subject to investigation; or

(b) If only a portion of the parcel(s) was investigated, the study area boundary in relation to the parcel boundaries; and

(c) Existing structures (unless shown on a current aerial photo included in the report), areas of fill, water diversions, or other major alterations;

(d) All water features and their boundaries;

(e) Numbered sample plots corresponding to data forms (see sections (14) and (15) of this rule);

(f) North arrow and scale bar; and

(g) Photograph locations and direction of view.

(11) The wetland map(s) shall indicate whether the location of the parcel boundaries and waters of the state depicted on the map are approximated, measured from permanent features identified on the map or on an aerial photo included with the report, mapped using a resource grade GPS, or professionally land surveyed.

(12) For most intensive development activities, such as subdivision planning or commercial development, a professional land survey of flagged wetland boundaries and sample plots is strongly recommended and for some sites may be necessary to meet the required standard below:

(a) Except as provided in subsection (b) of this section and section 22 of this rule, the map precision standard (precision of transferring boundaries of features located on the ground to a map) for wetland boundaries, data plots and parcel and/or study area boundaries is one meter (3.28 feet);

(b) The minimum delineation accuracy and map precision standard for voluntary wetland restoration and enhancement projects (see OAR 141-089-0205) that do not include compensatory mitigation activities or payment-in-lieu is 50 feet.

(13) The wetlands and other waters identified may be mapped onto a large scale aerial photograph (to be included in the report) but must also be accurately transferred to a drawn map (as described in sections (10) and (11) of this rule) unless otherwise authorized by the Department.

(14) **Data Form Requirements**: All reports shall include a wetland determination data form for each sample plot. The data form used must be that provided with the appropriate regional supplement to the manual, or other form provided by the Department.

(15) All wetland determination data forms must:

(a) Be fully completed;

(b) Include only data collected from a single sample plot on a single date (additional dates of hydrology data may be reported in the comments section or provided in a table);

(c) Include the full Latin botanical name of all plant species listed; and

(d) Use standard soils terminology and abbreviations as established by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(16) **Field Methods**: The field investigation methods and level of detail required for making and documenting a PJD or JD and mapping waters of the state is dependent upon site or study area size, complexity of the site or the wetland boundaries, disturbance history, and on whether atypical situations or problem areas are encountered. At a minimum:

(a) The entire parcel (tax lot) or study area must be investigated during a field investigation. Investigation of entire parcels is strongly recommended and may be required for a permit application. If only a portion of a parcel is investigated, the study area with respect to parcel boundaries must be made clear in the report text and shown on the wetland maps.

(b) All waters of the state in addition to wetlands must be identified, described, supported by data as appropriate, and mapped.

(c) Sufficient data and additional information shall be collected for any waters of the state to enable the Department to make a JD and also to determine if removal-fill permit requirements apply or if the water identified may be specifically exempt from permit requirements.

(d) Wetland delineation data must include a sample plot that best represents the characteristics of each wetland present (minimum of one plot per wetland); a sample plot that best represents adjacent non-wetland(s); and paired sample plots located close enough to either side of the wetland boundary (e.g. four feet apart) to substantiate the wetland boundary location.

(e) Wetland determination data must be provided for any portion of the study area where there is significant deviation from wetlands mapped on the NWI or LWI. Note in the report text if the deviation is due to development of the area mapped as wetland on the NWI or LWI, thus precluding data collection.

(f) At least one data plot must be placed in all mapped hydric soil units within the study area.

(g) If the study area does not contain wetlands, at least one sample plot must be placed in each of the lowest topographic areas or other locations most likely to contain wetlands to document site conditions.

(17) If a wetland boundary is long or irregular in shape, paired data points sufficient to accurately identify and substantiate the wetland boundary are required; for a very irregular wetland boundary, several pairs of plots may be required. If the wetland boundary can be determined based upon one set of paired data points and a defined break in slope or other clearly visible features, that information must be fully described in the report text.

(18) Parcel boundaries, study area boundaries if applicable, wetland boundaries and sample plots shall be identified on the ground with numbered stakes, flags, spray paint or similar markers, and/or identified on an aerial photo and/or the wetland map, such that the boundaries and sample plots can be readily relocated in the field during a site visit by the Department.

(19) Because sites are highly variable and JD needs also vary, there are many potential situations where minimal field documentation may be acceptable (e.g., linear projects covering extremely large geographic areas), where non-standard field documentation and wetland mapping may be appropriate (e.g., intricate wetland/non-wetland mosaics), or where more intensive sampling may be required (e.g., an atypical site). In such situations, persons conducting wetland delineations are encouraged to consult with the Department regarding appropriate methods.

(20) On farmed sites (plowed and planted atypical sites), the natural vegetation is removed, soils are disturbed and most wetland hydrology field indicators are obscured by land management activities, making wetland delineation extremely difficult. It is important to use multiple information sources and indicators, including at least three aerial photos (early growing season if possible), a detailed topographic survey, and information about site management activities such as subsurface drainage systems.

(a) Field work conducted in the early growing season (e.g. late winter/early spring) is strongly recommended in order to verify seasonal wetland hydrology. The normal range of precipitation, referencing the NRCS WETS data, must be taken into consideration in analyzing hydrology data.

(b) If field work cannot be conducted in the early growing season, mapped hydric soils and any additional field-identified hydric soil areas are presumed to still meet wetland hydrology criteria unless there is substantial evidence that soils have been effectively drained (hydrology criterion no longer met). One or more field visits during the subsequent early growing season may be conducted to verify or adjust the delineation (e.g., make observations and collect data to confirm hydrology and any areas of drained hydric soil) or may be required by the Department.

(c) If the approach in subsection (b) of this section is inconclusive or anticipated to be inconclusive for all or portions of the site, water table monitoring at frequent intervals (minimum two days per week at regular intervals) for at least six weeks (or until criterion is met) through the early growing season may be proposed or required by the Department:

(A) Consultation with the Department regarding proposed monitoring methods is strongly recommended.

(B) Refer to the Corps of Engineers' "Technical Standard for Water-Table Monitoring of Potential Wetland Sites" (ERDC TN-WRAP-05-2) for additional guidance on collecting and analyzing water table data.

(21) Depending on site conditions and circumstances, additional information that may be required to establish state jurisdiction includes, but is not limited to:

(a) Documentation of fish presence or absence in a stream or ditch, using published maps or reports or information from an authoritative source (e.g., Oregon Department of Fish and Wildlife field staff);

(b) Data sufficient to determine whether or not an identified water area is artificially created entirely from upland and/or the purpose for which it was created;

(c) Hydrology monitoring data;

(d) Historical aerial photographs;

(e) Extent and date of site alterations;

(f) Data or other information on pre-disturbance conditions, such as excavation to an original (unfilled) soil surface or identification of a former stream course;

(g) Data collected at a certain time of year;

(h) Additional plant species identification; or

(i) More rigorous field sampling methodologies.

(22) The appropriate delineation accuracy and map precision for removal-fill permitting is subject to the judgment of the Department.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0040

Procedures for Review and Approval of a Wetland Determination or Delineation Report Submitted to the Department for a Jurisdictional Determination

(1) When a wetland delineation report is submitted to the Department for review, approval and a JD, the Department shall review the report (according to its established priorities) to ensure that:

(a) The work meets the technical requirements in 141-090-0030;

(b) The report meets the standards and requirements in 141-090-0035;

(c) There is sufficient information for the Department to make a JD, including the geographic extent of any waters identified, as appropriate; and

(d) There is sufficient information for the Department to determine the removal-fill authorization requirements or exemptions that apply to the wetlands or other waters identified and/or the activities proposed.

(2) The Department shall complete an initial review of the report within 120 calendar days from receipt of the report and the fee.

(3) During or upon completion of the Department's review, the Department may take any of the following actions:

(a) Approve all or a portion of the report and PJD by providing a written JD to the landowner, agent or applicant and the consultant, if any, in accordance with 141-090-0025(10).

(b) Request missing information (report incomplete), clarification or additional data (see 141-090-0035(19 to 21)).

(A) The request will be made to the primary contact by telephone, e-mail or in writing.

(B) If the Department makes a written request to the primary contact, the Department will copy the request to the consultant, landowner and/or applicant, as appropriate.

(C) The primary contact shall be responsible for promptly informing the Department of any change in the primary contact during the Department 's review process.

(c) Conduct a site visit to confirm the report findings or obtain additional information;

(d) Withdraw the report from further review if missing, additional or clarifying information, or requested revisions, are not provided within 60 calendar days of the Department's written request;

(e) Revise the wetland map and/or the PJD based upon the report review, any additional information requested, and/or a site visit, and provide a JD accordingly after consulting with the primary contact and report author, if different; or

(f) Reject the report, along with a written explanation to the applicant, consultant, landowner and agent, as appropriate. Examples of reasons for rejecting a report include, but are not limited to:

(A) The work has not been completed according to the technical requirements in 141-090-0030.

(B) Lack of payment of fee;

(C) The report does not, in the judgment of the Department, accurately reflect site conditions or provide sufficient information for a JD;

(D) The report contains major errors, omissions or inconsistencies according to the standards and requirements in 141-090-0035, such as but not limited to:

(i) Onsite data is not collected (e.g., offsite or reconnaissance level report);

(ii) No paired plots or number of paired plots is clearly inadequate for length and complexity of wetland boundaries;

(iii) Data forms with major gaps (e.g., no soils data collected);

(iv) Wrong data form used;

(v) Clearly erroneous data or conclusions;

(vi) All water features are not mapped;

(vii) Permission for a requested site visit is not granted;

(viii) Standard report format is not followed (141-090-0035(1));

(ix) Report cannot be field-verified because site preparation or construction has already commenced;

(x) The Department requests and conducts a site visit and the wetland boundaries and sample plots are not identified on the ground or cannot be accurately relocated by the consultant or applicant (see 141-090-0035(18)); or

(xi) After the second written request for information or revisions, the resubmitted information does not address all of the Department's comments or requests, and/or introduces new errors.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800–196.990, 196.600–196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0045

Duration, Expiration and Reissuance of Jurisdictional Determinations

(1) All JDs by the Department shall be in writing and, except as provided in section (2) of this rule, shall remain valid for a period of not more than five years from the date of issuance. A JD may be revised by the Department prior to the expiration date if:

(a) A field investigation or new information reveals that site conditions and/or the geographic extent of waters of the state are not consistent with the information in a report or permit application submitted to the Department;

(b) Additional site information or data is provided voluntarily by an applicant or landowner to the Department;

(c) Additional information is provided to or obtained by the Department in conjunction with a request for reconsideration (141-090-0050) or a contested case hearing associated with an authorization application (ORS 196.825(6) and OAR 141-085-0075);

(d) Information is provided to or obtained by the Department in conjunction with an appeal to the U.S. Army Corps of Engineers of an Approved Jurisdictional Determination (33 CFR Parts 320, 326 and 331); or

(e) New information obtained by or provided to the Department shows a change in circumstances resulting in a change in the jurisdictional area.

(2) JDs that are issued in the form of a removal-fill authorization or those made for an enforcement action are not subject to the five-year expiration.

(3) Upon expiration, a report and JD are no longer valid for determining whether a state removal-fill authorization may be required.

(4) If the Department's report approval and JD has expired and agency approval is still needed or desired, the site must be revisited by a wetland professional and the report must be updated to meet the requirements in 141-090-0030 and 141-090-0035. The delineation report review fee must be submitted with a new report. At the discretion of the Department and within staffing ability, the Department may conduct a site visit to determine if a recently expired JD can be reissued or if a new report is required.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0050

Request for Reconsideration

(1) A JD by the Department may be reconsidered upon written request to the Department by the applicant, landowner or agent within six months of the date of the JD (date the letter or form was signed by the Department). The request for reconsideration initiates an informal review process.

(2) New information may be provided by the applicant, landowner, agent or the Department, or may be requested by the Department.

(3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.

(4) In the event that the applicant, landowner or agent disagrees with the reconsideration decision, he or she may initiate a contested case proceeding pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800–196.990, 196.600–196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-090-0055

Effective Date

These rules become effective on January 1, 2008.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-102-0000

Purpose

Pursuant to ORS 196.810(b), these rules:

(1) Designate "essential indigenous anadromous habitat" (hereafter referred to as "essential habitat") on maps that are made a part of this rule;

(2) Establish the process to amend the designation; and

(3) Require an authorization from the Department for activities involving the fill or removal of any amount of material in essential habitat pursuant to OAR 141-085-0018 or a general authorization under OAR 141-

085-0070, unless the activity is exempt pursuant to OAR 141-085-0020(7), (12) or (13).

Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-102-0020
Definitions

(1) "Essential indigenous anadromous salmonid habitat" as defined in ORS 196.810(f)(B) is called "essential habitat" in these rules. "Essential habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing as designated in these rules and shown on the associated maps that are incorporated by reference into these rules.

(2) "Essential" means those portions of a stream reach that fill all or part of the basic or indispensable spawning and rearing need of indigenous anadromous salmonids and are those areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas include "spawning and rearing," and "rearing and migration" areas as defined below under subsections (3) and (4) of this section.

(3) "Indigenous anadromous salmonid" means Chum, Sockeye, Chinook and Coho Salmon, and Steelhead and Cutthroat Trout that are members of the family of Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(4) "Spawning and rearing" areas are where eggs are deposited and fertilized, where gravel emergence occurs, and where at least some juvenile development occurs.

(5) "Rearing and migration" areas are outside primary spawning habitats where juvenile fish take up residence during some stage of juvenile development and utilize the area for feeding, shelter, and growth. Some migration also occurs as juvenile and adult fish move between the ocean and spawning areas.

Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

141-102-0030
Designation of Essential Salmon Habitat (ESH)

(1) Areas designated as essential habitat shall include the waters of this state as described in OAR 141-085-0015, including side channels and off-channel wetland areas that are hydrologically connected by surface water.

(2) The streams and stream segments designated as essential habitat are shown on maps which are made part of this rule.

(3) The Department shall make available detailed maps of essential habitat at cost as provided in OAR 141-091-0005.

(4) New designations (i.e., streams not previously designated) adopted by the Department on the effective day of this rule shall be effective sixty (60) days thereafter.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

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

Rule Caption: Procedures and Requirements for the Release or Assignment of Ownership Interest in a Vehicle.
Adm. Order No.: DMV 11-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 11-30-07
Notice Publication Date: 9-1-2007
Rules Adopted: 735-020-0075
Subject: OAR 735-020-0075 describes requirements for the transfer, release or assignment of ownership interest in a vehicle. This includes the duties and responsibilities of persons who transfer interest in a vehicle (typically, but not always the seller) and those who receive interest (typically, but not always the buyer). The rule also explains how interest may be transferred by an operation of law, for example, when interest is transferred by court order, upon death, divorce, repossession, lien foreclosure, etc. Finally, the rule defines terms, specifies the documents required to release or assign interest and establishes timelines to submit relevant documents and information to DMV.
Rules Coordinator: Lauri Salsbury—(503) 986-3171

735-020-0075
Release or Assignment of Interest; Oregon Title or Salvage Title

Authority and Purpose. This rule specifies the requirements for the release or assignment of interest shown on an Oregon-titled vehicle as required by ORS 803.094.

(1) Definitions. For purposes of ORS 803.094 and this rule:

(a) "Affiant" means the person who signs a small estate affidavit filed under ORS 114.515;

(b) "Assign," "assignment" or "assignment of interest" means the act of a lien holder, owner, or security interest holder transferring his or her interest in a vehicle to another person by signing the release section on an Oregon title, a secure odometer form, a bill of sale, or other document showing the transfer of the interest;

(c) "Authorized agent" means a person given a power of attorney by the owner of a vehicle for the purposes of transferring an interest in the vehicle;

(d) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation;

(e) "Estate" means the real and personal property of a decedent;

(f) "Heir" means the person who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate (without a will);

(g) "Interest" means a right, claim or legal share in a vehicle shown on an Oregon title, or other ownership document described in subsection (k) of this section;

(h) "Interest holder" means a lien holder, owner, or security interest holder;

(i) "MCO" means a Manufacturer's Certificate of Origin;

(j) "Operation of law" means a transfer or assignment of interest in a vehicle from one person to another person due to death, divorce, merger, consolidation, dissolution, bankruptcy, inheritance, devise or bequest, court order, dissolution decree, insolvency, seizure or foreclosure;

(k) "Other ownership document" means a primary ownership document as described in OAR 735-020-0010. For example, MCO, a sheriff's bill of sale, a court judgment or a completed signed Certification of Ownership Facts (DMV Form 735-550);

(l) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or a legal or commercial entity;

(m) "Release" or "release of interest" means the act of a lien holder, owner, or security interest holder transferring an interest in a vehicle by signing the release section on an Oregon title, a secure odometer form, a bill of sale, or other document showing the transfer of the interest. For purposes of these rules, transferring includes release, termination, assignment or transfer of an interest;

(n) "Representative," "authorized agency representative" or "personal representative" means a personal representing agent, government official, receiver, trustee, executor, administrator, or other representative with lawful right or authority to transfer an interest in a vehicle on behalf of the owner or by operation of law;

(o) "Title" means an Oregon certificate of title, Oregon salvage title, other ownership document or electronic equivalent issued by DMV, as evidence of ownership interest in a vehicle recorded in DMV's records;

(p) "Transferee" means a person to whom an interest in a vehicle is transferred, including but not limited to a purchaser of the vehicle;

(q) "Transferor" means any person who transfers an interest in a vehicle.

(r) "VIN" means vehicle identification number.

(2) General Requirements. Except as provided in section (6) of this rule, upon transferring an interest in an Oregon-titled vehicle, any person whose interest is released, terminated, assigned or transferred, or the person's representative, must release or assign that interest in writing. A release or assignment document must include the following:

(a) For the vehicle subject to the transfer, the make, model year, license plate number (if available) and VIN;

(b) The full name and signature of the transferor(s), or the transferor's representative;

(c) If available, the date the interest in the vehicle was released or assigned; and

(d) A statement or other indicator in the document that the vehicle was sold, ownership was transferred or released, or any interest, including a lien or security interest, was assigned, released, terminated or transferred.

(3) Although not required, a release or assignment document should include the name of the transferee.

(4) DMV will accept the following as a release or assignment document:

(a) The current title issued for the vehicle with the release/assignment section completed by the transferor(s) or the transferor(s) authorized agent;

(c) The vehicle's MCO with the release section completed by the dealer.

(b) A completed odometer disclosure that meets the requirements of ORS 803.120, 803.122 and OAR 735-028-0050; or

(d) A bill of sale or other document that meets the requirements of section (2) of this rule.

(5) Additional Requirements. In addition to the requirements of section (2) of this rule, a release or assignment of interest for a vehicle with a salvage title must comply with OAR 735-024-0170.

(6) Operation of Law. In addition to other applicable requirements of this rule, if an interest in a vehicle is transferred by operation of law as described in this section, a representative, an authorized agency representative, personal representative, heir, affiant, security interest holder, or lien claimant must release or assign the interest in the vehicle as follows:

(a) Transfer of Interest upon Death. The personal representative of an estate must sign the release or assignment document unless DMV receives:

(A) If the owner of the vehicle died intestate, an Inheritance Affidavit (DMV Form 735-516) signed by all of the heirs; or

(B) A Small Estate Certification (DMV Form 735-6797) signed by the affiant;

(b) Vehicle Repossession. The security interest holder or representative of the security interest holder must sign a Vehicle Repossession Certificate (DMV Form 735-263).

(c) Possessory Lien Foreclosure. A lien claimant must fulfill all legal requirements to foreclose a possessory lien on the vehicle and sign a certificate of possessory lien foreclosure form as specified in OAR 735-020-0012.

(d) Government Agency. A government agency may transfer interest in a vehicle in its custody, if it complies with relevant legal requirements and, at the time of transfer, provides the transferee a certificate of sale, bill of sale or similar document that contains:

(A) A citation of the legal authority authorizing the government agency to transfer or assign interest in the vehicle;

(B) The make, model, year and VIN of the vehicle subject to the transfer; and

(C) The full name and signature of an authorized agency representative.

(7) A person who assigns or releases a partial interest in a vehicle but will remain on the vehicle title as an owner, does not need to complete an assignment or release document. However, the person must acknowledge that the addition of a new owner on the title is authorized by signing:

(a) A title application that lists the additional owner; or

(b) A written document that identifies and permits the addition of the additional owner on the title.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.094
Stats. Implemented: ORS 803.015 & 803.094
Hist.: DMV 11-2007, f. & cert. ef. 11-30-07

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Rule Caption: Requirement for Ignition Interlock Device Following a DUII Suspension and on a Hardship/Probationary Permit
Adm. Order No.: DMV 12-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 10-1-2007
Rules Amended: 735-064-0070, 735-070-0080
Subject: Chapter 655, Oregon Laws 2007 (HB 2774) amends ORS 813.602 to extend the length of time a person convicted of driving under the influence of intoxicants (DUII) must install and use an approved ignition interlock device (IID). The current requirement for an IID is six months, but with these amendments, effective January 1, 2008, the IID must be installed and used at the end of the suspension for one year for a first DUII conviction and two years for a second or subsequent DUII conviction. Further changes clarify that a person who fails to install an IID at the end of the DUII suspension but does install an IID during the year or two-year suspension for failure to install, does not need a hardship permit as they will have met the requirement for reinstatement. Naturopathic doctor was added to the list of medical professionals who may provide a written, signed statement that a person is unable to use an IID due to a medical condition. This change is being made for consistency with other DMV rules and processes. Other changes were made to make the terminology consistent with OAR Chapter 735, Division 118 which describes approved ignition interlock devices.
Rules Coordinator: Lauri Salsbury—(503) 986-3171

735-064-0070
Ignition Interlock Device (IID) Requirement for Issuance of Hardship or Probationary Permits

(1) DMV will require a person convicted of DUII in an Oregon court to have an IID installed in any vehicle the person operates if the person's driving privileges are currently suspended for the DUII conviction and the person applies for a hardship permit. The IID will be required before a hardship permit is issued.

(2) DMV will issue a hardship/probationary permit if a person's driving privileges are revoked as a habitual offender and are also suspended for a DUII conviction in an Oregon court. It will be a condition of a hardship/probationary permit that a person install, maintain or use an IID while the person's driving privileges are suspended for the DUII conviction and for the period described in ORS 813.602 following the ending of the DUII suspension. The IID will be required before a hardship/probationary permit is issued.

(3) While a DUII suspension remains in effect, DMV will require an IID to be installed, maintained and used as long as the person has a valid hardship or hardship/probationary permit.

(4) When installation of an IID is required, DMV will not issue a hardship or hardship/probationary permit to the person until a provider submits an installation report form showing an approved device has been installed in the person's vehicle. The provider who installed the device must sign the installation report form.

(5) For purposes of ORS 813.606, DMV will place a notation on the driving record that the person's employer has been informed of the IID requirement in the hardship or hardship/probationary permit issued to the person. DMV must receive a letter on business letterhead, signed by the employer, stating that the employer has been informed of the IID requirement and that the person is required to operate the employer's vehicle(s) in the course of employment; or an Employer IID Exemption, (DMV form 735-6874) submitted by the employer.

(6) For purposes of ORS 813.606, a person who is self-employed is not an employee and DMV will not place an employer IID notification notation on the person's driving record.

(7) A person may operate a vehicle(s) without an IID, if the person is medically unable to operate a vehicle equipped with an IID and is granted a medical exemption from the IID requirement. To apply for medical exemption the person must submit:

(a) A written, signed statement from an IID provider stating the provider is unable to adapt an IID to accommodate usage by the person because of the person's medical condition; and

(b) A written, signed statement from the person's medical doctor, doctor of osteopathy, naturopathic doctor, physician assistant or nurse practitioner containing the following information:

(A) The name of the exempting medical condition;

(B) Whether the condition is temporary or permanent and if temporary, when the condition will no longer prevent usage of an IID; and

(C) Whether the exemption is required because the condition results in the inability to sustain an exhaled breath sampling of five pounds of pressure for five seconds required to operate the device or results in a ketone level in the person's breath which will not allow the driver to successfully complete the test.

(8) When application for a medical exemption is made under section (7) of this rule and approved by DMV, DMV shall issue a medical exemption letter. The person shall carry a copy of DMV's medical exemption letter while operating any motor vehicle which would otherwise require installation and use of an IID.

(9) DMV will include information in the hardship or hardship/probationary permit restriction that the person shall only operate vehicles equipped with an IID. If the person operates a vehicle owned or leased by the person's employer in the course of employment or has been issued a medical exemption, the hardship or hardship/probationary permit driving restrictions shall include that the person must have in his or her possession

a copy of the employer's letter or Employer IID Exemption Form from his or her employer, or medical exemption letter.

(10) In order for the person to have the IID periodically checked or maintained, DMV will include in the hardship or hardship/probationary permit driving restriction sufficient time for the person to travel to and from the installation facility.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.270 & 813.602
Stats. Implemented: ORS 807.240, 807.270 & 813.602
Hist.: MV 40-1987, f. 12-11-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0107; MV 18-1989(Temp), f. 8-31-89, cert. ef. 9-5-89; MV 2-1990, f. & cert. ef. 2-1-90; MV 4-1991, f. 6-18-91, cert. ef. 7-1-91; DMV 5-1994, f. & cert. ef. 7-21-94; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 12-2007, f. 11-30-07, cert. ef. 1-1-08

735-070-0080
Ignition Interlock Device (IID) as Requirement Following DUII Suspension

(1) A person convicted by an Oregon Court of Driving Under the Influence of Intoxicants (DUII) must install, use and maintain an IID following the ending date of the DUII suspension as follows:

(a) For one year for a first DUII conviction; or

(b) For two years for a second or subsequent DUII conviction.

(2) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will suspend driving privileges for failure to install an IID if proof that an approved IID has been installed in the person's vehicle is not submitted to DMV by the ending date of the DUII suspension. The proof must be an installation report form showing an approved device, as described in OAR 735-118-0010, completed and signed by the provider who installed the device.

(3) A person may operate a vehicle(s) without an IID, if the person is medically unable to operate a vehicle equipped with an IID, and DMV grants a medical exemption from the IID requirement. To avoid suspension of driving privileges for failure to install an IID, the person must apply before the last day of the DUII suspension and submit to DMV:

(a) A written, signed statement from an IID provider that the provider is unable to adapt an IID to accommodate usage by the person because of the person's medical condition; and

(b) A written, signed statement from the person's medical doctor, doctor of osteopathy, naturopathic doctor, physician assistant or nurse practitioner containing the following information:

(A) The name of the exempting condition;

(B) Whether the condition is temporary or permanent and if temporary, when the condition will no longer prevent usage of an IID; and

(C) Whether the exemption is required because the condition results in the inability to sustain an exhaled breath sampling of five pounds of pressure for five seconds required to operate the device or results in a ketone level in the person's breath which will not allow the driver to successfully complete the test.

(4) When the application for a medical exemption is made under section (3) of this rule and approved by DMV, DMV will issue a medical exemption letter. The person must carry a copy of DMV's medical exemption letter while operating a vehicle that would otherwise require installation and use of an IID.

(5) DMV will reinstate driving privileges if during the suspension period for failure to install an IID, the person installs an IID or DMV grants the person a medical exemption.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.602
Stats. Implemented: ORS 813.602
Hist.: MV 39-1987, f. 12-11-87, cert. ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0078; MV 20-1988, f. & cert. ef. 6-1-88; MV 14-1989, f. & cert. ef. 5-17-89; MV 18-1989(Temp), f. 8-31-89, cert. ef. 9-5-89; MV 4-1990, f. & cert. ef. 3-2-90; DMV 5-1994, f. & cert. ef. 7-21-94; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 12-2007, f. 11-30-07, cert. ef. 1-1-08

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Rule Caption: Deletes Reference to Length of Time that Vehicle Appraiser Certificate is Valid.
Adm. Order No.: DMV 13-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 11-30-07
Notice Publication Date: 10-1-2007
Rules Amended: 735-158-0000
Subject: HB 2435 (Chapter 630, Oregon Laws 2007), amends ORS 819.230 to increase—from two years to three years—the length of time a vehicle appraiser certificate is valid. Rather than amend section (4) of the administrative rule, ODOT has deleted it because the length of time a certificate is valid is already established under ORS 819.230. Repeating this in the rule serves no additional purpose.
Rules Coordinator: Lauri Salsbury—(503) 986-3171

735-158-0000
Vehicle Appraiser Certificate

(1) An applicant for a vehicle appraiser certificate or renewal under ORS 819.230 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Vehicle Appraiser Certificate (DMV Form 735-6610);

(b) All applicable fees; and

(c) Proof of two years combined work experience as a vehicle appraiser:

(A) For a new or used car business, tow business, insurance company, vehicle body repair business, law enforcement or a state or local jurisdiction: or

(B) In the operation or employment of a certified vehicle dismantler business.

(2) DMV will deny issuance or renewal of a vehicle appraiser certificate if:

(a) DMV determines the applicant was convicted of a felony or misdemeanor related to fraud, dishonesty or moral turpitude, if the conviction occurred less than three years before the date of application; or

(b) DMV determines the application contains false or misleading information.

(3) DMV will not process an application that is incomplete. An incomplete application and the fees submitted with the application will be returned to the applicant.

(4) Failure to comply with any applicable statute or rule pertaining to a vehicle appraiser certificate is grounds to deny issuance, revoke, suspend or refuse to renew a vehicle appraiser certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 819.230, OL 2007, ch. 630
Stats. Implemented: ORS 819.210, 819.220, 819.230, 822.700, OL 2007, ch. 630
Hist.: MV 25-1981(Temp), f. & ef. 12-1-81; MV 13-1982, 5-28-82, ef. 6-1-82; MV 27-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0078; DMV 7-2002(Temp), f. 3-14-02, cert. ef. 3-18-02 thru 9-13-02; DMV 13-2002, f. & cert. ef. 6-24-02; DMV 16-2006, f. & cert. ef. 11-17-06; DMV 13-2007, f. & cert. ef. 11-30-07

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Economic and Community Development Department
Chapter 123

Rule Caption: Conform the Port Planning and Marketing rules to the provisions of SB 350 (2007 Legislature).
Adm. Order No.: EDD 13-2007(Temp)
Filed with Sec. of State: 12-7-2007
Certified to be Effective: 12-7-07 thru 6-1-08
Notice Publication Date:
Rules Adopted: 123-025-0014
Rules Amended: 123-025-0010, 123-025-0012, 123-025-0017, 123-025-0021, 123-025-0023, 123-025-0025, 123-025-0030
Rules Suspended: 123-025-0015
Subject: The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms existing rule to the legislative requirements.
Rules Coordinator: Paul J. Grove—(503) 986-0192

123-025-0010
Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the context clearly indicates otherwise:

(1) "Department" means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Department.

(3) "Port" means a municipal corporation organized under ORS chapter 777 or 778, which may be known as a "port authority" or "port district."

(4) "Fund" means Port Planning and Marketing Fund.

(5) "Project" means any activity that is eligible for assistance from the Port Planning and Marketing Fund.

(6) "Peer Review Committee" means a committee of representatives, as determined by the department. The peer review committee shall:

(a) Recommend standards for typical Port Planning and Marketing Fund projects;

(b) Review and evaluate Port Planning and Marketing Fund proposals submitted to the department for possible funding; and

(c) Review and evaluate project deliverables prior to disbursal of final payment.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0012
Annual Funding of Program

The Department will transfer up to five percent of the assets of the Port Revolving Fund, not to exceed the annual accrued net income from the Port Revolving Fund into the Port Planning and Marketing Fund annually as calculated on receipt of the Fund Audit each year.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0014
Project Eligibility and Criteria, Strategic Business Plans Requirement

(1) A planning or marketing project that meets the following criteria is eligible for assistance from the fund:

(a) The project is necessary for improving a port's capability to carry out its authorized functions and activities relating to trade and commerce;

(b) The project is feasible and will produce measurable results;

(c) The project will promote the long-term economic self-sufficiency of the port and will encourage cost-effective investments guided by prudent financial consideration and review;

(d) The project has a single focus and does not attempt to accomplish multiple disjointed or unrelated outcomes or tasks;

(e) The applicant has met the strategic planning requirements in 123-025-0014(2); and

(e) The project meets the standards and criteria as set by the department in this division of administrative rules.

(2) Those Ports formed under ORS 777 shall develop and maintain strategic business plans before obtaining department funding for other projects. Ports must have a formally adopted strategic business plan, approved by the department, in place by a date established by the Commission, as a condition of obtaining financial assistance from the department.

(3) The department, in consultation with the Ports Peer Review Committee, shall determine whether individual port strategic business plans developed under this section comply with the standards and requirements for such plans.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0015
Application Requirements

(1) An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(2) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; Suspended by EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0017
Application Submittal, Review and Approval

(1) An eligible port may submit an application after consulting with department staff on a preliminary determination of eligibility and otherwise following the department's procedures for submitting applications. The application must be in the form provided by the department and must contain or be accompanied by such information as the department may require. The department will process only completed applications.

(2) Upon receipt of a completed application the department will apply the following criteria to determine the project's eligibility:

(a) The project is cited in or conforms to a port's adopted strategic business plan required under OAR 123-025-0014(2) and approved by the department. Consideration will, however, be given for immediate job or revenue creation projects or other opportunities not cited in a port's adopted strategic business plan provided that the port consults with the department and, if required to do so by the department, the ruling body of the port acts to amend its strategic business plan;

(b) The project is not an unnecessary duplication of marketing efforts among ports. However it is recognized that regional or cooperative projects may require ports to simultaneously perform similar tasks;

(c) The project does not subsidize regular port operating expenses;

(d) The project will not require or rely upon continuing subsidies from the department; (e) Financial need may be a consideration when reviewing a project proposal for funding; and,

(f) The requirements set out elsewhere in OAR 123-025 are met.

(3) If the Project is not eligible, the Department will, within 60 days:

(a) Reject the application; or

(b) Require the applicant to submit additional information as may be necessary.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0021
Project Funding Priorities

(1) At the beginning of each state fiscal year the Department and the Ports will make reasonable efforts to identify and initiate high priority projects. Funding of up to 50% of that year's transfer of funds will be reserved exclusively for high priority projects for the first four months of the state fiscal year, after which it will become available for any eligible project. High priority projects are:

(a) Regional or cooperative projects that benefit more than one port;

(b) Projects that leverage other marketing and development efforts by the state or other government units;

(c) Projects to develop or update the strategic business plans as required under OAR 123-025-0014(2), or port marketing or financial plans.

(d) Projects leading to economic diversification, development of a new or emerging industry or redevelopment of existing public facilities.

(2) Projects must meet the standards set by the Peer Review Committee.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0023
Grant Awards and Match

(1) The maximum grant is $50,000 or 75% of the total project cost, whichever is less.

(2) Grants will be awarded only when there are sufficient funds available in the fund.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0025
Project Administration

(1) The department and the port must execute a grant contract prior to disbursal of grant funds.

(2) Documentation of project costs incurred by a port must be submitted to the department prior to disbursal of funds.

(3) Disbursal of grant funds to a port will not exceed one disbursal per month. Ten percent of the grant funds will be withheld until the Peer Review Committee reviews the appropriate deliverables of the project.

(4) Upon request the port must provide the department with a copy of documents, studies, reports, and materials developed during the project, including written report on activities or results of the project, or any other information that may reasonably be requested by the department.

(5) Prior to final disbursement, the Peer Review Committee will review all documents produced as a result of the project. The committee will evaluate and make recommendations to the department on value of resulting document(s) and how closely the project delivered the outcome anticipated in the application.

(6) Any monies disbursed but not used for an approved project, must be returned to the department.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

123-025-0030
Sanctions, Exceptions and Appeals

(1) The department may invoke sanctions against ports that fail to comply with the requirements governing the fund. Sanctions will not be imposed by the department until the port has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) None of the project activities have begun within six months after award; or

(b) Any private party agreements relating to the project are not legally binding within six months of the award; or

(c) State statutory requirements have not been met; or

(d) There is a significant deviation from the contract; or

(e) The department finds that significant corrective actions are necessary to protect the integrity of the project funds.

(2) One or more of the following sanctions may be imposed by the department:

(a) Bar a port from applying for future assistance;

(b) Revoke an existing award;

(c) Withhold unexpended funds;

(d) Require the return of unexpended funds or repayment of expended funds;

(e) Withhold other state funds such as state-shared revenues; and

(f) Other remedies as described in the contract.

(3) The remedies set forth in this rule are cumulative, not exclusive, and in addition to any other rights and remedies provided by law or under contract.

(4) Appeals of local government decisions regarding a project must be made at the local level.

(5) The director will consider appeals of the department's funding decisions. Only the port may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. An application that would have been funded but for technical error in the department's review will be funded as soon as sufficient funds become available, provided the project is still viable. The director's decision is final.

(6) The director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08

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Education and Workforce Policy Advisor, Office of Education and Workforce Policy
Chapter 151

Rule Caption: Temporary rule adopting 2006 version of Attorney General's Model Rules.
Adm. Order No.: EWP 1-2007(Temp)
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 12-13-07 thru 6-6-08
Notice Publication Date:
Rules Amended: 151-001-0005
Subject: Temporarily amends rules of the Education and Workforce Policy Advisor by adopting the January 1, 2006, version of the Attorney General's Model Rules of Procedure, in place of the 1997 version.
Rules Coordinator: James Sager—(503) 986-6546

151-001-0005
Model Rules of Procedure

Pursuant to ORS 183.341, the Education and Workforce Policy Advisor adopts the following Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2006: OAR chapter 137, division 1; OAR 137-003-0000 through 137-003-0092; OAR chapter 137, division 4; and OAR chapter 137, division 5.

Stat. Auth.: ORS 285A.455
Stats. Implemented: ORS 285A.455
Hist.: EWP 1-2000(Temp), f. 6-30-00, cert. ef. 7-1-00 thru 12-27-00; EWP 3-2000, f. & cert. ef. 12-22-00; EWP 1-2007, f. & cert. ef. 12-13-07

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Rule Caption: Clarifies language regarding public notice of permanent rulemaking.
Adm. Order No.: EWP 2-2007(Temp)
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 12-13-07 thru 6-6-08
Notice Publication Date:
Rules Amended: 151-001-0010
Subject: Temporarily amends Education and Workforce Policy Advisor rulemaking rules and deletes unnecessary reference to adoption of Attorney General's Model Rules.
Rules Coordinator: James Sager—(503) 986-6546

151-001-0010
Notice of Proposed Rule

Before permanently adopting, amending, or repealing any rule, the Education and Workforce Policy Advisor shall give notice of the proposed adoption, amendment, or repeal:

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

(2) By mailing a copy of the Notice to persons on the Education and Workforce Policy Advisor's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(3) By mailing a copy of the Notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(4) By mailing or furnishing a copy of the Notice to:

(a) The Associated Press; and

(b) The Capitol Press Room;

(c) Title IB Directors;

(d) Area and Regional Board Staff;

(e) Employment Department;

(f) Adult and Family Services Division, DHS;

(g) Vocational Rehabilitation Division, DHS;

(h) Community Colleges and Workforce Development Department;

(i) Rapid Response and Dislocated Worker Representatives;

(j) Department of Education.

Stat. Auth.: ORS 285A.455
Stats. Implemented: ORS 285A.455
Hist.: EWP 1-2000(Temp), f. 6-30-00, cert. ef. 7-1-00 thru 12-27-00; EWP 3-2000, f. & cert. ef. 12-22-00; EWP 2-2007(Temp), f. & cert. ef. 12-13-07 thru 6-6-08

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Rule Caption: Temporary rule clarifying procedures for resolving complaints against Department of Community Colleges and Workforce Development.
Adm. Order No.: EWP 3-2007(Temp)
Filed with Sec. of State: 12-13-2007
Certified to be Effective: 12-13-07 thru 6-6-08
Notice Publication Date:
Rules Amended: 151-020-0045
Subject: Temporarily amends rules of the Education and Workforce Policy Advisor by clarifying procedures that apply to resolution of complaints against the Department of Community Colleges and Workforce Development, and incorporates time lines for resolution of complaints set by federal regulation.
Rules Coordinator: James Sager—(503) 986-6546

151-020-0045
Procedure for Resolving a Non-Criminal Allegation of a Violation of the Act, Regulations, Grant or Other Agreement Under the Workforce Investment Act filed Directly Against the Department of Community Colleges and Workforce Development

(1) If there is a complaint against the Department (CCWD) and the complainant is a Local Workforce Area subrecipient, another grant recipient, or other entity receiving WIA funds directly from the Department, the initial complaint must be filed at the State level with CCWD. Complainants are entitled to an opportunity for informal resolution of the complaint and a contested case hearing.

(2) Both the informal resolution process and the contested case hearing must be completed within 60 days of receipt of a complaint.

(3) These procedures shall be used for the resolution of complaints arising from actions, such as audit disallowance or the imposition of sanc-

tions, taken by the governor with respect to audit findings, investigations, or monitoring reports.

Stat. Auth.: ORS 285A.455
Stats. Implemented: ORS 285A.455
Hist.: EWP 3-2000, f. & cert. ef. 12-22-00; EWP 3-2007(Temp), f. & cert. ef. 12-13-07 thru 6-6-08

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Employment Department
Chapter 471

Rule Caption: Requires unemployment insurance benefits to be paid primarily by electronic funds transfer or stored value card.
Adm. Order No.: ED 6-2007
Filed with Sec. of State: 11-19-2007
Certified to be Effective: 12-3-07
Notice Publication Date: 11-1-2007
Rules Amended: 471-030-0050
Subject: Permanent amendment is to change primary payment of unemployment insurance benefits to electronic funds transfer or stored value card.
Rules Coordinator: Janet Orton—(503) 947-1724

471-030-0050
Benefit Payments

(1) Benefits shall be paid by such method as the Director may approve.

(2) The Employment Department's primary payment method to any individual approved to receive unemployment insurance benefits is electronic funds transfer. "Electronic funds transfer" has the same meaning as provided in ORS 293.525.

(3) Individuals who do not apply for direct deposit will be paid by a stored value card, including but not limited to ReliaCard Visa.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.255
Hist.: 1DE 150, f. & ef. 2-9-76; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05; ED 4-2007(Temp), f. & cert. ef. 9-26-07 thru 3-23-08; ED 6-2007, f. 11-19-07, cert. ef. 12-3-07

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Land Conservation and Development Department
Chapter 660

Rule Caption: Adoption and Amendment of Temporary Rules Implementing and Clarifying 2007 Ballot Measure 49.
Adm. Order No.: LCDD 2-2007(Temp)
Filed with Sec. of State: 12-10-2007
Certified to be Effective: 12-10-07 thru 6-7-08
Notice Publication Date:
Rules Adopted: 660-041-0060, 660-041-0070, 660-041-0500, 660-041-0510, 660-041-0520, 660-041-0530
Rules Amended: 660-002-0010, 660-002-0015, 660-041-0000, 660-041-0010, 660-041-0030, 660-041-0040
Rules Suspended: 660-041-0050
Subject: These temporary rules specify what a person submitting a Measure 49 claim must include as part of their claim. These rules also address the effect of 2007 Ballot Measure 49 on waivers that have already been approved by DLCD under 2004 Ballot measure 37, including the effect for purposes of the state agency coordination requirements under ORS 197.180. In addition, these rules amend the LCDC delegation of authority to the Director of DLCD to conform to 2007 Ballot Measure 49.
Rules Coordinator: Sarah Watson—(503) 373-0050, ext. 271

660-002-0010
Authority to Director

In addition to the other duties and responsibilities conferred on the Director by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

(1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);

(2) Condition a compliance schedule in accordance with ORS 197.252;

(3) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and

(4) Request that the Commission schedule a hearing to consider an enforcement order if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1) through (10);

(5) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby;

(6) Prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;

(7) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county;

(8) Carry out the responsibilities and exercise the authorities of the Commission and DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:

(a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws 2007;

(b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007; and

(c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007, except that the Director may approve a claim only by not applying the land use regulations that are the basis of the claim unless legislation is enacted that appropriates funds for the payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

Stat. Auth.: ORS 183, 196 & 197, Ch. 424, OL 2007
Stats. Implemented: ORS 197.040, 197.045 & 197.090, Ch. 424, OL 2007
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. & ef. 4-3-81; LCDC 2-1983(Temp), f. & ef. 2-9-83; LCDC 3-1983, f. & ef. 5-5-83; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-002-0015
Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested member of the public and other units of government of the Director's actions taken pursuant to OAR 660-002-0010.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by the Director during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040, 197.045 & 197.090
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0000
Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-0060 is to clarify and implement the requirements of ORS 197.352 (2004 Oregon Ballot Measure 37) for filing Measure 37 Claims after December 4, 2006 and on or before June 28, 2007 based on one or more DLCD Regulations. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver is required. Finally, these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-0060.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and on or before June 28, 2007, and that are based on one or more DLCD Regulations.

(4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007.

(5) OAR 660-041-0040 to 660-041-0060 apply to all DLCD Measure 37 Waivers.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0010
Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0060:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that was filed on or before June 28, 2007.

(3) "Claimant" means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) "DAS" means the Department of Administrative Services.

(5) "DLCD" means the Department of Land Conservation and Development.

(6) "DLCD Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.

(7) "DLCD Measure 37 Waiver" means a decision by the Land Conservation and Development Commission (LCDC) or DLCD that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD Regulations to allow a Claimant to use the Property for a use that was permitted when the Claimant acquired the Property.

(8) "Land Use Application" means an application for a "land use decision," a "limited land use decision," or an "expedited land division," as those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.

(9) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

(10) "LCDC" means the Land Conservation and Development Commission.

(11) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a person has a vested right to complete or continue a use based on a Measure 37 Waiver.

(12) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more Land Use Regulations to allow a Claimant to use the Property for a use that was permitted when the Claimant acquired the Property.

(13) "Metro" means the Portland Metropolitan Service District.

(14) "Property" means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0030
Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

(2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office at least ten calendar days before any deadline for comment on the application for a Measure 37 Permit. If there is no opportunity for comment, then the notice must be sent ten days before the decision becomes final. The notice must include:

(a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

(b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

(d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject land use application; and,

(e) The name of the present owner of the property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office within ten calendar days of the date of the final written decision. The notice must include a copy of the final written decision.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0040
When a DLCD Measure 37 Waiver is Required

Before a Claimant may use Property for a use under a Measure 37 Waiver, the Claimant must obtain a DLCD Measure 37 Waiver for that use of the Property in all cases where that use is restricted by a DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Property includes:

(1) Land zoned for farm use under Goal 3;

(2) Land zoned for forest use under Goal 4; or

(3) Land outside of an acknowledged urban growth boundary where the Claimant's desired use of the Property is an urban use under Goal 14, or that use includes the establishment or extension of a sewer or water system restricted under Goal 11.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0050
Applicability

OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006, and that are based on one or more DLCD Regulations. OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007. OAR 660-041-0040 takes effect upon the filing of these rules with the Oregon Secretary of State.

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; Suspended by LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0060
Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

Any authorization for a Claimant to use Property without application of a DLCD Regulation provided by a DLCD Measure 37 Waiver will expire as of December 6, 2007, as will the effect of any order of DLCD denying a Claim. A Claimant may continue an existing use of Property that was authorized under ORS 197.352 (2005), or complete a use of Property that was begun prior to December 6, 2007 (2005) only if the Claimant has a common law vested right to complete and continue that use on December 6, 2007, and the use complies with the terms of any applicable DLCD Measure 37 Waiver.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0070
State Agency and Special District Land Use Coordination and DLCD Measure 37 Waivers

After December 5, 2007, when a state agency or a special district is required to take an action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Property based on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation based on a DLCD Measure 37 Waiver will expire, and a DLCD Measure 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or 195.020.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0500
Purpose and Applicability

The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 Claims. These rules apply to Measure 49 Claims filed with the State of Oregon.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0510
Definitions

The following definitions apply to OAR 660-041-0500 to 660-041-0530:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claimant" means an Owner who filed a Measure 49 Claim.

(3) "DLCD" means the Department of Land Conservation and Development.

(4) "DLCD Regulation" has the meaning provided by section 2(14)(a)–(b) and 2(14)(g) of Chapter 424, Oregon Laws 2007.

(5) "Farming Practice" has the meaning provided by section 2(5) of Chapter 424, Oregon Laws 2007.

(6) "File" or "Filed" has the meaning provided by section 2(7) of Chapter 424, Oregon Laws 2007. The date a document is Filed is the date that it is received by the Public Entity.

(7) "Forest Practice" has the meaning provided by section 2(8) of Chapter 424, Oregon Laws 2007.

(8) "Land Use Regulation" has the meaning provided in section 2(14) of Chapter 424, Oregon Laws 2007. A "New Land Use Regulation" means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency on or after January 1, 2007.

(9) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(10) "Measure 49 Claim" means a claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007, and a claim Filed with the State of Oregon under Chapter 424, Oregon Laws 2007 after December 5, 2007.

(11) "Owner" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

(12) "Parcel" means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(13) "Property" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

(14) "Regulating Entity" means an Agency that has enacted, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Measure 49 Claim.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0520
Procedures for Measure 49 Claims

(1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the address provided in this rule, or from DLCD's website, and must contain all information required by the form.

(2) A Measure 49 Claim must be Filed with DLCD at: Measure 49 Claims 635 Capitol St. NE, Suite 150 Salem 97301-2540 Claims may not be submitted by facsimile or electronically.

(3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, it is deemed Filed on December 6, 2007 for purposes of subsections 13(5) to 13(11) of Chapter 424, Oregon Laws 2007.

(4) DLCD's form for a Measure 49 Claim will require at least the following information:

(a) The name and mailing address of each Claimant and each Owner of the Property.

(b) Evidence establishing that each Claimant is an Owner of the Property.

(c) The consent to the Measure 49 Claim by each Owner of the Property if there are Owners of the Property other than the Claimant, which consent must be notarized.

(d) A description of the Claimant's specific desired use of the Property, which use must be a residential use or a Farming Practice or a Forest Practice. The description must be sufficiently specific to establish that each Land Use Regulation listed under paragraph (g) of this rule applies to and restricts the Claimant's desired use.

(e) The location of the Property by reference to:

(A) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(B) The street address of each Lot or Parcel that makes up the Property, if a street address has been assigned;

(C) The county the Property is located in; and

(D) If the Property is located within a city, the name of that city.

(f) Evidence of each Claimant's Acquisition Date, as provided in sections 13(7)(c) and 21 of Chapter 424, Oregon Laws 2007;

(g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's desired use of the Property, and for each New Land Use Regulation listed, a description of how that regulation restricts the Claimant's desired use of the property;

(h) An appraisal of the reduction in the fair market value of the Property caused by the enactment of each listed New Land Use Regulation as provided in section 12(2) of Chapter 424, Oregon Laws 2007.

(5) DLCD will review a Measure 49 Claim to determine whether it complies with the requirements of sections 12 to 14 of Chapter 424, Oregon Laws 2007. If the Measure 49 Claim is incomplete, within 60 days of receiving the claim, DLCD will notify the person who filed the claim of the information that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCD receives:

(a) The missing information;

(b) Part of the missing information and written notice from the Claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(6) If a Claimant submits a request in writing for additional time to provide missing information, DLCD may for good cause shown agree to provide such additional time, which agreement must be in writing. An agreement to allow additional time has the effect of abating the time requirements under sections 13 and 14 of Chapter 424, Oregon Laws 2007, until the date specified in the agreement.

(7) If DLCD does not notify the Claimant within 60 days after a Measure 49 Claim is Filed that information is missing from the claim, the claim is deemed complete when Filed.

(8) If the Claimant does not respond in writing to the written notification from DLCD under subsection (5) of this rule within sixty (60) days of the date the written notification was sent, the claim is deemed withdrawn.

(9) DLCD will provide notice of a Measure 49 Claim as provided by section 14 of Chapter 424, Oregon Laws 2007. The notice will describe the Measure 49 Claim and specify a deadline by which written evidence and arguments must be Filed. The Claimant may respond to the written evidence and argument by Filing a written response within fifteen (15) days of the date specified as the deadline for the initial evidence and argument.

(10) DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

660-041-0530
Coordinating with Other Regulating Entities

(1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute that is administered by an Agency other than DLCD, DLCD will forward the claim to that Agency.

(2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation for which there is no Regulating Entity, DLCD will forward the claim to the Department of Administrative Services.

(3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49 Claim, that Regulating Entity will process the claim using the procedures set forth in OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures for review.

(4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim, DLCD will coordinate the review of the claim under the procedures set forth in OAR 660-041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted or that it administers as provided in Chapter 424, Oregon Laws 2007 and if so what form of relief to grant under subsection 12(5) with respect to those regulations.

(5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08

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Oregon Board of Dentistry
Chapter 818

Rule Caption: Creates/amends rules: Fees; Unprofessional Conduct, Education, Expanded/Restorative Functions, Limited Permits, and Radiologic Proficiency.

Adm. Order No.: OBD 3-2007
Filed with Sec. of State: 11-30-2007
Certified to be Effective: 11-30-07
Notice Publication Date: 10-1-2007
Rules Adopted: 818-042-0095
Rules Amended: 818-001-0087, 818-012-0030, 818-021-0060, 818-021-0070, 818-035-0030, 818-035-0040, 818-035-0065, 818-042-0040, 818-042-0060
Subject: OAR 818-001-0087, Fees, is amended to create a fee for Restorative Functions Dental Assistant Certificates.

OAR 818-012-0030, Unprofessional Conduct, is amended to update the charges that dentists are allowed to charge regarding the copying of patient records and adding to unprofessional conduct any agreements made by licensees that would prevent the Board from interviewing witnesses regarding an investigation by the Board.

OAR 818-021-0060, Continuing Education – Dentists, is amended to update types of continuing education credits that may be considered acceptable for fulfilling the continuing education requirements and adding the newly required one hour of Web-based pain management continuing education.

OAR 818-021-0070, Continuing Education – Dental Hygienists, is amended to update types of continuing education credits that may be considered acceptable for fulfilling the continuing education requirements.

OAR 818-035-0030, Additional Functions of Dental Hygienists, is amended to reflect recent legislative changes regarding functions that can be performed without the supervision of a dentist.

OAR 818-035-0040, Expanded Functions of Dental Hygienists, is amended to bring it in line with other recent rule changes.

OAR 818-035-0065, Limited Access Permits, is amended to reflect a change in the requirements of hours and information regarding professional liability insurance.

OAR 818-042-0040, Prohibited Acts, is amended to reflect recent legislative changes, as well as a name change for a state agency named in the rule.

OAR 818-042-0060, Certification – Radiologic Proficiency, is amended to reflect a name change for a state agency named in the rule.

OAR 818-042-0095, Restorative Functions of Dental Assistants, is adopted to allow the placement and finishing of direct alloy or direct composite restorations.
Rules Coordinator: Sharon Ingram—(503) 673-3200

818-001-0087
Fees

(1) The Board adopts the following fees:
(a) Biennial License Fees:
(A) Dental — $210;
(B) Dental — retired — $0;
(C) Dental Faculty — $210;
(D) Volunteer Dentist — $0;
(E) Dental Hygiene — $100;
(F) Dental Hygiene — retired — $0;
(G) Volunteer Dental Hygienist — $0.
(b) Biennial Permits, Endorsements or Certificates:
(A) Anesthesia Class 1 Permit (Nitrous Oxide) — $40;
(B) Anesthesia Class 2 Permit (Conscious Sedation) — $75;
(C) Anesthesia Class 3 Permit (Deep Sedation) — $75;
(D) Anesthesia Class 4 Permit (General Anesthesia) — $140;
(E) Radiology — $75;
(F) Expanded Function Dental Assistant — $50;
(G) Expanded Function Orthodontic Assistant — $50;
(H) Instructor Permits — $40;
(I) Dental Hygiene, Limited Access Permit — $50;
(J) Dental Hygiene Restorative Functions Endorsement —$50;
(K) Restorative Functions Dental Assistant — $50;
(L) Anesthesia Dental Assistant — $50.
(c) Applications for Licensure:
(A) Dental — General and Specialty — $305;
(B) Dental Faculty — $305;
(C) Dental Hygiene — $140;
(D) Licensure Without Further Examination — Dental and Dental Hygiene — $750.
(d) Examinations:
(A) Jurisprudence — $0;
(B) Dental Specialty:
(i) $750 at the time of application; and
(ii) If only one candidate applies for the exam, an additional $1,250 due ten days prior to the scheduled exam date;
(iii) If two candidates apply for the exam, an additional $250 (per candidate) due ten days prior to the scheduled exam date;
(iv) If three or more candidates apply for the exam, no additional fee will be required.
(e) Duplicate Wall Certificates — $50.
(2) Fees must be paid at the time of application and are not refundable.
(3) The Board shall not refund moneys under $5.01 received in excess of amounts due or to which the Board has no legal interest unless the person who made the payment or the person's legal representative requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 293.445, 679.060, 679.120, 680.050, 680.200 & 680.205
Hist.: DE 6-1985(Temp), f. & ef. 9-20-85; DE 3-1986, f. & ef. 3-31-86; DE 1-1987, f. & ef. 10-7-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0085; DE 2-1989(Temp), f. & cert. ef. 11-30-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 1-1991(Temp), f. 8-5-91, cert. ef. 8-15-91; DE 2-1991, f. & cert. ef. 12-31-91; DE 1-1992(Temp), f. & cert. ef. 6-24-92; DE 2-1993, f. & cert. ef. 7-13-93; OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction, 8-2-99; OBD 5-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 8-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 3-2007, f. & cert. ef. 11-30-07

818-012-0030
Unprofessional Conduct

The Board finds that in addition to the conduct set forth in ORS 679.140(2), a licensee engages in unprofessional conduct if the licensee does or permits any person to:

(1) Attempt to obtain a fee by fraud or misrepresentation.

(2) Offer rebates, split fees, or commissions for services rendered to a patient to any person other than a partner, employee, or employer.

(3) Accept rebates, split fees, or commissions for services rendered to a patient from any person other than a partner, employee, or employer.

(4) Initiate, or engage in, with a patient, any behavior with sexual connotations. The behavior can include but is not limited to, inappropriate physical touching; kissing of a sexual nature; gestures or expressions, any of which are sexualized or sexually demeaning to a patient; inappropriate procedures, including, but not limited to, disrobing and draping practices that reflect a lack of respect for the patient's privacy; or initiating inappropriate communication, verbal or written, including, but not limited to, references to a patient's body or clothing that are sexualized or sexually demeaning to a patient; and inappropriate comments or queries about the professional's or patient's sexual orientation, sexual performance, sexual fantasies, sexual problems, or sexual preferences.

(5) Engage in an unlawful trade practice as defined in ORS 646.605 to 646.608.

(6) Fail to present a treatment plan with estimated costs to a patient upon request of the patient or to a patient's guardian upon request of the patient's guardian.

(7) Misrepresent any facts to a patient concerning treatment or fees.

(8)(a) Fail to provide a patient or patient's guardian within 14 days of written request:

(A) Legible copies of records; and

(B) Duplicates of study models and radiographs, photographs or legible copies thereof if the radiographs, photographs or study models have been paid for.

(b) The dentist may require the patient or guardian to pay in advance a fee reasonably calculated to cover the costs of making the copies or duplicates. The dentist may charge a fee not to exceed $30 for copying 10 or fewer pages of written material and no more than $0.50 per page for each additional page (including records copied from microfilm), plus any postage costs to mail copies requested and actual costs of preparing an explanation or summary of information, if requested. The actual cost of duplicating x-rays may also be charged to the patient. Patient records or summaries may not be withheld from the patient because of any prior unpaid bills, except as provided in (8)(a)(B) of this rule.

(9) Fail to identify to a patient, patient's guardian, or the Board the name of an employee, employer, contractor, or agent who renders services.

(10) Use prescription forms pre-printed with any Drug Enforcement Administration number, name of controlled substances, or facsimile of a signature.

(11) Use a rubber stamp or like device to reproduce a signature on a prescription form or sign a blank prescription form.

(12) Order drugs listed on Schedule II of the Drug Abuse Prevention and Control Act, 21 U.S.C. Sec. 812, for office use on a prescription form.

(13) Violate any Federal or State law regarding controlled substances.

(14) Becomes addicted to, or dependent upon, or abuses alcohol, illegal or controlled drugs, or mind altering substances.

(15) Practice dentistry or dental hygiene in a dental office or clinic not owned by an Oregon licensed dentist(s), except for an entity described under ORS 679.020(3) and dental hygienists practicing pursuant to ORS 680.205(1)(2).

(16) Make an agreement with a patient or person, or any person or entity representing patients or persons, or provide any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Oregon Board of Dentistry; to truthfully and fully answer any questions posed by an agent or representative of the Board; or to participate as a witness in a Board proceeding.

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

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.140(1)(c), 679.140(2), 679.170(6) & 680.100

Hist.: DE 6, f. 8-9-63, ef. 9-11-63; DE 14, f. 1-20-72, ef. 2-10-72; DE 5-1980, f. & ef. 12-26-80; DE 2-1982, f. & ef. 3-19-82; DE 5-1982, f. & ef. 5-26-82; DE 9-1984, f. & ef. 5-17-84; Renumbered from 818-010-0080; DE 3-1986, f. & ef. 3-31-86; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-011-0020; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 2-1997, f. & cert. ef. 2-20-97; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06; OBD 1-2007, f. & cert. ef. 3-1-07; OBD 3-2007, f. & cert. ef. 11-30-07

818-021-0060

Continuing Education — Dentists

(1) Each dentist must complete 40 hours of continuing education every two years. Continuing education (C.E.) must be directly related to clinical patient care or the practice of dental public health.

(2) Dentists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dentists is April 1 through March 31.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than 12 hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course, provided that the course includes an examination and the dentist passes the examination.

(d) Continuing education credit can be given for volunteer pro bono dental services; community oral health instruction at a public health facility located in the state of Oregon; authorship of a publication, book, chapter of a book, article or paper published in a professional journal; participation on a state dental board, peer review, or quality of care review procedures; successful completion of Part II of the National Board Dental Examinations taken after initial licensure; a recognized specialty examination taken after initial licensure; or test development for clinical dental, dental hygiene or specialty examinations. No more than 6 hours of credit may be in these areas.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than four hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) All dentists licensed by the Oregon Board of Dentistry will complete a one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Department of Human Services. All applicants or licensees shall complete this requirement by January 1, 2010 or within 24 months of the first renewal of the dentist's license.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(9)

Hist.: DE 3-1987, f. & ef. 10-15-87; DE 4-1987(Temp), f. & ef. 11-25-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-020-0072; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; OBD 9-2000, f. & cert. ef. 7-28-00; OBD 16-2001, f. 12-7-01, cert. ef. 4-1-02; OBD 3-2007, f. & cert. ef. 11-30-07

818-021-0070

Continuing Education — Dental Hygienists

(1) Each dental hygienist must complete 24 hours of continuing education every two years. Continuing education (C.E.) must be directly related to clinical patient care or the practice of dental public health.

(2) Dental hygienists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dental hygienists is October 1 through September 30.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than six hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course provided, that the course includes an examination and the dental hygienist passes the examination.

(d) Continuing education credit can be given for volunteer pro bono dental hygiene services; community oral health instruction at a public health facility located in the state of Oregon; authorship of a publication, book, chapter of a book, article or paper published in a professional journal; participation on a state dental board, peer review, or quality of care review procedures; successful completion of the National Board Dental Hygiene Examination, taken after initial licensure; or test development for clinical dental hygiene examinations. No more than 6 hours of credit may be in these areas.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than two hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) Dental hygienists who hold a Class 1 (nitrous oxide) Anesthesia Permit must meet the requirements contained in OAR 818-026-0040(9) for renewal of the Class 1 Permit.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 279.250(9)

Hist.: DE 3-1987, f. & ef. 10-15-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-020-0073; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; OBD 9-2000, f. & cert. ef. 7-28-00; OBD 2-2002, f. 7-31-02, cert. ef. 10-1-02; OBD 2-2004, f. 7-12-04, cert. ef. 7-15-04; OBD 3-2007, f. & cert. ef. 11-30-07

818-035-0030

Additional Functions of Dental Hygienists

(1) In addition to functions set forth in ORS 679.010, a dental hygienist may perform the following functions under the general supervision of a licensed dentist:

(a) Make preliminary intra-oral and extra-oral examinations and record findings;

(b) Place periodontal dressings;

(c) Remove periodontal dressings or direct a dental assistant to remove periodontal dressings;

(d) Perform all functions delegable to dental assistants and expanded function dental assistants providing that the dental hygienist is appropriately trained;

(e) Administer and dispense antimicrobial solutions or resorbable antimicrobial agents in the performance of dental hygiene functions.

(2) A dental hygienist may perform the following functions at the locations and for the persons described in ORS 680.205(1) and (2) without the supervision of a dentist:

(a) Determine the need for and appropriateness of sealants or fluoride; and

(b) Apply sealants or fluoride.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j)

Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 3-2007, f. & cert. ef. 11-30-07

818-035-0040

Expanded Functions of Dental Hygienists

(1) Upon completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, a dental hygienist who completes a Board approved application shall be issued

endorsement to perform the following functions under the general supervision of a licensed dentist:

(a) Administer local anesthetic agents;

(b) Use high-speed handpieces to polish restorations; and

(c) Apply temporary soft relines to full dentures, providing that the patient is seen by the dentist within 14 days after the application.

(2) Upon completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, a dental hygienist may administer nitrous oxide under the indirect supervision of a licensed dentist in accordance with the Board's rules regarding anesthesia.

Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)
Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 3-1998, f. & cert. ef. 7-13-98; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 8-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 3-2007, f. & cert. ef. 11-30-07

818-035-0065
Limited Access Permit

The Board shall issue a Limited Access Permit (LAP) to a Dental Hygienist who holds an unrestricted Oregon license, has completed at least 2,500 hours of supervised dental hygiene clinical practice, completes an application approved by the Board, pays the permit fee, and

(1) Certifies on the application that the dental hygienist has completed at least 2,500 hours of supervised dental hygiene clinical practice. Clinical teaching hours shall count toward this requirement; and

(2) Provides the Board with a copy of the applicant's current professional liability policy or declaration page which will include, the policy number and expiration date of the policy.

(3) Notwithstanding OAR 818-035-0025(1), prior to performing any dental hygiene services a Limited Access Permit Dental Hygienist shall examine the patient, gather data, interpret the data to determine the patient's dental hygiene treatment needs and formulate a patient care plan.

Stat. Auth.: ORS 680
Stats. Implemented: ORS 680.200
Hist.: OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-2001, f. & cert. ef. 1-8-01; OBD 3-2007, f. & cert. ef. 11-30-07

818-042-0040
Prohibited Acts

No licensee may authorize any dental assistant to perform the following acts:

(1) Diagnose or plan treatment.

(2) Cut hard or soft tissue.

(3) Any Expanded Function duty (818-042-0070 and 818-042-0090) or Expanded Orthodontic Function duty (818-042-0100) without holding the appropriate certification.

(4) Correct or attempt to correct the malposition or malocclusion of teeth or take any action related to the movement of teeth except as provided by OAR 818-042-0100.

(5) Adjust or attempt to adjust any orthodontic wire, fixed or removable appliance or other structure while it is in the patient's mouth.

(6) Administer or dispense any drug except fluoride, topical anesthetic, desensitizing agents or drugs administered pursuant to OAR 818-026-0060(11), 818-026-0070(11) and as provided in 818-042-0115.

(7) Prescribe any drug.

(8) Place periodontal packs.

(9) Start nitrous oxide.

(10) Remove stains or deposits except as provided in OAR 818-042-0070.

(11) Use ultrasonic equipment intra-orally except as provided in OAR 818-042-0100.

(12) Use a high-speed handpiece or any device that is operated by a high-speed handpiece intra-orally.

(13) Use lasers, except laser-curing lights.

(14) Use air abrasion or air polishing.

(15) Remove teeth or parts of tooth structure.

(16) Cement or bond any fixed prosthetic or orthodontic appliance including bands, brackets, retainers, tooth moving devices, or orthopedic appliances except as provided in 818-042-0100.

(17) Condense and carve permanent restorative material except as provided in OAR 818-042-0095.

(18) Place any type of cord subgingivally.

(19) Take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except diagnostic or opposing models or for the fabrication of temporary or provisional restorations or appliances.

(20) Apply denture relines except as provided in OAR 818-042-0090(2).

(21) Expose radiographs without holding a current Certificate of Radiologic Proficiency issued by the Board (818-042-0050 and 818-042-0060) except while taking a course of instruction approved by the Oregon Department of Human Services, Oregon Public Health Division, and Radiation Protection Services (RPS), or the Oregon Board of Dentistry.

(22) Use the behavior management techniques known as Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient.

(23) Any act in violation of Board statute or rules.

Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 679.020, 679.025 & 679.250
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 3-2007, f. & cert. ef. 11-30-07

818-042-0060
Certification — Radiologic Proficiency

(1) The Board may certify a dental assistant in radiologic proficiency by credential in accordance with OAR 818-042-0120, or if the assistant:

(2) Submits an application on a form approved by the Board, pays the application fee and:

(a) Completes a course of instruction in a program approved by the Oregon Department of Human Services, Oregon Public Health Division, and Radiation Protection Services (RPS), or the Oregon Board of Dentistry, in accordance with OAR 333-106-0055 or submits evidence that RPS recognizes that the equivalent training has been successfully completed;

(b) Passes the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, Inc. (DANB), or comparable exam administered by any other testing entity authorized by the Board, or other comparable requirements approved by the Oregon Board of Dentistry; and

(c) Passes a clinical examination approved by the Board and graded by the Dental Assisting National Board, Inc. (DANB), or any other testing entity authorized by the Board, consisting of exposing, developing and mounting a full mouth series of radiographs (14 to 18 periapical and 4 bitewing radiographs) within one hour and under the supervision of a person permitted to take radiographs in Oregon. No portion of the clinical examination may be completed in advance; a maximum of three retakes is permitted; only the applicant may determine the necessity of retakes. The radiographs should be taken on an adult patient with at least 24 fully erupted teeth. The radiographs must be submitted for grading within six months after they are taken.

Stat. Auth.: ORS 679
Stats. Implemented: ORS 679.020, 679.025 & 679.250
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 3-2007, f. & cert. ef. 11-30-07

818-042-0095
Restorative Functions of Dental Assistants

(1) The Board shall issue a Restorative Functions Certificate (RFC) to a dental assistant who holds an Oregon EFDA Certificate, and has successfully completed:

(a) A Board approved curriculum from a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, and successfully passed the Western Regional Examining Board's Restorative Examination or other equivalent examinations approved by the Board within the last five years, or

(b) If successful passage of the Western Regional Examining Board's Restorative Examination or other equivalent examinations approved by the Board occurred over five years from the date of application, the applicant must submit verification from another state or jurisdiction where the applicant is legally authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least 25 restorative procedures within the immediate five years from the date of application.

(2) A dental assistant may perform the placement and finishing of direct alloy or direct anterior composite restorations, under the indirect supervision of a licensed dentist, after the supervising dentist has prepared the tooth (teeth) for restoration(s):

(a) These functions can only be performed after the patient has given informed consent for the procedure and informed consent for the placement of the restoration by a Restorative Functions Endorsement dental assistant.

(b) Before the patient is released, the final restoration(s) shall be checked by a dentist and documented in the chart.

Stat. Auth.: ORS 679
Stats. Implemented: ORS 679.010 & 679.250(7)
Hist.: OBD 3-2007, f. & cert. ef. 11-30-07

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Oregon Department of Education
Chapter 581

Rule Caption: Allows students in youth care centers operated by public and private agencies to receive educational services.
Adm. Order No.: ODE 28-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 8-1-2007
Rules Amended: 581-015-2595
Subject: Senate Bill 216 was enacted during the 2007 Legislative Session, which deleted language limiting application of the law to youth care centers operated by private agencies. The amended law would permit students to be served in youth care centers operated by public and private agencies.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-015-2595
Education Programs for Children at Residential Youth Care Centers

The purpose of this rule is to ensure that school districts meet the provisions outlined in ORS 336.580.

(1) Definitions: For the purposes of this rule, the following definitions apply:

(a) "Consultation" means scheduled opportunities for the residential youth care center director and the education representative of the district, or its contractor, to share information and concerns about the behavioral characteristics, learning styles, educational needs, and level of educational support for the children residing at the residential youth care center in order to develop, review, and agree upon the education plan;

(b) "District" means the school district in which the residential youth care center is located;

(c) "Least restrictive environment" means serving a child in the educational setting in which the child can reasonably be expected to learn while maintaining integration in the local community;

(d) "Open entry-open exit" means that the education program provides opportunities for students to make progress in obtaining school credits or otherwise meeting their educational goals even though they may enroll or exit at any time during the school year.

(e) "Residential youth care center" means a community program defined in ORS 420.855 and operated by a public or private agency. Residential youth care centers where resident children receive educational services funded under ORS 343.961 are not included under the provisions of this rule;

(2)(a) The school district in which the residential youth care center is located is responsible for developing a plan which meets the provisions outlined in ORS 336.580. The district may contract this responsibility to another school district or ESD. The delivery of educational services may be provided by the residential youth care center;

(b) The plan must be developed by the district or its contractor after consultation with the residential youth care center director and shall address behavioral characteristics, learning styles, and educational needs of the children pursuant to OAR 581-022-1670;

(c) The plan for an education program must provide for open entry-open exit and must provide opportunities for students to earn school credits in accordance with OAR 581-022-1350, 581-022-1131, and 581-023-0008, opportunities for earning a GED when appropriate, or appropriate skill development to ensure educational progress. A continuum of educational services must be available which assure placement of children in the least restrictive environment in which they can reasonably be expected to be successful until they are exempted from compulsory attendance or receive a high school diploma or an equivalent;

(d) The plan must be approved annually by the school district board in which the youth care center is located.

(3) The district must ensure compliance with sections (2) of this rule. If the district does not comply directly or through its contractor, the State Superintendent will find the district deficient and may apply the penalty provided in ORS 327.103.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 336.580
Hist.: EB 9-1988(Temp), f. & cert. ef. 2-17-88; EB 29-1988, f. & cert. ef. 7-5-88; ODE 2-1998, f. & cert. ef. 2-27-98; Renumbered from 581-015-0505, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 28-2007, f. & cert. ef. 12-12-07

Rule Caption: Rule will define process for awarding physical education grants authorized by HB 3141.
Adm. Order No.: ODE 29-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 11-1-2007
Rules Adopted: 581-020-0250
Subject: In 2007, HB 3141 directed the Oregon Department of Education to award grants to school districts and public charter schools for purpose of meeting the physical education requirements of Section 5 of HB 3141. Rule will define terms needing clarity and define process for awarding of grants.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-020-0250
Physical Education Grants

(1) The following definitions apply to this rule:

(a) "Number of minutes" means the number of minutes of physical education instruction that is actually provided to all students kindergarten through grade 8 each school week.

(b) "Physical capacity" means the space, indoors and out, available at the school to provide the prescribed number of minutes per week at a class size that promotes effective practices consistent with the outcomes expected of the instructional programs.

(2) Beginning with the 2017-2018 school year:

(a) Kindergarten through grade 5 students shall participate in at least 150 minutes of physical education during each school week throughout the school year; and

(b) Students in grades 6-8 shall participate in at least 225 minutes of physical education during each school week.

(3) The Department of Education shall distribute Physical Education K-8 Expansion grants for activities related to meeting the physical education requirements for instruction of all students in kindergarten through grade 8 described in subsection (2) of this rule.

(4) The grants may be used to:

(a) Hire teachers who are licensed to teach in physical education; and

(b) Provide in-service training to teachers on the instruction of physical education, the academic content standards for physical education and the minimum number of minutes requirement using evidence-based programs.

(5) School districts and public charter schools shall identify in the grant application of the district or school the goals of the district or school for increases in the number minutes per week for the entire school year and shall outline how the district or school plans to use the resources provided from the grant to reach the performance goals.

(6) In evaluating the grant applications, the Department shall consider:

(a) The physical capacity readiness of the district or public charter school to implement the goals set by the district or school for increases in physical education instruction;

(b) Whether there is 100% teacher support of each grant within the school where the grant will be used;

(c) The activities identified to meet the stated goals;

(d) Consistency with the district's Continuous Improvement Plan; and

(e) Consistency with the district's Wellness Plan.

(7) Each district or public charter school shall account for the grant amounts it receives, and shall apply these amounts to pay for activities described in the district or school's grant application.

(8) Each district or public charter school may use the grant funds only for schools that offer kindergarten through grade 8 or a combination of those grades and only for those purposes described in the approved district or school application.

(9) A district or public charter school may apply for a second year continuation grant. In addition to the criteria listed in subsection (6) of this rule, the department in evaluating an application for a second year continuation grant shall consider whether the district or school has shown continued commitment and fidelity to the district's or school's application from the prior year.

(10) To receive a grant under this rule, the district or public charter school shall agree to continue to offer, after the time period of the grant, the required number of minutes of physical education instruction described in subsection (2) of this rule at those schools for which the district or school received the grant funds.

(11) The State Superintendent of Public Instruction shall resolve any issues arising from the administration of the School Improvement Fund grants not specifically addressed by this rule and the Superintendent's determination shall be final.

Stat. Auth.: ORS 326.051
Stats. Implemented: Sec. 10, ch. 839, OL 2007
Hist.: ODE 29-2007, f. & cert. ef. 12-12-07

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Rule Caption: Rule will define terms and process for collection and reporting of physical education data.
Adm. Order No.: ODE 30-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 11-1-2007
Rules Adopted: 581-022-1661
Subject: In 2007, HB 3141 directed the Oregon Department of Education to collect data from school districts concerning the number of minutes of physical education that are provided to students in Kindergarten through grade 8 each school week, the physical capacity of schools to provide required minutes to students in kindergarten through grade 8 and what additional facilities are required by public schools to provide the required number of minutes to students each school week. Rule will define terms needing clarity and define process for collection and reporting of data.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-1661
Report on Physical Education Data

(1) The following definitions apply to this rule:

(a) "Additional facilities" means the added space to the school needed to provide the minimum number of minutes of physical education instruction per week.

(b) "Number of minutes" means the number of minutes of physical education instruction that is actually provided to all students kindergarten through grade 8 each school week.

(c) "Physical capacity" means the space, indoors and out, available at the school to provide the prescribed number of minutes per at a class size that promotes effective practices consistent with the outcomes expected of the instructional programs.

(2) Beginning with the 2007-2008 school year each school district shall report to the Department of Education annually:

(a) The number of minutes of physical education that are provided to students in kindergarten through grade 8 each school week in each public school within the district;

(b) The physical capacity of public schools to provide students in kindergarten through grade 5 with at least 150 minutes of physical education during each school week and to provide students in grades 6 through 8 with at least 225 minutes of physical education during each school week; and

(c) The additional facilities required by public schools to provide physical education to students for the minimum number of minutes as described in paragraph (b) of this subsection.

(3) Prior to February 1, 2009, the Department shall report to the Legislative Assembly on the data collected under this rule for the 2007-2008 school year. Prior to February 1 of each odd-number year beginning with 2011, the Department shall report to the Legislative Assembly on the data collected under this rule for the prior two school years.

Stat. Auth.: ORS 326.051
Stats. Implemented: Sec. 1-3, ch. 839, OL 2007
Hist.: ODE 30-2007, f. & cert. ef. 12-12-07

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Rule Caption: Establishes complaint procedures for school districts and process to appeal local decisions to state.
Adm. Order No.: ODE 31-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 8-1-2007
Rules Adopted: 581-022-1941
Rules Amended: 581-022-1940
Subject: The proposed amendments would clarify the requirements, processes and timelines for filing a complaint with the Department of Education regarding the actions of a local school district. The proposed rule would require school districts to adopt and implement a process for receiving and processing complaints from district constituents. The rule would establish minimum requirements and timelines for such processes.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-1940
Appeal Procedure

(1) A complainant may direct an appeal of a final decision by a school district to the State Superintendent of Public Instruction if:

(a) The complaint alleges a violation of standards of the Oregon Administrative Rules, chapter 581, division 022; or

(b) A violation of other statutory or administrative rule requirements for which the State Superintendent has appeal responsibilities.

(2) The appeal must be in writing and contain:

(a) The name and address of the person bringing the appeal, and the district in which that person resides;

(b) The name and address of the district which is alleged to have violated standards; and

(c) A brief statement indicating each standard the district is alleged to have violated and how the district is alleged to have violated it.

(3) A decision is deemed final if:

(a) The district has failed to comply with the procedural time limits in its written complaint process;

(b) In a multi-step district complaint process, the district fails to render a written decision within 30 days of the submission of the complaint at each step; or

(c) The district fails to resolve a complaint within 90 days of the initial filing of a written complaint, regardless of the number of steps in the district complaint process.

(4) Upon receipt of the appeal the State Superintendent will determine whether a violation of standards has been properly alleged and the requirements of section (2) of this rule have been satisfied.

(a) If the State Superintendent determines that the facts of complaint, if true, would be a violation of a standard, the appeal will be accepted and the procedures listed in this rule in the following sections will be applied;

(b) If the State Superintendent determines that the complaint, even if true, would not violate a standard, the appeal will not be accepted. In either case, the State Superintendent will give notice of the determination to the complainant and the school district.

(5) Within 30 days of receipt of notice of the State Superintendent's acceptance of the appeal, the district shall submit a written report with the State Superintendent which shall include:

(a) A statement of facts;

(b) A statement of district action, if any, taken in response to the complaint, or if none was taken, the reason(s) therefore;

(c) A stipulation, if one was reached, of the settlement of the complaint; and

(d) A list of any complaints filed with another agency by the party, concerning the subject of the appeal.

(6) The State Superintendent may for good cause extend the time for the filing of a report by the district.

(7) Upon receipt of the district's report, the State Superintendent will investigate the allegations of the complaint to the extent necessary including but not limited to:

(a) Authorizing an on-site investigation; and

(b) Conducting interviews, meetings and surveys and reviewing documents, data and district procedures.

(8) The State Superintendent will issue a written decision within 60 days of receiving the district's report that addresses each allegation in the complaint and contains reasons for the State Superintendent's decision as to whether or not the district is deficient. If the schools of the district are not open during the 60-day period due to summer vacation, the decision shall be issued within 60 days after the beginning of the school year.

(9) Notwithstanding section (8) of this rule, the State Superintendent may extend the time period for issuing a written decision on a complaint to a time period that is more than 60 days if the State Superintendent has the consent of the complainant and the allegation concerns a comprehensive or widespread deficiency and more extensive investigation is needed than may be reasonably completed within 60days. The State Superintendent shall prepare a timeline and plan for investigation and provide copies to the complainant and district within two weeks of receiving the district's report.

(10) If a deficiency is found, the State Superintendent's written decision will include any necessary corrective action to be undertaken by the district as well as any documentation to be supplied to ensure that the corrective action has occurred.

(11) If a deficiency is not corrected, the provisions of ORS 327.103 will apply.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 327.103 & 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 31-2007, f. & cert. ef. 12-12-07

581-022-1941
Complaint Procedures

(1) Each school district must establish a process for the prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in the school district. The process must be in writing and state clearly who within the school district has the responsibility for responding to the complaint.

(2) A school district's complaint procedure must specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period for each step as well as the overall time period for completing the procedure.

(3) A school district's complaint procedure may distinguish between those complaints that may be appealed under OAR 581-022-1940 and other complaints.

(4) A school district's complaint procedure may include mediation or other alternative dispute resolution processes.

(5) The procedure for hearing and acting on complaints that may be appealed under OAR 581-022-1940 must include the following:

(a) A point at which the decision is final;

(b) A provision for the complainant receive written notice that the district's decision may be appealed to the State Superintendent of Public Instruction under OAR 581-022-1940; and

(c) A written decision that clearly establishes the legal basis for the decision, findings of fact and conclusions of law.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 327.103 & 326.051
Hist.: ODE 31-2007, f. & cert. ef. 12-12-07

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Rule Caption: Increases floor for eligibility to receive reimbursement from high cost disabilities fund from $25,000 to $30,000.
Adm. Order No.: ODE 32-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 11-1-2007
Rules Amended: 581-023-0104
Subject: ORS 327.348 increases the amount that a school district must incur before the district can claim funds from the High Cost Disability funds from $25,000 to $30,000. The proposed amendment makes that revision.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-023-0104
Reimbursement to School Districts for Children with High Cost Disabilities

(1) Consistent with the provisions of this rule, a school district may apply to the Department for reimbursement from the high cost disability fund when combined district and ESD general fund expenditures for special education and related services for any student eligible and served under IDEA exceed $30,000 in a fiscal year.

(2) To be eligible for the reimbursement, the school district shall have:

(a) Determined that the student is eligible for special education and related services under one of the disability categories set forth in OAR 581-015-2130 through 581-015-2180;

(b) Provided services to the student on the basis of the student's current or previous individualized education program in effect during the fiscal year; and

(c) Submitted a timely application as per Department requirements.

(3) The Department shall only distribute the reimbursement to a school district for:

(a) Expenditures exceeding $30,000 for special education and related services that are required by the individualized education program of an individual student with a disability. Qualifying expenditures include those incurred by the school district and those incurred by the ESD through the resolution process.

(b) Transportation expenditures, exclusive of local, state and federal reimbursements.

(c) Special education general fund expenditures, exclusive of federal sources, as set forth in the Maintenance of Effort requirements of the federal IDEA. District and school level administrative expenditures (e.g. salaries) may be included by first averaging the expenditures across all the special education students enrolled as identified on the most recent SECC, then applying the average to the student for whom the district is requesting reimbursement. Similarly, teacher and educational assistant salaries must be averaged across all the special education students for whom the teacher or assistant provided instruction during the school year.

(4) Expenditures not eligible for reimbursement include:

(a) Regional Program expenditures;

(b) Reimbursed Medicaid expenditures;

(c) Expenditures associated with facility operations and maintenance (e.g., heat, electricity, custodial services)

(5) In December of each year, school districts will provide the Department with an estimate of the aggregate number of students eligible for reimbursement from the High Cost Disabilities Fund and the total estimated aggregate amount of reimbursable expenditures, including ESD expenditures that will be incurred during the school year. As requested by the Department, districts will also report during the school year, updated information listing eligible students, SDID, names, estimated expenditures, and other information as requested.

(6) A school district may submit an application for each student identified who meets the criteria set forth in section (2) and (3) of this rule.

(7) The Department shall provide school districts with an application that shall require documentation that identifies all the school districts and ESD's expenditures for each student. Additional supporting documentation, subject to ODE review, may include a copy of the contract(s) between the school district and the service provider(s), invoices reflecting actual expenses, and any additional documentation of expenditures incurred as determined by the Department. These documents must be maintained at the District for at least three years after the submission of the student-level data.

(8) The Department shall develop and implement a process for reviewing applications.

(9) The Department shall prorate the distribution of funds for each school year to eligible school districts if sufficient funds are not available.

(10) Based on the outcome of section (8), the Department will exclude from reimbursement those expenditures deemed excessive, ineligible or unsubstantiated.

(11) Funds will be distributed to districts on or before May 15 for the current fiscal based on expenditure estimates. Adjustments will be made May 15 of the following year based on audited data and Department reviews of district records.

(12) The decision of the Department regarding reimbursement of costs pursuant to this rule shall be final.

Stat. Auth.: ORS 326.051, 327.348
Stats. Implemented: ORS 327.348
Hist.: ODE 6-2004, f. & cert. ef. 3-15-04; ODE 32-2007, f. & cert. ef. 12-12-07

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Rule Caption: Establishes requirements for ESD local service plans.
Adm. Order No.: ODE 33-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 8-1-0007
Rules Amended: 581-024-0285
Subject: The proposed amendment to OAR 581-024 0285 will implement the requirement that education service districts develop and approve local service plans as part of their annual budget development and adoption process.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-024-0285
Local Service Plans

(1) The district board must develop and adopt a local service plan pursuant to ORS 334.175 and this rule.

(2) Following adoption by the district board, the local service plan must be approved by the boards of the component school districts by resolution on or before March 1 pursuant to ORS 334.175(5)(b). The local service plan must include all services and facilities provided by an ESD, including the core services as defined in ORS 334.175(2) and section (7) of this rule, those services required by state and federal law and services provided under contract to component school districts, non-component school districts and other public and private entities and must be approved annually by the ESD board and the component school districts. A local service plan shall also contain annual performance measures. A local service plan must

be approved by the affirmative vote of at least two thirds of the boards of the ESD's component school districts, representing at least 50 percent of the total number of students enrolled in component school districts of the ESD.

(3) Pursuant to ORS 334.177 an education service district board shall expend at least 90 percent of all amounts received from the State School Fund and at least 90 percent of all amounts considered to be local revenues of an education service district on services or programs that have been adopted by the district board in the local service plan and approved by the component school districts of the education service district through the resolution process described in ORS 334.175. For purposes of this section, amounts considered to be local revenues of an education service district are those local revenues defined in ORS 327.019(1)(b) less the amounts required to be distributed to component school districts under ORS 327.019(8).

(4) Pursuant to ORS 334.177, an education service district board shall expend 100 percent of all amounts received from the School Improvement Fund on services or programs that have been adopted by the district board in the local service plan and approved by the boards of the component school districts of the education service district through the resolution process described in ORS 334.175.

(5) Appropriate allocated costs of personnel, supplies, materials, equipment, and facilities associated with providing resolution services may be allocated to the local service plan and included in the 90% calculation.

(6) An approved local service plan may be amended at any time by the affirmative vote of at least two thirds of the boards of the ESD's component school districts, representing at least 50 percent of the total number of students enrolled in component school districts of the ESD.

(7) "Core services" means those services ESDs are required to offer component school districts, including:

(a) Programs for children with special needs, including but not limited to special education services, services for at-risk students and professional development for employees who provide those services;

(b) Technology support for component school districts and the individual technology plans of those districts, including but not limited to technology infrastructure services, data services, instructional technology services, distance learning and professional development for employees who provide those services;

(c) School improvement services for component school districts, including but not limited to services designed to support component school districts in meeting the requirements of state and federal law, services designed to allow the education service district to participate in and facilitate a review of the state and federal standards related to the provision of a quality education by component school districts, services designed to support and facilitate continuous school improvement planning, services designed to address schoolwide behavior and climate issues and professional technical education and professional development for employees who provide those services;

(d) Administrative and support services for component school districts, including but not limited to services designed to consolidate component school district business functions, liaison services between the Department of Education and component school districts and registration of children being taught by private teachers, parents or legal guardians pursuant to ORS 339.035; and

(e) Other services that an education service district is required to provide by state or federal law, including but not limited to services required under ORS 339.005 to 339.090.

(8) An ESD may provide entrepreneurial services and facilities to non-component school districts and other public and private entities pursuant to ORS 334.185. An ESD may provide entrepreneurial services and facilities if:

(a) The entrepreneurial services or facilities are included and identified in an approved local service plan;

(b) The entrepreneurial services or facilities are provided pursuant to a business plan, which must include a description of each service and facility, a statement of the projected expense incurred and revenue generated by the service or facility, a statement of the expected benefit to component school districts, an annual financial report provided to component districts and a statement of the source of funding for the service or facility; and

(c) The primary purpose of the entrepreneurial services or facilities is to address a need of component school districts.

(9) Prior to June 30 of each year, an ESD shall submit to the Department of Education the local service plan of the ESD adopted pursuant to ORS 334.175 and this rule.

Stat. Auth.: ORS 326.051, 334.005 & 334.175
Stats. Implemented: ORS 334.005 & 334.175
Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06; ODE 33-2007, f. & cert. ef. 12-12-07

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Rule Caption: Deletes 7 student minimum and 90 day definition for long term care and treatment centers.
Adm. Order No.: ODE 34-2007
Filed with Sec. of State: 12-12-2007
Certified to be Effective: 12-12-07
Notice Publication Date: 8-1-2007
Rules Amended: 581-015-2570
Subject: The proposed amendment to OAR 581-015-2570 would eliminate the requirement that long term care and treatment serve at least seven students in order to be eligible to receive state funds. Further the amendment would delete the definition for "long term" to allow services to be provided to students placed for less than 90 days. The proposed revisions are based on advice received from agency legal counsel.
Rules Coordinator: Paula Merritt—(503) 947-5746

581-015-2570
Criteria for Funding of Educational Programs for Children Placed by State Agencies for Psychiatric Day and Residential Treatment

(1) Definitions:

(a) "Contracting school district" means the school district, the education service district or a program under the auspices of the State Board of Higher Education that contracts with the Department of Education for the provision of educational services.

(b) "Education program" means those activities provided under contract between a school district or education service district and the Department of Education, which provide a public education to preschool or school-aged children in a treatment program;

(c) "Psychiatric day treatment programs" are defined in OAR 309-032-1110(68);

(d) "Psychiatric residential treatment facility" is defined in OAR 309-032-1110(69).

(e) "Resident district" means the resident district as defined under ORS 339.133.

(f) "State agency" means the Department of Human Services or the Oregon Youth Authority.

(g) "Treatment program" means the long-term day or residential treatment services provided by a private nonprofit or public agency and provided under contract with a state agency or designee of the state agency. Intermediate care facilities are excluded from this definition;

(2) The purposes of the education program under this rule are as follows:

(a) To serve children placed for needs other than educational;

(b) To serve children who require schooling in a protected environment in order to protect the health and safety of themselves and/or others; and

(c) To extend the treatment process into the school day to fully implement the treatment plan.

(3) Eligibility criteria for funding:

(a) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the definition of long-term provided in this rule, are eligible for funding only when attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;

(b) To be eligible for an education program, a treatment program must meet all of the following criteria:

(A) Either:

(i) A letter of approval from the Office of Mental Health and Addiction Services certifying that the psychiatric day treatment program or psychiatric residential treatment facility meets standards applicable for intensive children's mental health services under OAR 309-032-1120; or

(ii) Documentation that the program provides long-term residential treatment of children placed by a state agency or designee of the state agency;

(B) Meet state licensing requirements for a private child-caring agency;

(C) Be operated by a nonprofit corporation or a political subdivision of the state;

(D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.850 relating to the prevention of discrimination; and

(E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.

(4) Approval:

(a) The State Superintendent of Public Instruction is responsible for approving the educational program under this rule.

(A) The State Superintendent of Public Instruction must ensure that the contracting school district meets the requirements in subsection (4)(b).

(B) The contracting school district must ensure that the education program is operated in compliance with a written agreement with the Department that specifies the following services to be provided:

(i) Each child who is not a child with a disability under OAR 581-015-2130 through 581-015-2180: has a personalized educational plan that includes assessment, goals, services, and timelines;

(ii) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;

(iii) Children have opportunities to be educated in the least restrictive environment; and

(iv) The education program is developed and implemented in conjunction with the treatment program.

(b) Final determinations concerning the eligibility of treatment programs for education funding are at the discretion of the State Superintendent of Public Instruction.

(5) Funding Guidelines:

(a) For the purpose of allocation of state school funds under this rule, the following definitions apply:

(A) "Average daily membership" means the membership of a school as defined in ORS 327.006(3);

(B) "Net operating expenditure" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district or in the case of an ESD, its districts, which contract for education services offered in the program;

(C) "Service level factors" means:

(i) 1.75 for students in Psychiatric Day Treatment Programs;

(ii) 2.00 for students in residential facilities.

(b) A formula will be employed to reflect the needs of the population served and will identify state school funds available for the development of an approved contract.

(A) The formula is: (Service level factors) x (the contracting district's average net operating expenditure) x (average daily membership as specified in the contract with the Department of Human Services or Oregon Youth Authority) = ODE contracted amount;

(B) The factor represents an equitable division of funds available to the Department for programs eligible under these criteria.

(c) A special needs fund is established at the Oregon Department of Education which will be up to five percent of the total monies made available for this program:

(A) Individual applications may be made to this fund to cover unexpected, emergency expenses;

(B) Funds not utilized under this subsection for the first year of the biennium will be carried forward to the next fiscal year.

(6) Funding Procedures: Upon receipt of an application for funding under this rule, the Department will:

(a) Within a reasonable time determine if the treatment program meets the criteria for funding in this rule;

(b) If necessary, request additional funding or a limitation for funding from the State Legislature; and

(c) Fund the program only when funds are forthcoming.

(7) Resident District Obligations:

(a) The resident district is responsible for the provision and/or payment of daily transportation to and from a psychiatric day treatment education program in which a resident student is enrolled:

(A) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221;

(B) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district;

(C) Transportation must be provided by the resident district even though the education calendar of the psychiatric day treatment program differs from that of the resident district;

(b) The resident district may claim reimbursement for transportation costs under ORS 327.033;

(c) The resident district must participate in all individualized education program or personalized education plan meetings involving its students.

(8) Due Process Hearings:

(a) The contracting school district is the "school district" for the purposes of carrying out the procedures required by OAR 581-015-2340 through 581-015-2385;

(b) The issues of the hearing do not include the placement by the state agency or its designee for long-term treatment;

(c) Costs under OAR 581-015-2385 that are in excess of the contracted educational program budget will be paid by the Oregon Department of Education;

(d) The Oregon Department of Education and the Department of Human Services or Oregon Youth Authority, respectively, will be parties to such proceedings and will be responsible to provide additional services ordered by an administrative law judge that are beyond the funding provided to the contracting school district under this rule.

Stat. Auth.: ORS 343.961
Stats. Implemented: ORS 343.961
Hist.: 1EB 23-1986, f. & ef. 7-14-86; EB 7-1988, f. & cert. ef. 1-15-88; EB 22-1990, f. & cert. ef. 5-18-90; EB 10-1991(Temp), f. & cert. ef. 7-15-91; EB 31-1991, f. & cert. ef. 12-18-91; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0044, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 34-2007, f. & cert. ef. 12-12-07

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Adopt, amend and suspend rules creating new Direct Shipper Permit and Wine Self-Distribution Permit.
Adm. Order No.: OLCC 23-2007(Temp)
Filed with Sec. of State: 12-14-2007
Certified to be Effective: 1-1-08 thru 6-28-08
Notice Publication Date:
Rules Adopted: 845-005-0416, 845-005-0417, 845-005-0425, 845-005-0426, 845-006-0391, 845-006-0392, 845-006-0400, 845-006-0401, 845-015-0141
Rules Amended: 845-005-0420, 845-005-0424, 845-006-0396
Rules Suspended: 845-005-0422, 845-005-0423, 845-006-0395, 845-006-0398
Subject: The 2007 legislature passed HB 2171 and HB 2677, with the statutory changes becoming effective January 1, 2008. The subject of this legislation and subsequent rule changes is the creation of the new Direct Shipper Permit and Wine Self-Distribution Permit. Staff is further proposing amendments to the current alcoholic beverage delivery rules so as to streamline the rules and make the malt beverage delivery rules parallel to the wine and cider delivery rules. We need to adopt, amend and suspend these rules on a temporary basis in order to comply with the statutory changes made to ORS 471.229 and Chapter 651, (2007 Laws) by HB 2171 and HB 2677, which become effective January 1, 2008.
Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-005-0416
Definitions

As used in OAR 845-005-0416 through 845-005-0426:

(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.

(2) "Same-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine, or cider on the same day the person receives the order from the customer.

(3) "Next-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine, or cider after the day the person receives the order from the customer.

(4) "For-hire carrier" means any person or company who holds itself out to the public as willing to transport property in return for compensation.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.229
Hist.: OLCC 23-2007(Temp), f. 12-14-08, cert. ef. 1-1-08 thru 6-28-08

845-005-0417
Qualifications for Direct Shipper Permit for Wine and Cider

ORS 471.229 allows a person with a Direct Shipper Permit to sell and ship wine or cider directly to a resident of Oregon who is at least 21 years of age. This rule sets the qualifications to obtain a Direct Shipper Permit.

(1) Only the following persons may qualify for a Direct Shipper Permit:

(a) A person holding a winery license issued under ORS 471.223; a grower sales privilege license issued under ORS 471.227; or an off-premises license issued under ORS 471.186.

(b) A person holding a temporary sales license issued under ORS 471.190 that is also a nonprofit trade association and that has a membership primarily composed of persons holding winery licenses issued under ORS 471.223 and grower sales privilege licenses issued under ORS 471.227.

(c) A person holding a license issued by another state within the United States that authorizes the manufacture of wine or cider.

(d) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the licensee.

(e) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider at retail for consumption off the licensed premises.

(2) Application. A person must make application to the Commission upon forms to be furnished by the Commission and receive a Direct Shipper Permit from the Commission before shipping any wine or cider directly to residents of Oregon. The application shall include:

(a) If the application is by a person described under subsection (1)(a) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392.

(b) If the application is by a person described under subsection (1)(b) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392; a bond or other security described in ORS 471.155 in the minimum amount of $1,000; and a $50 fee.

(c) If the application is by a person described under subsection (1)(c), (1)(d), or (1)(e) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392; a true copy of their license; a bond or other security described in ORS 471.155 in the minimum amount of $1,000; and a $50 fee.

(3) Application for Same-Day Delivery. A person who holds, or is applying for, a Direct Shipper Permit who intends to provide the service of same-day delivery of wine or cider to Oregon residents must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application for same-day delivery approval shall include a statement that the person understands and will follow the same-day delivery requirements listed in OAR 845-006-0392.

(4) A Direct Shipper Permit must be renewed annually.

(a) If the person holds the permit based on a license issued by another state, the permit may be renewed by paying a $50 renewal fee, providing the Commission with a true copy of a current license issued to the person by the other state, and providing proof of a bond or other security described in ORS 471.155 in the minimum amount of $1,000.

(b) If the person holds the permit based on an annual license issued by this state, the permit may be renewed at the same time that the license is renewed.

(5) The Commission may refuse to process any application required under this rule if the application is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(6) The Commission may revoke or refuse to issue or renew a Direct Shipper Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.155 & ORS 471.229
Hist.: OLCC 23-2007(Temp), f. 12-14-08, cert. ef. 1-1-08 thru 6-28-08

845-005-0420
Qualifications for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

ORS 471.305 allows certain licensees of the Commission to deliver malt beverages to customers. This rule describes the qualifications to make same-day and next-day delivery of malt beverages to residents of Oregon.

(1) Only a holder of one the following licenses may qualify to deliver malt beverages to residents of Oregon:

(a) An off-premises sales license issued under ORS 471.186.

(b) A brewery-public house license issued under ORS 471.200.

(2) Notice of Next-Day Delivery. A licensee that intends to provide the service of next-day delivery of malt beverages to Oregon residents must notify the Commission in writing prior to beginning the next-day delivery service that it intends to provide this service. All deliveries must meet the requirements set forth in OAR 845-006-0396 for next-day delivery.

(3) Application for Same-Day Delivery. A licensee that intends to provide the service of same-day delivery of malt beverages to Oregon residents must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application shall include:

(a) A statement that the person understands and will follow the requirements for same-day delivery listed in OAR 845-006-0396.

(4) The Commission may refuse to process any application not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-005-0422
Next-Day Delivery of Package Alcohol; Wine and Cider Delivery by Winery Licensee

(1) ORS 471.305 restricts retail wine, cider, and malt beverage sales to the licensed premises. It allows deliveries within Oregon "made by the licensee to customers pursuant to bona fide orders received on the premises prior to delivery."

(2) The licensee's license must include off-premises sales privileges for malt beverages to deliver malt beverages, off-premises sales privileges for wine to deliver wine or cider.

(3) A Winery licensee is authorized to ship not more than two cases of wine or cider containing not more than nine liters per case per month to any resident of this state who is at least 21 years of age, for personal use and not for resale.

(4) Before making the first delivery, the licensee must notify the Commission on a Commission-supplied form that the licensee plans to provide this delivery service.

(5) The licensee may not deliver kegs without prior written approval for each delivery.

(6) As used in this rule, "made by the licensee" includes deliveries by the licensee's employee who holds a current Service Permit and by a common carrier who has a Commission-approved delivery plan. Common carrier delivery plans are assessed under the guidelines of OAR 845-005-0424.

(7) The licensee may make deliveries only in compliance with the requirements of OAR 845-006-0398.

Stat. Auth.: ORS 471, including 471.030, 471.305 & 471.730(1),(5) & (6)
Stats. Implemented: ORS 471.223 & 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; Suspended by OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-005-0423
Wine Shipment by Out-of-State Licensee

(1) A retailer or winery licensed in another state that wants to ship wine or cider to Oregon residents as ORS 471.229 allows must complete a Commission-supplied application for an Out-of-State Wine Shipper license. There is no fee for this license. The license is valid for five years and expires at 12 midnight on December 31 of the fifth year following issuance.

(2) An Out-of-State Wine Shipper licensee:

(a) Is authorized to ship not more than two cases of wine or cider containing not more than nine liters per case per month to any resident of this state who is at least 21 years of age, for personal use and not for resale;

(b) May accept written or telephone orders for wine or cider. The licensee must wait until the next day to ship a telephone order;

(c) May use only a common carrier that has a Commission-approved delivery plan. Requests for approval of common carrier delivery plans are evaluated under the guidelines of OAR 845-005-0424;

(d) Must prominently label each shipping container of any wine or cider shipped under this subsection: "Alcoholic Beverages — Do not deliver to a person who is under 21 years of age or visibly intoxicated."

(3) The Commission may cancel or suspend a wine shipper's license:

(a) If the delivery person delivers to a minor or a visibly intoxicated person or does not comply with subsection (2)(c) of this rule;

(b) If the licensee fails to comply with the requirements of ORS 471.229 and all other Oregon alcoholic beverage statutes and rules applicable to the sale of wine or cider in Oregon.

Stat. Auth.: ORS 471, including 471.030, 471.229, 471.730(1), (5) & (6)
Stat. Implemented: ORS 471.229
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; Suspended by OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-005-0424
Guidelines for Approval of a For-Hire Carrier's Plan for Delivery of Malt Beverages, Wine, or Cider

The Commission will evaluate and may approve a for-hire carrier's plan to deliver malt beverages, wine, and cider to residents of Oregon and licensees of the Commission.

(1) Delivery to a resident of Oregon. In order to deliver malt beverages, wine, or cider to a resident of Oregon, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine, or cider to a resident of Oregon. The application shall include the for-hire carrier's plan for ensuring that:

(a) Only persons age 18 or over will be used to deliver the alcohol to the resident.

(b) The person used to deliver the alcohol will verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age.

(c) The person used to deliver the alcohol will verify that the person receiving the alcohol is not visibly intoxicated.

(d) All alcohol is received by the resident before 9:00 pm.

(e) The alcohol is delivered only to a home or business with a permanent address.

(f) Any package containing alcohol is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery."

(g) The person delivering the alcohol to the resident of Oregon will complete a form that must be retained by the for-hire carrier for a minimum of two years from the date of delivering the alcohol. The form must include:

(A) A statement the person receiving the alcohol is required to sign that says "I am age 21 years or older;"

(B) A place for recording the date and time the alcohol was delivered to the resident;

(C) A place for recording the amount of alcohol delivered to the resident;

(D) A place for recording the name of the person delivering the alcohol to the resident;

(E) A place for recording the name, birth date, and delivery address of the person receiving the alcohol;

(F) A place for recording that the person delivering the alcohol verified by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(G) A place for recording the government and type of photo identification accepted; and

(H) A place for verifying that the person receiving the alcohol is not visibly intoxicated.

(2) Delivery to a licensee of the Commission. In order to deliver malt beverages, wine, or cider to a licensee of the Commission, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine, or cider to a licensee. The application shall include the for-hire carrier's plan for ensuring that:

(a) All alcohol is delivered only to an address with a current and valid liquor license issued by the Commission; and

(b) For wine or cider delivered to a retail licensee of the Commission from a state within the United States other than Oregon, that the person shipping the wine or cider holds a valid Wine Self-Distribution Permit issued by the Commission and the retail licensee holds a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit.

(3) The Commission may revoke its approval of a for-hire carrier's plan if the for-hire carrier fails to follow the plan approved by the Commission or comply with the provisions of this rule. A revocation under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.229
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-005-0425
Qualifications for Wine Self-Distribution Permit for Wine and Cider

(Note: from 2007 Oregon Laws, Chapter 651 and HB 2677) ORS 471 allows a manufacturer of wine or cider with a Wine Self-Distribution Permit to sell and ship wine and cider that the manufacturer produced directly to the Commission or to retail licensees of the Commission who hold a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit. This rule sets the qualifications to obtain a Wine Self-Distribution Permit.

(1) In order to qualify for a Wine Self-Distribution Permit, a person must:

(a) Hold a valid license issued by another state within the United States that authorizes the manufacture of wine or cider;

(b) Hold a valid Certificate of Approval issued under ORS 471.289; and

(c) Hold a bond or other security, as described in ORS 471.155, in the minimum amount of $1,000.

(2) Application. A person must make application to the Commission upon forms to be furnished by the Commission and receive a Wine Self-Distribution Permit from the Commission before shipping any wine or cider directly to retail licensees of the Commission. The application shall include:

(a) A true copy of the applicant's license and any information required by the Commission to establish that the license authorizes the manufacture of wine or cider;

(b) A statement that the person understands and will follow the requirements listed in OAR 845-006-0400;

(c) Proof of a valid Certificate of Approval issued under ORS 471.289;

(d) A $100 fee; and

(e) Proof of posting a bond or other security, as described in ORS 471.155, in the minimum amount of $1,000.

(3) The Commission may refuse to process any application required under this rule that is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(4) The Commission may revoke or refuse to issue or renew a Wine Self-Distribution Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471
Hist.: OLCC 23-2007(Temp), f. 12-14-08, cert. ef. 1-1-08 thru 6-28-08

845-005-0426
Qualifications for Retailer Endorsement to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit

(Note: from 2007 Oregon Laws, Chapter 651 and HB 2677) ORS 471 allows a retail licensee to receive wine or cider from the holder of a Wine Self-Distribution Permit if the retail licensee has received prior authorization from the Commission via license endorsement. This rule sets the qualifications to obtain this endorsement.

(1) Only retail licensees with one or more of the following licenses may qualify to receive wine or cider from the holder of a Wine Self-Distribution Permit:

(a) An off-premises license issued under ORS 471.186.

(b) A full on-premises licensed issued under ORS 471.175.

(c) A limited on-premises license issued under ORS 471.178.

(d) A brewery-public house license issued under ORS 471.200.

(e) A temporary sales license issued under ORS 471.190.

(2) Application. A retail licensee must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before receiving any wine or cider from a person with a Wine Self-Distribution Permit. The application shall include:

(a) A statement that the applicant understands and will comply with the reporting requirements listed in OAR 845-006-0401.

(3) The Commission may refuse to process any application not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471 & ORS 471.404
Hist.: OLCC 23-2007(Temp), f. 12-14-08, cert. ef. 1-1-08 thru 6-28-08

845-006-0391
Definitions

As used in OAR 845-006-0391through 845-006-0401:

(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.

(2) "Same-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine, or cider on the same day the person receives the order from the customer.

(3) "Next-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine, or cider after the day the person receives the order from the customer.

(4) "For-hire carrier" means any person or company who holds itself out to the public as willing to transport property in return for compensation.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.229
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-006-0392
Requirements for Direct Shipment of Wine and Cider

OAR 845-005-0417 sets the qualifications to obtain a Direct Shipper Permit. This rule sets the requirements for direct shipment.

(1) A person holding a Direct Shipper Permit must ship:

(a) Only wine or cider and only in manufacturer-sealed containers;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) Not more than a total of two cases of wine or cider containing not more than nine liters per case per month to any resident of Oregon who is at least 21 years of age;

(e) The product in a container that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery;"

(f) Only pursuant to an order for the wine or cider that is received by the permit holder prior to shipment of the alcohol;

(g) Only for next-day delivery, unless the permit holder has been approved for same-day delivery; and

(h) Only to a home or business with a permanent address.

(2) If the permit holder ships via a for-hire carrier, in addition to complying with subsection (1) of this rule, the permit holder must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424. A for-hire carrier may not be used for same-day delivery.

(3) If the permit holder does not use a for-hire carrier, in addition to complying with subsection (1) of this rule, only the permit holder or an employee of the permit holder may deliver the wine or cider to the resident of Oregon. Also, the person making the delivery of the wine or cider must:

(a) Be age 21 or over;

(b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) Verify that the person receiving the alcohol is not visibly intoxicated; and

(d) Complete a Commission-approved form that must be retained by the permit holder for a minimum of two years from the date of delivery of the alcohol to the resident. The form must include:

(A) A statement that the person receiving the alcohol is required to sign that says "I am age 21 years or older;"

(B) A place for recording the date and time the alcohol was delivered to the resident;

(C) A place for recording the amount of wine or cider delivered to the resident;

(D) A place for recording the name of the person delivering the alcohol to the resident;

(E) A place for recording the name, birth date, and delivery address of the person receiving the alcohol;

(F) A place for recording that the person delivering the alcohol verified by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(G) A place for recording the government and type of photo identification accepted; and

(H) A place for verifying that the person receiving the alcohol is not visibly intoxicated.

(4) Same-day delivery. If the permit holder has also obtained approval to make same-day delivery of wine or cider, in addition to complying with subsections (1) and (3) of this rule, the permit holder must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered;

(b) Ensure that the wine and cider is delivered to the resident before 9:00 pm; and

(c) Utilize only the permit holder or the permit holder's employee to deliver the wine or cider to the resident.

(5) A permit holder must:

(a) Keep a record of all shipment of wine and cider to Oregon residents, including the name of the resident, the date of shipment and the amount of wine or cider shipped, and shall retain such records for a minimum of two years from the date of the shipment. The permit holder must allow the Commission to audit the permit holder's records upon request and shall make those records available to the Commission in this state;

(b) Report to the Commission all shipments of wine or cider made to Oregon residents under the permit as required by ORS chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS chapter 473 on wine and cider sold and shipped directly to Oregon residents under the permit. For the purpose of the privilege tax imposed under ORS chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax.

(6) If the permit holder is a person holding a license issued by another state within the United States, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(7) A person may sell and ship wine or cider to Oregon residents only if the person holds a valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit.

(8) A violation of section (5) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for shipping wine or cider without a valid Direct Shipper Permit in violation of section (7) of this rule against any Oregon license held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.289.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.229 & ORS 473
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-006-0395
Shipments of Alcoholic Beverages to Oregon Residents

(1) Definitions for purposes of this rule:

(a) "Alcoholic beverage" and "alcoholic liquor" mean any liquid or solid containing more than one-half of one percent alcohol by volume, and capable of being consumed by a human being;

(b) "Distilled liquor" means any alcoholic beverage other than cider, a wine or malt beverage. "Distilled liquor" includes distilled spirits;

(c) "Malt beverage" means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume. "Malt beverage" includes beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume. "Malt beverage" does not include an alcoholic beverage obtained by fermentation of rice;

(d) To "ship" includes any one or more of the following acts: To import, transport, deliver and sell alcoholic beverages to any resident of this state;

(e) "Wine" means any wine containing not more than 21 percent alcohol by volume and produced in all respects in conformity with the laws of the United States and the regulations of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury. "Wine" does not include cider;

(f) "Cider" means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than ten percent of alcohol by volume.

(2) Wine or cider may be shipped to Oregon residents from out-of-state wine shipper licensees pursuant to ORS 471.229 and OAR 845-005-0423. Wine or cider may be shipped to Oregon residents from in-state licensees pursuant to ORS 471.223, 471.229, OAR 845-005-0422 and 845-006-0398.

(3) Malt beverages may not be shipped to Oregon residents from out-of-state. Malt beverages may be shipped to Oregon residents from in-state licensees pursuant to OAR 845-005-0422 and 845-006-0398.

(4) Distilled liquor may not be shipped to Oregon residents from out-of-state or from within the state, except in-person sales from state agents are permitted.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1), (5) & (6)
Stats. Implemented: ORS 471.229 & 471.404
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; Suspended by OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-006-0396
Requirements for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

This rule sets the requirements for same-day and next-day delivery of malt beverages to Oregon residents. A licensee must be approved by the Commission under OAR 845-005-0420 in order to provide same-day delivery of malt beverages.

(1) A licensee qualified to make same-day or next-day delivery of malt beverages under OAR 845-005-0420 must ship:

(a) Only malt beverages and only in a manufacturer-sealed container. A container must not hold more than two and one-quarter gallons;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the malt beverage is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) Not more than a total of five gallons per month per resident of Oregon who is at least 21 years of age. The licensee shall keep a record of all shipments of malt beverages to Oregon residents, including the name of the resident, the date of shipment and the amount of malt beverages shipped, and shall retain such records for a minimum of two years from the date of the shipment;

(e) The malt beverage in a package that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery;"

(f) Only pursuant to an order for the malt beverage that is received by the licensee prior to shipment of the alcohol;

(g) Only for next-day delivery unless the licensee has been approved for same- day delivery by the Commission; and

(h) Only to a home or business with a permanent address.

(2) If the licensee ships via a for-hire carrier, in addition to subsection (1) of this rule, the licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424. The licensee may not use a for-hire carrier for same day delivery.

(3) If the licensee does not use a for-hire carrier, in addition to complying with subsection (1) of this rule, only the licensee or an employee of the licensee may deliver the malt beverage to the resident of Oregon. Also, the person delivering the malt beverage must:

(a) Be age 21 or over;

(b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) Verify that the person receiving the alcohol is not visibly intoxicated; and

(d) Complete a Commission-approved form that must be retained by the licensee for a minimum of two years from the date of delivering the alcohol to the resident. The form must include:

(A) A statement that the person receiving the alcohol is required to sign that says "I am age 21 years or older;"

(B) A place for recording the date and time the alcohol was delivered to the resident;

(C) A place for recording the amount of alcohol delivered to the resident;

(D) A place for recording the name of the person delivering the alcohol to the resident;

(E) A place for recording the name, birth date, and delivery address of the person receiving the alcohol;

(F) A place for recording that the person delivering the alcohol verified by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(G) A place for recording the government and type of photo identification accepted; and

(H) A place for verifying that the person receiving the alcohol is not visibly intoxicated.

(4) Same-day delivery. If the licensee is approved to make same-day delivery of malt beverages, in addition to complying with subsections (1) and (3) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered;

(b) Ensure that the malt beverage is delivered to the resident before 9:00 pm; and

(c) Utilize only the licensee or the licensee's employee to deliver the malt beverage to the resident.

(5) Sanction. A violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-006-0398
Next-Day Retail Shipment of Alcoholic Beverages by Oregon Licensees to Oregon Residents

(1) A licensee may deliver wine, cider, or malt beverages on any day after the day the licensee receives the order only under the following conditions:

(a) The licensee's license must include off-premises sales privileges for malt beverages to deliver malt beverages, and off-premises sales privileges for wine to deliver wine or cider;

(b) Before making the first delivery, the licensee must notify the Commission on a Commission supplied form that the licensee plans to provide this delivery service;

(c) The licensee must prominently label each shipping container: "Alcoholic Beverages — Do not deliver to a person who is under 21 years of age or visibly intoxicated" or similar message that the Commission approves;

(d) The licensee must deliver only to a person who is at least 21 years old and must not deliver to a visibly intoxicated person;

(e) The licensee must deliver only to a home or business;

(f) The licensee must not deliver kegs unless the licensee gets prior written Commission approval for the delivery;

(g) The delivery vehicles driven by the licensee or the licensee's employee must prominently display the licensee's trade name;

(h) If the licensee or licensee's employee makes the delivery, he/she must record the signature of the person who receives the delivery, proof of age (if age verification is required), the delivery address and the identity of the delivery person. (See OAR 845-006-0335 for age verification requirements.) The licensee must keep these records for at least 18 months after the delivery;

(i) If the licensee delivers through a common carrier, the licensee may use only a common carrier who has a Commission-approved delivery plan. The Commission requires plan approval to assure appropriate alcoholic beverage delivery. The Commission evaluates common carrier delivery plans under the standards of OAR 845-005-0424.

(2) Sanction. Violation of this rule is a Category III violation. The sanction may include a restriction that prohibits further deliveries.

(3) Any person who knowingly or negligently delivers wine or cider which has been shipped under the provisions of ORS 471.229 to a person under 21 years of age, or who knowingly or negligently delivers wine or cider which has been shipped under the provisions of ORS 471.229 to a visibly intoxicated person, violates ORS 471.410 and commits a Class A misdemeanor, whether or not the person is licensed or appointed under the provisions of ORS Chapter 471.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.223, 471.229 & 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; Suspended by OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-006-0400
Requirements for Wine Self-Distribution Permit for Wine and Cider

Note: OAR 845-005-0425 sets the qualifications for a Wine Self-Distribution Permit. This rule sets the requirements for self-distribution of wine or cider.

(1) A person holding a Wine Self-Distribution Permit:

(a) May ship only wine or cider;

(b) May ship only to a retail licensee holding a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit;

(c) Shall keep a record of all shipment of wine or cider to Oregon licensees, including the name of the licensee, the date of shipment and the amount of wine or cider shipped, and shall retain such records for a minimum of two years from the date of the shipment. The permit holder must report to the Commission all shipment of wine or cider made to retail licensees under the permit as required by ORS chapter 473. The report must be in a form prescribed by the Commission;

(d) Must allow the Commission to audit the permit holder's records upon request and shall make those records available to the Commission in this state;

(e) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules; and

(f) Must timely pay to the Commission all taxes imposed under ORS chapter 473 on all wine or cider sold and shipped directly under the permit. The permit holder, not the retail licensee, is responsible for the tax.

(2) If the permit holder ships wine or cider to a retail licensee via a for-hire carrier, the permit holder must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(3) If the permit holder does not use a for-hire carrier with an approved plan, the permit holder must ensure that at the time the wine or cider is received by a retail licensee of the Commission the person delivering the wine or cider verifies that the retail licensee holds a valid endorsement issued by the Commission authorizing the receipt of the wine or cider from the permittee.

(4) A manufacturer may self-distribute wine or cider only if the manufacturer holds a valid Wine Self-Distribution Permit and a valid license issued by another state that qualifies the manufacturer to hold a Wine Self-Distribution Permit.

(5) A violation of any section of this rule is a Category IV violation. Self-distribution of wine or cider without a valid Wine Self-Distribution Permit issued by the Commission is grounds for revocation of the manufacturer's Certificate of Approval issued under ORS 471.289.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-006-0401
Requirements for Oregon Retailers to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit

OAR 845-005-0426 sets the qualifications for obtaining Commission approval to receive wine and cider from the holder of a wine self-distribution permit. This rule sets the requirements for receiving wine or cider from the holder of a Wine Self-Distribution Permit.

(1) No Oregon retail licensee may receive wine or cider directly from an out of state manufacturer via self-distribution unless the retail licensee has first applied for and received an endorsement pursuant to OAR 845-005-0426. No retail licensee may receive wine or cider via self distribution unless the manufacturer supplying the wine or cider holds a valid Wine Self-Distribution Permit.

(2) Retail licensees holding an endorsement must retain the purchase records showing the amount of wine and cider received from each Wine Self-Distribution Permit holder for a minimum of two years from the date of receipt of the wine or cider.

(3) Except as described in subsection (4) of this rule, all retail licensees approved under OAR 845-005-0426 must report to the Commission on or before the 20th day of each month on a form prescribed by the Commission the quantity of wine and cider received from Wine Self-Distribution Permit holders during the preceding calendar month and the names of the permit holders from whom the wine or cider was received.

(4) The holder of a full or limited on-premises sales license and with an endorsement approved under OAR 845-005-0426 is not required to file a report for wine received in any month in which the licensee receives a total from all holders of Wine Self-Distribution Permits of two or fewer cases (containing a total of eighteen or fewer liters) of wine.

(5) A violation of any section of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471 & ORS 471.404
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. & ef. 1-1-08 thru 6-28-08

845-015-0141
Shipment of Distilled Spirits

All sales of distilled spirits to individual consumers must be made in-person at a retail liquor store location. A retail sales agent may ship distilled spirits purchased in-person to an Oregon resident who is at least 21 years of age. In-person purchases may be shipped to a resident of a state other than Oregon only in accordance with the laws of that state.

Stat. Auth.: ORS 471, including ORS 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.740 & ORS 471.750
Hist.: OLCC 23-2007(Temp), f. 12-14-08, cert. ef. 1-1-08 thru 6-28-08

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Implements portion of House Bill 2619 regarding crediting earnings to loss of membership accounts.
Adm. Order No.: PERS 12-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Adopted: 459-007-0160
Rules Amended: 459-007-0110, 459-007-0290
Subject: 459-007-0110: Minor edit to reference new OAR 459-007-0160.

459-007-0160: Establishes manner by which loss of membership accounts will be credited with earnings during subsequent periods of active membership.

459-007-0290: Minor edit to reference new OAR 459-007-0160.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-007-0110
Crediting Earnings at Tier One Loss of Membership

In accordance with ORS 238.095(5), as amended by section 5, chapter 776, Oregon Laws 2007, when a former member establishes membership in the system and has a Loss of Membership account, earnings or losses during dates of active membership will be credited to the Loss of Membership account in the manner specified in this rule.

(1) Partial year crediting.

(a) If active membership begins after the first of the year and continues through the end of the calendar year, earnings or losses from the date of active membership to December 31 of that calendar year shall be credited to the Loss of Membership account based on the Tier Two rate for the calendar year less the latest year to date Tier Two rate on the date of active membership.

(b) If the member is active on January 1 of the calendar year and active membership ends before December 31 of that calendar year, earnings or losses shall be credited to the Loss of Membership account based on the latest year to date Tier Two rate available as of the first of the month in which active membership ends.

(c) If active membership begins after the first of the year and ends before December 31 of that calendar year, earnings or losses shall be credited to the Loss of Membership account based on the latest year to date Tier Two rate available as of the first of the month in which active membership ends less the latest year to date Tier Two rate available on the date of active membership.

(2) Full year crediting. Earnings or losses for full calendar years of active membership will be credited based on the Tier Two rate for the year.

(3) The effective date of this rule is July 17, 2007. No earnings or losses will be credited to a Loss of Membership account for periods of active membership before July 17, 2007.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.095 & 238.435, OL 2007 Ch. 776
Hist.: PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 12-2007, f. & cert. ef. 11-23-07

459-007-0160
Crediting Earnings to Loss of Membership Account for Periods of Active Membership

In accordance with ORS 238.095(5), as amended by section 5, chapter 776, Oregon Laws 2007, when a former member establishes membership in the system and has a Loss of Membership account, earnings or losses during dates of active membership will be credited to the Loss of Membership account in the manner specified in this rule.

(1) Partial year crediting.

(a) If active membership begins after the first of the year and continues through the end of the calendar year, earnings or losses from the date of active membership to December 31 of that calendar year shall be credited to the Loss of Membership account based on the Tier Two rate for the calendar year less the latest year to date Tier Two rate on the date of active membership.

(b) If the member is active on January 1 of the calendar year and active membership ends before December 31 of that calendar year, earnings or losses shall be credited to the Loss of Membership account based on the latest year to date Tier Two rate available as of the first of the month in which active membership ends.

(c) If active membership begins after the first of the year and ends before December 31 of that calendar year, earnings or losses shall be credited to the Loss of Membership account based on the latest year to date Tier Two rate available as of the first of the month in which active membership ends less the latest year to date Tier Two rate available on the date of active membership.

(2) Full year crediting. Earnings or losses for full calendar years of active membership will be credited based on the Tier Two rate for the year.

(3) The effective date of this rule is July 17, 2007. No earnings or losses will be credited to a Loss of Membership account for periods of active membership before July 17, 2007.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.095, 238.435 & OL 2007 Ch. 776
Hist.: PERS 12-2007, f. & cert. ef. 11-23-07

459-007-0290
Crediting Earnings at Tier Two Loss of Membership

When a Tier Two member's membership terminates under ORS 238.095(2), earnings from the effective date of the last annual rate through the end of the month of loss of membership shall be credited to the member account in the manner specified in this rule.

(1) Earnings or losses on the former member's regular account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited based on the latest year-to-date calculation as of the end of the month of the date of loss of membership

(2) If the former member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the former member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the date of loss of membership have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation for that year.

(b) Earnings or losses for the calendar year of loss of membership shall be credited as of the end of the month of loss of membership based on the latest year-to-date calculation as of the first of the month following the date of loss of membership.

(3) Except as provided in 459-007-0160, no earnings or losses shall be credited for any period following the calendar month of loss of membership.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.095
Hist.: PERS 7-1998, f. & cert. ef. 5-22-98; PERS 26-2004, f. 11-23-04, cert. ef. 3-15-05; PERS 12-2007, f. & cert. ef. 11-23-07

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Rule Caption: Adjusts earning crediting rule due to implementation of payroll-to-payroll amortization of side accounts.
Adm. Order No.: PERS 13-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 7-1-2007
Rules Amended: 459-007-0530
Subject: This rule provides for the crediting of earnings to side accounts. The rule modifications allow the implementation of payroll-to-payroll amortization of side accounts as opposed to the current annual bases.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-007-0530
Crediting Earnings To Employer Lump Sum Payments

(1) Definitions. For the purposes of this rule:

(a) "Allocated Earnings" means the actual investment earnings or losses of the Public Employees Retirement Fund (PERF), apportioned based upon the proportionate size of the side account in relation to the PERF and adjusted for administrative costs as described in ORS 238.229(3). These earnings are exempt from funding requirements of the Contingency or Capital Preservation Reserves.

(b) "Amortized Amount" means the amount of a Side Account used to offset contributions due from the employer.

(c) "Employer lump-sum payment" means any employer payment that is:

(A) Not regularly scheduled;

(B) Not paid as a percentage of salary; and

(C) Paid at the employer's election instead of at the PERS Board's direction.

(d) "UAL factor" means the monthly or annual rate based upon allocated side account earnings.

(2) Subject to ORS 238.229(4), the employer lump-sum payment shall first be applied to liabilities attributable to creditable service by employees of the employer before the employer was grouped with other public employers. Earnings on these amounts shall be credited based on the following:

(a) For the month in which the employer lump-sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the final Tier Two annual earnings rate and the Tier Two earnings rate in effect as of the first of the month after receipt of the payment.

(c) In subsequent calendar years, earnings or losses shall be credited to the employer lump-sum payment in accordance with OAR 459-007-0005(14).

(3) Earnings on an employer lump-sum payment held in a separate Side Account shall be credited to the Side Account based on the following:

(a) For the month in which the employer lump-sum payment is received, earnings shall be credited based on the average annualized rate, prorated for the number of days from date of receipt to the end of the month.

(b) For the remainder of the year, the employer lump-sum payment shall receive earnings based on the difference between the annual UAL factor and the UAL factor in effect as of the first of the month after receipt of the payment.

(4)(a) Amortized amounts to be applied to the Employer Contribution Account shall receive earnings or losses based on the UAL factor, effective as of the first of the calendar month following the date of the application of the amortized amount.

(b) In subsequent calendar years, earnings shall be credited to the remaining balance of the employer's side account created when the lump-sum payment was received on an annual basis in accordance with OAR 459-007-0005(4).

(5) The provisions of this rule are effective on January 1, 2008.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 - 238.229
Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 27-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 13-2007, f. & cert. ef. 11-23-07

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Rule Caption: Amends direct rollover rules to administer the PERS programs in compliance with federal tax law.
Adm. Order No.: PERS 14-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 7-1-2007
Rules Amended: 459-009-0084, 459-009-0085, 459-009-0090
Subject: 459-009-0084 — Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group

Allows pooled employers to make lump sum payments for the purpose of reducing or eliminating an existing unfunded actuarial liability and to reduce the corresponding employer rate. Changes to this rule will allow for greater conformity with other lump sum payment rules.

459-009-0085 — Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group Allows non-pooled employers to make lump sum payments for the purpose

of reducing or eliminating an existing unfunded actuarial liability and to reduce the corresponding employer rate. Changes to this rule will allow for greater conformity with other lump sum payment rules.

459-009-0090 — Surplus Lump-Sum Payments by Employers — Allows employers without an unfunded actuarial liability to make lump sum payments to further reduce their pension obligations and corresponding employer rate. This change establishes a new minimum and maximum payment, corrects previously conflicting language and provides for greater conformity with other lump sum payment rules.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-009-0084

Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements for the adjustment of employer contribution rates when an individual public employer participating in an employer actuarial pool makes an unfunded actuarial liability lump-sum payment.

(1) Definitions. For the purposes of this rule:

(a) "Amortized Amount" means the amount of a Side Account used to offset contributions due from the employer.

(b) "Employer Actuarial Pool" means a grouping of employers for actuarial purposes such as the School District and the State and Local Government Rate Pools.

(c) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair market value of assets.

(d) "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial liabilities attributed to an individual employer for the period before entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.

(e) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(f) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment that is:

(A) Not regularly scheduled;

(B) Not paid as a percentage of salary;

(C) Made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Paid at the employer's election instead of at the PERS Board's direction.

(2) Lump-sum payment amount. If an individual employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the individual employer's UAL calculated under section (6) of this rule or $1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the individual employer's UAL calculated under section (6) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.

(4) Initiating UAL lump-sum payment process. At least 45 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must notify the PERS Employer Liability Coordinator in writing that it intends to make a UAL lump-sum payment. The notification must specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the individual employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff must notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Payment to the actuary. The PERS consulting actuary must provide an invoice charging the employer for the cost of the actuarial liability calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.

(6) Calculation of the individual employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:

(a) 100 percent of the employer's share of the UAL for the employer actuarial pool in which the employer is participating. This calculation must be:

(A) Based on the fair value UAL of the actuarial pool in which the employer participates, from the most recent actuarial valuation;

(B) Based on the covered salary, as a proportion of the pool, reported by the employer for the year of most recent actuarial valuation; and

(C) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the individual employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the individual employer's UAL calculated in subsection (6)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(7) Notification of calculation. PERS staff must notify the employer in writing of the results of the individual employer's calculation in section (6) above, including the effective date(s) for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS must send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(8) Notification of UAL lump-sum payment. The employer or its agent must notify the PERS Employer Liability Coordinator in writing at least three business days before making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and must specify the amount of the payment and the date it intends to make the payment.

(9) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (8) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (8) of this rule or within the five business days following the intended date, the new employer contribution rate shall be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall be held in a side account to offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations of that employer.

(12) Side Account. The amount of an UAL lump-sum payment shall be held in a Side Account for the benefit of the employer making the UAL lump-sum payment. The amortized amount for each payroll reporting period shall be transferred from the Side Account to the appropriate employer actuarial pool in which the employer is participating.

(13) Crediting earnings or losses. Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.

(14) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 - 238.229
Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 17-2006, f. & cert. ef. 11-24-06; PERS 14-2007, f. & cert. ef. 11-23-07

459-009-0085
Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements for the adjustment of employer contribution rates when an individual public employer not participating in an actuarial group makes an unfunded actuarial liability lump-sum payment.

(1) Definitions. For the purposes of this rule:

(a) "Amortized Amount" means the amount of a Side Account used to offset contributions due from the employer.

(b) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair market value of assets.

(c) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(d) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment that is:

(A) Not regularly scheduled;

(B) Not paid as a percentage of salary;

(C) Made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Paid at the employer's election instead of at the PERS Board's direction.

(2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the employer's UAL calculated under section (6) of this rule or $1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the employer's UAL calculated under section (6) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.

(4) Initiating UAL lump-sum payment process. At least 45 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Employer Liability Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff must notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Payment to the actuary. The PERS consulting actuary must provide an invoice charging the employer for the cost of the actuarial liability calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a UAL lump-sum payment, the employer must remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.

(6) Calculation of an employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:

(a) 100 percent of the employer's UAL. This calculation must be:

(A) Based on the fair value UAL from the most recent actuarial valuation; and

(B) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the employer's UAL calculated in subsection (6)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(7) Notification of calculation. PERS staff must notify the employer in writing of the results of the employer's calculation in section (6) above, including the effective date(s) for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS must send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(8) Notification of UAL lump-sum payment. The employer or its agent must notify the PERS Employer Liability Coordinator in writing at least three business days before making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and must specify the amount of the payment and the date it intends to make the payment.

(9) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (8) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (8) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.

(12) Side Account. The UAL lump-sum payment shall be held in a Side Account for the benefit of the employer making the UAL lump-sum payment. The amortized amount for each payroll reporting period shall be transferred from the Side Account to the employer's Employer Contribution Account.

(13) Crediting earnings or losses. Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.

(14) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 - 238.229
Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 17-2006, f. & cert. ef. 11-24-06; PERS 14-2007, f. & cert. ef. 11-23-07

459-009-0090

Surplus Lump-Sum Payments by Employers

Purpose. The purpose of this rule is to establish procedures and requirements for the adjustment of employer contribution rates when an individual public employer that does not have an existing unfunded actuarial liability (UAL) makes a lump-sum payment. An employer with an existing unfunded actuarial liability must first submit a lump-sum payment for the full amount of that unfunded actuarial liability under OAR 459-009-0084 or 459-009-0085, as applicable, before the employer may make a payment under this rule.

(1) Definitions. For the purposes of this rule:

(a) "Actuarial Surplus" means the excess of the actuarial value of an employer's assets over the employer's actuarial liability.

(b) "Allocated Actuarial Liability" means the actuarial liability calculated using the fair market value of assets.

(c) "Amortized Amount" means the amount of a Side Account used to offset contributions due from the employer.

(d) "IAP" means the Individual Account Program of the Oregon Public Service Retirement Plan.

(e) "Pension Program Contributions" means the total calculated employer contribution due in any reporting period for both the Chapter 238 and OPSRP pension programs, excluding any IAP or retiree health insurance program contribution due.

(f) "Surplus Lump-Sum Payment" means any employer payment that is:

(A) Not regularly scheduled;

(B) Not paid as a percentage of salary;

(C) Made for the express purpose of creating an actuarial surplus or increasing an existing actuarial surplus; and

(D) Paid at the employer's election instead of at the PERS Board's direction.

(g) "UAL" or "Unfunded Actuarial Liability" means the excess of the actuarial liability over the actuarial value of assets.

(h) "UAL Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(2) For employers with an existing UAL that wish to make a payment in excess of the existing UAL, the surplus lump-sum payment must be made after and separately from the UAL lump-sum payment and the provisions of this rule apply only to the surplus lump-sum payment.

(3) Limitation on surplus lump-sum payments. An employer may make only one payment per every three calendar years under the provisions of this rule.

(4) Minimum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment must result in a 50 basis point reduction in the employer's pension program contribution rate based on the individual employer's reported payroll in the most recent actuarial valuation.

(5) Maximum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment may not be greater than the amount required to bring the employer's lowest pension program contribution rate to zero based upon the individual employer's reported payroll in the most recent actuarial valuation.

(6) Requirements. In order to make a surplus lump-sum payment, an employer must comply with the process described in sections (7) through (15) of this rule.

(7) Initiating surplus lump-sum payment process. At least 45 calendar days before the date the employer intends to make a surplus lump-sum payment, the employer must notify the PERS Employer Liability Coordinator in writing that it intends to make a surplus lump-sum payment. The notification must specify:

(a) Whether the intended payment shall be for the maximum payment amount as provided in section (5) of this rule, or, if other than the maximum amount, the percent of payroll reduction in the individual employer's rate or dollar amount of the intended payment; and

(b) No more than two potential dates for the payment.

(8) PERS staff must notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended date(s) of the surplus lump-sum payment.

(9) Payment to the actuary. The PERS consulting actuary must provide an invoice charging the employer for the cost of the rate reduction calculation requested by the employer. At least 30 calendar days before the date the employer intends to make a surplus lump-sum payment, the employer must remit payment for the cost of the rate reduction calculation directly to the PERS consulting actuary according to the instructions on the invoice. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's rate reduction calculation by the proposed surplus lump-sum payment date.

(10) Calculation of the individual employer's actuarial liability. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:

(a) The minimum amount of the surplus lump-sum payment under section (4) of this rule;

(b) The maximum amount of the surplus lump-sum payment under section (5) of this rule;

(c) The alternative percentage or dollar amount specified by the employer in its notification under section (7) of this rule; and

(d) The effect of each of the amounts calculated in subsections (a) to (d) of this section on the individual employer's contribution rate using the potential date(s) for payment specified by the employer in its notification.

(11) The calculations described in section (10) of this rule must be:

(a) Based on the individual employer's pension program contribution rate from the most recent rate setting actuarial valuation;

(b) Based on the covered salary, for the individual employer or as a proportion of the pool, as applicable, reported by the employer for the year of the most recent actuarial valuation; and

(c) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.

(12) Notification of calculation. PERS staff must notify the employer in writing of the results of the individual employer's calculation under section (10). In addition, PERS must send the employer a notification describing risks and uncertainties associated with making a lump-sum payment.

(13) Notification of payment. The employer or its agent must notify the PERS Employer Liability Coordinator in writing at least three business days before making a surplus lump-sum payment. This notification must be in addition to the notification in section (7) of this rule and must specify the dollar amount of the payment and the date the employer intends to make the payment.

(14) Method of payment. A surplus lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(15) Receipt of payment. In order to adjust the employer contribution rate to that reported by PERS in section (12) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the surplus lump-sum payment specified in the notification described in section (13) of this rule.

(a) If the surplus lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (13) of this rule or within the five business days following the intended date, the new employer contribution rate shall be effective for payrolls dated on or after the first of the month following receipt of the payment by PERS.

(b) If the surplus lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the payment.

(c) Except as provided in subsection (15)(d), if the surplus lump-sum payment received by PERS is other than any amount specified in the notification under section (13) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in section (10) of this rule.

(d) If the surplus lump-sum payment received by PERS is less than the minimum amount described in section (4) of this rule, or greater than the maximum amount described in section (5) of this rule, the funds shall be returned to the employer and no adjustment shall be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (12) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(16) Actuarial treatment of the payment. For actuarial purposes, the surplus lump-sum payment made by the employer shall be treated as

pre-funded contributions and additional assets for the payment of obligations of the employer under ORS Chapters 238 or 238A, rather than as a reduction of those obligations.

(17) Side Account. The surplus lump-sum payment shall be held in a Side Account for the benefit of the employer making the surplus lump-sum payment. The amortized amount for each payroll reporting period shall be applied from the Side Account to the Employer Contribution Account of the individual employer or of the employer actuarial pool in which the employer is participating, as applicable. The side account amortization period shall be equal to the remaining period that new Tier One and Tier Two gains and losses were amortized in the last rate-setting valuation.

(18) Crediting earnings or losses. Side accounts shall be credited with earnings and losses in accordance with OAR 459-007-0530.

(19) Nothing in this rule shall be construed to convey to an employer making a surplus lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the surplus lump-sum payment made to the fund by the employer.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.225 - 238.229
Hist.: PERS 17-2006, f. & cert. ef. 11-24-06; PERS 14-2007, f. & cert. ef. 11-23-07

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Rule Caption: Clarifies standards for position qualification, membership, and creditable service in PERS Chapter 238 Program.
Adm. Order No.: PERS 15-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Amended: 459-010-0003, 459-010-0014, 459-010-0035, 459-013-0110
Subject: 459-010-0003: Clarifies standards for determination of qualifying position and active membership. Outlines effect of employer designation of position as qualifying or non-qualifying.

459-010-0014: Clarifies standards for accrual of creditable service in the PERS Chapter 238 Program.

459-010-0035: Clarifies standards for six-month waiting period required to establish membership in the PERS Chapter 238 Program.

459-013-0110: Eliminates unnecessary text regarding controlled groups and benefit accounts; clarifies status of active member within five years of earliest retirement age.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-010-0003
Eligibility and Membership for the PERS Chapter 238 Program

(1) For the purpose of this rule:

(a) "Concurrent positions" means employment with two or more participating employers in the same calendar year.

(b) "Partial year of separation" means a period in the calendar year the employee separates from employment that begins on January 1 of the year and ends before the last working day of the year.

(c) "Qualifying position" means a position designated by the employer as qualifying, except:

(A) A position or concurrent positions in which an employee performs at least 600 hours of service in a calendar year is qualifying regardless of employer designation.

(B) A position in a partial year of separation is qualifying regardless of employer designation if the position is continued from an immediately preceding calendar year in which the employee performed at least 600 hours of service in the position or concurrent positions.

(C) A position with one employer in which the employee is employed for the entire calendar year and fails to perform at least 600 hours of service in that position or concurrent positions in the calendar year is non-qualifying regardless of employer designation.

(d) "Service" means a period in which an employee:

(A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

(B) Receives a payment of "salary," as defined in ORS 238.005 or similar payment from workers compensation or disability.

(e) "Working day" means a day that the employer is open for business.

(2) At the time an employee is hired, an employer must designate the employee's position as qualifying or non-qualifying. An employer must designate a position as qualifying if the position is one in which an employee would normally perform at least 600 hours of service in a calendar year.

(3) Employer designation of a position as qualifying or non-qualifying must be determined by PERS from information communicated to PERS by the employer. An employer designation that is contrary to the provisions of subsection (1)(c) of this rule in any calendar year will be reversed for that calendar year.

(4) Eligibility. An employee who was employed in a qualifying position before August 29, 2003 by an employer participating in the PERS Chapter 238 Program was eligible to become a member of that program if the employee:

(a) Began the six-month waiting period described in OAR 459-010-0035 before August 29, 2003;

(b) Did not elect to participate in an optional or alternative retirement plan as provided in ORS Chapters 243, 341, or 353; and

(c) Was not otherwise ineligible for membership.

(5) Membership. An employee who meets the requirements of section (4) of this rule becomes a member of the PERS Chapter 238 Program on the first day of the calendar month following the completion of the six-month waiting period described in OAR 459-010-0035 provided that the employee is employed on that date by the same employer that employed the employee throughout the waiting period.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005, 238.015, & 238A.025
Hist.: PERS 5-2005, f. & cert. ef. 2-22-05; PERS 23-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 15-2007, f. & cert. ef. 11-23-07

459-010-0014
Creditable Service in PERS Chapter 238 Program

(1) For purposes of this rule:

(a) "Active member" has the same meaning as provided in ORS 238.005(12)(b).

(b) "Creditable service" has the same meaning as provided in ORS 238.005(5).

(c) "Major fraction of a month" means a minimum of 50 hours in any calendar month in which an active member is being paid a salary by a participating public employer and for which benefits under ORS Chapter 238 are funded by employer contributions.

(2) An active member accrues one month of creditable service for each month in which the member performs service for the major fraction of the month.

(3) An active member is presumed to have performed service for a major fraction of a month if:

(a) The member performs at least 600 hours of service in the calendar year and the member's employer(s) reports salary and hours for a pay period occurring within the calendar month;

(b) The member starts employment on or before the 15th day of the calendar month and the employment continues through the end of the month;

(c) The member starts employment on or before the first day of the calendar month and ends employment on or after the 16th day of the month; or

(d) The member starts employment on or before the first day of the calendar month and ends employment before the 16th day of the month, but is reemployed in a qualifying position before the end of the month.

(4) A member or employer may seek to rebut the determination of creditable service based on the presumptions in section (3) by providing to PERS records that establish that the member did or did not perform service for a major fraction of a month as defined in subsection (1)(c) of this rule.

(5) Sections (2) and (3) of this rule notwithstanding, an active member who is a school employee will accrue six months of creditable service if the member performs service for all portions of a school year that fall between January 1 and June 30, and six months of creditable service if the member performs service for all portions of a school year that fall between July 1 and December 31.

(6) A member may not accrue more than one month of creditable service for any calendar month and no more than one year of creditable service for any calendar year.

(7) The provisions of this rule are effective for service credit determinations made on or after January 1, 2008.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005 & 238.300
Hist.: PERS 6-2005, f. & cert. ef. 2-22-05; PERS 24-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 15-2007, f. & cert. ef. 11-23-07

459-010-0035
Six-Month Waiting Period

(1) The six-month waiting period required for establishing membership under ORS 238.015 is six full calendar months of service with the

same employer. The service must be in a qualifying position, as defined in OAR 459-010-0003. The six full calendar months of service may not be interrupted by more than 30 consecutive working days. For the purposes of this rule, a working day is defined as a day that the employer is open for business.

(2) The waiting period begins:

(a) On the date the employee is hired, and includes the month of hire as a full calendar month, if the date of hire is the first business day of the month. For the purposes of this rule, a business day is defined as Monday through Friday when PERS is open for business;

(b) On the first day of the month following the date of hire; or

(c) On the first day of the month following the end date of an interruption of service of more than 30 consecutive working days.

(3) In the event an employee is on an official leave of absence under OAR 459-010-0010, the period of absence shall not constitute an interruption of the waiting period under Section (1) of this rule. The waiting period shall be extended by the length of the leave of absence.

(4) Absence from service by an educational employee during periods that the employing educational institution is not in session does not constitute an interruption of the waiting period under Section (1) of this rule. The waiting period shall be extended by the length of the period the educational institution is not in session.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015
Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 10-2005, f. & cert. ef. 3-31-05; PERS 15-2007, f. & cert. ef. 11-23-07

459-013-0110
Eligibility for Early Benefits

A member who reaches earliest retirement age under ORS 238.280 becomes eligible for a service retirement benefit that will be paid upon written application to the Board. After becoming eligible under that section, a member may not withdraw their account under ORS 238.265 nor will their membership terminate by operation of ORS 238.095(2).

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.280 & 238.095
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0090; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 15-2007, f. & cert. ef. 11-23-07

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Rule Caption: Provides for consistent administration of withdrawals in PERS programs.
Adm. Order No.: PERS 16-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 5-1-2007
Rules Adopted: 459-075-0020, 459-080-0020
Rules Amended: 459-010-0055
Subject: These new rules and rule modifications establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan pension and IAP programs and PERS Chapter 238 Program. Further modifications have also been made to comform to statutory changes by HB 2281.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-010-0055
Withdrawal of Contributions

(1) Definitions.

(a) A "controlled group" is a group of employers treated as a single employer for purposes of maintaining qualified status under federal law.

(b) "Effective date of withdrawal" has the same meaning as given the term in OAR 459-005-0001(7).

(2) An inactive member may withdraw the member account balance under ORS 238.265 if:

(a) The member has separated from employment with all participating employers and all employers in a controlled group with a participating employer;

(b) PERS receives the member's request for withdrawal of the member account before the member reaches earliest service retirement age;

(c) The member has been absent from service with all participating employers and all employers in a controlled group with a participating employer for at least one full calendar month following the month of separation; and

(d) The member complies with the requirements of section 1, chapter 52, Oregon Laws 2007.

(3) Under no circumstance may a member withdraw less than the entire balance in the member account.

(4) A member who withdrew the member account and received an additional 50 percent of the member account pursuant to section 2, chapter 276, Oregon Laws 2003 may not subsequently restore the creditable service forfeited by the withdrawal under ORS 238.105 or 238.115.

(5) The member may revoke the request for withdrawal of the member account if PERS receives a written request to revoke before the earlier of:

(a) The date of distribution; or

(b) The date PERS receives a valid court order requiring PERS to pay the distribution to someone other than the withdrawing member.

(6) If a member withdraws the member account under this rule, membership in the PERS Chapter 238 Program shall be terminated as of the effective date of withdrawal. Membership rights accrued under ORS chapter 238 before the effective date of withdrawal, including any service rights attributable to employment before the effective date of withdrawal, are forfeited.

(7) If a former member who has withdrawn the member account under this rule returns to employment with any participating employer or an employer in a controlled group with a participating employer before the first day of the second calendar month following the month of the separation described in subsection (2)(a) of this rule, the withdrawal is cancelled and membership is restored. The member must repay to PERS in a single payment the total amount of the payments attributable to the withdrawal within 30 days following the effective date of employment. Upon receipt by PERS of repayment under this section, service rights forfeited under section (6) of this rule are restored as of the effective date of withdrawal. The repayment amount will be credited pro rata to the accounts from which the withdrawal amount was derived.

(8) If the member fails to repay as provided in section (7) of this rule, PERS shall take all reasonable steps to recover the repayment amount due, including any interest, costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR 459-005-0610. Upon receipt by PERS of repayment under this section, service rights forfeited under section (6) of this rule are restored effective the first day of the month following the date of repayment. The repayment amount will be credited pro rata to the accounts from which the withdrawal amount was derived effective the first day of the month following the date of repayment.

(9) The effective date of this rule is January 1, 2008.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.265, OL 2003 Ch. 276 & OL 2007 Ch. 52
Hist.: PER 8, f. 12-15-55; PER 4-1979(Temp), f. & ef. 11-21-79; PER 7-1979(Temp), f. & ef. 12-11-79; PER 3-1980, f. & ef. 5-8-80; PER 2-1981, f. & ef. 1-15-81; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 17-2004, f. 6-15-04 cert. ef. 7-1-04; PERS 16-2007, f. & cert. ef. 11-23-07

459-075-0020
Withdrawal from OPSRP Pension Program

(1) Definitions. For the purposes of this rule:

(a) "Controlled group" means a group of employers treated as a single employer for purposes of maintaining qualified status under federal law.

(b) "Effective date of withdrawal" has the same meaning as given the term in OAR 459-005-0001(7).

(c) "Inactive member" has the same meaning given the term in ORS 238A.005(8).

(d) "Pension program" has the same meaning given the term in ORS 238A.005(12).

(2) An inactive member may withdraw from the OPSRP Pension Program under ORS 238A.120 if:

(a) The member is vested in the pension program under ORS 238A.115;

(b) The member has separated from employment with all participating employers and all employers in a controlled group with a participating employer;

(c) The member has been absent from service with all participating employers and all employers in a controlled group with a participating employer for at least one full calendar month following the month of separation;

(d) The member files with PERS a written request for withdrawal on a form acceptable to PERS;

(e) The actuarial equivalent of the member's pension benefit is $5,000 or less on the effective date of withdrawal. The actuarial equivalent may not include any value attributable to cost-of-living adjustments under ORS 238A.210; and

(f) The member complies with the requirements of section 2, chapter 52, Oregon Laws 2007.

(3) Any amount payable to the member under the provisions of this rule must be paid to the member in a single lump-sum payment.

(4) A member may revoke a request for withdrawal from the pension program if PERS receives the member's written revocation of the request before the earlier of:

(a) The date of distribution; or

(b) The date PERS receives a valid court order requiring PERS to pay the distribution to someone other than the withdrawing member.

(5) A member who withdraws from the pension program terminates membership in the pension program as of the effective date of withdrawal.

(6) A member who withdraws from the pension program forfeits any service performed by the member before the date of the separation described in subsection (2)(b) of this rule and may not use that service for any purpose including, but not limited to, establishing membership under ORS 238A.100, vesting under ORS 238A.115, and the accrual of retirement credit under ORS 238A.140, 238A.150, or 238A.155.

(7) If a former member who has withdrawn from the pension program returns to employment with a participating employer or an employer in a controlled group with a participating employer before the first day of the second calendar month following the month of the separation described in subsection (2)(b) of this rule, the withdrawal is cancelled and membership is restored. The member must repay to PERS in a single payment the total amount of all payments attributable to the withdrawal within 30 days following the effective date of the employment. Upon receipt by PERS of repayment under this section, service forfeited under section (6) of this rule is restored as of the effective date of withdrawal.

(8) If the member fails to repay as provided in section (7), PERS shall take all reasonable steps to recover the repayment amount due, including any interest, costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR 459-005-0610. Upon receipt by PERS of repayment under this section, service forfeited under section (6) of this rule is restored effective the first day of the month following the date of repayment.

(9) The effective date of this rule is January 1, 2008.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.120, OL 2007 Ch. 52
Hist.: PERS 16-2007, f. & cert. ef. 11-23-07

459-080-0020
Withdrawal of Individual Accounts

(1) Definitions. For the purposes of this rule:

(a) "Controlled group" means a group of employers treated as a single employer for purposes of maintaining qualified status under federal law.

(b) "Effective date of withdrawal" has the same meaning as given the term in OAR 459-005-0001(7).

(c) "Inactive member" has the same meaning given the term in ORS 238A.005(8).

(d) "Individual account program" has the same meaning given the term in ORS 238A.005(9).

(e) "Individual accounts" means the employee account, rollover account, and employer account of a member of the Individual Account Program (IAP) to the extent the member is vested in those accounts under ORS 238A.320.

(2) An inactive member may withdraw the individual accounts under ORS 238A.375 if:

(a) The member has separated from employment with all participating employers and all employers in a controlled group with a participating employer;

(b) The member has been absent from service with all participating employers and all employers in a controlled group with a participating employer for at least one full calendar month following the month of separation;

(c) The member files with PERS a written request for withdrawal on a form acceptable to PERS; and

(d) The member complies with the requirements of section 3, chapter 52, Oregon Laws 2007.

(3) A member may revoke a request for withdrawal of the individual accounts if PERS receives the member's written revocation of the request before the earlier of:

(a) The date of distribution; or

(b) The date PERS receives a valid court order requiring PERS to pay the distribution to someone other than the withdrawing member.

(4) A member who withdraws the individual accounts terminates membership in the IAP as of the effective date of withdrawal.

(5) An employer account not included in the withdrawn individual accounts by reason of the member's failure to vest in the employer account is permanently forfeited as of the date of distribution.

(6) A member who withdraws the individual accounts and is subsequently employed with a participating employer forfeits any service performed by the member before the separation described in subsection (2)(a) of this rule for the purpose of vesting in an employer account.

(7) If a former member who has withdrawn the individual accounts returns to employment with a participating employer or an employer in a controlled group with a participating employer before the first day of the second calendar month following the month of the separation described in subsection (2)(a) of this rule the withdrawal is cancelled and membership is restored. The member must repay to PERS in a single payment the total amount of all payments attributable to the withdrawal within 30 days following the effective date of the employment. Upon receipt by PERS of repayment under this section, account(s) forfeited under section (5) and service forfeited under section (6) of this rule are restored effective the date of distribution. The repayment amount received will be credited pro rata to the accounts from which the withdrawal amount was derived.

(8) If the member fails to repay as provided in section (7), PERS shall take all reasonable steps to recover the repayment amount due, including any interest, costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR 459-005-0610. Upon receipt by PERS of repayment under this section, account(s) forfeited under section (5) of this rule, and service forfeited under section (6) of this rule are restored effective the first day of the month following the date of repayment. The repayment amount received will be credited pro rata to the accounts from which the withdrawal amount was derived effective the first day of the month following the date of repayment.

(9) The effective date of this rule is January 1, 2008.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.375 & OL 2007 Ch. 52
Hist.: PERS 16-2007, f. & cert. ef. 11-23-07

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Rule Caption: Modifies rules to clarify qualifying position and membership, and to implement HB 2285.
Adm. Order No.: PERS 17-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Amended: 459-011-0050, 459-070-0001, 459-075-0010, 459-075-0150
Subject: These rules were originally drafted to accommodate provisions of ORS Chapter 238A regarding "Break in Service" and the full-time equivalency (FTE) accrual method for OPSRP Pension Program retirement credit. The rules need to be amended to comply with the elimination of these concepts by HB 2285.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-011-0050
Forfeiture and Restoration of Service Rights

(1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the member's account forfeits all membership rights accrued under ORS chapter 238 before the date of the withdrawal, including any service rights attributable to employment before the date of the withdrawal.

(2) Any such person who reenters the service of a participating employer within five years from the date of the last separation from employment that preceded the member's withdrawal may, at any time during the one-year period immediately following the date of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the amount withdrawn plus the earnings the amount withdrawn would have accumulated from the date of withdrawal to the date of repayment.

(3) Upon repayment as described in section (2) of this rule, the PERS Chapter 238 Program membership and service rights forfeited by the withdrawal will be restored. The former member will reestablish membership in the PERS Chapter 238 Program on the first day of the month following the date of the repayment. Service by the former member from date of reemployment to the date membership is reestablished shall be attributed to the PERS Chapter 238 Program. The withdrawn member account will be reestablished in the amount of the repayment.

(4) Notwithstanding the provisions of this rule, a member who withdraws pursuant to ORS 238.265 and receives an additional amount pursuant to section 2, chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of this rule.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.105, OL 2007 Ch. 769

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0060; PERS 2-2007, f. & cert. ef. 1-23-07; PERS 17-2007, f. & cert. ef. 11-23-07

459-070-0001
Definitions

The words and phrases used in this Division have the same meaning given them in ORS 238A.005 unless otherwise indicated. Specific and additional terms for purposes of Divisions 70, 75 and 80 are defined as follows unless context requires otherwise:

(1) "Academic employee of a community college" means an instructor who teaches classes offered for college-approved credit or on a non-credit basis.

(a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

(b) The governing body of a community college shall determine who is an academic employee in its employ under this rule. In making that determination, a community college shall consider all disciplines (academic activity) collectively when an employee's assignment includes multiple disciplines.

(2) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(3) "Calendar year" means 12 calendar months beginning on January 1 and ending on December 31 following.

(4) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

(5) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(6) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(7) "Final Average Salary" (FAS) has the same meaning given the term in:

(a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed by a local government as defined in ORS 174.116; or

(b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a local government as defined in ORS 174.116.

(8) "Member" has the same meaning given the term in ORS 238A.005(10).

(9) "Member account" means the account of a member of the individual account program.

(10) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a), but does not include retired members.

(11) "OPSRP" means the Oregon Public Service Retirement Plan.

(12) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(13) "Partial year of separation" means a period in the calendar year the employee separates from employment that begins on January 1 of the year and ends before the last working day of the year.

(14) "Qualifying position" means a position designated by the employer as qualifying, except:

(a) A position or concurrent positions in which an employee performs at least 600 hours of service in a calendar year is qualifying regardless of employer designation.

(b) A position in a partial year of separation is qualifying regardless of employer designation if the position is continued from an immediately preceding calendar year in which the employee performed at least 600 hours of service in the position or concurrent positions.

(c) A position with one employer in which the employee is employed for the entire calendar year and fails perform at least 600 hours of service in that position or concurrent positions in the calendar year is non-qualifying regardless of employer designation.

(15) "Salary" has the same meaning given the term in ORS 238A.005(16).

(16) "School employee" has the meaning given the term in ORS 238A.140(7).

(17) "Service" means a period in which an employee:

(a) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

(b) Receives a payment of "salary," as defined in ORS 238.005A(16) or similar payment from workers' compensation or disability.

(18) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: 238A.450
Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330 & 238A.335, OL 2007 Ch. 769
Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05; PERS 11-2005, f. & cert. ef. 6-16-05; PERS 25-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 7-2006, f. & cert. ef. 4-5-06; PERS 17-2007, f. & cert. ef. 11-23-07

459-075-0010
Eligibility and Membership

(1) Eligibility. An employee who is employed in a qualifying position on or after August 29, 2003 by an employer participating in the OPSRP Pension Program is eligible to become a member of that program unless the employee:

(a) Has established membership in the PERS Chapter 238 Program before August 29, 2003 under the terms of ORS 238A.025 and has not terminated membership in that program under ORS 238.095;

(b) Is a judge member as defined in ORS 238.500;

(c) Elects to participate in an optional or alternative retirement plan as provided in ORS Chapters 243, 341, or 353; or

(d) Is otherwise ineligible for membership.

(2) Notwithstanding section (1) of this rule, an employee who established membership in the PERS Chapter 238 Program before August 29, 2003 under the terms of ORS 238A.025 and has not terminated membership in that program under ORS 238.095 may nevertheless be eligible to establish membership in the OPSRP Pension Program if employed by a public employer that is participating in the pension program and is not participating in the PERS Chapter 238 Program.

(3) Membership:

(a) An employee who meets the requirements in section (1) or (2) of this rule becomes a member of the OPSRP Pension Program on the first day of the calendar month following the employee's completion of a waiting period of six full calendar months of service in a qualifying position with the same participating public employer. The six full calendar months of service may not be interrupted by more than 30 consecutive working days. For the purposes of this rule, a working day is defined as a day that the employer is open for business.

(b) The waiting period begins:

(A) On the date the employee is hired, and includes the month of hire as a full calendar month, if the date of hire is the first business day of the month. For the purposes of this rule, a business day is defined as Monday through Friday when PERS is open for business;

(B) On the first day of the month following the date of hire; or

(C) On the first day of the month following the end date of an interruption of service of more than 30 consecutive working days.

(c) In the event an employee is on an official leave of absence as described in OAR 459-010-0010, the period of absence shall not constitute an interruption of the waiting period under subsection (a) of this section. The waiting period shall be extended by the length of the leave of absence.

(d) Absence from service by an educational employee during periods that the employing educational institution is not in session shall not constitute an interruption of the waiting period under subsection (a) of this section. The waiting period shall be extended by the length of the period the educational institution is not in session.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.025, 238A.100 & OL 2007 Ch. 769
Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 8-2006, f. & cert. ef. 4-5-06; PERS 17-2007, f. & cert. ef. 11-23-07

459-075-0150
Retirement Credit

(1) For purposes of this rule:

(a) "Active member" has the same meaning as provided in ORS 238A.005(1).

(b) "Major fraction of a month" means a minimum of 50 hours in any calendar month in which an active member is being paid a salary by a participating public employer and for which benefits under ORS Chapter 238A are funded by employer contributions.

(2) An active member accrues one month of retirement credit for each month in which the member performs service for the major fraction of the month.

(3) An active member is presumed to have performed service for a major fraction of a month if:

(a) The member performs at least 600 hours of service in the calendar year and the member's employer(s) reports salary and hours for a pay period occurring within the calendar month;

(b) The member starts employment on or before the 15th day of the calendar month and the employment continues through the end of the month;

(c) The member starts employment on or before the first day of the calendar month and ends employment on or after the 16th day of the month; or

(d) The member starts employment on or before the first day of the calendar month and ends employment before the 16th day of the month, but is reemployed in a qualifying position before the end of the month.

(4) A member or employer may seek to rebut the determination of creditable service based on the presumptions in section (3) by providing to PERS records that establish that the member did or did not perform service for a major fraction of a month as defined in subsection (1)(c) of this rule.

(5) Sections (2) and (3) of this rule notwithstanding, an active member who is a school employee will accrue six months of retirement credit if the member performs service for all portions of a school year that fall between January 1 and June 30, and six months of creditable service if the member performs service for all portions of a school year that fall between July 1 and December 31.

(6) A member may not accrue more than one month of retirement credit for any calendar month and no more than one year of retirement credit for any calendar year.

(7) Credit for the six-month waiting period required by OAR 459-075-0010(2).

(a) Upon establishing membership in the pension program, a member shall receive credit for the waiting period required to establish membership under OAR 459-075-0010(2).

(b) If the member's waiting period before establishment of membership included an interruption of service as described in OAR 459-075-0010(2)(b), no credit shall be awarded for the period of employment before the interruption.

(8) The provisions of this rule are effective for retirement credit determinations made on or after January 1, 2008.

Stat. Auth.: 238A.450
Stats. Implemented: OL 2007 Ch. 769
Hist.: PERS 6-2004, f. & cert. ef. 2-18-04; PERS 17-2007, f. & cert. ef. 11-23-07

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Rule Caption: Modification of rule to accommodate 2007 legislation creating/amending exceptions to work after retirement.
Adm. Order No.: PERS 18-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Amended: 459-017-0060
Subject: The rule modifications expand the exceptions to the existing work after retirement restrictions for PERS Chapter 238 Program retired members to comply with 2007 legislation. The rule also adopts the current Social Security annual earnings limitations for the purpose of determining the applicability of certain work after retirement restrictions.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-017-0060
Reemployment of Retired Members

(1) Reemployment under ORS 238.082. A retired member of the system receiving a service retirement allowance, who has elected an option other than the total lump sum option under ORS 238.305(3), including those who have retired at a reduced benefit under ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws 2007, may be employed under ORS 238.082 by a participating employer without loss of retirement benefits provided:

(a) The period or periods of employment with one or more public employers participating in the system do not exceed 1039 hours in a calendar year; or

(b) If the retired member is receiving retirement, survivors, or disability benefits under the federal Social Security Act, the period or periods of employment do not exceed the greater of 1039 hours in a calendar year or the total number of hours in a calendar year that, at the retired member's specified hourly rate of pay, limits the annual compensation of the retired member to an amount that does not exceed the following Social Security annual compensation limits:

(A) For retired members who have not reached full retirement age under the Social Security Act, the annual compensation limit is $13,560; or

(B) For the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age, the annual compensation limit is $36,120.

(2) The limitations on employment in section (1) of this rule do not apply if the retired member has reached full retirement age under the Social Security Act.

(3) The limitations on employment in section (1) of this rule do not apply if:

(a) The retired member meets the requirements of ORS 238.082(3), (4), (5), or (6), section 1, chapter 307, Oregon Laws 2007, or section 4, chapter 789, Oregon Laws 2007, and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws 2007;

(b) The retired member is employed in a position that meets the requirements of ORS 238.082(3), as amended by section 1, chapter 774, Oregon Laws 2007, the date of employment is more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;

(c) The retired member is employed by a school district or education service district as a speech-language pathologist or speech-language pathologist assistant and:

(A) The retired member did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws 2007; or

(B) If the retired member retired at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws 2007, the retired member is not so employed until more than six months after the member's effective retirement date and the member's retirement otherwise meets the standard of a bona fide retirement;

(d) The retired member meets the requirements of section 2, chapter 499, Oregon Laws 2007;

(e) The retired member is employed for service during a legislative session under ORS 238.092(2), as amended by section 4, chapter 776, Oregon Laws 2007; or

(f) The retired member is on active state duty in the organized militia and meets the requirements under ORS 399.075(8).

(4) If a retired member is reemployed subject to the limitations of ORS 238.082 and section (1) of this rule, the period or periods of employment subsequently exceed those limitations, and employment continues into the month following the date the limitations are exceeded:

(a) If the member has been retired for six or more calendar months:

(A) PERS will cancel the member's retirement. The last monthly service retirement allowance payment the member is entitled to will be for the month in which the limitations were exceeded. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(B) The member will reestablish active membership as required by ORS 238.078 the first of the calendar month following the date the limitations were exceeded.

(C) The member's account shall be rebuilt in accordance with the provisions of section (9) of this rule.

(b) If the member has been retired for less than six calendar months:

(A) PERS will cancel the member's retirement effective the date of the member's reemployment.

(B) All retirement benefits received by the member must be repaid to PERS in a single payment before the member can be reemployed.

(C) The member will reestablish active membership as required by ORS 238.078 effective the date the member is reemployed.

(D) The member account shall be rebuilt as of the date that PERS receives the single payment. The amount in the member account shall be the same as the amount in the member account at the time of the member's retirement.

(5) Reemployment of retired member who elected the total lump sum option or who received a lump sum payment in lieu of a small allowance (AS Refund). A retired member who elected the total lump sum option under ORS 238.305(3) or who received a lump sum payment in lieu of a small allowance under ORS 238.315 (AS Refund) may return to work with a participating employer in the six month period following the member's effective retirement date without having to repay the retirement benefits paid to them provided:

(a) The retired member is designated by the employer(s) as a casual, emergency, or seasonal worker as defined in OAR 459-005-0001; and

(b) The period or periods of employment with one or more public employers participating in the system do not exceed 599 hours.

(6) The return to work in a qualifying or other position after six months following the retirement date of a member who elected the total lump sum option or who received an AS Refund has no effect on the retire-

ment status of that member and, upon such reemployment, the member is not required to repay retirement benefits.

(7) If a retired member described in section (5) of this rule, is working subject to the limitation of subsection (5)(b) of this rule and the member exceeds that limitation, the member's retirement will be cancelled. The member will be required to repay to PERS in a single payment the total amount of all retirement benefits received. The member will reestablish active membership as required by ORS 238.078 effective the first of the calendar month following the date the member exceeded that limitation. The member's account shall be rebuilt in accordance with ORS 238.078(2) and subsection (10)(d) of this rule. Upon subsequent retirement, the member may choose a different retirement payment option.

(8) Limitations on hours of employment in sections (1) and (5) of this rule will be based on the number of hours employed on and after the retired member's effective retirement date.

(9) Reemployment under ORS 238.078(1). If a member has been retired for service for more than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of ORS 238.078(1), the following will occur:

(a) PERS will cancel the member's retirement effective the date of the member's reemployment.

(b) The member will reestablish active membership as required by ORS 238.078 on the date the member is reemployed.

(c) If the member elected an option other than a lump sum option under ORS 238.305(2) or (3), the member need not repay any service retirement allowance payment received that is attributable to the period the member was separated from service. The last monthly service retirement allowance payment to which the member is entitled will be for the month before the calendar month in which the member is reemployed. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS. Upon subsequent retirement, the member may choose a different retirement option.

(A) The member's account shall be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts distributed from the Benefits-In-Force Reserve (BIF) under the provisions of subsection (A) shall be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(d) If the member elected a partial lump sum option under ORS 238.305(2), the member need not repay any service retirement allowance payment received that is attributable to the period the member was separated from service. The last monthly service retirement allowance payment to which the member is entitled will be for the month before the calendar month in which the member is reemployed. A member who receives benefits to which he or she is not entitled must repay those benefits to PERS. No repayment of lump sum payment(s) received during the period the member was separated from service is required. Upon subsequent retirement, the member may not choose a different retirement option unless the member has repaid to PERS an amount equal to the lump sum payment(s) received and the interest that would have accumulated on that amount.

(A) The member's account shall be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts distributed from the BIF under the provisions of subsection (A), excluding any amounts attributable to any lump sum repayment(s) by the member, shall be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(e) If the member elected the total lump sum option under ORS 238.305(3), no repayment of the total lump sum payment received is required. Upon subsequent retirement, the member may not choose a different retirement option unless the member has repaid to PERS in a single payment an amount equal to the total lump sum payment received and the interest that would have accumulated on that amount.

(A) If the member repays PERS as described in subsection (e) the member's account shall be rebuilt as required by ORS 238.078 effective the date that PERS receives the single payment.

(B) Amounts distributed from the BIF under the provisions of subsection (A) shall not be credited with earnings for the period from the date of retirement to the date of active membership.

(10) Reemployment under ORS 238.078(2). If a member has been retired for service for less than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of ORS 238.078(2), the following will occur:

(a) PERS will cancel the member's retirement effective the date of the member's reemployment.

(b) All retirement benefits received by the member must be repaid to PERS in a single payment before the member can be reemployed.

(c) The member will reestablish active membership as required by ORS 238.078 effective the date the member is reemployed.

(d) The member account shall be rebuilt as of the date that PERS receives the single payment. The amount in the member account shall be the same as the amount in the member account at the time of the member's retirement.

(e) Upon subsequent retirement, the member may choose a different retirement payment option.

(11) Upon the subsequent retirement of any member who reestablished active membership under ORS 238.078, the retirement benefit of the member shall be calculated using the actuarial equivalency factors in effect on the effective date of the subsequent retirement.

(12) The provisions of subsections (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are applicable to members who reestablish active membership under ORS 238.078 whose initial effective retirement date is on or after the effective date of this rule.

(13) Reporting requirement. The employer shall notify PERS under which statute a retiree is reemployed in a format acceptable to PERS.

(a) Upon request by PERS, a participating employer shall certify to PERS that a retired member has not exceeded the number of hours allowed in ORS 238.082 and sections (1) and (5) of this rule.

(b) Upon request by PERS a participating employer shall provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.

(c) Participating employers shall provide the information requested in this section within 30 days of the date of the request.

(14) Sick leave. Accumulated unused sick leave reported by the employer to PERS upon a member's retirement, as provided in ORS 238.350, shall not be made available to a retired member returning to employment under sections (1) or (9) of this rule.

(15) Subsections (3)(c) and (3)(d) of this rule are repealed effective January 2, 2016.

(16) The effective date of this rule is January 1, 2008.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, 404, 499, 774, 776 & 789, OL 2007 Ch. 307,
Hist.: PERS 1-1994, f. 3-29-94, cert. ef. 4-1-94; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0182; PERS 13-1998, f. & cert. ef. 12-17-98; PERS 7-2001, f. & cert. ef. 12-7-01; PERS 18-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04; PERS 19-2004, f. & cert. ef. 6-15-04; PERS 3-2006, f. & cert. ef. 3-1-06; PERS 18-2007, f. & cert. ef. 11-23-07

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Rule Caption: Changes statutory term "Notice of Contest" to "Notice of Dispute."
Adm. Order No.: PERS 19-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Amended: 459-045-0030
Subject: Changes statutory term "Notice of Contest" to "Notice of Dispute."
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-045-0030
General Administration

(1) An alternate payee's award is payable to the alternate payee if the member would be eligible to receive benefits upon separation from service. The member is not required to be separated from service.

(2) A court order may restrict an alternate payee's award to be payable only when the member applies for and receives benefits.

(3) Unless prohibited by court order, an alternate payee who requests a withdrawal shall receive an additional 50 percent of the alternate payee award as of the effective date of withdrawal if:

(a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and before June 30, 2006; and

(b) As of the alternate payee's effective date of withdrawal, the member has met the requirements of OAR 459-010-0055(4), or would meet them except that the member has not withdrawn that portion of the member account that may be withdrawn.

(4) Under no circumstance may an alternate payee withdraw less than the entire alternate payee award.

(5) The alternate payee may revoke the request for withdrawal if PERS receives a written request to revoke before the date of distribution.

(6) The separate account in the name of the alternate payee shall be credited with earnings in accordance with OAR chapter 459, division 007 to the earlier of:

(a) The date of distribution of the separate account; or

(b) The date a non-vested member ceases to be a member as provided in ORS 238.095(2).

(7) An alternate payee who is awarded a separate account in the Fund in the alternate payee's own name shall not be allowed to participate in the Variable Annuity Account in the Fund, as described in ORS 238.260, regardless of whether the member participated in the Variable Annuity Account in the Fund. Once a separate account is established for the alternate payee, those funds shall no longer receive variable annuity account earnings.

(8) At the time of the division and establishment of the alternate payee accord, the alternate payee account shall be administered under Tier One pursuant to ORS 238.250 and 238.255 if:

(a) The member established membership in PERS or performed any period of service for a participating public employer that is credited to the six month period of employment required of an employee under ORS 238.015 before January 1, 1996; or

(b) The member ceased to be a member of PERS under the provisions of ORS 238.095 or 238.105, but restored part or all of the forfeited creditable service from before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January 1, 1996.

(9) At the time of the division and establishment of the alternate payee account, the alternate payee account shall be administered under Tier Two pursuant to ORS 238.250 and 238.435, if the provisions of section (8)(a) and (b) of this rule are not applicable to the member.

(10) The provisions of this rule do not apply to judge members under ORS 238.500 to 238.585.

(11) The provisions of this rule do not apply to the benefits provided by the Oregon Public Service Retirement Plan Pension Program under ORS Chapter 238A.

(12) An alternate payee who elects to begin receiving an award pursuant to a court order that uses the Division Methods described in OAR 459-045-0010(1) and (2), may select any retirement payment option available to the member, other than a joint and survivor annuity, but only if a court order allows the alternate payee to make any elections. The retirement payment to an alternate payee must be:

(a) Contingent on the member's eligibility for retirement benefits, regardless of whether the member actually retires;

(b) Separate and independent from the member's payment date and payment option; and

(c) Actuarially computed based on the age and life expectancy of the alternate payee.

(13) The alternate payee may elect to convert the Refund Annuity Option as described in ORS 238.300 to one of the following optional forms:

(a) Option 1, as described in ORS 238.305(1);

(b) Option 4, as described in ORS 238.305(1); or

(c) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and 238.305(3).

(14) Alternate payees are provided 60 days from the date of their first payment to change the option or designation of beneficiary, except that the designation of beneficiary under the Refund Annuity Option or Option 4 may be changed by the alternate payee at any time before the alternate payee's death.

(15) An alternate payee whose total award is less than $200 per month under Option 1, defined in ORS 238.305(1), shall receive in lieu of any and all allowances or other benefits or form of payment described in section (13) of this rule, a one time lump-sum payment equal to the actuarial value as of the effective date of the alternate payee's retirement, as is the case for a member under ORS 238.315.

(16)(a) PERS shall provide to the alternate payee a written summary of the information used in making a retirement computation. An alternate payee may dispute the accuracy of the factual information used by PERS in making the computation of the retirement allowance or benefit by filing a written notice of dispute with PERS not later than the later of:

(A) The 30th day after the date on which the computation and information is provided to the alternate payee under this section; or

(B) The 30th day after the date on which the retirement allowance or benefit to which the alternate payee is entitled first becomes payable.

(b) The filing of a notice of dispute under this section extends the time allowed for election of an optional form of retirement allowance or benefit until the 30th day after the conclusion of the dispute proceeding or review results in a change in the computation of the retirement allowance or benefit.

(c) Upon receiving a notice of dispute under this section, PERS shall determine the accuracy of the disputed information and make a written decision either affirming the accuracy of the information and computation based thereon or changing the computation using corrected information. PERS shall provide to the member a copy of the decision and a written explanation of any applicable statutes and rules.

(d) This section does not affect any authority of PERS, on its own initiative, to correct an incorrect computation of any retirement allowance or benefit.

(17) An alternate payee may not receive any cost of living increase under ORS 238.360, or special ad-hoc increase that may be granted by the Legislature under 238.365 or 238.385, or any other type of increase that may be granted to PERS retirees until benefits are first paid by PERS to or on behalf of the member.

(18) An alternate payee is not entitled to health insurance benefits under ORS 238.410, 238.415, and 238.420 regardless of whether a court order awards these benefits to an alternate payee.

(19) An alternate payee is not entitled to any benefits derived from the optional purchase of police officer and fire fighter unit benefits under 238.440 regardless of whether a court order awards these benefits to an alternate payee.

(20) If an alternate payee begins receiving a payment before the member, the alternate payee is not entitled to any further increases in retirement credit that the member may earn or become entitled to before the member's actual retirement due to continued employment, earnings, or other benefits earned as a member participating in PERS.

(21) Alternate payee court awards made after a member has retired under ORS 238.300 or 238.320 must be paid as deductions from the retired member's retirement allowance or lump-sum benefit or from the member's beneficiary's retirement allowance or lump sum payment. No alternate payee account shall be established.

(22) A court order may require a member who retired under ORS 238.300 or 238.320 to change the designated beneficiary outside the timeframe allowed under ORS 238.305(5) or 238.325(2). The retirement allowance shall be adjusted based on the new beneficiary's age to ensure the value of the benefits is not greater than the allowance the member is otherwise eligible to receive.

(23) Members who retire for disability under ORS 238.320 or 238.325 are considered retired members and all the provisions of sections (12) through (21) of this rule apply to the alternate payee.

(24) Death benefits payable from an alternate payee account are as follows:

(a) If an alternate payee dies before payout or retirement, the alternate payee award is payable to the alternate payee's designated beneficiary or estate as provided by ORS 238.390 and 238.395. No employer death benefits are payable under ORS 238.395 unless the member would have been eligible for employer death benefits had the member died on the same date as the alternate payee.

(b) If an alternate payee has begun receiving retirement benefits or dies after the first payment is due, the benefits due the designated beneficiary or estate, if any, shall be based on the option selected by the alternate payee.

(c) If an alternate payee dies after applying for a monthly retirement benefit but before the first of the month following the effective retirement date, the account shall be treated as if the alternate payee died before retirement and benefits shall be paid under subsection (a) above.

(d) If the alternate payee is awarded a percentage of a benefit, as long as the award is payable the award shall continue to be paid to the alternate payee's designated beneficiary, unless the court decree specifies otherwise.

(25) If the member predeceases the alternate payee, the benefits payable to the alternate payee are as follows:

(a) The alternate payee who has a separate account becomes eligible to withdraw his or her account in the form of a death benefit under ORS 238.390 and 238.395 (if eligible). If the alternate payee elects a death benefit under ORS 238.390 and 238.395 (if eligible), the death benefit shall be in lieu of any withdrawal, service or disability retirement or any other benefit. If the alternate payee does not elect a death benefit, the alternate payee shall be eligible to withdraw the separate account, or to leave the account in the Fund and elect to draw benefits under one of the optional retirement choices described in section (13) of this rule, any time on or after the date the member would have reached earliest retirement age.

(b) If the alternate payee is awarded a percentage of a benefit, as long as the award is payable the award shall be paid according to the decree of

divorce or separation or annulment unless the court decree provides for no alternate payee death benefits from the member's account.

(26) Benefit payments to either the member or the alternate payee, or to both simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal Revenue Code (IRC) shall be deducted from the benefit payment(s) to the member or the alternate payee, or both. Unless a final court order specifies the allocation of the deduction for benefits that exceed the limits in IRC Section 415, PERS shall pro rate the amount that exceed those limits in the same proportions that benefits were awarded to the member and the alternate payee as specified in a final court order.

(27) Distributions of benefits under OAR chapter 459, division 045 must not jeopardize the status of the programs as being part of a tax-qualified governmental plan.

Stat. Auth.: ORS 238.465 & 238.650
Stats. Implemented: ORS 238.450, 238.465, OL 2007 Ch. 53
Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 17-2004, f. 6-15-04 cert. ef. 7-1-04; PERS 14-2005, f.& cert. ef. 8-18-05; PERS 19-2007, f. & cert. ef. 11-23-07

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Rule Caption: Allow alternate payees to take distribution from account before they are eligible to receive distribution.
Adm. Order No.: PERS 20-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Amended: 459-050-0080, 459-050-0220
Subject: Aligns rules with new statutory provisions under House Bill 2286 that amended provisions in the Oregon Savings Growth Plan to allow an alternated payee to take a distribution form his/her account before the date the employee would be eligible to receive a distribution.

These changes were made to conform to governmental deferred compensation plan regulations enacted pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 that allow an alternate payee to take a distribution without a qualifying event, If allowed in a Qualified Domestic Relations Order.

These rule modifications are necessary to comply with the statutory changes.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-050-0080
Distribution of Funds After a Severance of Employment

The purpose of this rule is to establish the criteria and process for obtaining a distribution of deferred compensation funds after a participant's severance of employment as defined herein. Distribution under the Deferred Compensation Program shall be made in accordance with any minimum distribution or other limitations required by **Internal Revenue Code (IRC) section 401(a)(9)**, **26 U.S.C. 401(a)(9)** and related regulations.

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Commencement date" means the month and year that a participant will begin receiving a distribution(s) from the Deferred Compensation Program, whether by operation of the participant's election or under the terms of the plan. The commencement date is not the date that the necessary funds are liquidated for distribution.

(b) "Date of distribution" means the date funds are distributed to the participant, alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of the mechanism by which those funds are distributed.

(c) "Intention to return to work" means a written or oral, formal or informal agreement has been made with the plan sponsor to return to work on a full time, part time or temporary basis at the time the severance is effective. If a participant returns to work with the plan sponsor within 30 calendar days of severance, then a rebuttable presumption exists that the participant intended to return to work as of the date of severance.

(d) "Liquidation date" means the date the Deferred Compensation Program designates for liquidation of funds. Generally, the liquidation date will not be earlier than the 25th day of the calendar month preceding the commencement date. The Deferred Compensation Program may determine the liquidation date based on normal business practices. The Deferred Compensation Program is not liable to a participant for failure to liquidate an investment on a specified date.

(e) "Liquidation of funds" means the conversion of the necessary funds from the investments in the Deferred Compensation Program into cash for payment under a specified manner of distribution.

(f) "Manner of distribution" means the manner elected by the participant, alternate payee, or beneficiary in accordance with the terms of the plan, in which a distribution is to be paid out of the Deferred Compensation Program.

(g) "Required beginning date" means April 1 of the calendar year following the later of:

(A) The calendar year in which the participant reaches 70-1/2 years of age; or

(B) The calendar year in which the participant retires.

(h) "Severance of Employment" means a participant has ceased rendering services as an employee or an independent contractor of a plan sponsor for a minimum of 30 consecutive days, including services as a temporary employee, and has no intention to return to work for the plan sponsor.

(2) Manner of distribution. Subject to the provisions of sections (3) through (5) set out below, a participant, surviving beneficiary, or alternate payee may elect a manner of distribution, designate one or more beneficiaries, and change beneficiaries at any time. The total amount distributed may not exceed the total account value. The following manners of distribution are available:

(a) Total distribution of the account value in a lump sum. A lump-sum distribution is not eligible for direct deposit;

(b) Single distribution of a portion of the account value in a lump sum. This form of lump-sum distribution is not eligible for direct deposit. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held;

(c) Systematic withdrawal distribution for a specific number of years, which may be paid annually, semiannually, quarterly or monthly. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The remaining number of periodic distributions shall not change. However, the amount of distributions shall be adjusted depending on the earnings or losses experienced;

(d) Periodic specified dollar amount distribution. This distribution may be paid annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts in $5 increments. Any funds remaining after each periodic payment shall continue to receive earnings or losses based on the performance of investment option(s) in which the funds are held. The amount of each periodic distribution will remain the same throughout the withdrawal period. However, the withdrawal period may vary depending on the earnings or losses experienced;

(e) Required minimum distribution, which will provide an annual distribution of the minimum amount required in IRC section 401(a)(9), 26 U.S.C. 401(a)(9). This manner of distribution is available only to those who defer distribution to age 70-1/2 years of age (no later than April of the year following the year reaching 70-1/2 years of age) or a participant who continues to work and severs employment after 70-1/2 years of age. Funds not distributed shall continue to receive earnings or losses based on the performance of investment option(s) in which funds are held; or

(f) Mandatory single lump-sum distribution of an account balance of less than $1,000. This distribution shall be made to any participant or alternate payee with an account balance of less than $1,000 within one year of the participant's severance of employment.

(3) Application Requirements. Application shall be made on forms provided by, or other methods approved by, the Deferred Compensation Program. No distribution may be paid unless a timely and complete application is filed with the Deferred Compensation Program as follows:

(a) An application for distribution or to change the manner of distribution will be considered filed in a timely manner if it is received in writing or other method approved by the Deferred Compensation Program at least 30 days before the requested commencement date. The commencement date may be no earlier than the second calendar month following the month of severance of employment.

(b) An application for distribution or to change the manner of distribution may be made by a participant, surviving beneficiary, or alternate payee or the authorized representative of a participant, surviving beneficiary or alternate payee. A valid document appointing an authorized representative such as a power of attorney, guardianship or conservatorship appointment, must be submitted to the Deferred Compensation Program. The Deferred Compensation Program retains the discretion to determine whether the document is valid for purposes of this rule.

(c) The participant, surviving beneficiary, or alternate payee must file a tax-withholding certificate with the Deferred Compensation Program at

least 30 days before the requested commencement date. If the certificate is not filed, the Deferred Compensation Program shall withhold state income taxes based on a marital status of single and no dependents and federal income taxes based on a marital status of married and 3 dependents, or other federally mandated tax withholding requirements. A new certificate may be filed at any time, and will be applied to distributions paid on and after the first calendar month following the date received or as soon as reasonably possible.

(d) When direct deposit is permitted under the Deferred Compensation Plan, a request for periodic distributions to be transmitted to a financial institution for direct deposit must be made using a Deferred Compensation Program Automatic Deposit Agreement.

(e) Distribution of deferred compensation funds will occur no later than five days following the date funds necessary for a specified payment were liquidated. Liquidation of funds will be done on a pro-rata basis determined by the investment allocation of an account at the time the funds are liquidated or from the Stable Value account, at the participant's election. The election must be filed before the participant begins receiving distributions. If the participant elects distribution from the Stable Value account and there are insufficient funds in that account on the date of each distribution (whether monthly, quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis described above regardless of the participant's election.

(4) Denial of distribution election. The Deferred Compensation Program may deny any distribution election if that denial is required to maintain the status of the Deferred Compensation Program under the Internal Revenue Code and regulations adopted pursuant to the Internal Revenue Code and ORS Chapter 243.

(5) Changing the manner of distribution. A participant, surviving beneficiary or alternate payee may change or discontinue the manner of distribution only as follows and subject to the requirements of section (3) above:

(a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may be changed at any time upon application as required under section (3) of this rule.

(b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued upon written notification or by other methods approved by the Deferred Compensation Program. The participant, surviving beneficiary, or alternate payee must submit an application, as required in section (3) of this rule, to restart distributions and elect a manner of distribution for the remaining account.

(c) Subject to the requirements of this rule, a participant, surviving beneficiary or alternate payee who has commenced receiving a required minimum distribution may apply under the requirements of section (3) of this rule:

(A) For one or more additional distributions in a lump sum not to exceed the total value of the account; and

(B) To change the manner of distribution so long as future distributions will be continuous and equal to or greater than the minimum distribution required.

[Publications: Publications referenced are available from the agency.]
Stat. Auth: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507, OL 2007 Ch. 54
Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 20-2007, f. & cert. ef. 11-23-07

459-050-0220
Distribution of an Alternate Payee Account

(1) Commencement date of distribution. Subject to other requirements set forth in this division of administrative rules, a distribution to an alternate payee may commence earlier than the date an employee would be eligible to receive payments under the plan if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation.

(2) Distribution options. Subject to the rules and regulations pertaining to required minimum distributions, the alternate payee may elect to receive payment in any manner available to the participant under the Deferred Compensation Plan and OAR 459-050-0080, without regard to the form of payment elected by the participant.

(3) Application. The alternate payee must file an application for distribution, or request to change a distribution option with the Deferred Compensation Program at least 30 days before the requested date of the change or the distribution commencement date.

(4) Life expectancy factor. The life expectancy of the alternate payee shall be used anytime the form of payment elected by the alternate payee is based on a life expectancy factor.

(5) Tax liability. If the alternate payee is a spouse or former spouse, the alternate payee shall be solely responsible for the total amount of state and federal taxes at the time of distribution of an alternate payee's account effective January 1, 2002. If an alternate payee is someone other than the spouse or former spouse of the participant, the participant shall be solely responsible for the total amount of state and federal taxes at time of distribution of their alternate payee's account.

Stat. Auth: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507, OL 2007 Ch. 54
Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02 ; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 20-2007, f. & cert. ef. 11-23-07

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Rule Caption: IAP Account Installments Over Member's Life Expectancy — Implements House Bill 2679.
Adm. Order No.: PERS 21-2007
Filed with Sec. of State: 11-23-2007
Certified to be Effective: 11-23-07
Notice Publication Date: 9-1-2007
Rules Amended: 459-080-0250
Subject: In addition to the 5, 10, 15 or 20-year payout periods, this change implements the option in House Bill 2679 for members to receive their IAP account in distributions over a period that is equal to the anticipated life span of the member.

This rule outlines how installment payments, including payments over a member's life expectancy, will be administered.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-080-0250
IAP Account Installments

(1) Definitions.

(a) "Estimated Life Expectancy" means the member's life expectancy as determined by the applicable IRS mortality table.

(b) "Payout Period" means the span of years over which the member elects to receive installment payments under section (2) of this rule.

(2) Upon retirement, a member of the individual account program who elects to receive the amounts in the member's employee and employer accounts in installments under ORS 238A.400(2) shall designate the number of years over which the installments are to be paid, selecting a period of 5, 10, 15, or 20 years, or a period equal to the member's estimated life expectancy. The member may also request that installments be made on a monthly, quarterly, or annual basis.

(3) Account balances will be adjusted each month to reflect investment gains and losses on the unpaid balance.

(a) The amount of each 5-, 10-, 15-, or 20-year installment will be determined by dividing the member's adjusted balance by the number of remaining installment payments.

(b) The installment amount for the member's estimated life expectancy will be determined once a year by dividing the member's adjusted balance on the anniversary of their effective retirement date by the member's remaining estimated life expectancy, which amount will then be paid monthly, quarterly, or annually.

(4) If a member requests installments under section (2) of this rule, but the amount of the requested installment would be less than $200 as determined at the time of the initial request, the frequency and Payout Period of the installment payment will be modified so that the amount of the installment is at least $200. If the member's account balance is $1,000 or less at the time of the initial request, the member will not be eligible for installments and the balance will be paid in a lump sum.

(5) Notwithstanding the Payout Period selected by the member under section (2) of this rule, any distribution will be adjusted to comply with the required minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect August 29, 2003.

(6) Members who elect a five year Payout Period or a lump sum payment may elect to directly roll over any portion of their IAP installment or lump sum payment to an eligible retirement plan, subject to the following limitations:

(a) Members will not be permitted to directly roll over any IAP installment payments if the total annual distribution from their IAP account is reasonably expected to total less than $200.

(b) If members elect to have a portion of their IAP installment or lump sum payment paid directly to them and a portion directly rolled over, the

portion to be rolled over cannot be less than $500 or that portion will be paid directly to the member.

(7) Members who elect a 10-, 15-, or 20-year, or an estimated life expectancy Payout Period cannot elect to have any portion of their installment payments rolled over.

(8) Members who are subject to the required minimum distribution requirements referenced in section (5) of this rule may only roll over that portion of their installment or lump sum payments that exceeds required minimum distribution requirements.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.400, OL 2007 Ch. 412
Hist.: PERS 23-2003(Temp), f. & cert. ef. 9-22-04 thru 3-15-05; PERS 30-2004, f. & cert. ef. 11-23-04; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 14-2006, f. & cert. ef. 9-26-06; PERS 21-2007, f. & cert. ef. 11-23-07

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Oregon State Marine Board
Chapter 250

Rule Caption: Establish a Statewide Boating Safety/Education Assistance Program for non-profit organizations and associations.
Adm. Order No.: OSMB 14-2007(Temp)
Filed with Sec. of State: 12-10-2007
Certified to be Effective: 12-10-07 thru 5-31-08
Notice Publication Date:
Rules Adopted: 250-010-0075
Subject: This rule will implement a statewide boating safety/education assistance program. The program will provide small amounts of funding to local community organizations to address safety problems on their local waterways. The funds would be used for creative and innovative local projects that promote safe boating. Volunteer boating groups (such as the US Coast Guard Auxiliary or US Power Squadrons), non-profit clubs and associations are among the groups that would be eligible to apply for funding.
Rules Coordinator: June LeTarte—(503) 378-2617

250-010-0075
Boating Safety/Education Assistance Program

(1) The Board is authorized by ORS 830.110(1), (4), (7), and (8) to carry out the provisions of boating safety education. The Boating Safety/Education Assistance Program provides funds for new, unique or innovative ideas or programs to promote safe boating and increase youth involvement in recreational boating.

(2) The Board may adopt policies, guidelines and procedure manuals to implement these rules. Assistance funds will be provided only to participants who meet eligibility guidelines. The Program process is competitive in nature. Applications are reviewed and evaluated on the basis of applicant's eligibility, project feasibility, merit and effectiveness and the proposal's compatibility with goals, needs and priorities of the Board.

(3) Applications will be accepted from nonprofit corporations or organizations. The application will be submitted to the Agency as described in the "Let's Go Boating" Assistance Program Manual.

(A) Following Marine Board staff consideration, the applicant will be advised in writing of the Marine Board Director's or designee's decision. If the application is denied, Marine Board staff will provide specific notice indicating the reasons.

(B) Upon application approval, Marine Board staff will award a written contract stipulating project specifications and expectations. The recipient must sign and return the contract to the Agency within forty-five (45) days or award may be rescinded.

(4) An annual allotment of funds is available each biennial period as prescribed by the Board. Proposals requesting more than the amounts prescribed may be considered on a case-by-case basis based on available funds.

(A) Only items approved by the Marine Board Director or designee and identified in the scope of work from the recipient's finalized contract's itemized cost estimates or amendments are eligible for funding. Eligible project costs are those identified specifically with and charged directly to a particular scope item.

(B) In determining approval, Marine Board staff will give priority to those applicants providing their program or services free to the general public.

(C) Applications for funding are accepted, reviewed and considered on an annual basis prior to the state fiscal year beginning July 1st. Applicants should contact the Agency for program application deadlines and availability of funds.

(D) The Board requires projects or programs to be completed within the fiscal year period of funding approval. Under extraordinary circumstances, the Marine Board Director or designee may authorize project extensions up to ninety (90) days.

(5) Each approved project must clearly acknowledge the use of Marine Board funds. This will be done as appropriate in print or by sign.

Stat. Auth.: ORS 830.110
Stats. Implemented:
Hist.: OSMB 14-2007(Temp), f. & cert. ef. 12-10-07 thru 5-31-08

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Oregon State Treasury
Chapter 170

Rule Caption: Allocation of Private Activity Bond Limit
Adm. Order No.: OST 2-2007(Temp)
Filed with Sec. of State: 11-20-2007
Certified to be Effective: 11-20-07 thru 4-15-08
Notice Publication Date:
Rules Amended: 170-071-0005
Subject: The rule changes clarify the Private Activity Bond Committee's policy of allowing carry forward allocations for specific projects/purposes or for a qualifying class of projects to be further allocated by the requestor, revise the time period for acceptance of cap allocation requests to allow for more efficient timing of meetings of the Committee, and bring the administrative rules for PAB allocations into compliance with HB 3265 which becomes effective on January 1, 2008.
Rules Coordinator: Sally Furze—(503) 378-4990

170-071-0005
Allocation of Private Activity Bond Limit

(1) Definitions:

(a) "Committee" means the Private Activity Bond Committee established pursuant to ORS 286.615.

(b) "Issuer" has that meaning given to it by ORS 286.605.

(c) "Private Activity Bonds" has the meaning given in Section 141 of the Internal Revenue Code of 1986.

(2) Meetings of the Committee. Committee meetings will be held as necessary, and on dates determined by the Committee to be consistent with the efficient allocation of the state's private activity bond volume limit (CAP), with public notice given as required by law. Committee meetings are open to the general public and may be held in any location permitted under the public meetings law, ORS 192.610 to 192.690, where the Committee deems appropriate. The Committee reserves the right to change its meeting schedule as allowed by the Oregon Public Meetings Law.

(3) Allocation Requests. Applications for current year CAP must be submitted no earlier than 30 days prior to the year for which the allocation is requested. Requests must be received no later than 10 business days before the scheduled meeting of the Committee at which the request is to be considered. Private activity bond issuers not specifically granted CAP by the legislature must submit requests for CAP to the Committee. Issuer's who have been granted a CAP allocation by the legislature may also apply to the Committee for additional CAP. CAP requests may be made for a specific project or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. CAP requests and all communications must be sent to the Committee's address (Office of the State Treasurer, Debt Management Division, 350 Winter Street NE, Suite 100, Salem, Oregon 97301-3896; email "DMD@ost.state.or.us") and include:

(a) Name of the governmental bond issuer;

(b) Title of the obligation to be issued;

(c) Principal amount of the obligation;

(d) Amount of the allocation request;

(e) Date of any purchase commitment if such commitment has been made;

(f) Name and address of the original purchaser(s) of the obligation if such purchase has been made;

(g) Name, address and phone number of the principal user(s) of the proceeds from the issue;

(h) Anticipated sale date of the issue;

(i) Anticipated closing date of the issue;

(j) Name, address and phone number of bond counsel;

(k) Section and paragraph of the Internal Revenue Code, as identified by bond counsel, under which the bonds are deemed private activity bonds;

(l) How the project or activity for which an allocation is requested meets statutory standards;

(m) Expected number of family wage jobs created or saved as a result of the allocation;

(n) Expected number of housing units to be constructed or renovated as a result of the allocation, (describe how the affordability requirements of the Internal Revenue Code and your local requirements, if applicable, are to be met); and

(o) Any additional material, as required by the Committee, in support of the requested allocation.

(4) Allocation Standards. The purpose of private activity bonding in this state is to maximize the economic benefits of such bonding to the citizens of this state. To this end, the Committee shall make allocations that are expected to further economic development, housing, education, redevelopment, public works, energy, waste management, transportation and other activities that the Committee determines will benefit the citizens of the state. The Committee, in determining whether an allocation is made to a project or class of projects or activities, will consider criteria including but not limited to the following:

(a) Support projects that increase the number of family wage jobs in Oregon,

(b) Promote economic recovery in small cities heavily dependent on a single industry,

(c) Emphasize development in underdeveloped rural areas of this state,

(d) Utilize educational resources available at institutions of higher education,

(e) Support development of the state's small businesses, especially businesses owned by women and members of minority groups,

(f) Encourage use of Oregon's human and natural resources in endeavors, which harness Oregon's economic comparative advantages.

(5) Decision Factors. The Committee shall consider the following factors in reaching its allocation decision:

(a) Amount of CAP remaining within the Committee's allocation discretion and the total amount of unused CAP remaining at the time the request is received;

(b) Amount of allocation requested;

(c) Whether the project(s) or activities promote one of the standards listed in section (4) of this rule; and

(d) Type of bond issuer making the request.

(6) Allocation Methods.

(a) The Committee may grant more or less than the originally requested amount of CAP. Issuers must submit requests in the form and manner described in section (3) of this rule.

(b) At the Committee's discretion, a portion of their CAP may be reserved for the last six months of the calendar year.

(7) Committee Decision Final. Issuers have the right to submit additional information, germane to their request, to the Committee at its meeting described in section (6) of this rule. Action of the Committee is final, however, if a CAP request is denied, a new application may be re-submitted through the procedures outlined in this rule.

(8) Post-Allocation Report. Issuers to whom CAP allocations have been made under this rule must submit to the Committee, within 150 days after receiving such allocation or by December 15 of the current calendar year, whichever is earliest, a confirmation of bond closing. In the event an issuer fails to file written confirmation of bond closing as required by this section, the CAP allocation shall automatically lapse. Bond closing confirmations must be delivered to the Committee address and includes:

(a) Name of the governmental bond issuer;

(b) Title of the obligation issued;

(c) Principal amount of the obligation issued and allocation used;

(d) Date of closing;

(e) Date of the bond allocation;

(f) Name and address of the individual submitting the bond closing confirmation; and

(g) Any additional material, which may be required by the Committee in support of the closing confirmation.

(9) Lapse or Extension of Allocation. Lapse of an allocation does not preclude the issuer from applying for a subsequent allocation for the same project. Issuers may, under compelling circumstances, request an extension of time to their initial 150-day period. Such requests must be filed with the Committee for approval or denial of the extension. All CAP allocations automatically lapse on December 15 of the calendar year for which the allocation is made, unless the issuer who has received the allocation files with the Committee a binding commitment to purchase and close the bond issue on or before December 31.

(10) Carry Forward Allocations.

(a) The Committee, on behalf of the state's agencies, commissions, and governmental units, may elect to carry forward all unused CAP. To receive a carry forward CAP allocation, an issuer must file a carry forward request with the Committee before December 15 and after September 30 of the current calendar year. The Committee will require information necessary for it to determine whether such carry forward request qualifies under the Internal Revenue Code and associated regulations. The Committee, not later than January 31 of the following year, shall make carry forward allocations to eligible issuers for specified purposes or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. Carry forward requests must include the information required in section (3) of this rule.

(b) An issuer receiving a carry forward allocation must forward to the Internal Revenue Service a document indicating the carry forward election made to that issuer by the Committee, in such manner and format proscribed by the Internal Revenue Service and any relevant state or federal regulations.

(c) It is the responsibility of the issuers to whom carry forward CAP is granted to file Form 8328 "Carry Forward Election of Unused Private Activity Bond Volume Cap" with the Internal Revenue Service Center, Ogden, UT 84201 on or before February 15 of the year in which the carry forward is granted, in order to validate the carry forward with the federal government. A signed copy of the issuer's filing with the Internal Revenue Service must also be sent to the Committee on or before February 15 of the year in which the carry forward CAP is granted.

(d) Use Report. Issuers to whom carry forward CAP is granted must submit to the Committee, within 30 days of closing, a confirmation of CAP use and bond closing information including:

(A) Name of the governmental bond issuer;

(B) Title of the obligation issued;

(C) Principal amount of the obligation issued and allocation used;

(D) Date of closing;

(F) Date of the bond allocation;

(G) Name and address of the individual submitting the bond closing confirmation; and

(H) Any additional material, which may be required by the Committee in support of the closing confirmation.

(11) Annual Needs Survey. The Committee during the final quarter of each calendar year will inquire of the private activity bond issuers of the state as to their anticipated private activity bond issuance and the need for private activity bond allocation in the ensuing year. To be taken into consideration by the Committee for future allocation issuers should provide their information to the Committees address on or before December 15 of the calendar year prior to the year for which private activity bond projections are made.

(12) The Committee may allocate amounts, subject to the standards set forth in subsection (4) of this rule, among issuers without a request for allocation from the issuer in the event additional bond limit becomes available, because of changes in federal law or otherwise, that has not been specifically allocated to an issuer by the Legislative Assembly.

(13) Exceptions. The Committee, at its discretion, may waive any or all provisions of this rule.

Stat. Auth.: ORS 286.615
Stats. Implemented: ORS 286.615
Hist.: TD 3-1986, f. & ef. 9-18-86; TD 3-1988(Temp), f. & cert. ef. 6-14-88; TD 4-1988, f. & cert. ef. 12-30-88; TD 2-1994, f. & cert. ef. 9-9-94; TD 2-1995, f. & cert. ef. 12-26-95; TD 1-1997, f. & cert. ef. 7-23-97; OST 1-2001, f. 7-23-01, cert. ef. 8-1-01; OST 4-2006, f. & cert. ef. 10-25-06; OST 2-2007(Temp), f. & cert. ef. 11-20-07 thru 4-15-08

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Racing Commission
Chapter 462

Rule Caption: Administration of certain drugs within 24 hours prior to post time.
Adm. Order No.: RC 6-2007(Temp)
Filed with Sec. of State: 11-28-2007
Certified to be Effective: 11-28-07 thru 5-23-08
Notice Publication Date:
Rules Amended: 462-160-0110, 462-160-0120, 462-160-0130
Subject: Prohibits an animal from participating in a race if the animal was administered certain drugs within 24 hours prior to post time.
Rules Coordinator: Carol N. Morgan—(971) 673-0208

462-160-0110
Veterinary Practices

(1) Veterinarians under Authority of Official Veterinarian:

(a) Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are under the authority of the official veterinarian and the stewards:

(b) The official veterinarian shall recommend to the stewards or the Commission the discipline that may be imposed upon a veterinarian who violates the rules.

(2) Treatment Restrictions:

(a) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer, via injection, topical application, inhalant, per os or per rectum, a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission;

(b) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(A) A recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(B) A non-injectable substance on the direction or by prescription of a licensed veterinarian; or

(C) A non-injectable non-prescription medication or substance.

(c) No person shall possess a hypodermic needle, syringe or injectable of any kind on association grounds, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the stewards and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the stewards and/or the Commission;

(d) Veterinarians shall not have contact with an entered horse 24 hours prior to post time of which the horse is entered except for the administration of furosemide under the guidelines set forth in OAR 462-160-0130(5) unless approved by the commission veterinarian. Contact shall be defined as any direct or indirect physical proximity or examination;

(e) Any horse entered for racing must be present on the grounds 5-hours prior to the post time of the race they are entered in unless that horse is not entered to race with furosemide in which case that horse must be on the grounds no later than one hour prior to the post time of the race for which the horse is entered.

(3) Veterinarians' Reports:

(a) Every veterinarian who treats a racehorse at any location under the jurisdiction of the Commission shall, in writing on the Medication Report Form prescribed by the Commission, report to the official veterinarian or other commission designee at the racetrack where the horse is entered to run or as otherwise specified by the commission, the name of the horse treated, any medication, drug, substance, or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian;

(b) The Medication Report Form shall be signed by the practicing veterinarian;

(c) The Medication Report Form must be filed by the treating veterinarian within 24-hours of any treatments in section (a) and not later than post time of the race for which the horse is entered. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the Commission, or to the trainer or owner of record at the time of treatment;

(d) A timely and accurate filing of a Medication Report Form that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent, if any, of a rules violation.

(4) Veterinary Licenses. Any veterinarian licensed by the Oregon Racing Commission to practice veterinary medicine on a racecourse shall be prohibited from concurrently holding any other license at any location under the jurisdiction of the Commission.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270 & 462.415
Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07; RC 1-2007, f. 2-28-07, cert. ef. 3-7-07; RC 6-2007(Temp), f. & cert. ef. 11-28-07 thru 5-23-08

462-160-0120
Prohibited Practices

The following are considered prohibited practices:

(1) The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or,

(2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the Commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in (human or animal) is forbidden without prior permission of the Commission or its designee.

(3) The possession and/or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the Commission is forbidden:

(a) Erythropoietin;

(b) Darbepoetin;

(c) Oxyglobin®; and

(d) Hemopure®.

(4) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

(a) Any treated horse shall not be permitted to race for a minimum of 10 days following treatment;

(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the Commission;

(c) Any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines on the association grounds must be registered with and approved by the Commission or its designee before use; and

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments must be reported to the official veterinarian on the prescribed form not later than the time prescribed by the official veterinarian.

(5) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24-hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or his/her designee.

(6) No medication may be taken into a stall where a horse is stabled unless it is intended for use on that horse. Any medication or substance that is found in a stall or on a person within a stall with a horse shall be prima facia evidence that it is intended to be administered to that horse.

(7) An animal may not participate in any race if the animal has been administered any drug that is prohibited by the Commission less than 24 hours before post time.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270 & 462.415
Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07; RC 1-2007, f. 2-28-07, cert. ef. 3-7-07; RC 6-2007(Temp), f. & cert. ef. 11-28-07 thru 5-23-08

462-160-0130
Medications and Prohibited Substances

(1) No horse may be administered any substance, other than foods, by any route or method less than 24 hours before post time except furosemide (by the manner described in these rules) unless approved by the commission veterinarian:

(a) Any licensee of the commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer;

(b) The licensed trainer is responsible for notifying the licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding of any hearings and any resulting action. In addition their presence may be required at any and all hearings relative to the case;

(c) Any veterinarian found to be involved in the administration of any drug with an RCI Classification of 1, 2, or 3, involved in a prohibited practice as outlined in 0AR 462-160-0120, or involved in an ORS 462 violation shall be referred to the State Licensing Board of Veterinary Medicine for consideration of further disciplinary action and/or license revocation. This is in addition to any penalties issued by the stewards or the commission;

(d) Any person who the stewards or the commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the stewards or the commission in no way prohibits a prosecution for criminal

acts committed, nor does a potential criminal prosecution stall administrative action by the stewards or the commission;

(e) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(2) Medication Restrictions:

(a) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

(A) Drugs or medications for which no acceptable threshold concentration has been established;

(B) Therapeutic medications in excess of established threshold concentrations;

(C) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

(D) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(b) Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter less than 24 hours before post time for the race in which the horse is entered.

(3) Medical Labeling:

(a) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection;

(b) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

(A) The name of the product;

(B) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(C) The name of each patient (horse) for whom the product is intended/prescribed;

(D) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

(E) The name of the person (trainer) to whom the product was dispensed.

(4) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs):

(a) The use of one of three approved NSAIDs shall be permitted under the following conditions:

(A) The approved NSAIDs shall be authorized medication at race meets at which the average daily gross mutuel wagering during the preceding year exceeded $150,000. If a race meet with average daily gross mutuel wagering during the preceding year of $150,000 or less desires NSAIDs be authorized medications at their race meet they may petition the commission to approve the use of permitted NSAIDs at their race meet. The commission may approve the use of permitted NSAIDs at such race meet, if in the opinion of the commission the race meet can provide for the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program adequately. Horses on any permitted NSAID will be designated on the overnight and the daily racing program with an "M";

(B) No horse utilizing a permitted NSAID may be entered into a race unless the presence of the specific NSAID is stated on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, the stewards may designate a time until which errors may be corrected;

(C) Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection not less than 24 hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone (or its metabolite oxyphenylbutazone) -- 5 micrograms per milliliter;

(ii) Flunixin — 25 nanograms per milliliter;

(iii) Ketoprofen — 10 nanograms per milliliter.

(D) These or any other NSAID are prohibited to be administered within the 24-hours before post time for the race in which the horse is entered;

(E) A test sample with a phenylbutazone to oxyphenylbutazone ratio of greater than 3:1 shall be a presumption of administration less than 24 hours before scheduled post time;

(F) The presence of more than one of the three approved NSAIDs in urine or any unapproved NSAID in the post-race serum, plasma or urine sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at the close of entries for the day in which the horse is entered.

(b) Any horse to which a NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s);

(c) When listed to race on a permitted NSAID, the approved laboratory must be able to detect the presence of a permitted NSAID in serum, plasma or urine by the routine methods of detection;

(d) If a permitted NSAID is detected in the urine or in any other specimen taken from a horse not stated to have permitted medication in its system on the entry form and/or program, the violation will result in a penalty to the horse's trainer and may result in loss of purse;

(e) If the same horse has three (3) overages of any permitted NSAID during a 365 day period the commission veterinarian shall rule the horse off all NSAIDs for a period of one year (365 days);

(f) The decision of whether to scratch a horse which has been entered incorrectly or is incorrectly treated shall be left to the discretion of the commission veterinarian.

(5) Furosemide:

(a) The commission may approve the use of furosemide at any race meet, if in the opinion of the commission the race meet can provide the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer a Furosemide program;

(b) Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the Veterinarian's List or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List the following process must be followed:

(A) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide they shall notify the official veterinarian or his/her designee, using the prescribed form, that they wish the horse to be put on the Furosemide List;

(B) The form must be received by the official veterinarian or his/her designee by the proper time deadlines so as to ensure public notification;

(C) A horse placed on the official Furosemide List must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or his/her designee, on the proper form, no later than the time of entry;

(D) After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the official Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days;

(E) Furosemide shall only be administered on association grounds;

(F) Upon the request of the regulatory agency designee, the veterinarian administering the authorized bleeder medication shall surrender the syringe used to administer such medication which may then be submitted for testing.

(c) Horses to run with furosemide must be so noted on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, the stewards may designate a time until which errors may be corrected:

(A) Horses entered to race with furosemide will be designated on the overnight and the daily racing program with a "Lasix®" or "L". If the race is the first race the horse is to run in on furosemide, it shall be designated in the daily racing program with a "1-L". If the race is the first race the horse runs without furosemide after running one or more races with furosemide it shall be designated in the program by "O-L" or "L-X";

(B) When discovered prior to the race, errors in the listing of furosemide treatments in the program shall be announced to the public.

(d) The use of furosemide shall be permitted under the following circumstances:

(A) Furosemide shall be administered no more than five hours but not less than four hours prior to the scheduled post time for the race for which the horse is entered;

(B) The furosemide dosage administered shall not exceed 500 mg. nor be less than 150 mg;

(C) Furosemide shall be administered by a single, intravenous injection;

(D) The trainer of the treated horse shall cause to be delivered to the official veterinarian no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the Commission:

(i) The name of the horse, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide;

(iv) Violations of this subsection (subsection (d)) shall result in a fine and scratch from the race the horse was entered to run. Violations may also result in the commission veterinarian ordering the loss of furosemide privileges.

(e) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample. If furosemide is not detected in a post-race sample, a penalty may be imposed upon the horse's trainer without loss of purse:

(A) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

(B) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(f) Unauthorized use of furosemide shall result in a penalty to the horse's trainer;

(g) The decision of whether to scratch a horse which has been entered incorrectly or is incorrectly treated shall be left to the discretion of the commission veterinarian;

(h) The commission veterinarian may rule a horse off furosemide if in his/her opinion it is in the horse's best interest, the interest of the citizens of the state or the best interest of horse racing.

(6) Bleeder List:

(a) The official veterinarian shall maintain a Bleeder List of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian;

(b) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to enter for the following time periods:

(A) First incident — 14 days;

(B) Second incident within 365 day period — 30 days;

(C) Third incident within 365 day period — 180 days;

(D) Fourth incident within 365-day period — barred for racing lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period;

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy;

(e) A horse may be removed from the Bleeder List only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal;

(f) A horse which has been placed on a Bleeder List in another jurisdiction pursuant to these rules shall be placed on a Bleeder List in this jurisdiction.

(7) Anti-Ulcer Medications. The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to 24 hours prior to the race in which the horse is entered:

(a) Cimetidine — 8-20 mg/kg PO BID-TID; and

(b) Omeprazole — 2.2 grams PO SID.

(8) Environmental Contaminants and Substances of Human Use:

(a) The following substances can be environmental contaminants in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases;

(b) The following drugs are recognized as substances of human use and addiction and which could be found in the horse due to its close association with humans;

(c) Regulatory thresholds have been set for the following substances: Caffeine — 100 nanograms of caffeine per milliliter of serum or plasma

(d) If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use it should be considered as a mitigating factor in any disciplinary action taken against the affected trainer.

(9) Dimethylsulfoxide (DMSO): The use of DMSO shall be permitted under the following conditions:

(a) It is only administered as an external topical application;

(b) A test sample shall not exceed 10 micrograms / ml. in serum of DMSO or its analogs.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270 & 462.415
Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07; RC 1-2007, f. 2-28-07, cert. ef. 3-7-07; RC 6-2007(Temp), f. & cert. ef. 11-28-07 thru 5-23-08

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Rule Caption: Repeal of OAR 462-200-0630, which allows Electronic Filing 1-2-3 with Pick N wagering (Instant Racing).
Adm. Order No.: RC 7-2007
Filed with Sec. of State: 12-6-2007
Certified to be Effective: 12-6-07
Notice Publication Date: 11-1-2007
Rules Repealed: 462-200-0630
Subject: OAR 462-200-0630 sets out the parameters for a particular type of off-race course wagering-Electronic 1-2-3 with Pick N (sometimes referred to as "Instant Racing"), that may be offered by race meet licensees. This type of wagering requires the bettor to select the first three finishers for a single horse racing contest selected from a historical library of previously run horse races that are replayed for the bettor. The repeal of this rule eliminates this type of wagering option.
Rules Coordinator: Carol N. Morgan—(971) 673-0208

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Secretary of State, Archives Division
Chapter 166

Rule Caption: Pertaining to OAR publications subscription prices.
Adm. Order No.: OSA 4-2007
Filed with Sec. of State: 11-29-2007
Certified to be Effective: 11-29-07
Notice Publication Date: 11-1-2007
Rules Amended: 166-500-0015
Subject: The Secretary of State, Archives Division is raising its publication rates for the Oregon Bulletin and the Oregon Administrative Rules Compilation due to price increases passed on to the Division by the Department of Administrative Services Publishing and Distribution Division. The Archives Division last raised its subscription prices in 2002, and in addition to this price increase has adjusted internal procedures in order to minimize price increases passed in to the administrative rule publications' subscribers.
Rules Coordinator: Julie Yamaka—(503) 378-5199

166-500-0015
Fees

Fees charged by the Administrative Rules Unit are based upon actual personnel, equipment usage and materials costs and will be as follows:

(1) Charges for services and products identified in this section, except services identified in subsections (a) through (i) of this section, may be billed upon request:

(a) Basic records request — $5 in-state; $10 out-of-state. This includes copying charges, postage and supplies. It applies to one-page documents. A Basic Records Request must provide an exact citation to a record

(e.g., a citation of an Administrative Order number or a rule number) in the custody of the Archives Division;

(b) Basic Case File Request — $10 in-state; $15 out-of-state. This includes up to 10 photocopies, postage and supplies. Additional photocopy pages are charged at .75 cents per page. A Basic Case File Request must provide an exact citation to a record in the custody of the Archives Division;

(c) Other Requests — $5 out-of-state. In addition, all other requests will include labor charges and copying, supply and postage charges when incurred;

(d) Labor charges — $30 per hour charged in $5 (10-minute) increments. There is a maximum of $120 (four hours labor) for any request;

(e) Photocopies. Copies made by the customer — 25 cents per page. Copies made by Archives Division staff — 75 cents per page;

(f) Fax Charges — 75 cents per page;

(g) PDF Transfers — 75 cents per page;

(h) Certifying administrative rule records — $5 per certification plus any copying, labor or research fees incurred in filling the request;

(i) CD Rom or other media — $15 per file copied. plus any associated costs;

(j) Oregon Administrative Rules Compilation bound set — $550. per year;

(k) Oregon Administrative Rules Compilation bound set purchased with a one-year subscription to the Oregon Bulletin; — $650. per year;

(l) Individual volumes of the OAR Compilation — $40;

(m) Oregon Bulletin:

(A) One-year subscription — $150;

(B) Per issue — $13. each.

(2) Walk-in customers or customers with large requests will be assisted as workloads permit.

(3) The Secretary of State will not refund fees paid in excess of the amount legally due the Division if the amount is $10 or less, unless a refund is requested in writing by the applicant or the applicant's legal representative. Such requests must be made within three years of the date payment is received by the Division.

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

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 177.130, 183.370, 192 & 357.885

Hist.: SOS-AD 1-1992, f. & cert. ef. 2-11-92; OSA 4-1993, f. & cert. ef. 11-10-93, Renumbered from 164-001-0015; OSA 7-1994(Temp), f. & cert. ef. 10-14-94; OSA 11-1994, f. & ef. 11-21-94; OSA 8-1997, f. & cert. ef. 10-6-97; OSA 6-2001(Temp), f. & cert. ef. 10-23-01 thru 4-15-02; OSA 1-2002, f. & cert. ef. 1-25-02; OSA 4-2002, f. & cert. ef. 7-3-02; OSA 3-2003, f. & cert. ef. 11-20-03; OSA 2-2007, f. & cert. ef. 7-31-07; OSA 3-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; OSA 4-2007, f. cert. ef. 11-29-07

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Secretary of State, Corporation Division
Chapter 160

Rule Caption: Clarifies that notaries public may have only one journal for entering new information at a time.
Adm. Order No.: CORP 2-2007
Filed with Sec. of State: 12-14-2007
Certified to be Effective: 1-15-08
Notice Publication Date: 12-1-2007
Rules Amended: 160-100-0200
Subject: The rule clarifies that concurrently held journals are prohibited, so that a notary may only make entries into one book during that commission, until that book is full or otherwise unavailable.
Rules Coordinator: Tom Worsch—(503) 986-2371

160-100-0200
Form and Content of Notarial Journal

A notarial journal of a notary public may be in any form that meets the physical requirements set out in this rule and the entry requirements set out in OAR 160-100-0210:

(1) The cover and pages inside the cover shall be bound together by any binding method that is designed to prevent the insertion or removal of the cover or a page;

(2) Each page shall be consecutively numbered from the beginning to the end of the journal. If a journal provides two pages on which to record the required information about the same notarial act, then both pages may be numbered with the same number or each page may be numbered with a different number. A page number shall be preprinted;

(3) Each line shall be consecutively numbered from the beginning to the end of the page. If a line extends across two pages, the line shall be numbered with the same number on both pages. A line number shall be preprinted;

(4) A notarial journal of a notary public shall contain on the inside of the front cover or on the first page the following information in any order:

(a) The name of the notary public;

(b) The notary public's commission number;

(c) The notary public's commission expiration date;

(d) The notary public's residence or business street or mailing address;

(e) The earliest date the journal may be destroyed, which shall be seven years after expiration of the last commission in which entry was made in the journal;

(f) One of the following statements:

(A) That, in the event of the decease of this notary public, the journal shall be delivered or mailed to the Secretary of State; or

(B) That, in the event the notary public has entered into a written agreement with his/her employer pursuant to OAR 160-100-0360, the date such written agreement was entered into, the name and address of the employer and instructions that the journal shall be delivered or mailed to the employer in the event of the decease of the notary public;

(g) The meaning of any not commonly abbreviated word or symbol used in recording a notarial act in the notarial journal;

(h) The signature of the notary public;

(i) At the respective time of entry, the dates of the first and last notarial acts recorded in the notarial journal.

EXAMPLE: First entry on July 6, 1990, last entry on January 7, 1992.

(5) If a notary public's name, commission number, commission expiration date, destruction date or address that is written in the notarial journal changes before the notary public ceases to use the notarial journal, the notary public shall draw a single line through the old information and write the new information to the side of the old information.

(6) Notwithstanding OAR 160-100-0170, a notary public may not have more than one journal in active use, even if he or she has been issued a concurrent seal. All entries of notarizations shall comply with chronologically consecutive entries in the format outlined by the rules of this chapter.

Stat. Auth.: ORS 194.152

Stats. Implemented: ORS 194.152

Hist.: SOS-AD 2-1990, f. 5-9-90, cert. ef. 7-1-90; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94, Renumbered from 164-100-0200; CORP 2-2007, f. 12-14-07 cert. ef. 1-15-08

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Rule Caption: Regarding notices of intent to hold a Going Out of Business Sale under SB 684 (2007).
Adm. Order No.: CORP 3-2007
Filed with Sec. of State: 12-14-2007
Certified to be Effective: 1-1-08
Notice Publication Date: 10-1-2007
Rules Adopted: 160-010-0600, 160-010-0610, 160-010-0620, 160-010-0630
Subject: This rule clarifies certain aspects of the new Notice of Intent to hold a Going Out of Business Sale. It specifies the form and the content of the notice, and anticipates electronic filing.
Rules Coordinator: Tom Worsch—(503) 986-2371

160-010-0600
Going Out of Business Notice of Intent

This rule refers to a special notice filed by businesses that advertise sales or auctions held out to the public as the disposal of merchandise in anticipation of cessation of business, under Senate Bill 684 (2007).

(1) The Notice of Intent will contain:

(a) The name, address, and telephone number of the owner of the merchandise to be sold.

(b) The signature of the owner of the merchandise.

(c) The title of the signer, if owner is a legal entity.

(d) The name, address and telephone number of the person who will be in charge and responsible for the conduct of the sale.

(e) The descriptive name, location, and beginning and ending dates of the sale.

(f) Confirmation that no person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under ORS 646.608.

(2) When filing a Notice of Intent, the Secretary of State is not required to check for previous filings by the owner of the merchandise to be sold.

(3) For the purposes of this section, "location" is considered to be the physical location where the merchandise is sold, including street address, city, state and zip code.

Stat. Auth.: ORS 56.022
Stats. Implemented: 2007 SB 684
Hist.: CORP 3-2007, f. 12-14-07 cert. ef. 1-1-08

160-010-0610
Filing Format

(1) The notice of intent filed with the Secretary of State shall use a format approved by the Secretary of State, Corporation Division.

(2) The Corporation Division shall use an electronic method of filing the notice of intent and any amendments or cancellations thereof.

Stat. Auth.: ORS 56.022
Stats. Implemented: 2007 SB 684
Hist.: CORP 3-2007, f. 12-14-07 cert. ef. 1-1-08

160-010-0620
Signatures

(1) If the owner is a legal entity, the person signing the notice must be an officer of the entity and must identify the person's title.

(2) The signatures filed in the notice of intent will be electronic signatures, as provided in ORS Ch. 84.

Stat. Auth.: ORS 56.022
Stats. Implemented: 2007 SB 684
Hist.: CORP 3-2007, f. 12-14-07 cert. ef. 1-1-08

160-010-0630
Owner's Business Name

(1) If the owner of the merchandise to be sold is a business or other legal entity, the name may, but is not required to be, registered in the Business Entity Registry of the Corporation Division.

(2) The business name of the owner of the merchandise to be sold shall not be verified or validated against the records of the Corporation Division when filing notice.

Stat. Auth.: ORS 56.022
Stats. Implemented: 2007 SB 684
Hist.: CORP 3-2007, f. 12-14-07 cert. ef. 1-1-08

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Adopting Circulator Training and Registration.
Adm. Order No.: ELECT 7-2007
Filed with Sec. of State: 12-3-2007
Certified to be Effective: 12-3-07
Notice Publication Date: 11-1-2007
Rules Adopted: 165-014-0280
Subject: This rule designates the web based 2007 circulator Training and associated forms as the curriculum and forms to be used by any person who will be paid to gather signatures on a state initiative, referendum or recall petition to satisfy the training component of the Secretary of State's circulator registration process. Additionally this rule designates the SEL 308 Circulator Registration, the SEL 306 Circulator Training Certificate, and the SEL 309 Chief Petitioner Acknowledgment as the forms used to successfully register as a paid circulator for state initiative, referendum or recall petition.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0280
Circulator Training and Registration

(1) Any person who will be paid to gather signatures on a state initiative, referendum or recall petition must register with the Secretary of State after completing a training program prescribed by rule of the Secretary. Any person who has been convicted in any state for a criminal offense involving fraud, forgery or identification theft in the five-year period prior to the date of application may not apply for registration.

(2) The Secretary of State designates the web based 2007 Circulator Training and associated forms as the curriculum and forms to be used by any person who will be paid to gather signatures on a state initiative, referendum or recall petition to satisfy the training component of the Secretary of State's circulator registration process.

(3) To register, a person must complete and file the SEL 308 Circulator Registration, the SEL 306 Circulator Training Certificate, the SEL 309 Chief Petitioner Acknowledgement and must provide or have taken by the Elections Division staff a digital photograph.

(4) A circulator's photograph must be:

(a) Less than four years old when it is filed; and

(b) Portrait style, front-facing, showing the face, neck and shoulders only.

(5) The photograph will be used for production of a circulator badge. This badge will include the words "Paid Circulator," the registration number assigned to the circulator by the Elections Division, and the circulator's photograph.

(a) A circulator must carry this badge while circulating as evidence of registration.

(b) A circulator is required to produce the badge for inspection as evidence of registration upon a request from a representative of the Secretary of State, Attorney General or Commissioner of the Bureau of Labor and Industries.

(c) If a paid circulator can not produce the badge issued by the Elections Division upon a request from a representative of the Secretary of State, Attorney General or Commissioner of the Bureau of Labor and Industries the petition sheets signed by that circulator will not be accepted for verification unless the circulator can prove registration at the time of circulation. Only those signature sheets gathered by paid circulators who are registered in accordance with ORS 250.048 may be accepted for verification.

(6) Whenever any of the information disclosed on the Circulator Registration (SEL 308) changes, the circulator must report the change within 10 calendar days by filing an amended SEL 308 with the Elections Division. If the change being disclosed is additional or different initiatives, referendums or recalls for which the person will be circulating, the circulator may not begin gathering signatures for the additional or different petitions until an updated SEL 309 signed by the chief petitioners is submitted.

Stat. Auth.: ORS 246.150, Sec. 2, Ch. 848 OL 2007
Stats. Implemented: Sec. 2, Ch. 848 OL 2007
Hist.: ELECT 7-2007, f. & cert. ef. 12-3-07

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Adopt, amend and repeal rules regarding School Psychologists, Charter School educators and other housekeeping clarifications.
Adm. Order No.: TSPC 7-2007
Filed with Sec. of State: 12-14-2007
Certified to be Effective: 12-14-07
Notice Publication Date: 10-1-2007
Rules Adopted: 584-017-0351
Rules Amended: 584-019-0002, 584-019-0003, 584-019-0025, 584-019-0035, 584-019-0040, 584-020-0000, 584-020-0005, 584-020-0010, 584-020-0015, 584-020-0020, 584-020-0025, 584-020-0030, 584-020-0035, 584-020-0040, 584-020-0041, 584-023-0005, 584-023-0015, 584-023-0025, 584-038-0080, 584-038-0335, 584-038-0336, 584-040-0080, 584-040-0310, 584-040-0315, 584-050-0002, 584-050-0005, 584-050-0006, 584-050-0009, 584-050-0012, 584-050-0015, 584-050-0016, 584-050-0018, 584-050-0019, 584-050-0020, 584-050-0035, 584-050-0040, 584-050-0042, 584-050-0065, 584-050-0066, 584-050-0067, 584-050-0070, 584-052-0032, 584-060-0012, 584-070-0014
Rules Repealed: 584-019-0020, 584-070-0011, 584-070-0021
Subject: 1. Adopts new standards for School Psychologist license;

2. Adds Charter School educators to ethical procedural rules in two rule divisions and makes housekeeping amendments;

3. Updates educator standards rules to include charter school educators and other housekeeping amendments;

4. Amends Charter School rules to align with legislative amendments;

5. Makes housekeeping amendments to several rules.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0351
Knowledge, Skills and Abilities for Initial School Psychologist License

(1) In addition to passing the required Commission-approved subject matter examinations and completing the required practicum experience, the following requirements must be met to be eligible for an Initial School Psychologist License.

(2) Data-Based Decision-Making and Accountability: Candidates have knowledge and use models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically-based decisions about service delivery, and evaluate the outcomes of services.

(a) Candidates demonstrate skill in assessing or providing for assessments in the following areas: academic knowledge and achievement, intelligence and cognitive functioning, scholastic aptitude, personality, emotional status, social skills and adjustment, adaptive behavior, language and communication skills, sensory and neurological functioning, educational setting, and family/environmental influences.

(b) Candidates demonstrate knowledge of assessment practices include components specifically designed to take into account cultural, ethic, religious and other aspects of human diversity, and to prevent bias.

(c) Candidates demonstrate knowledge of assessment strategies appropriate for the age range of birth to 21 years, including early intervention, and vocational-transitional approaches.

(3) Consultation and Collaboration: Candidates have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations. Candidates collaborate effectively with parents, school and outside personnel in planning and decision-making processes at the individual, group, and system levels.

(4) Effective Instruction and Development of Cognitive/Academic Skills: Candidates have knowledge of human learning processes, and in collaboration with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions (e.g. instructional interventions and consultation).

(5) Socialization and Development of Life Skills: Candidates have knowledge of human developmental processes, and in collaboration with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions (e.g. consultation, behavioral assessment/intervention, and counseling).

(6) Student Diversity in Development and Learning: Candidates have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, sexual orientation, gender-related, and linguistic factors in development and learning. Candidates demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(7) School and Systems Organization, Policy Development, and Climate: Candidates have knowledge of general education, special education, and other educational and related services. Candidates understand schools and other settings as systems. Candidates work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(8) Prevention, Crisis Intervention, and Mental Health: Candidates have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Candidates provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students. Candidates have knowledge of crisis intervention and collaborate with school personnel, parents, and the community in the aftermath of crises.

(9) Home/School/Community Collaboration: Candidates have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery. Candidates work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(10) Research and Program Evaluation: Candidates have knowledge of research, statistics, and evaluation methods. Candidates evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct interventions (individual and/or program) for improvement of services.

(11) School Psychology Practice and Development: Candidates have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards. Candidates practice in ways that are consistent with applicable standards.

(12) Information Technology: Candidates have knowledge of information sources and technology relevant to their work. Candidate's access, evaluates, and utilizes information sources and technology in ways that safeguard or enhance the quality of services.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 7-2007, f. & cert. ef. 12-14-07

584-019-0002
Hearing Procedures

(1) Contested case hearings will be held in accordance with OAR 137-003-0501 through 137-003-0700.

(2) The Commission will, from time to time, adopt written Guidelines for the Management of Discipline Cases, which will govern internal procedures of the Commission for administering discipline cases and provide for coordination with the Hearing Officer Panel and its rules.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 1-2001, f. & cert. ef. 1-17-01; TSPC 7-2007, f. & cert. ef. 12-14-07

584-019-0003
Notice of Opportunity for Hearing

(1) The Commission delegates to the Executive Director the authority to draft the contents of the Notice of Hearing and Notice of Opportunity for Hearing when the Executive Director denies the issuance, renewal or reinstatement of a license, school nurse certificate or a charter school registration under OAR 584-050-0006 or when the Commission determines that there is sufficient cause to justify a hearing under ORS 342.176(5).

(2) The Commission delegates to the Executive Director the authority to amend the Notice of Hearing or Notice of Opportunity for Hearing.

(3) The Commission will review, approve or reject all Amended Notices of Hearing at the next Commission meeting following Executive Director's issuance of the Amended Notice. The educator who is the subject of an Amended Notice may file objections to the Amendment prior to the Commission meeting. The Commission's decision to review, approve or reject the Amended Notice will be in executive session under ORS 342.176.

(4) If the Commission rejects the Amended Notice of Hearing, the Executive Director will withdraw the Amended Notice, and the prior Notice of Hearing or Notice of Opportunity for Hearing will stand as the Commission's notice to the educator.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 7-2007, f. & cert. ef. 12-14-07

584-019-0025
Mutual Disclosure Prior to Contested Case Hearings

(1) Not less than ten days prior to the hearing date, the educator and the Commission staff will disclose to one another in writing the following information:

(a) The name, address and telephone number of each person that the disclosing party may call as a witness at the hearing; and

(b) A copy of all documents that the disclosing party may introduce as evidence at the hearing.

(2) For good cause shown, the Executive Director may modify the disclosure requirements under section (1) of this rule.

(3) The hearing officer at the hearing may refuse to accept testimony or evidence that has not been disclosed in compliance with this rule.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 7-2007, f. & cert. ef. 12-14-07

584-019-0035
Settlement of Cases Prior to Hearing

(1) A "Settlement Agreement" is a written agreement in a disciplinary proceeding that includes:

(a) A stipulation to an order that is signed by the educator;

(b) A consent by the educator to a negotiated default order; or

(c) An agreement between the educator and the commission staff to resolution of a disciplinary matter without a contested hearing.

(2) The Executive Director will not accept a settlement agreement unless it is signed by the educator and the educator's attorney, if any.

(3) All matters not settled in accordance with subsection (2) of this rule will be determined through a contested case hearing in accordance with OAR 137-003-0501 through 137-003-0700 or will be determined through entry of a default order or voluntary surrender of the educator's license, school nurse certificate or charter school registration.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175, 342.176, 342.177, 342.180 & 342.190

Hist.: TS 6-1996, f. & cert. ef. 12-9-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 7-2007, f. & cert. ef. 12-14-07

584-019-0040
Commission Final Orders in Contested Cases

(1) In all contested cases, the Commission will notify the parties, the hearing officer and the Office of Administrative Hearings that the Commission itself will issue the Final Order and each Hearing Officer Proposed Order will include a statement to that effect.

(2) If the recommended action in the Proposed Order is adverse to the educator, the Proposed Order will contain a statement that the educator may file written exceptions to the Commission and may file a request for oral argument to the Commission. The statement will inform the educator that written exceptions or a request for oral argument must be filed with the Commission at the Commission's office within fourteen days of the date of the Proposed Order in order for the exceptions or the request for oral argument to be considered. The Commission need not allow oral argument on the Proposed Order. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 1-2001, f. & cert. ef. 1-17-01; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0000
Application of Rules

(1) Oregon Administrative Rules 584-020-0005 through 584-020-0045 were adopted by the Teacher Standards and Practices Commission in accordance with Oregon Revised Statute 342.175(5).

(2) OAR 584-020-0005 through 584-020-0045 may be used as criteria by the Teacher Standards and Practices Commission in matters pertaining to the revocation or suspension of licenses or registrations issued by the Commission under ORS 342.120 to 342.200, or the discipline of any license or registration holder or any person who has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176.

(3) The Commission determines whether an educator's performance is ethical or competent in light of all the facts and circumstances surrounding the educator's performance as a whole.

(4) The Commission directs the Executive Director to promptly begin the investigation of complaints, reports or information related to educator misconduct under the following conditions:

(a) The Executive Director may delay investigating an educator against whom a complaint has been filed under ORS 342.176 when:

(A) The investigation report or other information indicates that disciplinary action against the educator is pending at the local district level; or

(B) When criminal charges are pending or are likely to be filed against the educator.

(b) In considering whether to delay an investigation or defer recommending action to charge an educator, the Executive Director will consider all relevant circumstances including the nature and seriousness of the allegations and whether the educator is currently employed in the public schools.

(c) The Executive Director will regularly inform the Commission of the status of any complaints, reports or information of misconduct on which the Executive Director has deferred action.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TS 7-1983, f. & ef. 12-14-83; TS 1-1987, f. & ef. 3-3-87; TS 2-1988, f. & cert. ef. 4-7-88; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0005
Definitions

The following definitions apply to Oregon Administrative Rules 584-020-0000 through 584-020-0045 unless otherwise indicated by context:

(1) "Administrator:" Any educator who holds a valid Oregon Administrative License or registration and who works in a position requiring an administrative license pursuant to OAR 584-005-0005(1).

(2) "Competent:" Discharging required duties as set forth in these rules.

(3) "Educator:" Any licensed or registered, or certified person who is authorized to engage in an instructional program including teaching, counseling, school psychology, administering, and supervising.

(4) "Ethical:" Conforming to the professional standards of conduct set forth in these rules.

(5) "Sexual Conduct:" Any conduct with a student which includes but is not limited to:

(a) The intentional touching of the breast or sexual or other intimate parts of a student;

(b) Causing, encouraging, or permitting a student to touch the breast or sexual or other intimate parts of the educator;

(c) Sexual advances or requests for sexual favors directed towards a student;

(d) Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment; or

(e) Verbal or physical conduct which has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment.

(6) "Sexual harassment:" Any unwelcome conduct with an individual which includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(7) "Teacher:" Any person who holds a teacher's license as provided in ORS 342.125.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 & 342.175 - 342.190
Hist.: TS 5-1979, f. 12-29-79, ef. 1-1-80; TS 1-1987, f. & ef. 3-3-87; TS 2-1988, f. & cert. ef. 4-7-88; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 8-1998, f. & cert. ef. 12-9-98; TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0010
The Competent Educator

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

(2) Encourage scholarship;

(3) Promote democratic and inclusive citizenship;

(4) Raise educational standards;

(5) Use professional judgment; and

(6) Promote equitable learning opportunities.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0015
Curriculum and Instruction

(1) The competent educator measures success by the progress of each student toward realization of personal potential as a worthy and effective citizen. The competent educator stimulates the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of goals as they are appropriate for each individual.

(2) The competent teacher demonstrates:

(a) Use of state and district adopted curriculum and goals;

(b) Skill in setting instructional goals and objectives expressed as learning outcomes;

(c) Use of current subject matter appropriate to the individual needs of students;

(d) Use of students' growth and development patterns to adjust instruction to individual needs consistent with the number of students and amount of time available; and

(e) Skill in the selection and use of teaching techniques conducive to student learning.

(3) The competent administrator demonstrates:

(a) Skill in assisting individual staff members to become more competent educators by complying with federal, state and local laws, rules, and lawful and reasonable district policy and contracts;

(b) Knowledge of curriculum and instruction appropriate to assignment;

(c) Skill in implementing instructional programs through adequate communication with staff; and

(d) Skill in identifying and initiating any needed change which helps each student toward realization of personal learning potential.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190

Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TS 7-1983, f. & ef. 12-14-83; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0020
Supervision and Evaluation

(1) The competent educator is a student of human behavior and uses this knowledge to provide a climate that is conducive to learning and that respects the rights of all persons without discrimination. The competent educator assumes responsibility for the activities planned and conducted through the district's program, and assists colleagues to do the same. The competent educator gathers relevant information and uses it in the planning and evaluation of instructional activities.

(2) The competent teacher demonstrates:

(a) Multiple ways to assess the academic progress of individual students;

(b) Skill in the application of assessment data to assist individual student growth;

(c) Procedures for evaluating curriculum and instructional goals and practices;

(d) Skill in the supervision of students; and

(e) Skill in differentiating instruction.

(3) The competent administrator demonstrates:

(a) Skill in the application of assessment data to provide effective instructional programs;

(b) Skill in the implementation of the district's student evaluation program;

(c) Skill in providing equal opportunity for all students and staff; and

(d) Skill in the use of employee and leadership techniques appropriate to the assignment and according to well established standards which ensure due process for the staff for which the administrator is responsible for evaluating.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TS 7-1983, f. & ef. 12-14-83; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0025
Management Skills

(1) The competent educator is a person who understands students and is able to relate to them in constructive and culturally competent ways. The competent educator establishes and maintains good rapport. The competent educator maintains and uses records as required, and as needed to assist the growth of students.

(2) The competent teacher demonstrates skills in:

(a) Establishing and maintaining classroom management that is conducive to learning;

(b) Using and maintaining district property, equipment, and materials appropriately;

(c) Using and maintaining student records as required by federal and state law and district policies and procedures;

(d) Using district and school business and financial procedures; and

(e) Using district lawful and reasonable rules and regulations.

(3) The competent administrator demonstrates:

(a) Leadership skills in managing the school, its students, staff, and programs as required by lawful and reasonable district policies, rules, and regulations, state and federal laws and regulations, and other programs as assigned, and assures that staff is informed of these requirements; and

(b) Skills in planning and staff assignment.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TS 7-1983, f. & ef. 12-14-83; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0030
Human Relations and Communications

(1) The competent educator works effectively with others -- Students, staff, parents, and patrons. The competent educator is aware of the ways the community identifies with the school, as well as community needs and ways the school program is designed to meet these needs. The competent educator can communicate with knowledge, clarity, and judgment about educational matters, the school, and the needs of students.

(2) The competent teacher demonstrates:

(a) Willingness to be flexible in cooperatively working with others; and

(b) Skill in communicating with administrators, students, staff, parents, and other patrons.

(3) The competent administrator demonstrates:

(a) Skill in helping students, staff, parents, and other patrons to learn about the school, the district and its program;

(b) Skills in communicating district and school goals to staff and the public;

(c) Willingness to be flexible in cooperatively working with others; and

(d) Skill in reconciling conflict.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0035
The Ethical Educator

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district, and the profession.

(1) The ethical educator, in fulfilling obligations to the student, will:

(a) Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and the student's family;

(b) Refrain from exploiting professional relationships with any student for personal gain, or in support of persons or issues; and

(c) Maintain an appropriate professional student-teacher relationship by:

(A) Not demonstrating or expressing professionally inappropriate interest in a student's personal life;

(B) Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student;

(C) Reporting to the educator's supervisor if the educator has reason to believe a student is or may be becoming romantically attached to the educator; and

(D) Honoring appropriate adult boundaries with students in conduct and conversations at all times.

(2) The ethical educator, in fulfilling obligations to the district, will:

(a) Apply for, accept, offer, or assign a position of responsibility only on the basis of professional qualifications, and will adhere to the conditions of a contract or the terms of the appointment;

(b) Conduct professional business, including grievances, through established lawful and reasonable procedures;

(c) Strive for continued improvement and professional growth;

(d) Accept no gratuities or gifts of significance that could influence judgment in the exercise of professional duties; and

(e) Not use the district's or school's name, property, or resources for noneducational benefit or purposes without approval of the educator's supervisor or the appointing authority.

(3) The ethical educator, in fulfilling obligations to the profession, will:

(a) Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;

(b) Extend equal treatment to all members of the profession in the exercise of their professional rights and responsibilities; and

(c) Respond to requests for evaluation of colleagues and keep such information confidential as appropriate.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 5-1979, f. 12-19-79, ef. 1-1-80; TS 7-1983, f. & ef. 12-14-83; TS 7-1989, f. & cert. ef. 12-13-89; TSPC 8-1998, f. & cert. ef. 12-9-98; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0040
Grounds for Disciplinary Action

(1) The Commission will deny, revoke or deny the right to apply for a license or charter school registration to any applicant or educator who, has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if convicted in another jurisdiction or convicted of attempt to commit such crimes as defined in ORS 161.405. Evaluation of substantially equivalent crimes or attempts to commit crimes will be based on Oregon laws in effect at the time of the conviction, regardless of the jurisdiction in which the conviction occurred. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 — Aggravated Murder;
(b) ORS 163.115 — Murder;
(c) ORS 163.185 — Assault in the First Degree;
(d) ORS 163.235 — Kidnapping in the First 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 163.415 — Sexual Abuse in the Third Degree;
(n) ORS 163.425 — Sexual Abuse in the Second Degree;
(o) ORS 163.427 — Sexual Abuse in the First Degree;
(p) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;
(q) ORS 163.445 — Sexual Misconduct;
(r) ORS 163.465 — Public Indecency;
(s) ORS 163.515 — Bigamy;
(t) ORS 163.525 — Incest;
(u) ORS 163.547 — Child Neglect in the First Degree;
(v) ORS 163.575 — Endangering the Welfare of a Minor;
(w) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;
(x) ORS 163.675 — Sale or Exhibition of Visual Reproduction of Sexual Conduct by a Child;
(y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a Child;
(z) ORS 163.684 — Encouraging Child Sexual Abuse in the First Degree;
(aa) ORS 163.686 — Encouraging Child Sexual Abuse in the Second Degree;
(bb) ORS 163.687 — Encouraging Child Sexual Abuse in the Third Degree;
(cc) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
(dd) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
(ee) ORS 164.325 — Arson in the First Degree;
(ff) ORS 164.415 — Robbery in the First Degree;
(gg) ORS 166.005 — Treason;
(hh) ORS 166.087 — Abuse of a Corpse in the First Degree;
(ii) ORS 167.007 — Prostitution;
(jj) ORS 167.012 — Promoting Prostitution;
(kk) ORS 167.017 — Compelling Prostitution;
(ll) ORS 167.062 — Sadomasochistic Abuse for Sexual Conduct in a Live Show;
(mm) ORS 167.065 — Furnishing Obscene Materials to Minors;
(nn) ORS 167.070 — Sending Obscene Materials to Minors;
(oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;
(pp) ORS 167.080 — Displaying Obscene Materials to Minors;
(qq) ORS 167.087 — Disseminating Obscene Materials;
(rr) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;
(ss) ORS 475.995 — Distribution of Controlled Substances to Minors;
(tt) ORS 475.999 — Manufacture or Delivery of Controlled Substance to Minor or Student within 1,000 Feet of School;
(uu) ORS ???.??? — Online Sexual Corruption of a Child in the First Degree;
(vv) ORS ???.??? — Online Sexual Corruption of a Child in the Second Degree;
(ww) ORS ???.??? — Furnishing Sexually Explicit Material to a Child; and
(xx) ORS ???.??? — Luring a Minor.

(2) An applicant fails to meet the requirement of ORS 342.143 "good moral character" if the applicant engages in gross neglect of duty, gross unfitness, in violation of section (4) of this rule or other acts which are in violation of sections (1) or (3) of this rule.

(3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration to an applicant under ORS 342.143 who:

(a) Has been convicted of a crime not listed in section (1) of this rule, if the Commission finds that the nature of the act or acts constituting the crime for which the educator was convicted render the educator unfit to hold a license;

(b) Is charged with knowingly making any false statement in the application for a license or registration;

(c) Is charged with gross neglect of duty;

(d) Is charged with gross unfitness; or

(e) Is convicted of a crime involving the illegal use, sale or possession of controlled substances.

(4) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

(a) Knowing and substantial unauthorized use of: school name or financial credit; school materials or equipment for personal purposes; or school personnel to provide personal services unrelated to school business;

(b) Knowing and substantial unauthorized use of employment time or school resources for private purposes;

(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

(e) Violent or destructive behavior on school premises or at a school-sponsored activity;

(f) Any sexual conduct with a student;

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol or any controlled substance;

(h) Unauthorized disclosure of student records information received in confidence by the educator under a statutory privilege, (See, subsection 6, below);

(i) Deliberately assigning an educator in violation of licensure requirements;

(j) Resignation from a contract in violation of ORS 342.553, (See, subsection 6, below);

(k) Knowing violation of any order or rule of the Commission;

(l) Sexual harassment;

(m) Knowing and willful failure of a chief administrator to report a violation of Commission standards as required by OAR 584-020-0041;

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035;

(p) Subject to the exercise of any legal right or privilege, failure or refusal by an educator under investigation to respond to requests for information, to furnish documents or to participate in interviews with a Commission representative relating to a Commission investigation; or

(q) Knowing and unauthorized use of school computer equipment to receive, store, produce or send sexually explicit materials.

(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

(a) Revocation, suspension or denial of a license by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Oregon;

(b) Fraud or misrepresentation;

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.

(d) Commission of an act listed in OAR 584-020-0040(1);

(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction; or

(f) Violation of a term of probation imposed by a court.

(6) In any proceeding brought under subsection (4)(h) of this rule, the Commission may not impose a sanction more severe than a suspension of the educator's license. In any proceeding brought under subsection (4)(j) of this rule, the Commission may not impose a sanction more severe than suspension of the educator's license for the remainder of the school year.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 5-1983, f. & ef. 7-21-83; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 2-1988, f. & cert. ef. 4-7-88; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1993, f. & cert. ef. 9-29-93; TS 5-1996, f. & cert. ef. 9-24-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 8-1998 f. & cert. ef. 12-9-98; TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 6-1999(Temp), f. & cert. ef. 9-20-99 thru 3-17-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 4-2000, f. & cert. ef. 7-17-00; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 7-2007, f. & cert. ef. 12-14-07

584-020-0041
Reporting Requirements

(1) For purposes of this rule, "chief administrator" means:

(a) The superintendent, head teacher or person designated by a school district board as district school clerk under ORS 332.515 of a school district, education service district or charter school;

(b) The chief administrative officer of the Oregon School for the Deaf and the Oregon School for the Blind; or

(c) The chief administrative officer of a private elementary or secondary school under ORS 345.505 to 345.585, regardless of whether the school is registered as a private school with the Department of Education.

(2) A chief administrator will report educators described in this subsection whether or not the educator is employed in the chief administrator's district. Subject educators include:

(a) Any educator possessing a TSPC-issued licensed;

(b) Any educator holding a charter school registration;

(c) Any pre-service candidate placed in a public or private school for purposes of program completion pursuant to any program described in division 17 of these administrative rules.

(3) A chief administrator will report to the Executive Director within thirty (30) days the name of any person described in subsection (2) above, when the chief administrator reasonably believes the person may have committed any act which may constitute any of the designated acts of gross neglect of duty under OAR 584-020-0040(4), subsections (a) to (i), (k) to (o) or (q) or any of the designated acts of gross unfitness listed under OAR 584-020-0040(5), subsections (a) to (e).

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.143 & 342.175 - 342.190
Hist.: TS 4-1993, f. & cert. ef. 9-29-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 1-2001, f. & cert. ef. 1-17-01; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-023-0005
Registry of Charter School Teachers and Administrators

No persons shall serve as a teacher or administrator (as defined in ORS 342.120) in a public charter school unless such person either holds a valid Oregon license issued by TSPC or is registered with TSPC as a charter school teacher or charter school administrator in accordance with ORS 342.125(5).

(1) TSPC shall create a Public Charter School Registry for all non-licensed persons who are employed as teachers or administrators in any charter school.

(2) To enroll in the Registry, an applicant and the employing charter school shall submit to TSPC, on forms established by the commission, a joint application, which shall include the following documentation and other data required by the commission for purposes of conducting a background check through the Oregon State Police Law Enforcement Data System, the Federal Bureau of Investigation and an interstate clearinghouse of revoked and suspended licenses.

(a) Description of the specific teaching or administrative position the applicant will fill with the employing charter school;

(b) Fingerprints on forms prescribed by the Oregon State Police and in the manner required by TSPC;

(c) Completed character questionnaire specified by OAR 584-036-0060;

(d) Resume of applicant's postsecondary education; and

(e) A list of any professional licenses held.

(3) Successful completion of the background checks disclosing no disqualifying materials or information shall entitle the registrant to serve as a teacher or administrator as defined in ORS 342.120 in the employing charter school for a period of up to three (3) years or until employment with the employing charter school ceases, whichever occurs first.

(4) The registration is only valid to teach or administer in the position described in the application to TSPC and only in the charter school that petitions for a charter school registration.

(5) A registration may be renewed for an additional three-year term upon joint application of the registrant and employing charter school on forms established by the Commission and upon the payment of the applicable fee.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.125, 338.135
Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-023-0015
Standards of Competence and Ethics

The provisions of ORS 342.120 to 342.430 and the Rules in OAR chapter 584 relating to the issuance, denial, continuation, renewal, lapse, revocation, suspension or reinstatements of licenses shall be applicable to all teachers and administrators enrolled in the Registry.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.125, 338.135
Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-023-0025
Charter School Fees

TSPC shall charge a fee of $75, or such other amount as may hereafter be allowed by law, for each original application and for each renewal application for any charter school registration. This fee shall include the costs of fingerprints and criminal history checks upon first application.

Stat. Auth.: ORS 342.175
Stats. Implemented: ORS 342.125 & 338.135
Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-038-0080
Basic Educational Media

Twenty-four quarter hours designed to develop competence in educational media, to include:

(1) Use, design, and production of printed, audiovisual, and electronic forms of educational media.

(2) Selection and utilization of media to include children's and young adult literature.

(3) Administration of library media collections.

(4) Implementation of a library information skills program.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 7-2007, f. & cert. ef. 12-14-07

584-038-0335
Basic Early Intervention and Special Education I

(1) Hold a Basic or Standard Teaching License with an elementary or special education endorsement.

(2) Complete 21 quarter hours designed to develop competence in:

(a) Issues in early intervention and early childhood special education to include professional development, values, and ethics;

(b) Typical and atypical child development;

(c) Infant, toddler and preschool assessment and evaluation;

(d) Family involvement in early intervention and early childhood special education;

(e) Intervention strategies to include design, implementation, and evaluation;

(f) Interdisciplinary and interagency collaboration to include case management and program management; and

(g) Research design and methods in early intervention and early childhood special education.

(3) Supervised practicum in early intervention and early childhood special education.

(4) Valid for teaching early intervention and early childhood special education from birth through grade 4.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-038-0336
Basic Early Intervention and Special Education II

(1) Forty-five quarter hours designed to develop competence in early intervention and early childhood special education, to include:

(a) Issues in early intervention and early childhood special education to include professional development, values, and ethics;

(b) Typical and atypical child development;

(c) Infant, toddler and preschool assessment and evaluation;

(d) Family involvement in early intervention and early childhood special education;

(e) Intervention strategies to include design, implementation, and evaluation;

(f) Interdisciplinary and interagency collaboration to include case management and program management; and

(g) Research design and methods in early intervention and early childhood special education.

(2) Student teaching or internship with early childhood special education children.

(3) Valid for teaching early intervention and early childhood special education from birth through grade 4.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-040-0080
Standard Educational Media

Fifteen quarter hours of graduate subject matter preparation distributed to strengthen the applicant's background in library media.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 7-2007, f. & cert. ef. 12-14-07

584-040-0310
Standard Early Intervention and Special Education I

(1) Fifteen quarter hours of graduate preparation in early intervention and early childhood special education distributed to strengthen the applicant's background in the field.

(2) Completion of a Standard Teaching License program.

(3) The professional preparation set forth in OAR 584-040-0008 is not required for this endorsement.

(4) Valid for teaching early intervention and early childhood special education from birth through grade 4.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-040-0315
Standard Early Intervention and Special Education II

(1) Fifteen quarter hours of graduate preparation in early intervention and early childhood special education distributed to strengthen the applicant's background in the field and which is in addition to the preparation required by OAR 584-038-0336 for the Basic Early Intervention Special Education II endorsement.

(2) A subject matter endorsement is not required, nor is the professional preparation outlined in OAR 584-040-0008.

(3) Valid for teaching early intervention and early childhood special education from birth through grade 4.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0002
Exercise of Commission Authority

Commission sanction, the exercise of authority granting, denying, or revoking a license, or registration is described in the following sections as it relates to particular circumstances.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0005
Criteria for Granting Licenses

(1) The Executive Director may issue licenses or registrations, grant reinstatements, and renew licenses or registrations when each of the following conditions exists:

(a) All requirements established by law and rules have been met;

(b) The applicant has attained at least eighteen years of age and has furnished evidence satisfactory to TSPC of fitness to serve as an educator; and

(c) The Executive Director deems that any conviction for a felony, misdemeanor, or major traffic offense which the applicant may have had does not adversely affect his or her ability to serve as an educator.

(2) The Executive Director may delay action when a conviction has occurred and refer the application to an investigator for further information. The results of the investigation will be reported to the Commission once the investigation is complete if the information obtained through the investigation would result in the Executive Director's recommendation to deny the license or registration.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0006
Criteria for Denying Issuance or Reinstatement of Licenses

(1) The Executive Director may deny issuance of a license or registration, renewal of a license or registration; or reinstatement of a license or registration that has not been subject to discipline.

(2) The Executive Director may not deny reinstatement of a license that has been revoked. Reinstatement of a revoked license or registration is subject to OAR 584-050-0015.

(3) Notice of denial and right to a hearing may be issued by the Executive Director when any of the following conditions exist:

(a) The applicant submits a falsified application;

(b) The applicant has been convicted of any felony, misdemeanor, or major traffic offense;

(c) The applicant has been convicted of a crime listed in ORS 342.143(3)(a), or any substantially equivalent offense under the laws of another state;

(d) The Executive Director has evidence that the applicant may lack fitness to serve as an educator; or

(e) The applicant refuses to consent to criminal records checks or refuses to be fingerprinted upon request.

(4) In a case not covered by this rule, the Executive Director will refer the application to the Commission for action.

Stat. Auth.: ORS 181 & 342
Stat. Implemented: ORS 181.525, 342.120 - 200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TS 6-1993, f. & cert. ef. 12-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1998, f. & cert. ef. 6-5-98; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0009
Procedures for Disciplinary Action in Certain Cases

(1) The Executive Director may issue a notice of hearing and statement of charges, on behalf of the Commission, against an educator who has been convicted of a crime listed in ORS 342.143 or who has admitted in the course of judicial proceeding or criminal prosecution conduct constituting a crime listed in ORS 342.143.

(2) The Executive Director may issue a notice of opportunity for hearing to an educator when the Executive Director has information that the educator has violated any term or condition of probation. Contested case hearings will be held in accordance with OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200 & 342.400
Hist.: TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1994, f. & cert. ef. 1-25-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0012
Criteria for Denial of Licensure Based on Conviction for Crimes

(1) An applicant for the initial Oregon license or for reinstatement of an Oregon license that has been lapsed for three years or more must submit to a fingerprint and criminal background check.

(2) If the applicant has been convicted of any of the crimes listed in ORS 342.143, the applicant will be denied licensure pursuant to OAR 584-050-0009.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525 & 342.223
Hist.: TS 2-1994, f. & cert. ef. 7-19-94; TS 5-1996, f. & cert. ef. 9-24-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0015
Reinstatement of Suspended, Revoked, or Surrendered License or Registration Generally

(1) Notwithstanding OAR 584-050-0017(1), a suspended, revoked or surrendered license or charter school registration may be reinstated if the applicant is otherwise qualified, meets recent educational experience licensure requirements in effect at the time of reinstatement, and complies with the other applicable provisions of rules in this division.

(2) Licenses or registrations that are revoked, suspended, or surrendered and eligible for reinstatement will be reinstated for the same period of time as an application for a new or renewed license or registration of that type.

(3) The fee to reinstate a license is in addition to the application fee required to issue a new license. See OAR 584-036-0055.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-2000, f. & cert. ef. 7-17-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0016
Reinstatement of Suspended License, Registration, or Right to Apply for a License or Registration

(1) Six weeks prior to the expiration of the period of suspension, an educator may apply to have a suspended license or registration reinstated. However, no reinstatement will be effective until expiration of the period of suspension.

(2) An application for reinstatement of a suspended license, registration or suspension of right to apply for a license or registration must include:

(a) A C-1 application form;

(b) A fee pursuant to OAR 584-036-0055; and

(c) A notarized affidavit from the applicant, together with requisite and additional documentation sufficient to establish convincingly that all terms and conditions of the suspension have been met satisfactorily and fulfilled.

(3) If the Executive Director is satisfied that the terms and conditions have been met successfully the Executive Director will reinstate the suspended license, registration or right to apply for a license or registration.

(4) If the Executive Director is not satisfied the terms and conditions have been met, the Director will make a recommendation to the Commission in executive session to deny reinstatement of the license.

(5) Before taking action on the Executive Director's recommendation, the Commission may schedule an informal meeting between the educator and the Commission in executive session. The decision to schedule or not to schedule an informal meeting is entirely at the Commission's discretion.

(6) If the Commission agrees with the Director's recommendation to deny the reinstatement, the Director will mail a copy of the recommendation of denial to the educator and notice of right to a hearing under ORS 342.175 and OAR 584-019-0002.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0018
Reinstatement of Revoked License, Registration, or Right to Apply for a License or Registration

(1) Any revocation for conviction for crimes listed in ORS 342.143(3) is permanent and the license or registration is not eligible for reinstatement. All other revocations of a license, registration or right to apply for a license or registration are eligible for application for reinstatement.

(2) Application for reinstatement of a license or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired for the license, registration or right to apply for a license or registration.

(3) The burden will be on the educator to establish fitness for reinstatement.

(4) The application for reinstatement must include:

(a) A C-1 application form;

(b) A fee pursuant to OAR 584-036-0055;

(c) A personal notarized affidavit attesting that:

(A) All the conditions of the order for revocation have been met; and

(B) That the educator has not violated any laws of the states, including ethical violations related to licensure or registration; and

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for renewal or reinstatement of a license or registration of that type.

(5) All decisions to reinstate a revoked license, registration or right to apply for a license or registration will be made by the Commission in executive session.

(6) If the Executive Director is satisfied that the terms and conditions have been met successfully and fulfilled, the Executive Director will recommend reinstatement of the revoked license, registration or right to apply for a license or registration.

(7) If the Executive Director is not satisfied the terms and conditions have been met, the Director will make a recommendation to the Commission in executive session to deny reinstatement of the license.

(8) Before taking action on the Executive Director's recommendation, the Commission may schedule an informal meeting between the educator and the Commission in executive session. The decision to schedule or not to schedule an informal meeting is entirely at the Commission's discretion.

(9) If the Commission agrees with the Executive Director's recommendation to deny the reinstatement, the Director will mail a copy of the recommendation of denial to the educator and notice of right to a hearing under ORS 342.175 and OAR 584-019-0002.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0019
Termination of Probation

(1) Promptly after the full term of probation has been completed, the educator must submit to the Commission a notarized affidavit from the applicant, together with requisite and additional documentation, sufficient to establish convincingly that all terms and conditions of the probation have been met successfully and fulfilled.

(2) If the materials submitted for termination of probation are satisfactory, the Executive Director will terminate the probation. If materials are incomplete or not found to be satisfactory, the Executive Director will make a recommendation regarding the probation to the Commission in executive session at the next regularly scheduled Commission meeting.

(3) Before taking action on the Executive Director's recommendation, the Commission may schedule an informal meeting between the educator and the Commission in executive session. The decision to schedule or not to schedule an informal meeting is entirely at the Commission's discretion.

(4) If the Commission does not terminate the probation, the educator will be entitled to a contested case hearing pursuant to ORS 342.175 and OAR 584-019-0002.

(5) The Executive Director may issue a charge and notice of opportunity for hearing to an educator on probation when the Executive Director has information that any term or condition of probation may have been violated. If the educator is unwilling to accept disciplinary action proposed by the Executive Director and approved by the Commission, the educator will be entitled to a contested case hearing under ORS 342.175 and OAR 584-019-0002.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0020
Suspension for Resignation in Violation of Contract

(1) If a school board charges a teacher with violation of a contract under ORS 342.553, for failure to provide sixty days' notice prior to resignation, the Board must submit all of the following documents:

(a) A copy of the Board's resolution containing the teacher's notice of resignation and the Board's request for suspension of licensure;

(b) A copy of the teacher's contract;

(c) A copy of the applicable collective bargaining agreement; and

(d) A statement from the superintendent describing the provisions of the agreement for resignations.

(2) Upon receipt of the information specified in section (1) of this rule, the Executive Director will notify the teacher of suspension of his or her license. The notice of suspension will contain the following statement: "You may appeal this action in writing within twenty days after the date of this notice. If an appeal is made to the Commission, suspension of your teaching license will be stayed until the Commission reaches its decision."

(3) If the Commission decides that the charge has been proven and the justification for violating the contract is not satisfactory, the Commission will suspend the teacher's license for the remainder of the school year. The decision of the Commission is final.

(4) A license which has been suspended for violation of contract may be reinstated after the period of suspension upon application and payment of the fee to reinstate a suspended license under OAR 584-036-0055.

Stat. Auth.: ORS 342
Stat. Implemented: ORS 342.553
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 1-2000(Temp), f. & cert. ef. 1-18-00 thru 7-11-00; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0035
Must be Licensed to Begin Employment

(1) In all cases, any person hired to fill a position in a school district, or education service district, or charter school for which a license or registration is required pursuant to ORS Chapter 342, must hold a valid license or registration appropriate for the assignment on the date the employment begins.

(2) An expedited emergency license or charter school registration may be valid in lieu of a regular license or registration, but the license or registration must be issued prior to beginning employment.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1980, f. & ef. 3-19-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0040
Expiration of Licenses and Continued Use of Expired Licenses

(1) A license or registration expires on the date posted on the license or registration unless an application for renewal is received by the Commission prior to that date. If a license or registration expires, reinstatement requirements, including possible late fees must be met for further license or registration.

(2) In spite of the expiration date, a license continues to be valid for 120 days after the date of expiration for purposes of ORS 342.173 (forfeiture for non-licensed personnel).

(3) Unless an application for renewal and fee are received prior to the expiration date on the license or registration, the educator is not eligible to continue employment under the license or registration.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0042
Addresses and Uses of Addresses

(1) A license, registration or certificate holder must report changes of, employment, residential and email addresses to the Commission within 90 days of such change.

(2) Changes of address may be made by telephone, in writing, or email notification. Changes of address must include the educator's name, social security number, and the old and new addresses the educator is changing.

(3) All licenses, registrations, certificates, correspondence or notices sent by the Commission will be sent to the last known residential address on file for the educator. The Commission is not responsible if the educator has moved and has failed to notify the Commission of any new address and that failure to notify resulted in the educator's failure to receive important licensure, registration, certification or discipline-related information.

(4) The Commission may send notice for opportunity for a hearing pursuant to ORS 342.175 to an educator at the address the educator provides in writing to the Commission. The Commission may complete service of notice under ORS 342.143(4) or 342.176(5), by mailing the notice through certified mail addressed to the educator's address on file with the Commission and such mailing will be deemed conclusive evidence of service.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 2-1990, f. 6-1-90, cert. ef. 6-14-90; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0065
Procedure for Determining Propriety and Amount of Forfeiture

(1) If the Commission obtains information indicating that a person has served without proper licensure, the Executive Director will notify the employing district of the potential violation of licensure and request the district's response to the charge.

(2) The district may deny that a violation of licensure has occurred. In that case, the district should present all reasons that the district believes no violation has occurred. If the Executive Director determines that, in fact, no violation has occurred, he or she will so notify the district superintendent and the district board. No further action will be taken by TSPC.

(3) The district may agree that a violation has occurred. In that case, the district should submit an explanation of all factors which the district believes explain the violation including the following as appropriate:

(a) Demographic characteristics of the district;

(b) Size of school;

(c) Local availability of licensed personnel and substitutes;

(d) Date the district first became aware the position in question required filling (e.g., date the district was notified of the resignation, illness, etc., of the previous employee in that position or, if a new position, date of its authorization);

(e) Prior violations by the district, regardless of whether any penalty was assessed therefore, or absence of prior violations;

(f) Opportunity and degree of difficulty to correct the violation;

(g) Efforts made by the district to correct the violation;

(h) Gravity and magnitude of the violation;

(i) Cause of the violation: e.g., unexpected emergency, unavoidable error, negligence, or an intentional act by the district;

(j) Best interests of the students and the public; and

(k) Any other factor or factors the district believes the Commission should consider.

(4) The district must submit its written explanation or denial within thirty calendar days after the notice required by section (1) of this rule was mailed, unless the Executive Director agrees to a longer period for response. The district must include at this time all grounds for justification of the violation. The Commission may refuse to consider any other grounds in any subsequent hearing on the matter.

(5) The Executive Director will consider any written explanation submitted by the district under section (3) of this rule and any other factors the Executive Director deems relevant and will make a preliminary determination as to whether the employment without proper licensure was justified. The Executive Director will also make a preliminary determination of the appropriate forfeiture, if any, of state school funds due the district. In making these determinations the Executive Director will apply the criteria for setting forfeitures stated in OAR 584-050-0066 and 584-050-0067.

(6) The Executive Director will inform the Commission of the preliminary determinations reached under section (5) of this rule. The Executive Director shall also notify the Commission when, despite a denial by the district, the Executive Director has determined that a violation has occurred. The Commission may adopt the Executive Director's determinations or may modify those determinations. The determination of the amount of forfeiture is not a contested case proceeding, so the district is not entitled to present argument unless requested by the Commission.

(7) The Executive Director will issue a Notice of Proposed Forfeiture and Opportunity for a Hearing and will send the notice to the district in accordance with OAR 584-050-0070.

(8) The district is entitled to a contested case hearing as indicated in OAR 584-050-0070.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.173
Hist.: TS 1-1980, f. & ef. 3-19-80; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0066
Criteria for Setting Amount of Forfeiture

(1) The Commission will require any district which employs a person without proper licensure to forfeit the full amount of salary paid to the person for the period of service without proper licensure unless one of the conditions stated in sections (3) through (8) of this rule exists.

(2) In determining the number of days which a teacher has served without proper licensure, the Commission will include a teacher's inservice days and will not count the 120 calendar days past the license expiration date as permitted in OAR 584-050-0040:

(3) After consideration of the explanation of the district and any other factors deemed relevant, the Commission may determine that extraordinary circumstances justify a lesser forfeiture.

(4) No forfeiture will be assessed where the justification for employment without proper licensure is satisfactory to the Commission.

(5) A school district will be required to forfeit not more than $1,000 of State School Funds due the district if the license has lapsed during the time of employment with the district if the holder had at the time the license expired all the qualifications necessary to renew the license.

(a) Subject to any applicable collective bargaining agreement, a district required to forfeit any State School Funds under this section is entitled to recover one-half of the amounts forfeited from the licensed personnel whose unlicensed status caused the forfeiture.

(b) Recovery may not exceed one-half of the amounts forfeited that is attributed to the particular licensed person.

(6) The maximum forfeiture for a single incident of employment without proper licensure will be $5,000. "Single incident" means employment during a school year involving a single individual. Districts may be assessed the maximum forfeiture for each single incident of employment without proper licensure.

(7) If a conditional assignment permit issued pursuant to OAR 584-036-0081 is filed or an application for an emergency license is made, as provided in OAR 584-050-0055, no forfeiture will be assessed for employment during the six-week reporting period.

(8) No school district will be required to forfeit State School Funds solely as a result of payment for services from a private alternative education program registered with the Oregon Department of Education or for the conditional assignment of a teacher holding a valid Oregon teaching license in an alternative education program operated by the district.

(a) Education service districts will not be required to make payment to the State School Fund for the employment or assignments specified above.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.127, 342.135, 342.140, 342.143, 342.147, 342.165, 342.175 & 342.176
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 5-1989(Temp), f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 2-1990, f. 6-1-90, cert. ef. 6-14-90; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0067
Setting Amount of Forfeiture During a Labor Dispute

(1) Notwithstanding provisions of OAR 584-050-0066 and 584-050-0070, if a school district employs a person not holding proper licensure in a position requiring licensure during a labor dispute, the district must forfeit the full amount of salary paid the person for each teaching day that the person was employed without licensure.

(2) Inservice days for teachers are not computed in the amount of forfeiture. See also ORS 342.173(3) regarding labor disputes.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.127, 342.135, 342.140, 342.143, 342.147, 342.165, 342.175 & 342.176
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 7-2007, f. & cert. ef. 12-14-07

584-050-0070
Notice of Commission's Determinations and Opportunity for a Hearing

(1) The Executive Director will notify the district superintendent and district board chair of the Commission's determinations concerning the alleged violation of licensure, the adequacy of the district's justification for the employment without proper licensure, and the amount of any forfeiture.

(2) The district is entitled to a contested case hearing on the matter if a written request for a hearing is received by the Commission within thirty days from the date of the notice. If the district does not submit a timely request for a hearing, the forfeiture will be imposed.

(3) The scope of a contested case hearing may be limited by the Commission to the justifying factors presented to the Executive Director in the district's written explanation. See OAR 584-050-0065(4) regarding the written explanation.

(4) Following the hearing, the Commission may affirm or deny the alleged violation, and may affirm, increase, or decrease the amount of forfeiture.

(5) The Commission will make its determinations based on the particular facts of each case, recognizing that this may result in variations in the amounts of penalties ordered.

Stat. Auth.: ORS 183 & 342
Stats. Implemented: ORS 183.310 - 183.550 & 342.173
Hist.: TS 1-1980, f. & ef. 3-19-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 7-2007, f. & cert. ef. 12-14-07

584-052-0032
Determination of Subject-matter Competency through Alternative Assessment

(1) The application, fee and all evidence for alternative assessment must be submitted at least four weeks prior to the scheduled Commission meeting at which the applicant would like to have the application considered.

(2) The application will be evaluated based on the coursework requirements in division 38 for the endorsement area in which the applicant is seeking licensure.

(a) The evaluation will be based on the following:

(A) Whether coursework submitted meets the requirements in OAR 584 division 38 for the content area the candidate is seeking waiver; and

(B) Whether the coursework in the subject area meets a GPA of 3.0 or better.

(3) If no further coursework is recommended by commission staff, the commission will consider the recommendation of the Executive Director and the applicant's coursework evaluation and other submitted evidence to make a determination of whether the applicant is eligible for subject-matter test waiver.

(4) The Commission will pass a resolution either waiving the applicant's requirement to pass a subject-matter test in the content area or denying the waiver to pass the test based on the evidence submitted for alternative assessment.

(5) If the coursework does not meet the requirements for endorsement in OAR 584 division 38, a list of necessary additional coursework directly relevant to meeting the division 38 requirements will be prepared for the applicant by a TSPC evaluator. The application for alternative assessment will be considered incomplete and the applicant may reapply for alternative assessment once the coursework is completed.

(a) All evidence, such as record of the score report for the attempted test, transcripts and letters of recommendation submitted with the first alternative assessment application will be kept on file for subsequent alternative assessment resubmissions.

(b) Applicants will only need to submit, a new application, a new fee and proof that the additional coursework required has been completed under the conditions set forth under subsection (2) above.

(6) For purposes of "Highly Qualified Teacher" alternative assessment shall be considered a rigorous state test for new teachers.

(7) An applicant or candidate for licensure is deemed to have passed their licensure tests if the commission determines they have met all the requirements for alternative assessment pursuant to OAR 584-052-0030 through 584-052-0033. Additionally, successful completion of alternative assessment satisfies the program completion requirement for passing the licensure test pursuant to OAR 584-017-0200.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.127, 342.135, 342.140, 342.143, 342.147, 342.165, 342.175 & 342.176
Hist.: TSPC 5-2004, f. & cert. ef. 8-25-04; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 7-2007, f. & cert. ef. 12-14-07

584-060-0012
Initial I Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial I Teaching License for three years. The first license will be issued for three years plus time to the applicant's birthday.

(2) The Initial I Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0052 for Authorization Levels.)

(3) To be eligible for an Initial I Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program approved by the commission in Oregon, or complete a state-approved teacher preparation program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment.

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See 584-060-0002(7) for definition of Basic Skills Tests.)

(f) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission; and

(g) Furnish fingerprints in the manner prescribed by the commission and satisfy requirements of OAR 584-060-0060 Character Questions to Establish Fitness to Serve as an Educator. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(h) Provide a copy of a recognized and current standard first aid card pursuant to ORS 342.126.

(i) Complete a recent experience during the three-year period immediately preceding application. (See OAR 584-005-0005 for definition of Recent Experience.)

(4) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for

unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(5) The Initial I Teaching License may be renewed two times for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-060-0013 during the life of the Initial I Teaching License under the following conditions:

(a) The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment.

(b) The educator must qualify for an Initial II Teaching License upon expiration of ten years following the date the first Initial I Teaching License was issued. A one year unconditional extension may be obtained if the educator is unable to meet all requirements within the nine year period. (See, OAR 584-060-0013 Initial II Teaching License.)

(6) The Executive Director may grant an extension to the Initial I Teaching License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the teacher was unable to complete the requirements for the Initial II Teaching License during the life of the Initial I Teaching License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.165 & 342.136
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07; Administrative correction 10-16-07; TSPC 7-2007, f. & cert. ef. 12-14-07

584-070-0014
Initial II School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial II School Counselor License for three years.

(2) The Initial II School Counselor License is valid as designated for regular counseling at early childhood and elementary grade levels; at elementary and middle-level grade levels; or at middle and high school grade levels, or at all four levels.

(a) The license is also valid for substitute counseling at any level; and

(b) The license is also valid for substitute teaching at any level in any specialty

(3)(a) To be eligible for an Initial II School Counselor License, the applicant must complete six (6) semester hours or nine (9) quarter hours of graduate level academic credit from a regionally accredited college or university.

(b) The graduate level credit must:

(A) Be completed after the Initial I School Counselor License has first been issued; and

(B) Be germane to the School Counselor License or directly germane to public school employment.

(4) The Initial II School Counselor License may be renewed repeatedly for three years upon completion of:

(a) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of six (6) semester hours or nine (9) quarter hours of preparation completed in an approved institution during the life of the current counseling license; or

(E) A combination of (A)–(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience or;

(F) Meeting any of the special provisions for renewal contained in OARs 584-048-0015; 584-048-0020 or 584-048-0067; and

(b) A professional development plan in accordance with OAR 584-090.

(5) A school counselor may choose to become eligible for the Continuing School Counselor License in lieu of obtaining the Initial II School Counselor License. (See OAR 584-070-0022 Continuing School Counselor License.)

(6) Educators issued an Initial School Counselor License prior to July 1, 2005 must meet the requirements of this rule prior to the expiration of ten years from the date the first Initial School Counselor License was issued. The additional year granted to licensees holding an Initial School Counselor License prior to October 13, 2003, will be included in the ten year calculation for meeting the requirements of this rule.

(7) Educators issued an Initial School Counselor License after June 30, 2005 must meet the requirements of this rule prior to the expiration of nine years from the date the first Initial School Counselor License was issued.

(8) This rule applies to all Initial School Counselor Licenses issued after January 1999.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2007, f. & cert. ef. 12-14-07

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141-085-0146	1-1-2008	Amend	1-1-2008
141-085-0156	1-1-2008	Amend	1-1-2008
141-085-0161	1-1-2008	Amend	1-1-2008
141-085-0166	1-1-2008	Amend	1-1-2008
141-085-0171	1-1-2008	Amend	1-1-2008
141-085-0176	1-1-2008	Amend	1-1-2008
141-085-0256	1-1-2008	Amend	1-1-2008
141-085-0257	1-1-2008	Amend	1-1-2008
141-085-0421	1-1-2008	Amend	1-1-2008
141-085-0425	1-1-2008	Amend	1-1-2008
141-085-0430	1-1-2008	Amend	1-1-2008
141-089-0100	1-1-2008	Amend	1-1-2008
141-089-0105	1-1-2008	Amend	1-1-2008
141-089-0110	1-1-2008	Amend	1-1-2008
141-089-0115	1-1-2008	Amend	1-1-2008
141-089-0120	1-1-2008	Amend	1-1-2008
141-089-0135	1-1-2008	Amend	1-1-2008
141-089-0140	1-1-2008	Amend	1-1-2008
141-089-0150	1-1-2008	Amend	1-1-2008
141-089-0155	1-1-2008	Amend	1-1-2008
141-089-0157	1-1-2008	Adopt	1-1-2008
141-089-0170	1-1-2008	Amend	1-1-2008
141-089-0175	1-1-2008	Amend	1-1-2008
141-089-0180	1-1-2008	Amend	1-1-2008
141-089-0185	1-1-2008	Amend	1-1-2008
141-089-0190	1-1-2008	Amend	1-1-2008
141-089-0192	1-1-2008	Adopt	1-1-2008
141-089-0205	1-1-2008	Amend	1-1-2008
141-089-0215	1-1-2008	Amend	1-1-2008
141-089-0225	1-1-2008	Amend	1-1-2008
141-089-0230	1-1-2008	Amend	1-1-2008
141-089-0245	1-1-2008	Amend	1-1-2008
141-089-0260	1-1-2008	Amend	1-1-2008
141-089-0265	1-1-2008	Amend	1-1-2008
141-089-0280	1-1-2008	Amend	1-1-2008
141-089-0285	1-1-2008	Amend	1-1-2008
141-089-0290	1-1-2008	Amend	1-1-2008
141-089-0295	1-1-2008	Amend	1-1-2008
141-089-0300	1-1-2008	Amend	1-1-2008
141-089-0302	1-1-2008	Adopt	1-1-2008
141-089-0400	1-1-2008	Amend	1-1-2008
141-089-0405	1-1-2008	Amend	1-1-2008
141-089-0415	1-1-2008	Amend	1-1-2008
141-089-0420	1-1-2008	Amend	1-1-2008
141-089-0423	1-1-2008	Adopt	1-1-2008
141-089-0500	1-1-2008	Amend	1-1-2008
141-089-0505	1-1-2008	Amend	1-1-2008
141-089-0515	1-1-2008	Amend	1-1-2008
141-089-0520	1-1-2008	Amend	1-1-2008
141-089-0550	1-1-2008	Amend	1-1-2008
141-089-0555	1-1-2008	Amend	1-1-2008
141-089-0560	1-1-2008	Amend	1-1-2008
141-089-0565	1-1-2008	Amend	1-1-2008
141-089-0570	1-1-2008	Amend	1-1-2008
141-089-0572	1-1-2008	Adopt	1-1-2008
141-089-0585	1-1-2008	Amend	1-1-2008
141-089-0595	1-1-2008	Amend	1-1-2008
141-089-0600	1-1-2008	Amend	1-1-2008

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141-089-0607	1-1-2008	Adopt	1-1-2008
141-090-0005	1-1-2008	Amend	1-1-2008
141-090-0010	1-1-2008	Amend	1-1-2008
141-090-0015	1-1-2008	Amend	1-1-2008
141-090-0020	1-1-2008	Amend	1-1-2008
141-090-0025	1-1-2008	Amend	1-1-2008
141-090-0030	1-1-2008	Amend	1-1-2008
141-090-0032	1-1-2008	Adopt	1-1-2008
141-090-0035	1-1-2008	Amend	1-1-2008
141-090-0040	1-1-2008	Amend	1-1-2008
141-090-0045	1-1-2008	Amend	1-1-2008
141-090-0050	1-1-2008	Amend	1-1-2008
141-090-0055	1-1-2008	Amend	1-1-2008
141-102-0000	1-1-2008	Amend	1-1-2008
141-102-0020	1-1-2008	Amend	1-1-2008
141-102-0030	1-1-2008	Amend	1-1-2008
141-102-0045	1-1-2008	Repeal	1-1-2008
151-001-0005	12-13-2007	Amend(T)	1-1-2008
151-001-0010	12-13-2007	Amend(T)	1-1-2008
151-020-0045	12-13-2007	Amend(T)	1-1-2008
160-010-0600	1-1-2008	Adopt	1-1-2008
160-010-0610	1-1-2008	Adopt	1-1-2008
160-010-0620	1-1-2008	Adopt	1-1-2008
160-010-0630	1-1-2008	Adopt	1-1-2008
160-100-0200	1-15-2008	Amend	1-1-2008
165-014-0280	12-3-2007	Adopt	1-1-2008
166-500-0015	11-29-2007	Amend	1-1-2008
170-071-0005	11-20-2007	Amend(T)	1-1-2008
250-010-0075	12-10-2007	Adopt(T)	1-1-2008
291-069-0010	12-1-2007	Suspend	1-1-2008
291-069-0020	12-1-2007	Suspend	1-1-2008
291-069-0031	12-1-2007	Suspend	1-1-2008
291-069-0040	12-1-2007	Suspend	1-1-2008
291-069-0050	12-1-2007	Suspend	1-1-2008
291-069-0060	12-1-2007	Suspend	1-1-2008
291-069-0070	12-1-2007	Suspend	1-1-2008
291-069-0090	12-1-2007	Suspend	1-1-2008
291-069-0100	12-1-2007	Suspend	1-1-2008
291-069-0200	12-1-2007	Adopt(T)	1-1-2008
291-069-0210	12-1-2007	Adopt(T)	1-1-2008
291-069-0220	12-1-2007	Adopt(T)	1-1-2008
291-069-0230	12-1-2007	Adopt(T)	1-1-2008
291-069-0240	12-1-2007	Adopt(T)	1-1-2008
291-069-0250	12-1-2007	Adopt(T)	1-1-2008
291-069-0260	12-1-2007	Adopt(T)	1-1-2008
291-069-0270	12-1-2007	Adopt(T)	1-1-2008
291-069-0280	12-1-2007	Adopt(T)	1-1-2008
309-011-0100	12-5-2007	Adopt(T)	1-1-2008
309-031-0215	12-1-2007	Amend(T)	1-1-2008
309-032-0455	12-11-2007	Amend	1-1-2008
309-114-0000	12-1-2007	Amend(T)	1-1-2008
309-114-0005	12-1-2007	Amend(T)	1-1-2008
309-114-0010	12-1-2007	Amend(T)	1-1-2008
309-114-0015	12-1-2007	Amend(T)	1-1-2008
309-114-0020	12-1-2007	Amend(T)	1-1-2008
309-114-0025	12-1-2007	Amend(T)	1-1-2008
309-118-0015	12-1-2007	Amend(T)	1-1-2008
330-007-0200	12-13-2007	Adopt	1-1-2008
330-007-0210	12-13-2007	Adopt	1-1-2008
330-007-0220	12-13-2007	Adopt	1-1-2008
330-007-0230	12-13-2007	Adopt	1-1-2008
330-007-0240	12-13-2007	Adopt	1-1-2008
330-007-0250	12-13-2007	Adopt	1-1-2008
330-007-0260	12-13-2007	Adopt	1-1-2008
330-007-0270	12-13-2007	Adopt	1-1-2008
330-007-0280	12-13-2007	Adopt	1-1-2008
330-007-0290	12-13-2007	Adopt	1-1-2008
330-007-0300	12-13-2007	Adopt	1-1-2008
330-007-0310	12-13-2007	Adopt	1-1-2008
330-007-0320	12-13-2007	Adopt	1-1-2008
330-007-0330	12-13-2007	Adopt	1-1-2008
330-070-0010	12-1-2007	Amend	1-1-2008
330-070-0013	12-1-2007	Amend	1-1-2008
330-070-0014	12-1-2007	Amend	1-1-2008
330-070-0021	12-1-2007	Amend	1-1-2008
330-070-0022	12-1-2007	Amend	1-1-2008
330-070-0025	12-1-2007	Amend	1-1-2008
330-070-0026	12-1-2007	Amend	1-1-2008
330-070-0048	12-1-2007	Amend	1-1-2008
330-070-0059	12-1-2007	Amend	1-1-2008
330-070-0060	12-1-2007	Amend	1-1-2008
330-070-0064	12-1-2007	Amend	1-1-2008
330-070-0073	12-1-2007	Amend	1-1-2008
330-070-0089	12-1-2007	Amend	1-1-2008
330-070-0091	12-1-2007	Amend	1-1-2008
330-070-0097	12-1-2007	Amend	1-1-2008
330-090-0105	12-1-2007	Amend	1-1-2008
330-090-0110	12-1-2007	Amend	1-1-2008
330-090-0120	12-1-2007	Amend	1-1-2008
330-090-0130	12-1-2007	Amend	1-1-2008
330-090-0135	12-1-2007	Amend	1-1-2008
330-090-0140	12-1-2007	Amend	1-1-2008
330-090-0150	12-1-2007	Amend	1-1-2008
340-248-0260	11-30-2007	Amend	1-1-2008
407-005-0110	12-1-2007	Amend	1-1-2008
407-012-0005	12-1-2007	Adopt	1-1-2008
407-012-0010	12-1-2007	Adopt	1-1-2008
407-012-0015	12-1-2007	Adopt	1-1-2008
407-012-0020	12-1-2007	Adopt	1-1-2008
407-012-0025	12-1-2007	Adopt	1-1-2008
407-045-0800	12-3-2007	Adopt(T)	1-1-2008
407-045-0810	12-3-2007	Adopt(T)	1-1-2008
407-045-0820	12-3-2007	Adopt(T)	1-1-2008
407-045-0830	12-3-2007	Adopt(T)	1-1-2008
407-045-0840	12-3-2007	Adopt(T)	1-1-2008
407-045-0850	12-3-2007	Adopt(T)	1-1-2008
407-045-0860	12-3-2007	Adopt(T)	1-1-2008
407-045-0870	12-3-2007	Adopt(T)	1-1-2008
407-045-0880	12-3-2007	Adopt(T)	1-1-2008
407-045-0890	12-3-2007	Adopt(T)	1-1-2008
407-045-0900	12-3-2007	Adopt(T)	1-1-2008

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407-045-0920	12-3-2007	Adopt(T)	1-1-2008
407-045-0930	12-3-2007	Adopt(T)	1-1-2008
407-045-0940	12-3-2007	Adopt(T)	1-1-2008
407-045-0950	12-3-2007	Adopt(T)	1-1-2008
407-045-0960	12-3-2007	Adopt(T)	1-1-2008
407-045-0970	12-3-2007	Adopt(T)	1-1-2008
407-045-0980	12-3-2007	Adopt(T)	1-1-2008
410-120-0000	1-1-2008	Amend	1-1-2008
410-120-0010	12-5-2007	Adopt(T)	1-1-2008
410-120-1200	1-1-2008	Amend	1-1-2008
410-120-1295	1-1-2008	Amend	1-1-2008
410-120-1320	1-1-2008	Amend	1-1-2008
410-120-1340	1-1-2008	Amend	1-1-2008
410-120-1397	1-1-2008	Amend	1-1-2008
410-120-1560	1-1-2008	Amend	1-1-2008
410-120-1570	1-1-2008	Amend	1-1-2008
410-121-0040	1-1-2008	Amend	1-1-2008
410-121-0135	1-1-2008	Amend	1-1-2008
410-121-0140	1-1-2008	Amend	1-1-2008
410-121-0146	1-1-2008	Amend	1-1-2008
410-121-0148	1-1-2008	Amend	1-1-2008
410-121-0150	1-1-2008	Amend	1-1-2008
410-121-0155	1-1-2008	Amend	1-1-2008
410-121-0160	1-1-2008	Amend	1-1-2008
410-121-0300	1-1-2008	Amend	1-1-2008
410-122-0202	1-1-2008	Amend	1-1-2008
410-122-0203	1-1-2008	Amend	1-1-2008
410-122-0320	1-1-2008	Amend	1-1-2008
410-122-0325	1-1-2008	Amend	1-1-2008
410-122-0330	1-1-2008	Amend	1-1-2008
410-122-0380	1-1-2008	Amend	1-1-2008
410-122-0662	1-1-2008	Adopt	1-1-2008
410-122-0678	1-1-2008	Amend	1-1-2008
410-122-0720	1-1-2008	Amend	1-1-2008
410-123-1000	1-1-2008	Amend	1-1-2008
410-123-1040	1-1-2008	Repeal	1-1-2008
410-123-1060	1-1-2008	Amend	1-1-2008
410-123-1100	1-1-2008	Amend	1-1-2008
410-123-1160	1-1-2008	Amend	1-1-2008
410-123-1200	1-1-2008	Amend	1-1-2008
410-123-1220	1-1-2008	Amend	1-1-2008
410-123-1240	1-1-2008	Amend	1-1-2008
410-123-1260	1-1-2008	Amend	1-1-2008
410-123-1490	1-1-2008	Amend	1-1-2008
410-123-1620	1-1-2008	Amend	1-1-2008
410-123-1670	1-1-2008	Amend	1-1-2008
410-127-0060	1-1-2008	Amend	1-1-2008
410-129-0070	1-1-2008	Amend	1-1-2008
410-129-0200	1-1-2008	Amend	1-1-2008
410-141-0180	1-1-2008	Amend	1-1-2008
410-141-0480	1-1-2008	Amend	1-1-2008
410-142-0020	1-1-2008	Amend	1-1-2008
410-146-0000	1-1-2008	Amend	1-1-2008
410-146-0020	1-1-2008	Amend	1-1-2008
410-146-0021	1-1-2008	Amend	1-1-2008
410-146-0025	1-1-2008	Repeal	1-1-2008
410-146-0040	1-1-2008	Amend	1-1-2008
410-146-0060	1-1-2008	Amend	1-1-2008
410-146-0075	1-1-2008	Amend	1-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-146-0080	1-1-2008	Amend	1-1-2008
410-146-0100	1-1-2008	Amend	1-1-2008
410-146-0120	1-1-2008	Amend	1-1-2008
410-146-0130	1-1-2008	Amend	1-1-2008
410-146-0140	1-1-2008	Amend	1-1-2008
410-146-0160	1-1-2008	Amend	1-1-2008
410-146-0180	1-1-2008	Repeal	1-1-2008
410-146-0200	1-1-2008	Amend	1-1-2008
410-146-0220	1-1-2008	Amend	1-1-2008
410-146-0240	1-1-2008	Amend	1-1-2008
410-146-0340	1-1-2008	Amend	1-1-2008
410-146-0380	1-1-2008	Amend	1-1-2008
410-146-0400	1-1-2008	Repeal	1-1-2008
410-146-0420	1-1-2008	Repeal	1-1-2008
410-146-0440	1-1-2008	Amend	1-1-2008
410-146-0460	1-1-2008	Amend	1-1-2008
410-147-0365	1-1-2008	Amend	1-1-2008
413-010-0400	12-1-2007	Amend	1-1-2008
413-010-0410	12-1-2007	Amend	1-1-2008
413-010-0420	12-1-2007	Amend	1-1-2008
413-010-0430	12-1-2007	Amend	1-1-2008
413-010-0440	12-1-2007	Amend	1-1-2008
413-010-0450	12-1-2007	Repeal	1-1-2008
413-010-0460	12-1-2007	Repeal	1-1-2008
413-010-0470	12-1-2007	Repeal	1-1-2008
413-010-0480	12-1-2007	Amend	1-1-2008
413-010-0490	12-1-2007	Repeal	1-1-2008
413-015-0100	12-3-2007	Amend(T)	1-1-2008
413-015-0115	12-3-2007	Amend(T)	1-1-2008
413-015-0115(T)	12-3-2007	Suspend	1-1-2008
413-015-0205	12-3-2007	Amend(T)	1-1-2008
413-120-0060	12-12-2007	Amend(T)	1-1-2008
415-010-0005	12-5-2007	Adopt(T)	1-1-2008
415-051-0045	12-11-2007	Amend	1-1-2008
436-010-0210	1-2-2008	Amend(T)	1-1-2008
436-010-0220	1-2-2008	Amend(T)	1-1-2008
436-010-0280	1-2-2008	Amend(T)	1-1-2008
437-001-0205	1-1-2008	Amend	1-1-2008
437-001-0215	1-1-2008	Amend	1-1-2008
437-001-0220	1-1-2008	Amend	1-1-2008
437-001-0240	1-1-2008	Amend	1-1-2008
437-001-0255	1-1-2008	Amend	1-1-2008
437-001-0295	12-3-2007	Amend	1-1-2008
437-002-0100	12-3-2007	Amend	1-1-2008
437-002-0122	12-3-2007	Adopt	1-1-2008
438-005-0046	1-1-2008	Amend	1-1-2008
438-005-0050	1-1-2008	Amend	1-1-2008
438-005-0055	1-1-2008	Amend	1-1-2008
438-006-0020	1-1-2008	Amend	1-1-2008
438-006-0100	1-1-2008	Amend	1-1-2008

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438-009-0020	1-1-2008	Amend	1-1-2008
438-009-0022	1-1-2008	Amend	1-1-2008
438-009-0025	1-1-2008	Amend	1-1-2008
438-009-0028	1-1-2008	Amend	1-1-2008
438-009-0030	1-1-2008	Amend	1-1-2008
438-009-0035	1-1-2008	Amend	1-1-2008
438-011-0020	1-1-2008	Amend	1-1-2008
438-012-0035	1-1-2008	Amend	1-1-2008
438-015-0005	1-1-2008	Amend	1-1-2008
438-015-0019	1-1-2008	Adopt	1-1-2008
438-015-0022	1-1-2008	Adopt	1-1-2008
438-015-0080	1-1-2008	Amend	1-1-2008
438-019-0030	1-1-2008	Amend	1-1-2008
441-730-0000	12-27-2007	Amend	1-1-2008
441-730-0010	12-27-2007	Amend	1-1-2008
441-730-0015	12-27-2007	Amend	1-1-2008
441-730-0270	12-27-2007	Amend	1-1-2008
441-730-0275	12-27-2007	Amend	1-1-2008
441-730-0310	12-27-2007	Amend	1-1-2008
441-755-0000	11-30-2007	Adopt	1-1-2008
441-755-0010	11-30-2007	Adopt	1-1-2008
441-755-0100	11-30-2007	Adopt	1-1-2008
441-755-0110	11-30-2007	Adopt	1-1-2008
441-755-0120	11-30-2007	Adopt	1-1-2008
441-755-0130	11-30-2007	Adopt	1-1-2008
441-755-0140	11-30-2007	Adopt	1-1-2008
441-755-0150	11-30-2007	Adopt	1-1-2008
441-755-0160	11-30-2007	Adopt	1-1-2008
441-755-0170	11-30-2007	Adopt	1-1-2008
441-755-0200	11-30-2007	Adopt	1-1-2008
441-755-0210	11-30-2007	Adopt	1-1-2008
441-755-0220	11-30-2007	Adopt	1-1-2008
441-755-0300	11-30-2007	Adopt	1-1-2008
441-755-0310	11-30-2007	Adopt	1-1-2008
459-007-0110	11-23-2007	Amend	1-1-2008
459-007-0160	11-23-2007	Adopt	1-1-2008
459-007-0290	11-23-2007	Amend	1-1-2008
459-007-0530	11-23-2007	Amend	1-1-2008
459-009-0084	11-23-2007	Amend	1-1-2008
459-009-0085	11-23-2007	Amend	1-1-2008
459-009-0090	11-23-2007	Amend	1-1-2008
459-010-0003	11-23-2007	Amend	1-1-2008
459-010-0014	11-23-2007	Amend	1-1-2008
459-010-0035	11-23-2007	Amend	1-1-2008
459-010-0055	11-23-2007	Amend	1-1-2008
459-011-0050	11-23-2007	Amend	1-1-2008
459-013-0110	11-23-2007	Amend	1-1-2008
459-017-0060	11-23-2007	Amend	1-1-2008
459-045-0030	11-23-2007	Amend	1-1-2008
459-050-0080	11-23-2007	Amend	1-1-2008
459-050-0220	11-23-2007	Amend	1-1-2008
459-070-0001	11-23-2007	Amend	1-1-2008
459-075-0010	11-23-2007	Amend	1-1-2008
459-075-0020	11-23-2007	Adopt	1-1-2008
459-075-0150	11-23-2007	Amend	1-1-2008
459-080-0020	11-23-2007	Adopt	1-1-2008
459-080-0250	11-23-2007	Amend	1-1-2008
461-120-0310	12-1-2007	Amend(T)	1-1-2008
461-120-0310(T)	12-1-2007	Suspend	1-1-2008
462-160-0110	11-28-2007	Amend(T)	1-1-2008
462-160-0120	11-28-2007	Amend(T)	1-1-2008
462-160-0130	11-28-2007	Amend(T)	1-1-2008
462-200-0630	12-6-2007	Repeal	1-1-2008
471-030-0050	12-3-2007	Amend	1-1-2008
581-015-2570	12-12-2007	Amend	1-1-2008
581-015-2595	12-12-2007	Amend	1-1-2008
581-020-0250	12-12-2007	Adopt	1-1-2008
581-022-1661	12-12-2007	Adopt	1-1-2008
581-022-1940	12-12-2007	Amend	1-1-2008
581-022-1941	12-12-2007	Adopt	1-1-2008
581-023-0104	12-12-2007	Amend	1-1-2008
581-024-0285	12-12-2007	Amend	1-1-2008
584-017-0351	12-14-2007	Adopt	1-1-2008
584-019-0002	12-14-2007	Amend	1-1-2008
584-019-0003	12-14-2007	Amend	1-1-2008
584-019-0020	12-14-2007	Repeal	1-1-2008
584-019-0025	12-14-2007	Amend	1-1-2008
584-019-0035	12-14-2007	Amend	1-1-2008
584-019-0040	12-14-2007	Amend	1-1-2008
584-020-0000	12-14-2007	Amend	1-1-2008
584-020-0005	12-14-2007	Amend	1-1-2008
584-020-0010	12-14-2007	Amend	1-1-2008
584-020-0015	12-14-2007	Amend	1-1-2008
584-020-0020	12-14-2007	Amend	1-1-2008
584-020-0025	12-14-2007	Amend	1-1-2008
584-020-0030	12-14-2007	Amend	1-1-2008
584-020-0035	12-14-2007	Amend	1-1-2008
584-020-0040	12-14-2007	Amend	1-1-2008
584-020-0041	12-14-2007	Amend	1-1-2008
584-023-0005	12-14-2007	Amend	1-1-2008
584-023-0015	12-14-2007	Amend	1-1-2008
584-023-0025	12-14-2007	Amend	1-1-2008
584-038-0080	12-14-2007	Amend	1-1-2008
584-038-0335	12-14-2007	Amend	1-1-2008
584-038-0336	12-14-2007	Amend	1-1-2008
584-040-0080	12-14-2007	Amend	1-1-2008
584-040-0310	12-14-2007	Amend	1-1-2008
584-040-0315	12-14-2007	Amend	1-1-2008
584-050-0002	12-14-2007	Amend	1-1-2008
584-050-0005	12-14-2007	Amend	1-1-2008
584-050-0006	12-14-2007	Amend	1-1-2008
584-050-0009	12-14-2007	Amend	1-1-2008
584-050-0012	12-14-2007	Amend	1-1-2008
584-050-0015	12-14-2007	Amend	1-1-2008
584-050-0016	12-14-2007	Amend	1-1-2008
584-050-0018	12-14-2007	Amend	1-1-2008
584-050-0019	12-14-2007	Amend	1-1-2008
584-050-0020	12-14-2007	Amend	1-1-2008
584-050-0035	12-14-2007	Amend	1-1-2008
584-050-0040	12-14-2007	Amend	1-1-2008

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584-050-0066	12-14-2007	Amend	1-1-2008
584-050-0067	12-14-2007	Amend	1-1-2008
584-050-0070	12-14-2007	Amend	1-1-2008
584-052-0032	12-14-2007	Amend	1-1-2008
584-060-0012	12-14-2007	Amend	1-1-2008
584-070-0011	12-14-2007	Repeal	1-1-2008
584-070-0014	12-14-2007	Amend	1-1-2008
584-070-0021	12-14-2007	Repeal	1-1-2008
603-011-0610	11-28-2007	Amend	1-1-2008
603-011-0620	11-28-2007	Amend	1-1-2008
603-027-0420	11-29-2007	Amend(T)	1-1-2008
603-027-0420(T)	11-29-2007	Suspend	1-1-2008
603-027-0430	11-29-2007	Amend(T)	1-1-2008
603-027-0430(T)	11-29-2007	Suspend	1-1-2008
623-040-0005	12-3-2007	Adopt	1-1-2008
623-040-0010	12-3-2007	Adopt	1-1-2008
623-040-0015	12-3-2007	Adopt	1-1-2008
635-004-0018	1-1-2008	Amend	1-1-2008
635-004-0019	11-28-2007	Amend(T)	1-1-2008
635-004-0019	12-11-2007	Amend(T)	1-1-2008
635-004-0019(T)	11-28-2007	Suspend	1-1-2008
635-004-0033	11-28-2007	Amend(T)	1-1-2008
635-004-0033	1-1-2008	Amend	1-1-2008
635-004-0033(T)	11-28-2007	Suspend	1-1-2008
635-004-0170	11-28-2007	Amend(T)	1-1-2008
635-004-0170	1-1-2008	Amend	1-1-2008
635-005-0055	12-11-2007	Amend(T)	1-1-2008
635-005-0055	12-14-2007	Amend(T)	1-1-2008
635-005-0055	12-14-2007	Suspend	1-1-2008
635-042-0130	12-1-2007	Amend(T)	1-1-2008
635-056-0010	11-19-2007	Amend	1-1-2008
635-056-0020	11-19-2007	Amend	1-1-2008
635-057-0000	11-19-2007	Adopt	1-1-2008
635-060-0023	12-1-2007	Amend	1-1-2008
660-002-0010	12-10-2007	Amend(T)	1-1-2008
660-002-0015	12-10-2007	Amend(T)	1-1-2008
660-041-0000	12-10-2007	Amend(T)	1-1-2008
660-041-0010	12-10-2007	Amend(T)	1-1-2008
660-041-0030	12-10-2007	Amend(T)	1-1-2008
660-041-0040	12-10-2007	Amend(T)	1-1-2008
660-041-0050	12-10-2007	Suspend	1-1-2008
660-041-0060	12-10-2007	Adopt(T)	1-1-2008
660-041-0070	12-10-2007	Adopt(T)	1-1-2008
660-041-0500	12-10-2007	Adopt(T)	1-1-2008
660-041-0510	12-10-2007	Adopt(T)	1-1-2008
660-041-0520	12-10-2007	Adopt(T)	1-1-2008
660-041-0530	12-10-2007	Adopt(T)	1-1-2008
735-020-0075	11-30-2007	Adopt	1-1-2008
735-064-0070	1-1-2008	Amend	1-1-2008
735-070-0080	1-1-2008	Amend	1-1-2008
735-158-0000	11-30-2007	Amend	1-1-2008
811-001-0005	1-31-2008	Amend	1-1-2008
811-010-0085	11-30-2007	Amend	1-1-2008
811-010-0086	11-30-2007	Amend	1-1-2008
811-010-0090	11-30-2007	Amend	1-1-2008
811-010-0093	11-30-2007	Amend	1-1-2008
811-015-0010	11-30-2007	Amend	1-1-2008
811-015-0025	11-30-2007	Amend	1-1-2008
811-021-0005	11-30-2007	Amend	1-1-2008
812-001-0200	1-1-2008	Amend	1-1-2008
812-002-0140	1-1-2008	Amend	1-1-2008
812-002-0143	1-1-2008	Amend	1-1-2008
812-002-0170	1-1-2008	Adopt	1-1-2008
812-002-0265	1-1-2008	Adopt	1-1-2008
812-002-0420	1-1-2008	Amend	1-1-2008
812-002-0580	1-1-2008	Amend	1-1-2008
812-002-0630	1-1-2008	Adopt	1-1-2008
812-002-0635	1-1-2008	Adopt	1-1-2008
812-002-0640	1-1-2008	Amend	1-1-2008
812-002-0760	1-1-2008	Amend	1-1-2008
812-002-0840	1-1-2008	Repeal	1-1-2008
812-003-0150	1-1-2008	Amend	1-1-2008
812-003-0155	1-1-2008	Adopt	1-1-2008
812-003-0160	1-1-2008	Amend	1-1-2008
812-003-0170	1-1-2008	Amend	1-1-2008
812-003-0175	1-1-2008	Amend	1-1-2008
812-003-0180	1-1-2008	Amend	1-1-2008
812-003-0190	1-1-2008	Amend	1-1-2008
812-003-0200	1-1-2008	Amend	1-1-2008
812-003-0240	1-1-2008	Amend	1-1-2008
812-003-0250	1-1-2008	Amend	1-1-2008
812-003-0260	1-1-2008	Amend	1-1-2008
812-003-0280	1-1-2008	Amend	1-1-2008
812-003-0290	1-1-2008	Amend	1-1-2008
812-003-0300	1-1-2008	Amend	1-1-2008
812-003-0310	1-1-2008	Amend	1-1-2008
812-003-0380	1-1-2008	Amend	1-1-2008
812-003-0400	1-1-2008	Amend	1-1-2008
812-004-0240	1-1-2008	Amend	1-1-2008
812-004-0250	1-1-2008	Amend	1-1-2008
812-004-0260	1-1-2008	Amend	1-1-2008
812-004-0560	1-1-2008	Amend	1-1-2008
812-004-0590	1-1-2008	Amend	1-1-2008
812-004-0600	1-1-2008	Amend	1-1-2008
812-005-0200	1-1-2008	Amend	1-1-2008
812-005-0210	1-1-2008	Amend	1-1-2008
812-005-0250	1-1-2008	Amend	1-1-2008
812-005-0270	1-1-2008	Adopt	1-1-2008
812-008-0040	1-1-2008	Amend	1-1-2008
812-008-0060	1-1-2008	Amend	1-1-2008
812-008-0070	1-1-2008	Amend	1-1-2008
812-008-0110	1-1-2008	Amend	1-1-2008
812-009-0140	1-1-2008	Amend	1-1-2008
812-010-0420	1-1-2008	Amend	1-1-2008
812-010-0470	1-1-2008	Amend	1-1-2008
812-012-0110	1-1-2008	Adopt	1-1-2008
812-012-0130	1-1-2008	Adopt	1-1-2008
818-001-0087	11-30-2007	Amend	1-1-2008
818-012-0030	11-30-2007	Amend	1-1-2008
818-021-0060	11-30-2007	Amend	1-1-2008

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818-035-0065	11-30-2007	Amend	1-1-2008
818-042-0040	11-30-2007	Amend	1-1-2008
818-042-0060	11-30-2007	Amend	1-1-2008
818-042-0095	11-30-2007	Adopt	1-1-2008
836-009-0007	12-11-2007	Amend(T)	1-1-2008
836-052-0500	1-1-2008	Amend	1-1-2008
836-052-0508	1-1-2008	Adopt	1-1-2008
836-052-0516	1-1-2008	Amend	1-1-2008
836-052-0526	1-1-2008	Amend	1-1-2008
836-052-0531	1-1-2008	Adopt	1-1-2008
836-052-0546	1-1-2008	Amend	1-1-2008
836-052-0556	1-1-2008	Amend	1-1-2008
836-052-0566	1-1-2008	Amend	1-1-2008
836-052-0576	1-1-2008	Amend	1-1-2008
836-052-0616	1-1-2008	Amend	1-1-2008
836-052-0626	1-1-2008	Amend	1-1-2008
836-052-0636	1-1-2008	Amend	1-1-2008
836-052-0639	1-1-2008	Adopt	1-1-2008
836-052-0656	1-1-2008	Amend	1-1-2008
836-052-0666	1-1-2008	Amend	1-1-2008
836-052-0676	1-1-2008	Amend	1-1-2008
836-052-0696	1-1-2008	Amend	1-1-2008
836-052-0700	1-1-2008	Am. & Ren.	1-1-2008
836-052-0706	1-1-2008	Amend	1-1-2008
836-052-0726	1-1-2008	Amend	1-1-2008
836-052-0736	1-1-2008	Amend	1-1-2008
836-052-0738	1-1-2008	Adopt	1-1-2008
836-052-0740	1-1-2008	Adopt	1-1-2008
836-052-0746	1-1-2008	Amend	1-1-2008
836-052-0756	1-1-2008	Amend	1-1-2008
836-052-0766	1-1-2008	Amend	1-1-2008
836-052-0776	1-1-2008	Amend	1-1-2008
836-052-0786	1-1-2008	Amend	1-1-2008
836-071-0130	12-11-2007	Amend(T)	1-1-2008
836-071-0135	12-11-2007	Amend(T)	1-1-2008
836-071-0145	12-11-2007	Amend(T)	1-1-2008
837-020-0035	11-30-2007	Amend(T)	1-1-2008
837-020-0115	11-30-2007	Amend(T)	1-1-2008
837-035-0000	11-16-2007	Adopt	1-1-2008
837-035-0020	11-16-2007	Adopt	1-1-2008
837-035-0040	11-16-2007	Adopt	1-1-2008
837-035-0060	11-16-2007	Adopt	1-1-2008
837-035-0080	11-16-2007	Adopt	1-1-2008
837-035-0100	11-16-2007	Adopt	1-1-2008
837-035-0120	11-16-2007	Adopt	1-1-2008
837-035-0140	11-16-2007	Adopt	1-1-2008
837-035-0160	11-16-2007	Adopt	1-1-2008
837-035-0180	11-16-2007	Adopt	1-1-2008
837-035-0200	11-16-2007	Adopt	1-1-2008
837-035-0220	11-16-2007	Adopt	1-1-2008
837-035-0240	11-16-2007	Adopt	1-1-2008
837-035-0260	11-16-2007	Adopt	1-1-2008
837-035-0280	11-16-2007	Adopt	1-1-2008
837-035-0300	11-16-2007	Adopt	1-1-2008
837-035-0320	11-16-2007	Adopt	1-1-2008
837-035-0340	11-16-2007	Adopt	1-1-2008
839-025-0700	11-23-2007	Amend	1-1-2008
845-005-0416	1-1-2008	Adopt(T)	1-1-2008
845-005-0417	1-1-2008	Adopt(T)	1-1-2008
845-005-0420	1-1-2008	Amend(T)	1-1-2008
845-005-0422	1-1-2008	Suspend	1-1-2008
845-005-0423	1-1-2008	Suspend	1-1-2008
845-005-0424	1-1-2008	Amend(T)	1-1-2008
845-005-0425	1-1-2008	Adopt(T)	1-1-2008
845-005-0426	1-1-2008	Adopt(T)	1-1-2008
845-006-0391	1-1-2008	Adopt(T)	1-1-2008
845-006-0392	1-1-2008	Adopt(T)	1-1-2008
845-006-0395	1-1-2008	Suspend	1-1-2008
845-006-0396	1-1-2008	Amend(T)	1-1-2008
845-006-0398	1-1-2008	Suspend	1-1-2008
845-006-0400	1-1-2008	Adopt(T)	1-1-2008
845-006-0401	1-1-2008	Adopt(T)	1-1-2008
845-015-0141	1-1-2008	Adopt(T)	1-1-2008
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851-056-0012	11-21-2007	Amend	1-1-2008
852-001-0001	12-7-2007	Amend	1-1-2008
852-001-0002	12-7-2007	Amend	1-1-2008
852-050-0006	12-7-2007	Amend	1-1-2008
852-080-0030	1-1-2008	Amend	1-1-2008