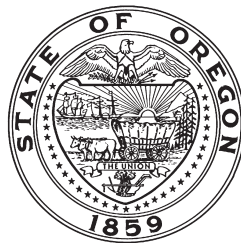


OREGON BULLETIN

Supplements the 2009 *Oregon Administrative Rules Compilation*

Volume 48, No. 11
November 1, 2009

For September 16, 2009–October 15, 2009



Published by
KATE BROWN
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

The online OAR Compilation is updated on the first of each month to include all rule actions filed with the Secretary of State’s office by the 15th of the previous month, or by the previous workday if the 15th is on a weekend or holiday. The annual printed *Oregon Administrative Rules Compilation* contains the full text of all permanent rules filed through November 15 of the previous year. Subsequent changes to individual rules are listed in the OAR Revision Cumulative Index which is published monthly in the *Oregon Bulletin*. Changes to individual administrative rules are listed in the OAR Revision Cumulative Index by OAR number and include the effective date, the specific rulemaking action and the issue of the *Oregon Bulletin* which contains the full text of the amended rule. The *Oregon Bulletin* publishes the full text of permanent and temporary administrative rules submitted for publication.

Locating Administrative Rules Unit Publications

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

2008–2009 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts rulemaking notices and filings Monday through Friday 8:00 a.m. to 5:00 p.m. at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following publication deadlines.

Submission Deadline — Publishing Date

| | |
|--------------------|-------------------|
| December 15, 2008 | January 1, 2009 |
| January 15, 2009 | February 1, 2009 |
| February 13, 2009 | March 1, 2009 |
| March 13, 2009 | April 1, 2009 |
| April 15, 2009 | May 1, 2009 |
| May 15, 2009 | June 1, 2009 |
| June 15, 2009 | July 1, 2009 |
| July 15, 2009 | August 1, 2009 |
| August 14, 2009 | September 1, 2009 |
| September 15, 2009 | October 1, 2009 |
| October 15, 2009 | November 1, 2009 |
| November 13, 2009 | December 1, 2009 |

Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an “Appointment of Agency Rules Coordinator” form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a “Delegation of Rulemaking Authority” form, ARC 915-2005. It is the agency’s responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms are available from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701, or are downloadable at <http://arcweb.sos.state.or.us/banners/rules.htm>

Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701. The Archives Division charges for such copies.

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TABLE OF CONTENTS

| | Page |
|---|----------|
| Information and Publication Schedule | 2 |
| Table of Contents | 3 |
| Executive Orders | 4, 5 |
| Other Notices | 6 |
| | |
| Notices of Proposed Rulemaking Hearings/Notices | |
| The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State. | |
| Board of Accountancy, Chapter 801..... | 7, 8 |
| Board of Geologist Examiners, Chapter 809..... | 8 |
| Board of Naturopathic Examiners, Chapter 850 | 8 |
| Board of Nursing, Chapter 851 | 8 |
| Board of Parole and Post-Prison Supervision, Chapter 255 | 8 |
| Board of Pharmacy, Chapter 855 | 8, 9 |
| Bureau of Labor and Industries, Chapter 839 | 9, 10 |
| Construction Contractors Board, Chapter 812 | 10, 11 |
| Department of Administrative Services, | |
| Oregon Educators Benefit Board, Chapter 111 | 11 |
| Department of Agriculture, Chapter 603 | 11 |
| Department of Community Colleges and Workforce Development, | |
| Chapter 589..... | 11 |
| Department of Consumer and Business Services, | |
| Building Codes Division, Chapter 918..... | 11, 12 |
| Division of Finance and Corporate Securities, Chapter 441 | 12, 13 |
| Insurance Division, Chapter 836 | 13 |
| Department of Corrections, Chapter 291..... | 13 |
| Department of Environmental Quality, Chapter 340..... | 13, 14 |
| Department of Fish and Wildlife, Chapter 635 | 14–16 |
| Department of Human Services, | |
| Addictions and Mental Health Division: | |
| Addiction Services, Chapter 415 | 16 |
| Children, Adults and Families Division: | |
| Child Welfare Programs, Chapter 413..... | 16–19 |
| Self-Sufficiency Programs, Chapter 461 | 19–25 |
| Division of Medical Assistance Programs, Chapter 410 | 25–28 |
| Public Health Division, Chapter 333..... | 28–30 |
| Seniors and People with Disabilities Division, Chapter 411 | 30 |
| Department of Justice, Chapter 137 | 30–32 |
| Department of Oregon State Police, Chapter 257 | 32, 33 |
| Department of Oregon State Police, | |
| Office of State Fire Marshal, Chapter 837 | 33 |
| Department of Public Safety Standards and Training, | |
| Chapter 259..... | 33 |
| Department of Revenue, Chapter 150 | 33, 34 |
| Department of Transportation, Chapter 731 | 34, 35 |
| Department of Transportation, | |
| Driver and Motor Vehicle Services Division, Chapter 735 | 35, 36 |
| Motor Carrier Transportation Division, Chapter 740 | 36 |
| Land Conservation and Development Department, | |
| Chapter 660..... | 37 |
| Land Use Board of Appeals, Chapter 661 | 37 |
| Landscape Architect Board, Chapter 804..... | 37 |
| Landscape Contractors Board, Chapter 808..... | 37, 38 |
| Oregon Business Development Department, Chapter 123..... | 38, 39 |
| Oregon Criminal Justice Commission, Chapter 213 | 39 |
| Oregon Department of Education, Chapter 581 | 39, 40 |
| Oregon Government Ethics Commission, Chapter 199 | 40 |
| Oregon Health Licensing Agency, | |
| Board of Cosmetology, Chapter 817 | 40 |
| Oregon Housing and Community Services Department, | |
| Chapter 813..... | 40 |
| Oregon Liquor Control Commission, Chapter 845 | 41 |
| Oregon Military Department, | |
| Office of Emergency Management, Chapter 104..... | 41 |
| Oregon Public Employees Retirement System, | |
| Chapter 459 | 41, 42 |
| Oregon State Marine Board, Chapter 250 | 42 |
| Oregon State Treasury, Chapter 170..... | 42 |
| Oregon University System, | |
| Eastern Oregon University, Chapter 579 | 42 |
| Parks and Recreation Department, Chapter 736 | 42, 43 |
| Secretary of State, | |
| Archives Division, Chapter 166 | 43 |
| Elections Division, Chapter 165 | 43 |
| | |
| Administrative Rules | |
| The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State. | |
| Board of Naturopathic Examiners, Chapter 850 | 44–48 |
| Board of Nursing, Chapter 851 | 48 |
| Board of Parole and Post-Prison Supervision, | |
| Chapter 255..... | 48–50 |
| Board of Psychologist Examiners, Chapter 858..... | 50, 51 |
| Bureau of Labor and Industries, Chapter 839 | 51–53 |
| Department of Administrative Services, | |
| Oregon Educators Benefit Board, Chapter 111 | 53 |
| Public Employees’ Benefit Board, Chapter 101 | 53–58 |
| Department of Agriculture, Chapter 603 | 58, 59 |
| Department of Consumer and Business Services, | |
| Building Codes Division, Chapter 918..... | 59–60 |
| Director’s Office, Chapter 440 | 60, 61 |
| Insurance Division, Chapter 836..... | 61, 62 |
| Oregon Medical Insurance Pool Board, Chapter 443 | 62 |
| Oregon Occupational Safety and Health Division, | |
| Chapter 437..... | 62–68 |
| Workers’ Compensation Board, Chapter 438 | 68–70 |
| Workers’ Compensation Division, Chapter 436..... | 70, 71 |
| Department of Corrections, Chapter 291..... | 71 |
| Department of Fish and Wildlife, Chapter 635 | 71–87 |
| Department of Human Services, | |
| Administrative Services Division and Director’s Office, | |
| Chapter 407..... | 87–99 |
| Children, Adults and Families Division: | |
| Child Welfare Programs, Chapter 413..... | 99–111 |
| Self-Sufficiency Programs, Chapter 461 | 112–145 |
| Division of Medical Assistance Programs, | |
| Chapter 410..... | 145–150 |
| Public Health Division, Chapter 333..... | 150–193 |
| Seniors and People with Disabilities Division, | |
| Chapter 411..... | 193–203 |
| Department of Justice, Chapter 137 | 203–206 |
| Department of Oregon State Police, Chapter 257 | 206–213 |
| Department of Public Safety Standards and Training, | |
| Chapter 259..... | 213–220 |
| Department of Revenue, Chapter 150 | 221, 222 |
| Department of Transportation, | |
| Driver and Motor Vehicle Services Division, | |
| Chapter 735..... | 222–225 |
| Highway Division, Chapter 734 | 225, 226 |
| Motor Carrier Transportation Division, Chapter 740 | 226–228 |
| Transportation Safety Division, Chapter 737 | 228, 229 |
| Landscape Contractors Board, Chapter 808 | 229 |
| Office for Oregon Health Policy and Research, | |
| Chapter 409..... | 229–232 |
| Oregon Business Development Department, Chapter 123 | 232–236 |
| Oregon Criminal Justice Commission, Chapter 213 | 236–238 |
| Oregon State Lottery, Chapter 177 | 238–252 |
| Oregon State Treasury, Chapter 170..... | 252 |
| Oregon University System, Chapter 580 | 252–255 |
| Oregon University System, | |
| Oregon State University, Chapter 576..... | 255, 256 |
| Southern Oregon University, Chapter 573 | 256–258 |
| Parks and Recreation Department, Chapter 736 | 258–265 |
| Public Utility Commission, Chapter 860 | 265–267 |
| Secretary of State, | |
| Archives Division, Chapter 166 | 267–275 |
| Elections Division, Chapter 165 | 275, 276 |
| Teacher Standards and Practices Commission, Chapter 584 | 276–290 |
| Travel Information Council, Chapter 733 | 290, 291 |
| Veterinary Medical Examining Board, Chapter 875 | 291–293 |
| | |
| OAR Revision Cumulative Index | 294–338 |

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 09 - 15

INVOCATION OF EMERGENCY CONFLAGRATION ACT FOR THE DEER RIDGE FIRE IN JACKSON COUNTY

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

A fire known as the “Deer Ridge Fire” is burning in Jackson County.

The resources necessary for protecting life and property from the Deer Ridge Fire are beyond local capabilities. Assistance with life, safety, and structural fire protection was requested by the Jackson County Fire Defense Chief. The Chief Deputy State Fire Marshal concurs with that request.

In accordance with ORS 476.510-476-610, I have determined that a threat to life, safety, and property exists due to fire known as the Deer Ridge Fire in Jackson County and the threat exceeds the fire-fighting capabilities of local firefighting personnel and equipment. Accordingly, I have invoked the Emergency Conflagration Act.

These findings were made at 4:25 p.m. on September 21, 2009 and I now confirm them with this Executive Order.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Oregon State Police and the Office of State Fire Marshal shall mobilize fire resources statewide and coordinate with all appropriate Fire Defense Chiefs for the use of personnel and equipment in accordance with the Emergency Conflagration Act to suppress and contain this fire.
2. This emergency is declared only for the Deer Ridge Fire in Jackson County.
3. This order was made by verbal proclamation at 4:25 p.m. the 21st day of September, 2009.

Done at Salem, Oregon this 24th day of September, 2009.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 09 - 16

IMPLEMENTING THE STATE RESPONSE TO PANDEMIC H1N1 INFLUENZA

Pandemic H1N1 influenza (once referred to as “swine flu”), a new flu virus that causes respiratory illness in people, is widespread throughout Oregon. The Centers for Disease Control and Prevention (CDC) first detected the H1N1 virus in the United States in April 2009. In June 2009, the World Health Organization (WHO) declared that an H1N1 pandemic is underway, which means this infectious disease is spreading among people throughout the world. Since September 1, 2009, Oregon has experienced 128 hospitalizations and five deaths as a result of H1N1 influenza.

Pandemic H1N1 flu symptoms are similar to the symptoms of seasonal flu and include fever, cough, sore throat, body aches, runny or stuffy nose, headache, nausea, chills and fatigue. Some people have reported diarrhea and vomiting due to pandemic H1N1 flu. The pandemic H1N1 virus spreads the same way seasonal influenza viruses spread—mainly from person to person through coughing and sneezing by people with the flu. Sometimes people may become infected by touching something with flu virus on it and then touching their mouth, nose or eyes.

In Oregon, the Department of Human Services (DHS) Public Health Division is taking the lead on providing official state guidance in response to pandemic H1N1 flu; however, each state agency can and must support this effort. To that end, this Order directs all state agencies to (1) use their websites to provide the public with accurate information about pandemic H1N1 flu; (2) prepare for pandemic H1N1 flu contingencies through business continuity planning; (3) advise employees to remain at home while exhibiting flu-like symptoms; (4) encourage vaccination of priority groups; and (5) work with federal and local government partners to promote these measures statewide.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. On or before October 31, 2009, each state agency shall update its website to include a prominent link to the Department of Human Services website, www.flu.oregon.gov, where the public can obtain facts about H1N1 influenza.
2. As soon as possible, all state agencies shall amend their business continuity plans to address the agency’s contingency plan during this pandemic H1N1 influenza outbreak. Plans shall describe procedures that will be followed if this outbreak causes disruption, so that agencies can restore critical services as quickly as possible.
3. The Department of Administrative Services (DAS), in cooperation with DHS Public Health Division, shall lead a statewide coordination effort to provide state agencies with policy guidance and direction regarding the current outbreak of the H1N1 flu virus. DAS will advise state employees, in accordance with state policy and collective bargaining agreements, to remain at home if they exhibit flu-like symptoms. State agencies shall implement DAS policies on an expedited basis.
4. All state agencies shall encourage priority groups to obtain both the seasonal and H1N1 influenza vaccinations as soon as possible. The following groups of people have been identified as priority groups by the CDC and the State of Oregon:
 - a. Everyone aged 6 months to 24 years;
 - b. Pregnant women;
 - c. People caring for, or living with infants, under 6 months of age;
 - d. People aged 25–64 with underlying medical conditions (such as asthma, immune deficiencies, etc.); and
 - e. Health care workers, emergency medical responders and front-line law enforcement and public safety workers.
5. All state agencies shall work with their federal, county, city, special district, and school district partners to promote an effective response to pandemic H1N1 influenza statewide, by directing those partners to utilize their websites to direct the public to facts about pandemic H1N1 influenza at www.flu.oregon.gov, create

EXECUTIVE ORDERS

H1N1 business continuity plans, implement clear workplace policies, and promote the vaccination of priority groups.

6. This Order expires on July 1, 2010.

Done at Salem, Oregon this 14th day of October, 2009.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

CONDITIONAL NO FURTHER ACTION DETERMINATION FOR THE FIRST AND MAIN PROPERTY IN PORTLAND

PROJECT LOCATION: 100 SW Main Street, Portland, Oregon.
DETERMINATION: The Department of Environmental Quality (DEQ) had made a Conditional No Further Action Determination for the city block property located at SW First Avenue and SW Main Street property in downtown Portland.

HIGHLIGHTS: A service station operated at the northwest corner of the property from 1932 to 1975. Leaks from underground storage tanks at the service station contaminated soil and groundwater at the site. Petroleum-contaminated soil was found to extend downward to the water table at approximately 32 feet. In 2008, during construction for a 14-story office building, the entire property was excavated to a depth of 37 feet including the area of the former service station. A total of 4,535 cubic yards of petroleum-impacted soil was excavated. Approximately 2.66 million gallons of groundwater were pumped from the excavation during construction and treated to remove contaminants prior to sewer discharge. With the large volume of petroleum-contaminated soil removed from the site in 2008, the source of contamination to groundwater at the site has been removed.

Prior to site cleanup, volatile organic compounds in groundwater were found to exceed DEQ's Risk Based Concentrations for the vapor intrusion into buildings and construction and excavation worker direct contact exposure pathways. Engineering and institutional controls to safeguard construction and excavation workers and to prevent vapor intrusion into the new building were successfully implemented through building design and during construction.

The First & Main office building is nearing completion. Due to successful remediation efforts and engineering and institutional controls, DEQ has determined that conditions at the First & Main construction site and office building are protective of public health and the environment and that no further action is necessary on the condition that engineering and institutional controls are maintained.

FOR MORE INFORMATION: You may contact DEQ Project Manager, Kenneth Thiessen, by phone 503-229-6015, by email Thiessen.Kenneth@deq.state.or.us, or by mail Oregon DEQ, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, Oregon 97201. To view the First & Main project files please call (503) 229-6729 to schedule an appointment. Support information for this Conditional No Further Action Determination is available on the DEQ Environmental Cleanup Site Information (ECSI) database, go to <http://www.deq.state.or.us/lq/ECSI/ecsquery.asp>, enter ECSI #4085 in the

Site ID box, and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #4085 in the Site ID/Info column.

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.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DECISION FOR METLER BROS. TAX LOT 900 (COLVIN OIL) KLAMATH FALLS, OREGON

COMMENTS DUE: November 30, 2009 by 5:00 p.m.

PROJECT LOCATION: 3434 South 6th Street, Klamath Falls
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a no further action (NFA) determination for the Metler Bros. Tax Lot 900 (Colvin Oil) site located at 3434 South 6th Street in Klamath Falls, Oregon.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment activities performed at the site. Concentrations of petroleum products detected in the soil and/or groundwater are below applicable risk based pathways for the site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. Summary information and a copy of "No Further Action Decision Document" dated October 15, 2009 are available in DEQ's Environmental Cleanup Site Information (ECSI) database <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 4872.

To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by November 30, 2009 and sent to Katie Robertson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

.....
Board of Accountancy
Chapter 801

Rule Caption: Amended to update the effective date of professional standards adopted by the Board.

| Date: | Time: | Location: |
|---------|---------|----------------------------------|
| 12-1-09 | 10 a.m. | 3218 Pringle Rd. SE Salem, OR |

Hearing Officer: L. Patrick Hearn, Exec. Director

Stat. Auth.: ORS 183.332, 673.410 & 670.310

Stats. Implemented: ORS 183.337 & 643.410

Proposed Amendments: 801-001-0035

Last Date for Comment: 12-1-09, 5 p.m.

Summary: The rule is amended to update the effective date of professional standards adopted by the Board.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

.....

Rule Caption: Clarifications on definitions; addition of retired status.

| Date: | Time: | Location: |
|---------|---------|----------------------------------|
| 12-1-09 | 10 a.m. | 3218 Pringle Rd. SE Salem, OR |

Hearing Officer: L. Patrick Hearn, Exec. Director

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.445

Proposed Amendments: 801-005-0010

Last Date for Comment: 12-1-09, 5 p.m.

Summary: The rule is revised to clarify some definitions and to add the definition of 'retired' status.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

Rule Caption: Make changes subsequent to SB 867, delete transitional language for exam, create retired status.

| Date: | Time: | Location: |
|---------|---------|----------------------------------|
| 12-1-09 | 10 a.m. | 3218 Pringle Rd. SE Salem, OR |

Hearing Officer: L. Patrick Hearn, Exec. Director

Stat. Auth.: ORS 670.310, 673.410, 673.153, 673.220 & 673.160

Stats. Implemented: ORS 673.410, 673.050, 673.060, 673.075, 673.040, 673.153, 673.220 & 673.160

Proposed Amendments: 801-010-0010, 801-010-0060, 801-010-0075, 801-010-0080, 801-010-0100, 801-010-0120, 801-010-0130, 801-010-0345

Last Date for Comment: 12-1-09, 5 p.m.

Summary: Amendments include the dissolution of substantial equivalency application requirements which was replaced by mobility language due to the passage of SB 867. The fees have also been increased for permit holders and application for firm registration. Deletion of transitional credit language as it pertains to the written CPA exam. Clarification of public accountant licensees applying for a CPA certificate. New provision to include the status of retired. Firm requirements amended to include mobility provisions.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

.....

Rule Caption: Revisions to address mobility legislation on terms of municipal auditors.

| Date: | Time: | Location: |
|---------|---------|----------------------------------|
| 12-1-09 | 10 a.m. | 3218 Pringle Rd. SE Salem, OR |

Hearing Officer: L. Patrick Hearn, Exec. Director

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS 297.680

Proposed Amendments: 801-020-0690

Last Date for Comment: 12-1-09, 5 p.m.

Summary: Revisions to address mobility legislation, allowing individuals entering the state under mobility the opportunity to apply for a municipal license.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

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Rule Caption: Address mobility legislation changes to firms.

| Date: | Time: | Location: |
|---------|---------|----------------------------------|
| 12-1-09 | 10 a.m. | 3218 Pringle Rd. SE Salem, OR |

Hearing Officer: L. Patrick Hearn, Exec. Director

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Proposed Amendments: 801-030-0020

Last Date for Comment: 12-1-09, 5 p.m.

Summary: The revisions include necessary changes to the plural firm name rules to include individuals who fall under the mobility regulations.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

.....

Rule Caption: Remove substantial equivalency references due to SB 867, Add retired status.

| Date: | Time: | Location: |
|---------|---------|----------------------------------|
| 12-1-09 | 10 a.m. | 3218 Pringle Rd. SE Salem, OR |

Hearing Officer: L. Patrick Hearn, Exec. Director

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

Stats. Implemented: ORS 673.165, 673.210 & 673.170

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 801-040-0010, 801-040-0090, 801-040-0150

Last Date for Comment: 12-1-09, 5 p.m.

Summary: Revised to adhere to mobility legislation, SB 867. Remove references to substantial equivalency and add reinstatement provisions for retired status.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

Rule Caption: 2009 AICPA Standards for Performing and Reporting on Peer review.

Date: 12-1-09 **Time:** 10 a.m. **Location:** 3218 Pringle Rd. SE Salem, OR

Hearing Officer: L. Patrick Hearn, Exec. Director

Stat. Auth.: ORS 673.455, 673.457 & 673.310

Stats. Implemented: ORS 673.455, 673.457 & 673.310

Proposed Amendments: 801-050-0005, 801-050-0010, 801-050-0020, 801-050-0030, 801-050-0035, 801-050-0040, 801-050-0065, 801-050-0070, 801-050-0080

Last Date for Comment: 12-1-09, 5 p.m.

Summary: The rules are revised to adhere to the 2009 AICPA Standards for Performing and Reporting on Peer Review.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

Board of Geologist Examiners Chapter 809

Rule Caption: Provide clarification of the process used in reviewing complaints submitted to the Board.

Stat. Auth.: ORS 670.310(1), 672.615(8) & 672.665

Stats. Implemented: ORS 672.665

Proposed Amendments: 809-055-0000

Last Date for Comment: 11-30-09, Close of Business

Summary: The Board has been working with the revision of the complaint process prior to a January 2009 retreat dedicated to reviewing the process. Now the revisions are complete and the method of processing any complaint is clear. The process now identifies Technical Reviewers as critical to the evaluation of the complaint.

Rules Coordinator: Susanna Knight

Address: 707 13th Street SE, Suite 260, Salem, OR 97301

Telephone: (503) 566-2837

Board of Naturopathic Examiners Chapter 850

Rule Caption: Updating the list of drugs that may be prescribed by Naturopathic Physicians per SB 327.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

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

Last Date for Comment: 11-30-09

Summary: Revise the Formulary Compendium and Classifications to be consistent with SB 327, effective January 1, 2010.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

Board of Nursing Chapter 851

Rule Caption: Rule Changes Clarify Conduct Unbecoming for Nursing Assistants and Medication Aides.

Date: 11-19-09 **Time:** 9 a.m. **Location:** 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Proposed Amendments: 851-063-0090

Last Date for Comment: 11-17-09, 5 p.m.

Summary: These rules cover the standards and authorized duties for Certified Assistants and Certified Medication Aides. These amendments clarify conduct unbecoming for Nursing Assistants and Medication Aides related to disclosing the contents of the nursing assistant or medication aide state certification examination.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Adopts guidelines for specified juvenile offender prison terms (crimes after October 1989, before May 1991).

Date: 11-16-09 **Time:** 9 a.m. **Location:** 2575 Center St. NE, Rm. 108 Salem, OR 97301-4621

Hearing Officer: Aaron Felton

Stat. Auth.: ORS 144.050, 144.110, 144.120 & 144.140

Stats. Implemented: ORS 144.120

Proposed Adoptions: 255-032-0007

Proposed Repeals: 255-032-0007(T)

Last Date for Comment: 11-16-09

Summary: OAR 255-032-0007 adopts hearing procedures and a matrix for specified juvenile offenders where the Board is required to hold a prison term hearing. Specifically, for inmates who were under the age of 17 years at the time of their crime(s), and who were waived to adult court under ORS 419C.340 through 419C.364, and who were convicted of Aggravated Murder under ORS 163.095, and whose crimes were committed after October 31, 1989, and before May 1, 1991, the Board will hold a prison term hearing. At the hearing, the Board will apply divisions 30 and 35 of its rules except that, to determine an initial parole release date, the Board will use the guidelines and matrix set out in Exhibits P-I through P-III instead of guidelines and matrix set out in Exhibits A through C of the Board's rules.

Rules Coordinator: Michelle Mooney

Address: Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Salem, OR 97301

Telephone: (503) 945-0914

Board of Pharmacy Chapter 855

Rule Caption: Amend registration rules for drug manufacturers and wholesalers, and amend fee schedules.

Date: 11-23-09 **Time:** 9 a.m. **Location:** 800 NE Oregon St., Rm. 1B Portland, OR

Hearing Officer: Tony Burt

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 2009 OL Ch. 799

Proposed Adoptions: 855-060-0003, 855-062-0003, 855-062-0005, 855-062-0020, 855-062-0030, 855-062-0040, 855-062-0050, 855-110-0003

Proposed Amendments: 855-065-0001, 855-065-0005, 855-065-0006, 855-110-0005, 855-110-0007, 855-110-0010

Proposed Repeals: 855-062-0003(T), 855-062-0005(T), 855-110-0007(T), 855-110-0010(T)

Last Date for Comment: 11-30-09

NOTICES OF PROPOSED RULEMAKING

Summary: The new rules in division 60 and 62, and the amended rules in division 65 define more clearly which entities must register as drug manufacturers and as drug wholesalers. A new category of Drug Distribution Agent is created in division 62 to accommodate entities that are involved in the drug manufacturing and distribution industry but that do not take ownership or possession of actual product and are not licensed with the FDA as manufacturers, Division 65 is further amended to eliminate confusion over the status of repackagers and brokers, and to eliminate the requirements for a surety bond for a wholesale drug outlet that is accredited by the National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program. The fee schedule in division 110 is amended to include the new category of Drug Distribution Agent. Division 110 is also amended to add the \$25 Electronic Prescription Monitoring Fund Fee mandated by SB 355 (Oregon Laws 2009, Chapter 799), to the pharmacist license fee. Finally, division 110 is further amended to make all applications non-refundable, and updates miscellaneous administrative fees.

Complete text of the proposed rule can be found on the Board's website at www.pharmacy.state.or.us

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St., # 150, Portland, OR 97232

Telephone: (971) 673-0001

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Rule Caption: Amend criteria for implementation of rules for a Public Health Emergency.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 11-23-09 | 9 a.m. | 800 NE Oregon St., Rm. 1B Portland, OR |

Hearing Officer: Tony Burt

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 461.204 & 401.055

Proposed Amendments: 855-007-0010

Last Date for Comment: 11-30-09

Summary: Current rule does not allow the Oregon Board of Pharmacy to respond to an emergency or to implement measures in preparation for an emergency declared by the President or a federal official. In addition, current rules do not adequately address an emergency that is limited in scope. This amendment corrects the omission.

Complete text of the proposed rule can be found on the Board's website at www.pharmacy.state.or.us

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St., # 150, Portland, OR 97232

Telephone: (971) 673-0001

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Bureau of Labor and Industries Chapter 839

Rule Caption: Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744, SB 928, Oregon Legislative Assembly 2009, ORS 659A.270-659A.285 & 659A.150-659A.186

Proposed Adoptions: 839-009-0265, 839-009-0326, 839-009-0370, 839-009-0380, 839-009-0390, 839-009-0400, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0440, 839-009-0450, 839-009-0460, Rules in 839-009

Proposed Amendments: Rules in 839-009

Last Date for Comment: 11-13-09

Summary: The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

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Rule Caption: Amends wage claim enforcement, Wage Security Fund, and insurance notification rules.

Stat. Auth.: ORS 651.060(4), 652.165 & 652.900

Other Auth.: HB 2595 (2009)

Stats. Implemented: ORS 652.010-652.900

Proposed Amendments: 839-001-0495, 839-001-0496, 839-001-0515, 839-001-0520, 839-001-0700

Proposed Repeals: 839-001-0750

Last Date for Comment: 11-25-09

Summary: These proposed rule amendments implement House Bill (HB) 2595 enacted in 2009, which prohibits home health agencies and hospice programs from paying nurses providing home health or hospice services on a per-visit basis. HB 2595 provides civil penalty authority to the Commissioner of the Bureau of Labor and Industries for violations of its provisions. The rule amendments conform existing rules relating to the assessment of civil penalties to this legislation. In addition, the proposed rules clarify conditions to be met in qualifying for payments from the Wage Security Fund and delete obsolete references in the agency's insurance cancellation notification rules.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

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Rule Caption: Amends Child Labor rules to conform to legislation enacted and corrects erroneous language in rule.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.305-653.545

Proposed Amendments: 839-021-0070, 839-021-0280, 839-021-0290

Last Date for Comment: 11-25-09

Summary: These proposed rule amendments implement House Bill (HB) 2826 enacted in 2009, which removes the requirements that employers obtain a special permit before employing a minor under 16 years of age until 7 p.m. (9 p.m. between June 1 and Labor Day). The proposed rules also conform current language in the rules to the provisions of HB 2826, which shifts authority for the issuance of agricultural overtime permits from the Wage and Hour Commission to the Commissioner of the Bureau of Labor and Industries. Finally, OAR 839-021-0280 is being amended to clarify that minors may not be employed to operate or assist in the operation of power-driven farm machinery unless the employer has obtained an employment certificate as required and the minor has received required training in the operation of such machinery.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

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Rule Caption: Amends Prevailing Wage Rate rules to conform to legislation enacted in 2009.

Stat. Auth.: ORS 279C.808

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

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 839-025-0010, 839-025-0013, 839-025-0015, 839-025-0020, 839-025-0030, 839-025-0035, 839-025-0085, 839-025-0200, 839-025-0210, 839-025-0530

Proposed Repeals: 839-025-0013(T), 839-025-0020(T), 839-025-0030(T), 839-025-0035(T), 839-025-0085(T), 839-025-0200(T), 839-025-0210(T), 839-025-0530(T)

Last Date for Comment: 11-25-09

Summary: These proposed rule amendments replace temporary rules effective August 5, 2009 and implement legislation enacted in 2009 that is already in effect, specifically SB 51, which permanently adjusts the PWR fee payable by a public agency to 0.1 percent of the contract price, with a minimum fee of \$250 and maximum fee of \$7,500; SB 53, which requires the PWR fee payable by a public agency to paid at the same time as when the agency provides the Notice of Contract to BOLI, deletes an obsolete requirements that contract specifications contain a provision that a fee is required to be paid by the contractor, requires PWR wages to be paid on the contractor's regularly established and maintained paydays, and provides civil penalties for violations; and SB 55, which makes intentional falsification of certified payrolls a violation for which a contractor may be placed on the list of contractors ineligible to receive a public works contract. The proposed rule amendments also implement the provisions of SB 54 relating to required information on Payroll and Certified Statement forms and HB 2907, which prohibits contracting agencies from entering into agreements with other state agencies or political subdivisions of other states agreeing that contractors may pay less than the prevailing wage rates required under Oregon law. In addition, the proposed amendments clarify existing requirements regarding when public works bonds are required and relating to information required to be included in public works specifications, and delete obsolete language requiring contractors to maintain records relating to fee payments. Finally, OAR 839-025-0210(4) is proposed to be amended to include form number references for the convenience of contracting agencies in calculating the amount of the PWR fee to be paid.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Rule Caption: Implementing statutory enactments and amendments regarding disability, veterans' preference and discrimination based on unformed service.

Stat. Auth.: ORS 659A.805

Other Auth.: HB 3256, HB 2510 & SB 874 (2009)

Stats. Implemented: HB 3256, HB 2510 & SB 874 (2009)

Proposed Adoptions: 839-005-0150, 839-005-0160, 839-005-0170, 839-005-0180, 839-006-0202, Rules in 839-005, 839-006

Proposed Amendments: Rules in 839-005, 839-006

Last Date for Comment: 12-7-09

Summary: The proposed rules and amendments would implement amendments to statutes providing for employment preference for veterans. (HB 2510)

The proposed rules and amendments would implement amendments to disability discrimination statutes to conform them to the federal Americans with Disabilities Act Amendments Act of 2008. (SB 874)

The proposed rules would implement newly enacted statutes prohibiting discrimination in employment on the basis of unformed service. (HB 3256)

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Rule Caption: Implementing projections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Stat. Auth.: ORS 69A.805

Other Auth.: ORS 25.424(3), HB 2600, SB 786 & SB 277 (2009)

Stats. Implemented: ORS 25.424(3), HB 2600, SB 786 & SB 277 (2009)

Proposed Adoptions: 839-005-0138, 839-006-0331, 839-006-0332

Proposed Amendments: Rules in 839-005, 839-006

Last Date for Comment: 12-7-09

Summary: The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Rule Caption: Proposed rules implementing procedures for housing discrimination contested cases and mediations, and clarifying edits.

Stat. Auth.: ORS 183, 659A.805 & 36.224

Stats. Implemented: ORS 659A, 36.224, 36.228, 36.230, 36.232 & ORCP 1.E

Proposed Amendments: 839-050-0080, 839-050-0130, 839-050-0140, 839-050-0160, 839-050-0240, 839-050-0260, 839-050-0290, 839-050-0370, Rules in 839-050, 839-051-0010

Last Date for Comment: 12-4-09

Summary: The proposed rule amendments would implement time limits for specified contested case procedures in housing discrimination cases; implement procedures for election of remedies in housing discrimination cases; specify that only an employee of the Bureau of Labor and Industries may hear a housing discrimination contested case; implement specific confidentiality provisions for mediation of housing discrimination contested cases; provide for awarding of attorney fees and costs to intervenors in housing discrimination contested cases; specify when declarations may be used in contested cases; clarifying when pleadings and answers in contested cases may be amended.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Construction Contractors Board Chapter 812

Rule Caption: Exemption to showing license number, house-keeping, implement SB 203, Sec. 8 (2009) and adopt education provider bond form.

| Date: | Time: | Location: |
|---------|---------|---|
| 12-1-09 | 11 a.m. | West Salem Roth's IGA, Santiam Rm. 1130 Wallace Rd. NW Salem, OR |

Hearing Officer: Rob Hernandez

Stat. Auth.: ORS 670.310, 701.126, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335

Other Auth.: 2009 OL Ch. 408 (SB 203, Sec. 8(2)(d))

Stats. Implemented: ORS 701.010, 701.026, 701.126, 701.325, 701.330 & 701.335

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 812-003-0120, 812-008-0090, 812-012-0110, 812-021-0025

Last Date for Comment: 12-1-09, 11 a.m.

Summary: 812-003-0120 is amended to reorganize and clarify existing language and revised the exemption to exempt promotional gifts from the requirements that it contain the CCB license number.

812-008-0090 is amended to delete (3) because the language is no longer necessary as OAR 812-008-0078 was repealed 1-26-06. 812-012-0110 is amended to implement SB 203, section 8(2)(d) that removes the requirement that written contracts must have a summary of notices. The new requirement is to "list" the notices.

812-021-0025 is amended to add an approved bond form for residential continuing education providers of CORE.

Rules Coordinator: Catherine Dixon

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

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

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Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Amended to include the Family Health Insurance Assistance Program (FHIAP) as a qualified status change.

| Date: | Time: | Location: |
|----------|----------|---|
| 11-23-09 | 3-4 p.m. | 1225 Ferry St. SE PEBB/OEBB Brdm. Salem, OR |

Hearing Officer: Denise Hall

Stat. Auth.: ORS 243.860-243.886

Stats. Implemented: ORS 243.864

Proposed Amendments: 111-040-0040

Last Date for Comment: 11-30-09, 5 p.m.

Summary: OAR 111-040-0040 is amended to include the Family Health Insurance Assistance Program (FHIAP) as a qualified status change that is recognized by the Oregon Educators Benefit Board.

Rules Coordinator: April Kelly

Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301

Telephone: (503) 378-6588

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Department of Agriculture Chapter 603

Rule Caption: Requires 2% biodiesel blends and exempts 91 octane or above gasoline from 10% ethanol mandate.

| Date: | Time: | Location: |
|---------|---------|--|
| 12-1-09 | 10 a.m. | Dept. of Agriculture 635 Capitol St. NE Salem, OR 97301-2532 |

Hearing Officer: Staff

Stat. Auth.: ORS 646.925 & 646.957

Other Auth.: Enrolled HB 3463 & 3497

Stats. Implemented: ORS 646.921 & 646.922

Proposed Amendments: 603-027-0410, 603-027-0420, 603-027-0430, 603-027-0440, 603-027-0490

Last Date for Comment: 12-4-09

Summary: To implement enrolled HB 3463 and HB 3497 passed by the 75th Oregon Legislative Assembly, 2009 Regular Session, mandating Oregon's diesel fuel by blended with a minimum of 2% by volume biodiesel and exempting 91 octane or above gasoline from the ethanol blending mandate. Excludes other renewable diesel from meeting the biodiesel blending requirements until January 2, 2009. Updates adopted edition of ASTM standards to 2009. Updates biodiesel blend dispenser labeling to include FTC approved labels. Updates labeling requirements on E85 fuel ethanol dispensers and greater than B20 biodiesel blend dispensers into closer alignment with current NIST model regulations.

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: Updates the grape quarantine's list of harmful organisms, commodities covered, and required mitigation measures.

| Date: | Time: | Location: |
|----------|---------|--|
| 11-16-09 | 10 a.m. | Dept. of Agriculture 635 Capitol St. NE Salem, OR 97301-2532 |

Hearing Officer: Ron Pence

Stat. Auth.: ORS 561.190, 561.510-561.600, 570.305, 570.405 & 570.410-570.415

Stats. Implemented: ORS 561.190, 561.510-561.600, 570.305, 570.405 & 570.410-570.415

Proposed Amendments: 603-052-0051

Last Date for Comment: 11-30-09

Summary: The proposed amendments would: (1) List specific harmful organisms recognized as a threat to the State's wine-grape and nursery industries; (2) Update the list of commodities covered by the quarantine; and (3) Specify measure that must be taken if a harmful organism is found in Oregon. It also specifies precautions that must be taken with table grapes for pressing to mitigate the risk of introducing the harmful organism vine mealybug.

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 Community Colleges and Workforce Development Chapter 589

Rule Caption: Career Readiness Certification Program.

| Date: | Time: | Location: |
|----------|----------|---|
| 11-24-09 | 1-4 p.m. | Public Service Bldg. Rm. 251A 255 Capitol St. NE Salem OR |

Hearing Officer: Linda Hutchins

Stat. Auth.: ORS 660.318, 660.330-660.339 & 183

Stats. Implemented:

Proposed Adoptions: 589-007-0700

Last Date for Comment: 11-24-09, Close of Hearing

Summary: HB 2398, which was passed during the 2009 legislative session, calls for the Department of Community Colleges and Workforce Development (CCWD) to implement the statewide program for the Career Readiness Certification (CRC) program.

The purpose of the Career Readiness Certification program is to prepare Oregonians for the workplace and for college as a part of implementing an integrated workforce delivery system that focuses on developing the skills and talents of Oregonians.

The CRC in Oregon will provide documented, transportable, skills-based certificates to Oregon citizens that assist them in obtaining employment. Employers will recognize the CRC as a meaningful credential and will have confidence that certificate holders have the skills necessary to be successful in the workplace.

Rules Coordinator: Linda Hutchins

Address: 255 Capitol Street NE, Salem OR 97310

Telephone: (503) 947-2456

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

Rule Caption: Aligns boiler and elevator inspection and permit fee rules with changes implemented in HB 2200.

| Date: | Time: | Location: |
|----------|-----------|------------------------------------|
| 11-18-09 | 9:30 a.m. | 1535 Edgewater St. NW Salem, OR |

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Jim Hanson

Stat. Auth.: ORS 455.030, 460.057, 460.059, 460.061, 460.085, 480.545, 480.585, 480.595, 480.600, 480.605 & 660

Stats. Implemented: ORS 460.048, 460.055, 460.057, 460.059, 460.061, 460.065, 460.085, 460.125, 460.165, 479.630, 480.525, 480.545, 480.550, 480.560, 480.565, 480.585, 480.595, 480.600 & 480.605

Proposed Adoptions: 918-400-0662

Proposed Amendments: 918-225-0240, 918-225-0600, 918-225-0620, 918-225-0630, Rules in 918-400

Proposed Repeals: 918-225-0605, 918-225-0610

Last Date for Comment: 11-20-09, 5 p.m.

Summary: The proposed rules implement statutory changes that resulted from the passage of House Bill 2200 during the 2009 legislative session. The rules update the boiler and elevator permitting and inspection fees to align with the new statutory fee amounts and requirements. The proposed rules also include housekeeping changes that improve readability and provide clarity and consistency among the division's rules.

Rules Coordinator: Shauna M. Parker

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

Telephone: (503) 373-7438

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Rule Caption: Adopts the 2010 Oregon Structural Specialty Code.

| Date: | Time: | Location: |
|----------|---------|------------------------------------|
| 11-18-09 | 10 a.m. | 1535 Edgewater St. NW Salem, OR |

Hearing Officer: Richard Rogers

Stat. Auth.: ORS 447.231, 447.247, 455.020, 455.030, 455.110, 455.112, 455.210, 455.447 & 455.610

Stats. Implemented: ORS 447.247, 455.110, 455.112 & 455.210

Proposed Amendments: 918-460-0010, 918-460-0015, 918-460-0050

Proposed Repeals: 918-460-0016

Last Date for Comment: 11-20-09, 5 p.m.

Summary: The proposed rules adopt the 2009 edition of the International Building Code with Oregon amendments and shall be known as the 2010 Oregon Structural Specialty Code. The rules also include some non-substantive housekeeping changes to administrative rule that provide clarity and consistency among the division's rules.

Rules Coordinator: Shauna M. Parker

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

Telephone: (503) 373-7438

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

Rule Caption: Adopts fees for mortgage banker, mortgage broker and mortgage loan originator licenses.

| Date: | Time: | Location: |
|----------|--------|--|
| 11-16-09 | 9 a.m. | Labor & Industries Bldg. Conference Rm. F 350 Winter St. NE Salem, OR |

Hearing Officer: Richard Y. Blackwell

Stat. Auth.: ORS 59.850, 59.588, 59.900 & 2009 OL Ch. 863 §3 & 13a

Stats. Implemented: ORS 59.850, 59.855 & 2009 OL Ch. 863 §3 & 6

Proposed Adoptions: 441-860-0101, 441-880-0400

Proposed Amendments: 441-860-0020, 441-860-0030, 441-860-0050, 441-860-0110

Last Date for Comment: 11-20-09, 5 p.m.

Summary: ORS 59.850 requires the Director of the Department of Consumer and Business Services to set by rule fees for licensing

mortgage banker and mortgage brokers. The statute requires the director to set the fees in an amount that both reflects the costs of administering the Oregon Mortgage Lending Law, ORS 59.840 to 59.980 and establishes a reasonable emergency fund. The department's policy seeks to maintain a fund balance equivalent to two and four quarters of coverage. This rulemaking activity raises fees for initially issuing and renewing mortgage banker or mortgage broker licenses to administer the program and to maintain a one to two quarter reserve. Additionally, this rulemaking activity establishes the fee for issuing and renewing the license of a mortgage loan originator.

Rules Coordinator: Shelley Greiner

Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

Telephone: (503) 947-7484

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Rule Caption: Implements and clarifies registration requirements for debt management service providers.

| Date: | Time: | Location: |
|----------|------------|--|
| 11-16-09 | 10:30 a.m. | Labor & Industries Bldg. Conference Rm. F 350 Winter St. NE Salem, OR |

Hearing Officer: Richard Y. Blackwell

Stat. Auth.: 2009 OL Ch. 604 § 21

Stats. Implemented: ORS 697.602, 697.612, 697.632, 697.652, 697.672, 976.682, 697.692, 697.707, 697.732 & 697.752

Proposed Adoptions: 441-910-0005, 441-910-0091, 441-910-0099, 441-910-0130, 441-910-0140, 441-910-0150, 441-910-0200, Rules in 441-910

Proposed Amendments: 441-910-0000, 441-910-0010, 441-910-0030, 441-910-0050, 441-910-0055, 441-910-0080, 441-910-0092, Rules in 441-910

Proposed Repeals: 441-910-9000, 441-910-9001, Rules in 441-910

Last Date for Comment: 11-20-09, 5 p.m.

Summary: In 2009, the legislature enacted House Bill 2191. HB 2191 created a comprehensive registration system for persons engaged in debt management services. The bill requires that persons engaging in debt management activities register with the Department of Consumer and Business Services as debt management service providers. The rulemaking activity implements the registration requirement from the bill. This rulemaking activity also clarifies the scope of the exemptions from registration and implements additional counseling fee authorized by the bill until January 2012.

Rules Coordinator: Shelley Greiner

Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

Telephone: (503) 947-7484

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Rule Caption: Permanently adopts additional information for loan modifications on foreclosure notice form.

Stat. Auth.: 2008 OL Ch. 19 § 20 & 2009 OL Ch. 864 § 1

Stats. Implemented: 2008 OL Ch. 19 § 20 & 2009 OL Ch. 864 § 1

Proposed Amendments: 441-505-3046, 441-710-0540, 441-730-0246, 441-850-0042

Last Date for Comment: 11-20-09, 5 p.m.

Summary: The legislature recently adopted Senate Bill 628 to address residential foreclosures and loan modification. Part of the bill amended the foreclosure notice form created by the 2008 Legislature in House Bill 3630. The amended form describes how to request a loan modification and provides information on resources available to the borrower. The Department of Consumer and Business Services is authorized to adopt rules prescribing the changes to this form. These proposed rules add the loan modification provisions and directs users of the foreclosure notice to fill in specific information on the loan modification section of the foreclosure notice. The

NOTICES OF PROPOSED RULEMAKING

department adopted temporary rules in August 2009 to ensure that the information amended for the amended form was in place before the bill became effective. These proposed rules simply re-adopt the temporary rules on a permanent basis.

Rules Coordinator: Shelley Greiner

Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

Telephone: (503) 947-7484

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Annual Update of Rule Relating to Health Insurance Coverage of Prosthetic and Orthotic Devices.

| Date: | Time: | Location: |
|---------|---------|---|
| 12-8-09 | 11 a.m. | Labor & Industries Bldg., Conference Rm. E 350 Winter St. NE Salem, OR |

Hearing Officer: Jeanette Holman

Stat. Auth.: ORS 731.244 & 743A.144

Stats. Implemented: ORS 743A.144

Proposed Amendments: 836-052-1000

Last Date for Comment: 12-15-09

Summary: This rulemaking proposes to update the Insurance Division rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. This rulemaking implement ORS 743A.144, which requires all such policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

Rule Caption: Health Insurance Public Rate Review and Confidentiality of Filing Documents.

| Date: | Time: | Location: |
|---------|-----------|--|
| 12-2-09 | 9:30 a.m. | Labor & Industries Bldg. Conference Rm. F 350 Winter St. NE Salem, OR |

Hearing Officer: Jeanette Holman

Stat. Auth.: ORS 731.244 & 743.018

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018 & 2009 OL Ch. 595, § 28 & 29

Proposed Adoptions: 836-053-0000, 836-053-0471, 836-053-0475

Proposed Amendments: 836-053-0465, 836-053-0780, 836-053-0910

Last Date for Comment: 1-8-10

Summary: These rules implement provisions enacted by the 2009 Legislative Assembly pertaining to the review of proposed schedule or table of premium rates filed for health plans for small employers, individual health benefit plans and portability health benefit plans. The rules clarify the public process established by the Legislative Assembly for these filing and for individual and small employer group plans, specify the materials that must be submitted in a schedule or table of premium rate filing. The rules specify that all materials are available to the public for review. For those filings, the rules also provide clarification of the factors the Director of the Department of Consumer and Business Services will consider in approving, disapproving or modifying the proposed rates and for approving the amount of an increase in administrative expenses that may be included in a rate.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

Rule Caption: Requirements for Total Loss Settlements in Automobile Insurance.

| Date: | Time: | Location: |
|---------|--------|--|
| 12-4-09 | 1 p.m. | 350 Winter St. NE Conf. Rm. F (basement) Salem, OR |

Hearing Officer: Jeanette Holman

Stat. Auth.: ORS 731.244 & 2009 Ol Ch. 65

Stats. Implemented: ORS 742.466, 746.230, 746.240, 746.280 & 2009 OL Ch. 65

Proposed Amendments: 836-080-0240

Last Date for Comment: 12-11-09

Summary: This rulemaking amend the current rule that establishes standards for adjustment and settlement of automobile total loss claims under collision or comprehensive coverage on the basis of replacement or actual cash value. The rule specifies the written statement that insurers must provide to consumers whose automobiles are totaled and incorporates other provisions of House Bill 2190.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

Department of Corrections Chapter 291

Rule Caption: Imposition of Administrative Sanctions/Interventions on Transitional Leave Inmates.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030 & 423.075

Proposed Amendments: 291-058-0046

Last Date for Comment: 12-30-09

Summary: Amendment of this rule is necessary to allow inmates on transitional leave from an Alternative Incarceration Program to receive jail as an administrative sanction to address violation of conditions of supervision.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Environmental Quality Chapter 340

Rule Caption: This rulemaking repeals state regulations that duplicate federal transportation conformity rules.

| Date: | Time: | Location: |
|----------|--------|--|
| 11-23-09 | 7 p.m. | DEQ Headquarters 811 SW 6th Ave Portland, OR |

Hearing Officer: DEQ Staff

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Proposed Amendments: 340-200-0040, 340-252-0030, 340-252-0060, 340-252-0070, 340-252-0230

Proposed Repeals: 340-252-0020, 340-252-0040, 340-252-0050, 340-252-0080, 340-252-0090, 340-252-0100, 340-252-0110, 340-252-0120, 340-252-0130, 340-252-0140, 340-252-0150, 340-252-0160, 340-252-0170, 340-252-0180, 340-252-0190, 340-252-0200, 340-252-0210, 340-252-0220, 340-252-0240, 340-252-0250, 340-252-0260, 340-252-0270, 340-252-0280, 340-252-0290

Last Date for Comment: 11-30-09, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: Transportation conformity is the process required by the Clean Air Act that limits vehicle pollution from new transportation projects to an amount that will not exceed national air quality standards. The rules establish requirements for transportation planning agencies including Metro (in the Portland area), Oregon Department of Environmental Quality and several councils of government. Oregon was originally required to adopt the majority of the federal conformity rules as state regulations but that obligation was removed in 2008. This proposed rulemaking responds to the change by repealing state requirements that duplicate federal measures.

The most significant effects of this rulemaking are that transportation planning agencies will be able to extend the maximum interval between conformity analyses to four years from the current three year limit. They will also be able to use a more efficient technique for demonstrating conformity at the project level. In addition, the proposed rules add a provision that a conformity analysis period may be shortened only with the approval of the appropriate air quality agency.

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

To request additional information regarding this rulemaking, please contact: Dave Nordberg at the Department of Environmental Quality, call toll free in Oregon 800-452-4011 or (503) 229-5519, or visit DEQ's public notices webpage <http://www.deq.state.or.us/news/publicnotices/PN.asp>

To comment on this rulemaking, submit your comments to: Dave Nordberg, Oregon Department of Environmental Quality, 811 SE Sixth Avenue, Portland, OR 97204 or by fax to (503) 229-5675, or by email to TranspConformity@deq.state.or.us

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

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Rule Caption: Beneficial Use of Solid Waste. DEQ approval of proposals to beneficially use solid wastes rather than dispose of them.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-17-09 | 6 p.m. | DEQ Office 811 SW 6th Ave., 10th Floor Rm. EQC-A Portland, OR |
| 11-17-09 | 6 p.m. | DEQ Office 165 E 7th Ave. Willamette Meeting Rm. Eugene, OR |
| 11-17-09 | 6 p.m. | DEQ Office 475 NE Bellevue Dr. (corner of Hwy 20 & Dalton Rd. Main Conference Rm. Bend, OR |

Hearing Officer: Tom Roick, Bob Barrows, Bruce Lumpfer
Stat. Auth.: ORS 459.045, 459.215, 459.235, 459A.025 & 468.065
Stats. Implemented: ORS 459.045, 459.215 & 459.235
Proposed Adoptions: 340-093-0260, 340-093-0270, 340-093-0280, 340-093-0290
Proposed Amendments: 340-093-0030, 340-097-0120
Last Date for Comment: 11-24-09, 5 p.m.

Summary: The purpose of these rules is to establish a process for Oregon Department of Environmental Quality (DEQ) review of proposals to use solid wastes beneficially as an alternative to disposal. Currently, DEQ does not have an appropriate process or funding mechanism for evaluating requests by generators to use wastes beneficially. The rules will allow DEQ to issue beneficial use determinations (BUDs) rather than disposal permits for appropriate uses. Examples of solid waste uses are:

- Spent foundry sand from the steel industry used as a substitute for virgin sand in making concrete;
- Scrap asphalt roofing shingles used as a component of asphalt pavement;
- Dredged sediments used for upland construction fill.

Beneficial use of solid waste conserves energy, reduces the need to extract resource, reduces the demand for disposal facilities, and promotes sustainability. Requests for approval of beneficial uses have increased in Oregon as awareness of the potential opportunities to convert wastes to resources increases.

To submit comments or request additional information, please contact:

Tom Roick at the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204-1390; call toll free in Oregon 800-452-4011 or 503-229-5502, fax 503-229-6977, or visit DEQ's public notices webpage at <http://www.deq.state.or.us/news/publicnotices/PN.asp>

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

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Department of Fish and Wildlife Chapter 635

Rule Caption: Amendments to Rules for Commercial Groundfish Fisheries.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 12-11-09 | 8 a.m. | Dept. of Fish & Wildlife Commission Rm. 3406 Cherry Ave. NE Salem, OR |

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129
Proposed Adoptions: Rules in 635-001, 635-004, 635-006
Proposed Amendments: Rules in 635-001, 635-004, 635-006
Proposed Repeals: Rules in 635-001, 635-004, 635-006
Last Date for Comment: 12-11-09

Summary: These amended rules will modify commercial groundfish fisheries and establish annual management measures for 2010. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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Rule Caption: Amend rules related to the disposition of deer, elk and moose antlers that come into the Department's possession.

| Date: | Time: | Location: |
|--------------|--------------|----------------------------------|
| 12-10-09 | 1 p.m. | 3406 Cherry Ave. NE Salem, OR |

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 183 & 496.012
Stats. Implemented: ORS 183 & 496
Proposed Amendments: Rules in 635-002
Last Date for Comment: 12-10-09

Summary: The purpose of these rule amendments is to govern how deer, elk and moose antlers that come into the Department's possession are provided to nonprofit organizations and certain government entities to advance the public interest; in accordance with the Wildlife Policy, ORS 496.012.

Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Amendment of Rules for the Temporary Suspension of the Developmental Fisheries Program.

Date: 12-11-09
Time: 8 a.m.
Location: 3406 Cherry Ave.
Commission Rm.
Salem, OR

Hearing Officer: Fish & 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 635-004, 635-005, 635-006

Proposed Amendments: Rules in 635-004, 635-005, 635-006

Proposed Repeals: Rules in 635-004, 635-005, 635-006

Last Date for Comment: 12-11-09

Summary: Rules will be adopted and/or amended as determined necessary to temporarily suspend the Developmental Fisheries Program; and modify the Developmental Species List, permitting structure and rule requirements for the five fisheries permitted through the program in 2009.

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

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Amendments to the Sauvie Island Wildlife Area Management Plan.

Date: 12-11-09
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats. Implemented: ORS 496.012, 496.138 & 496.146

Proposed Amendments: Rules in 635-008

Last Date for Comment: 12-11-09

Summary: Amendments to Oregon Administrative Rules for the Sauvie Island Wildlife Areas Management Plan. Amendments will guide management activities for the next ten years.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Adoption of Regulations Governing Marine Reserves and Protected Area in Oregon's Territorial Sea.

Date: 12-11-09
Time: 8 a.m.
Location: Dept. of Fish & Wildlife
Commission Rm.
3406 Cherry Ave NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Proposed Adoptions: Rules in 635-012

Last Date for Comment: 12-11-09

Summary: These adopted rules will regulate hunting and fishing activities in the Otter Rock and Redfish Rocks Marine Reserves and the Redfish Rocks Marine Protected Area. The proposed rules prohibit fishing for, hunting for, or take of any fish or wildlife species in the marine reserves; and allow for removing crab pots and other fishing gear; scientific research; transiting, drifting, or anchoring; and non-extractive activities. In the marine protected area, the proposed rules prohibit and allow the same activities as in marine reserves, with the addition of allowing commercial and recreational salmon trolling and crabbing for Dungeness and red rock crab.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Amend Rules to Suspend Participants from Master Hunter Program for Violation of the Wildlife Laws.

Date: 12-10-09
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496 & 497

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

Proposed Amendments: Rules in 635-048

Proposed Repeals: 635-048-0080(T)

Last Date for Comment: 12-10-09

Summary: Amend rule to suspend hunters from participation in the Master Hunter program for a period of five years if the hunter is convicted of, or pleads guilty to, a violation of the wildlife laws.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Amend rules related to the capture of Peregrine Falcons for use in Falconry.

Date: 12-10-09
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

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

Proposed Amendments: Rules in 635-055

Last Date for Comment: 12-10-09

Summary: Amend rules related to the capture of Peregrine Falcons to be used in the practice of Falconry and capture permits. Specific changes include: the capture of post-fledge peregrine falcons from the wild for the purpose of falconry, establish an allocation of available peregrine falcon take for use in the sport of falconry, establish that capture permit application fees are nonrefundable and establish in rule criteria in which permits may be revoked.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Amend Rules Related to Access and Habitat Board and Grants.

Date: 12-10-09
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.232, 496.242, HB 2218 (Ch. 291, 2009 Laws) & HB 3089 (Ch. 778, 2009 Laws)

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232, 496.242, HB 2218 (Ch. 291, 2009 Laws) & HB 3089 (Ch. 778, 2009 Laws)

Proposed Amendments: Rules in 635-090

Last Date for Comment: 12-10-09

Summary: These rule amendments implement HB 2218 (Chapter 291, 2009 Laws) and HB 3089 (Chapter 778, 2009 Laws), enacted by the 2009 Legislative Assembly.

Amend rules related to the minimum number of landowner representative applicants for the Access and Habitat Board, and rules authorizing the department to grant moneys available for the Access and Habitat Program to promote access to the public and private lands through the acquisition of easements.

Rules Coordinator: Therese Kucera

NOTICES OF PROPOSED RULEMAKING

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE,
Salem, OR 97303
Telephone: (503) 947-6033

Rule Caption: Amend Rules to Expand the Authority of ODFW to Require Fingerprints in Certain Circumstances.

| | | |
|--------------|--------------|----------------------------------|
| Date: | Time: | Location: |
| 12-10-09 | 1 p.m. | 3406 Cherry Ave. NE Salem, OR |

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 181.534 & 496.121

Stats. Implemented: ORS 181.534, 496.121 & 496.118

Proposed Amendments: Rules in 635-600

Last Date for Comment: 12-10-09

Summary: Amendments expands the authority of the Oregon Fish and Wildlife Department to require fingerprints of employees, those who provide services or volunteer to the department, in certain circumstances, for the purpose of requesting a state or federal criminal records check.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

**Department of Human Services,
Addictions and Mental Health Division:
Addiction Services
Chapter 415**

Rule Caption: Revise OAR 415-060 to specify where cigarette vending machines may be located.

Stat. Auth.: ORS 409.050, 409.410 & 431.853

Other Auth.: HB 2136 (2009)

Stats. Implemented: ORS 409.420 & 431.853

Proposed Amendments: Rules in 415-060

Last Date for Comment: 11-20-09, 5 p.m.

Summary: Rules in OAR 415-060 are being revised to comply with HB 2136 Enrolled (2009 Session) that changed where cigarette vending machines can be located under ORS 167.402.

Rules Coordinator: Richard Luthe

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

Telephone: (503) 947-1186

**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: |
| 11-24-09 | 8:30 a.m. | 500 Summer St. NE, Rm. 137C Salem, OR |

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 2009 OL Ch. 126

Stats. Implemented: ORS 183.411–183.685, 411.095, 418.005 & 2009 OL Ch. 126

Proposed Adoptions: 413-010-0505, 413-010-0510, 413-010-0515, 413-010-0520, 413-010-0525, 413-010-0530, 413-010-0535

Proposed Amendments: 413-010-0500

Last Date for Comment: 11-30-09, 5 p.m.

Summary: Child Welfare Policy I-A.5.2.1 about contested case hearings, which was not adopted through the rule making process, is being repealed and its terms are being merged and updated into Child Welfare Policy I-A.5.2 (OAR 413-010-0500 to 413-010-0535).

OAR 413-010-0500, which was amended by temporary rule on September 1, 2009, is being amended to make those changes permanent and make further changes. The Department is incorporating policies not previously set out in rules. The amended rule defines certain terms used in the contested case hearing rules, sets out who has a right to a contested case hearing for child welfare programs, iden-

tifies other laws that apply in these hearings, explains how the Department and the parties may be represented in these hearings, and who may and may not attend these hearings.

OAR 413-010-0505, which was adopted by temporary rule on August 12, 2009 and concerns contested case hearing requests, is being adopted to make those changes permanent and make further changes. The new rule sets out the requirements to request a hearing, the deadline to request a hearing, the process for allowing late hearing requests, and how the Department responds to hearing requests on issues not allowed under the Child Welfare hearing rules.

OAR 413-010-0510, which was adopted by temporary rule on July 1, 2009 and concerns notices that include the right to a contested case hearing, is being adopted to make those changes permanent and make further changes. The new rule sets out the requirements that apply to Department notices, including content, timing, and effective dates; and when a notice may become a final order.

OAR 413-010-0515, which was adopted by temporary rule on July 1, 2009, amended by temporary rule on August 12, 2009, and concerns continuation of benefits pending a contested case hearing concerning child welfare programs, is being adopted to make those changes permanent and make further changes. The new rule sets out when these benefits are available, the requirements to receive these benefits, the extent to which these benefits are available, and the situations in which the Department may take action to recover these benefits.

OAR 413-010-0520, which was adopted by temporary rule on July 1, 2009 and concerns informal conferences following a request for a contested case hearing, is being adopted to make those changes permanent and make further changes. The new rule describes the topics covered in informal conferences.

OAR 413-010-0525, which was adopted by temporary rule on July 1, 2009 and concerns the burden of proof in a contested case hearing, is being adopted to make these changes permanent. The new rule set out who has the burden of proof in contested case hearings about child welfare programs.

OAR 413-010-0530, which was adopted by temporary rule on July 1, 2009 and concerns withdrawals and dismissals after a request for a contested case hearing, is being adopted to make those changes permanent and make further changes. The new rule describes the requirements when a party withdraws, when and how a withdrawal may be canceled, when the Department may withdraw a case, and dismissals after a party or party's representative fails to attend a hearing.

OAR 413-010-0535, which was adopted by temporary rule on July 1, 2009 and concerns proposed orders and final orders in contested cases, is being adopted to make those changes permanent and make further changes. This rule describes steps that lead to a final order once the Office of Administrative Hearings issues its initial decision, including the deadlines for both parties and the Department once the initial order is issued. This rule also describes situations in which a final order may be amended or withdrawn.

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, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

Rule Caption: Changing OARs affecting Child Welfare programs.

| | | |
|--------------|--------------|--|
| Date: | Time: | Location: |
| 11-24-09 | 8:30 a.m. | 500 Summer St. NE, Rm. 137C Salem, OR |

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 418.330–418.340

Other Auth.: 8 USC 1601–1645, 25 USC 1901–1934, 42 USC 471–475, 42 USC 601–687, 42 USC 1305, 42 USC 1396–1396v, 42 CFR 440.167, Title IV-E Waiver Terms and Conditions

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 183.411–183.685, 411.095, 418.005, 418.330–418.340, 418.470 & 418.625

Proposed Adoptions: 413-090-0021, 413-090-0133, 413-090-0135, 413-090-0136

Proposed Amendments: 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, 413-020-0255, 413-040-0000, 413-040-0005, 413-040-0006, 413-040-0008, 413-040-0009, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, 413-040-0017, 413-040-0024, 413-040-0032, 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, 413-070-0645, 413-080-0040, 413-080-0050, 413-080-0052, 413-080-0055, 413-080-0059, 413-080-0063, 413-080-0067, 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, 413-090-0050, 413-090-0100, 413-090-0110, 413-090-0120, 413-090-0130, 413-090-0140, 413-090-0150, 413-090-0210

Proposed Repeals: 413-080-0000, 413-080-0010, 413-080-0020, 413-080-0030, 413-090-0160, 413-090-0170, 413-090-0180, 413-090-0190, 413-090-0200

Last Date for Comment: 11-30-09, 5 p.m.

Summary: These rules about payments to foster parents and relative caregivers eligible to receive assistance on behalf of an eligible child and eligible young adults for housing assistance are being adopted, amended, and repealed because the Department is redesigning the rates and structures for these payments (rate redesign). These rules set the requirements and responsibilities for the Department and foster parents and relative caregivers of an eligible child or young adult around assistance payments, payment structure, eligibility requirements for enhanced supervision and personal care services payments, and housing subsidy payments. These rules also are being amended, adopted, and repealed so that the Department will be in compliance with federal requirements and timelines in response to a federal audit, to clarify the use of Title XIX personal care services payments, to comply with federal requirements regarding case planning and length of time a child can be away from a substitute care placement while the payment continues, and to implement the new payment structure for foster care maintenance payments when a child is in a home certified by the Department. These rules also clarify Department responsibilities for monitoring the safety of a child who needs enhanced supervision. These rule changes make permanent rule changes made through the temporary rulemaking process on July 1, 2009, August 12, 2009, and September 1, 2009.

OAR 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, and 413-020-0255 about the Department's responsibilities in monitoring and managing the enhanced supervision needs of a child or young adult in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-020-0210 about the definitions used in OAR 413-020-0200 to 413-020-0255 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-020-0230 also is being amended to state under which circumstances the Department must complete and how the Department reviews a CANS (Child and Adolescent Needs and Strengths) screening. OAR 413-020-0233 also is being amended to describe the requirements of the Department in developing a supervision plan for a child or young adult in substitute care. OAR 413-020-0236 also is being amended to state the Department methodology and considerations when developing a supervision plan. OAR 413-020-0240 also is being amended to state when a physical restraint may be used even if the certified family has not attended Behavior Crisis Management Training or the child or young adult does not have a supervision plan. OAR 413-020-0245 also is being amended to explain the Department's responsibilities when monitoring a child or young adult's enhanced supervision needs. OAR 413-020-0255 also is being amended to explain the training required of a certified family when a supervision plan includes the use of physical restraint as a supervision action or activity.

OAR 413-040-0000, 413-040-0005, 413-040-0006, 413-040-0008, 413-040-0009, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, 413-040-0017, 413-040-0024, and 413-040-0032 about the development and management of a case plan for a child who has been removed from the care and custody of his or her parents or legal guardians by the Department are being amended to reflect current Department terminology, policy, and practices. OAR 413-040-0005 about the definitions used in OAR 413-040-0000 to 413-040-0032 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-040-0010 about the requirements for a substitute care case plan is being amended to include referrals for services based on a CANS screening or other screening or assessment and remove an exception process for the requirement that a caseworker develop a case plan within 60 days of a child's removal from a home or completion of a Child Protective Services assessment. OAR 413-040-0013 about the Department's case plan monitoring requirements also is being amended to state a caseworker must make reasonable efforts to reduce the time the child or young adult spends in substitute care, monitor the case plan, and terminate Department intervention services in a timely manner, and is responsible for a timely response to the child or young adult's needs identified in the CANS screening or other screening or assessment. OAR 413-040-0024 about the Department's requirements when developing an in-home ongoing safety plan also is being amended to clarify when the in-home ongoing safety plan must be revised prior to returning a child to his or her parents.

OAR 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, and 413-070-0645 about how the Department assesses a child or young adult's needs, identifies the appropriate placement, and assesses the placement for the safety, permanency, and well-being when the child or young adult has been placed in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-070-0620 about the definitions used in these rules also is being amended to add current and remove outdated definitions of terms used throughout these rules. 413-070-0625 about the Department's responsibilities to assess a child's needs prior to placement also is being amended to clarify language, add young adult to these rules, and state how the Department selects a substitute care placement for a child or young adult. OAR 413-070-0630 about Department monitoring of the ongoing substitute care placement needs of a child or young adult also is being amended to state a caseworker must determine if the foster parent, relative caregiver, or provider manages the child or young adult's supervisions needs as identified by the CANS screening and provides the personal care services outlined in the personal care services plan. OAR 413-070-0645 about involving a substitute caregiver in a child or young adult's permanent placement planning also is being amended to state how the Department involves substitute caregivers in the development of a child or young adult's permanency plan.

OAR 413-080-0000, 413-080-0010, 413-080-0020, and 413-080-0030 about how the Department determines when and what type of shelter care is appropriate for a child in substitute care are being repealed as their relevant provisions have been incorporated into OAR 413-090-0000 to 413-090-0050.

OAR 413-080-0050 about the definitions used in the Department's rules about monitoring child safety, OAR 413-080-0059 about Department responsibility for monitoring the safety and well-being of a child or young adult placed in substitute care, and OAR 413-080-0063 about the additional documentation required when a child or young adult is placed in Oregon through the Interstate Compact for the Placement of Children (ICPC) are being amended to add current and remove outdated definitions of terms used throughout the Department's rules about monitoring child safety, ensure a child or young adult's personal care services supervision needs are met, and place definitions in the correct rule. OAR 413-080-0040 about the purpose of the monitoring child safety rules (OAR 413-070-0040 to 413-080-0067), OAR 413-080-0052 about mandatory reporting of

NOTICES OF PROPOSED RULEMAKING

new safety threats on an open child safety case, OAR 413-080-0055 about in-home ongoing safety plans, and OAR 413-080-0067 about the required face-to-face contacts between Department caseworkers and children, young adults, parents, legal guardians, certified families, and providers are being amended to update terminology.

OAR 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, and 413-090-0050 about the Department's responsibilities in determining and providing the foster care base rate, shelter care, enhanced shelter care, level of care, Chafee housing, and independent living housing subsidy payments for a child or young adult in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-090-0000 about the purpose of the Department's payment for foster care base rate, shelter care, enhanced shelter care, level of care, Chafee housing, and independent living housing subsidy payments (OAR 413-090-0000 to 413-090-0130) also is being amended to state accurately the purpose of these rules and to remove references to family group home care and residential treatment service providers as payments for those services are not covered by these rules (OAR 413-090-0000 to 413-090-0050). OAR 413-090-0005 about the definitions used in these rules also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-090-0010 about the eligibility for payments for family foster care, shelter care, enhanced shelter care, level of care, dependent parent, Chafee housing and independent living housing subsidy also is being amended to state when the Department makes these payments, the eligibility requirements that must be met for the Department to make these payments, what expenses, each type of payment is intended to cover, when payment is prohibited, to explain how the Department determines the level of care and the payment to a foster parent or relative caregiver for each level of care when an eligible child or young adult requires enhanced supervision, and state that the shelter care rate for a child or young adult age 13 through 20 years old is a daily rate, state the daily rates for enhanced shelter care, and set forth the limitations of Chafee housing and independent living housing subsidy payments. OAR 413-090-0021 is being adopted to state when the Department conducts periodic review of a child or young adult's continued eligibility for a level of care payment. OAR 413-090-0030 about payments during a child or young adult's temporary absence from the placement home is being amended to state that family foster care payments may be continued for no longer than 14 days during a child or young adult's absence and that district manger approval is required for payment for more than seven but less than 14 days and to remove language permitting payment or utilization credits for residential treatment stays for a child or young adult in substitute care. OAR 413-090-0040 about payments made during adoptive supervision is being amended to allow base rate and enhanced supervision payments to foster parents who plan to adopt the child until adoption assistance payments commence. OAR 413-090-0050 about when the Department may continue current foster care payments to a foster parent or relative caregiver moving out of Oregon beyond 180 days when the licensure or certification process in a receiving state has not been completed when the delay is due to circumstances beyond the Department's control and to remove language allowing the payments to continue when the delay is due to circumstances beyond the control of the foster parent or relative caregiver.

OAR 413-090-0100 about the purpose of the Department's personal care services rules (OAR 413-090-0100 to 413-090-0210), OAR 413-090-0110 about the definitions used in these rules, OAR 413-090-0120 about the scope of personal care services, OAR 413-090-0130 about the eligibility requirements for personal care services, OAR 413-090-0140 about the periodic review of a client's eligibility for personal care services, OAR 413-090-0150 about payment determinations, and OAR 413-090-0210 about the termination of personal care services and payments are being amended; OAR 413-090-0133 about how the Department conducts a personal care services assessment, OAR 413-090-0135 about provider eligibility to provide personal care services, and 413-090-0136 about

developing a personal care services plan are being adopted; and OAR 413-090-0160 about personal care services costs the Department will reimburse, OAR 413-090-0170 about personal care services costs the Department will not reimburse, OAR 413-090-0180 about the requirements for special rate payments, OAR 413-090-0190 about the authorization of payments, and OAR 413-090-0200 about exceptions and variances costs are being repealed to clarify the Department's policy for this program, include definitions used throughout the personal care services rules, OAR 413-090-0100 to 413-090-0210, reflect current Department terminology, state the payment rates, and bring the personal care services program into compliance with federal requirements.

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, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-24-09 | 8:30 a.m. | 500 Summer St. NE, Rm. 137C Salem, OR |

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 418.340

Other Auth.: 42 USC 673

Stats. Implemented: ORS 418.330-418.340

Proposed Adoptions: 413-130-0045

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

Proposed Repeals: 413-130-0120, 413-120-0127

Last Date for Comment: 11-30-09, 5 p.m.

Summary: These rules about payments to adoptive parents on behalf of an eligible child are being changed because the Department is redesigning the rates and structures for these payments (rate redesign). These rules, OAR 413-130-0000 to 413-130-0130 set the requirements and responsibilities for the Department and adoptive parents of an eligible child around adoption assistance benefits, including cash payments, medical coverage, an Agreement Only, reimbursement of nonrecurring expenses, and special payments. These rules also are being adopted, amended, and repealed so that the Department will be in compliance with federal requirements and timelines in response to a federal audit, to clarify the use of Title XIX personal care services payments, to comply with federal requirements addressing limitations for reducing adoption assistance payments, and to implement the new payment structure for foster care maintenance payments when a child is in a home certified by the Department. These rules also are being adopted, amended, and repealed to make permanent the temporary rule changes filed effective July 1, 2009.

OAR 413-130-0000 about the purpose of the adoption assistance rules (OAR 413-130-0000 to 413-130-0130), OAR 413-130-0010 about the definitions used in these rules, OAR 413-130-0020 about the eligibility requirements for adoption assistance, OAR 413-130-0030 about the eligibility requirements for nonrecurring expenses reimbursement, OAR 413-130-0040 about the eligibility requirements for adoption assistance payments, OAR 413-130-0050 about the availability of new adoption assistance payments and payment adjustments, OAR 413-130-0060 about agreement only adoption assistance agreements, OAR 413-130-0070 about how the Department determines adoption assistance payments, OAR 413-130-0075 about when the Department will renegotiate an adoption assistance agreement, OAR 413-130-0080 about adoption assistance payments for nonrecurring expenses, OAR 413-130-0090 about adoption assis-

NOTICES OF PROPOSED RULEMAKING

tance special payments, OAR 413-130-0100 about adoption assistance medical coverage benefits, OAR 413-130-0110 about how approved adoption assistance is administered, OAR 413-130-0115 about the functions of the Adoption Assistance Review Committee, OAR 413-130-0125 about what happens in response to budgetary reductions in adoption assistance funding, and OAR 413-130-0130 about how applications for adoption assistance received after an adoption is legally finalized are processed are being amended; OAR 413-130-0045 about how a child's immigrant status effects his or her eligibility for adoption assistance is being adopted; and OAR 413-130-0120 about the right of adoption assistance clients a contested case hearing and OAR 413-130-0127 about adjustments to adoption assistance payments are being repealed to clarify the Department's policy for this program, include definitions used throughout the adoption assistance rules (OAR 413-130-0000 to 413-130-0130), reflect current Department terminology, and bring the adoption assistance program into compliance with federal requirements.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

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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: |
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| 11-23-09 | 10 a.m. | 500 Summer St. NE, Rm. 166 Salem, OR |

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.040, 409.050, 410.070, 411.060, 411.070, 411.105, 411.116, 411.135, 411.598, 411.600, 411.660, 411.700, 411.706, 411.816, 411.892, 412.001, 412.006, 412.014, 412.016, 412.024, 412.042, 412.049, 412.124, 414.042, 414.342, 414.346 & 2009 OL Ch. 263 & 867

Other Auth.: 42 USC 602(a), 42 USC 1396p, 42 USC 1396r-5, 42 USC 1396p(b), 42 USC 1902(a)(18), Pub. Law 110-275, American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5), The Afghan Allies Protection Act of 2009 under the Omnibus Appropriations Act of 2009 (Section 602, Division F of Public Law 111-08; available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ008.111.pdf), Section 7301(a) of the Deficit Reduction Act of 2005, Public Law 110-275, Medicare Improvements For Patients and Providers Act of 2008; available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ275.pdf, 7 CFR 273.1, 7 CFR 273.18, 45 CFR 233.20, 45 CFR 233.52, 45 CFR 30, 45 CFR 260.31, 45 CFR 260.32, 45 CFR Part 400., 42 CFR 433.36, 42 CFR 435.610, 42 CFR 435.832, 42 CFR 435.908, Social Security Administration, Program Manual Operations System, SI 00830.820 Individual Indian Money Accounts, available at: <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0500830820!opendocument>, Oregon Medicaid/State Children's Health Insurance Program (SCHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration

Stats. Implemented: ORS 113.085, 115.525, 409.040, 409.050, 409.010, 411.060, 411.070, 411.095, 411.105, 411.111, 411.117, 411.122, 411.598, 411.600, 411.620, 411.630, 411.635, 411.640, 411.660, 411.670, 411.675, 411.690, 411.700, 411.704, 411.706, 411.708, 411.795, 411.816, 411.825, 411.830, 411.892, 412.001, 412.006, 412.009, 412.014, 412.016, 412.017, 412.024, 412.049, 412.069, 412.124, 412.151, 414.025, 414.042, 414.047, 414.055, 414.342, 416.310 & 2009 OL Ch. 263, 595, 827 & 867

Proposed Adoptions: 461-105-0006, 461-135-1149, 461-155-0688, 461-155-0693

Proposed Amendments: 461-001-0000, 461-025-0310, 461-101-0010, 461-110-0210, 461-110-0370, 461-110-0430, 461-115-0030, 461-115-0050, 461-115-0071, 461-115-0090, 461-115-0705, 461-120-0125, 461-120-0210, 461-120-0310, 461-120-0315, 461-120-0345, 461-120-0510, 461-125-0170, 461-125-0310, 461-135-0095, 461-135-0096, 461-135-0780, 461-135-0835, 461-135-0990, 461-135-1100, 461-135-1125, 461-135-1185, 461-135-1225, 461-135-1230, 461-145-0130, 461-145-0143, 461-145-220, 461-145-0260, 461-145-0405, 461-145-0810, 461-145-0930, 461-150-0055, 461-155-0180, 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0360, 461-155-0530, 461-155-0580, 461-155-0630, 461-155-0640, 461-155-0660, 461-155-0670, 461-155-0680, 461-160-0015, 461-160-0580, 461-160-0610, 461-160-0620, 461-160-0700, 461-165-0010, 461-165-0200, 461-165-0210, 461-165-0230, 461-175-0270, 461-180-0085, 461-180-0090, 461-190-0199, 461-193-0031, 461-193-0240, 461-193-1380, 461-195-0501, 461-195-0521, 461-195-0541, 461-195-0551, 461-195-0561

Proposed Repeals: 461-135-1180, 461-155-0175, 461-193-0121, 461-193-0920, 461-193-0980, 461-193-1360, 461-193-1370, 461-195-0511, 461-195-0531

Last Date for Comment: 11-23-09, 5 p.m.

Summary: OAR 461-001-0000 about the definitions the Department uses in chapter 461 rules is being amended to state the definition for "continuous eligibility for non-CAWEM children". The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-025-0310 about hearing requests is being amended to correct a rule reference and remove outdated language in connection with service reassessments of clients in the Seniors and People with Disabilities Division.

OAR 461-101-0010 about the program acronyms the Department uses in the chapter 461 rules is being amended to include the acronyms for the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to reflect that the name of the Food Stamp (FS) Program is changing to the Supplemental Nutrition Assistance Program (SNAP) to implement recent legislation (2009 Or. Laws ch. 599).

OAR 461-105-0006 is being adopted to make permanent a temporary rule adopted on October 1, 2009 and set out the exceptions to rules in Chapter 461 that may apply during a business continuity disruption, what a business continuity disruption is, and how the exception process is authorized.

OAR 461-110-0210 about how the Department determines the composition of a household group (the individuals who live together with or without benefit of a dwelling) is being amended to state when a child in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs still is considered to be in the household group. The Department is amending this rule this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure

NOTICES OF PROPOSED RULEMAKING

eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-110-0370 about filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) composition in the Supplemental Nutrition Assistance Program (SNAP) program is being amended to state when an individual is excluded from the SNAP program filing group when that individual already received SNAP program benefits in another household that month. This rule also is being amended to comply with recent legislation (2009 Or. Laws ch. 599) changing the name of the Food Stamp (FS) program to SNAP.

OAR 461-110-0430 about the composition of a filing group (individuals from the household group whose circumstances are considered in the eligibility determination process) in the Department's Refugee (REF) and Refugee Medical (REFM) programs is being amended to state when the Department allows a separate filing group to be formed when a newly arriving refugee is joining a household group with his or her spouse or the parent of a common child.

OAR 461-115-0030 about how the Department determines the date a client requested program benefits is being amended to make permanent temporary rule changes adopted on August 28, 2009 that restate how the date of request is determined for an Oregon Health Plan - Standard (OHP-OPU) program reservation list applicant.

OAR 461-115-0050 about when an application for program benefits must be filed is being amended in response to House Bill 2116 (2009) to make permanent temporary rule changes adopted on August 1, 2009 that state that the Department may redetermine the eligibility of a child under 19 years of age for Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medicare Beneficiaries (QMB), or Medical Coverage for Children in Substitute or Adoptive Care (SAC) program benefits using the administrative rules in effect on October 1, 2009 and January 1, 2010 when the child applied for and was denied EXT, MAA, MAF, OHP, OSIPM, QMB, or SAC program benefits between July 1, 2009 and December 31, 2009 for a reason other than failing to complete the application. This rule also is being amended, in response to House Bill 2116 (2009), to allow clients in the EXT, MAA, MAF and OHP (except Oregon Health Plan Adults (OHP-OPU) who must use a Department specified application form), programs to change programs using the current application under certain conditions. This rule also is being amended to remove the requirement that OHP Standard Reservation List applicants must apply for OHP Standard using only the OHP 7210R application.

OAR 461-115-0071 about authorized representatives is being amended to indicate that an authorized representative may sign the application in the Oregon Supplemental Income Program and Oregon Supplemental Income Program-Medical.

OAR 461-115-0090 about application processing requirements is being amended to allow an applicant to designate an authorized representative of his or her choice without written documentation and to indicate when the Department is not required to accept the choice of authorized representative.

OAR 461-115-0705 about the required verification is being amended to state that the Department verifies income in the Oregon Health Plan program for the month prior to the budget month, the income already received in the budget month, and the income reasonably anticipated to be received in the budget month. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's

Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-120-0125 about the alien status requirements is being amended to state that in the Department's medical assistance programs a qualified non-citizen meets the alien status requirements if he or she is under 19 years of age, to add the alien status requirements for the Continuous Eligibility for OHP-CHP (CEC), Continuous Eligibility for Medicaid (CEM), and Extended Medical Assistance (EXT) programs and to extend Food Stamp (FS) program eligibility for Afghan special immigrants to eight months. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. The Department also is amending this rule to comply with recent federal legislation (The Afghan Allies Protection Act of 2009 under the Omnibus Appropriations Act of 2009 (Section 602, Division F of Public Law 111-08)) extending Food Stamp (FS) program eligibility to eight months and removing the September 30, 2009 restriction on FS program eligibility for Afghan special immigrants and removing the September 30, 2008 restriction on FS program eligibility for Iraqi special immigrants.

OAR 461-120-0210 about when a client in the Department's programs must provide or apply for a social security number (SSN) is being amended to state when a client in the Continuous Eligibility for OHP-CHP (CEC) or Continuous Eligibility for Medicaid (CEM) program may not be required to provide the SSN due to religious objections or may delay supplying the SSN due to being a newborn child. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-120-0310 about assignment of support rights is being amended to clarify that to be eligible to receive services funded with federal grants under Title IV-A (TANF) of the Social Security Act, a filing group must assign to the state child support that accrues during any time period that the filing group receives assistance. The filing group is no longer required to assign child support that accrues during any period that the filing group did not receive assistance funded with federal grants under Title IV-A (TANF) of the Social Security Act. This rule is also being amended to make permanent October 1, 2009 temporary rule changes that state that its provisions do not apply to clients in the Continuous Eligibility for OHP-CHP (CEC) program and state when clients in the Continuous Eligibility for Medicaid (CEM) program must assign the right to child support to the state.

OAR 461-120-0315 about the assignment of the right to reimbursement for health care costs for clients in the Department medical programs is being amended to state that clients in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs must agree to turn over their right to reimbursement for health care costs to the Department. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to

NOTICES OF PROPOSED RULEMAKING

ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009. This rule also is being amended to state that failure to assign the rights to reimbursement to the Department makes a client ineligible for medical program benefits. The rule also is being amended to state that in all programs, except the Program for All-Inclusive Care for the Elderly, a client in a nursing facility who is receiving long-term care insurance payments may meet the requirement to assign rights for medical care reimbursements to the Department by assigning them to the long-term care facility or immediately turning them over to the long-term care facility if received directly. In addition, this rule is being amended to state that the Department establishes an overpayment if it is discovered after-the-fact that during any period of time a client or another individual submitting long term care insurance claims on the client's behalf received long term care insurance payments that were not turned over to the long term care facility.

OAR 461-120-0345 about the obligation of clients in the Department's medical assistance programs, except the Continuous Eligibility for OHP-CHP (CEC) and Refugee Medical (REFM) programs, to obtain health care coverage and cash medical support for members of the benefit group is being amended to state that its provisions apply to clients in the Continuous Eligibility for Medicaid (CEM) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-120-0510 about the age requirements for clients to receive benefits is being amended to state the age requirement to receive benefits for clients in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-125-0170 about when deprivation exists based on the unemployment or underemployment of a primary wage earner (PWE) in the Temporary Assistance for Needy Families (TANF) program is being amended to state the definition for the term "most recent employment", affecting the eligibility of two-parent families in which the PWE separated from his or her most recent employment. This rule is also being amended to state when a need group is not subject to the provision excluding clients from TANF program benefits when they leave a job for a reason that would otherwise disqualify them from TANF program benefits under the provisions of this rule.

OAR 461-125-0310 about the basis of need for clients of the Oregon Supplemental Income Program Medical (OSIPM) is being amended to remove references to the Oregon Supplemental Income Program (OSIP) and the OSIP supplemental income payment as the payments are being discontinued effective January 1, 2010 in response to HB 3065 (2009).

OAR 461-135-0095 about the specific eligibility requirements for the Extended Medical Assistance (EXT) program is being amended to make permanent temporary rule changes adopted on October 1, 2009 that allow the Department to provide EXT program benefits to an eligible filing group for a longer initial period and remove the requirement that a filing group have been eligible for and received Medical Assistance Assumed (MAA) or Medical Assistance to Families (MAF) program benefits for at least three of the six months prior to the beginning of the EXT program benefit eligibility period.

OAR 461-135-0096 about Extended Medical Assistance (EXT) program eligibility periods is being amended to make permanent temporary rule changes adopted on October 1, 2009 that remove the prohibition against extending medical eligibility beyond four months for clients eligible for EXT due to increased child support and to state that the initial EXT eligibility period is twelve months for clients eligible for EXT due to an increase in the earnings of the caretaker relative.

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the Oregon Supplemental Income Program Medical (OSIPM) program, OAR 461-155-0270 about the payment standard for Oregon Supplemental Income Program (OSIP) and OSIPM clients in non-standard living arrangements, OAR 461-155-0300 about the shelter-in-kind standard for the OSIP, OSIPM, and Qualified Medicare Beneficiaries (QMB) programs, OAR 461-160-0580 about the excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD (Employed Persons with Disabilities) and OSIPM-EPD, and OAR 461-160-0620 about income deductions and liability for OSIPM clients in long-term care are being amended to adjust these standards to reflect the annual federal cost of living adjustments which will be effective January 1, 2010.

OAR 461-135-0835 about the limits on claims against an estate the Department may make in the Breast and Cervical Cancer Medical (BCCM), General Assistance (GA), General Assistance Medical (GAM), Oregon Health Plan (OHP), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs is being amended to comply with recent federal legislation (Pub. Law 110-275, sec. 115) by removing language allowing claims against an estate for Medicare cost sharing for Medicare premium payments, co-payments, and deductibles made under the QMB program.

OAR 461-135-0990 about when the Department reimburses a client for cost-effective employer-sponsored health insurance premiums is being amended to state that its provisions apply to clients in the Continuous Eligibility for Medicaid (CEM) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-135-1100 about the specific eligibility requirements for the Oregon Health Plan (OHP) program is being amended to state that its definition of private major medical health insurance also applies to OAR 461-135-1149 (a new rule about the specific eligibility requirements in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs for ensuring continuous eligibility for non-Citizen/Alien-Waived Emergent Medical program children). OAR 461-135-1100 also is being amended to state that to be eligible for the Oregon Health Plan - Persons Under 19 (OHP-CHP) program a client cannot have had private major medical health insurance during the preceding two months and must have lost the health insurance coverage due to a loss of employment, and to remove language stating a client had to meet a resource limit. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation

NOTICES OF PROPOSED RULEMAKING

required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-135-1125 about how the Department determines eligibility for and manages the Oregon Health Plan - Standard (OHP-OPU) program reservation list is being amended to make permanent temporary rule changes adopted on August 28, 2009 that remove the requirement that an individual selected to be considered for OHP-OPU program benefits submit an OHP 7210R Reservation List Application to qualify for OHP-OPU program benefits.

OAR 461-135-1149 is being adopted to state specific eligibility requirements in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs, and how continuous eligibility applies to non-Citizen/Alien-Waived Emergent Medical program children. The Department is adopting this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-135-1180 about the program establishment, eligibility requirements, procedures, benefits, and appeals in the Senior Prescription Drug Assistance Program is being repealed to comply with Senate Bill 154 (2009) ending the program and repealing its statutory authority.

OAR 461-135-1185 about the Low-Income Subsidy (LIS) program, a federal assistance program for Medicare clients who need extra help meeting their Medicare Part D prescription drug costs, is being amended to remove a cross-reference to OAR 461-135-1180 which is being repealed.

OAR 461-135-1225 about the eligibility and verification requirements for a client in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program is being amended to state that the Temporary Assistance for Needy Families (TANF) program requirement for a caretaker relative in the need group to not have been separated from his or her most recent employment for a reason that would result in a denial of TANF program benefits under OAR 461-135-0070 is waived when there is risk of further or future domestic violence against the need group. The rule also is being amended to state that if a client has been arrested for or convicted of an act of domestic violence in the past and if it is uncertain whether the individual is a victim of domestic violence, the Department verifies that the individual is not or was not a perpetrator of domestic violence.

OAR 461-135-1230 about the benefits provided and the benefit periods in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program is being amended to state that two TA-DVS program 90-day eligibility periods may not overlap and that a TA-DVS program client may not receive benefits in more than four eligibility periods during any 12-month period.

OAR 461-145-0130 about how the Department treats earned income in the Medical Assistance Assumed (MAA) and Medical Assistance to Families (MAF) programs is being amended to make permanent temporary rule changes adopted on October 1, 2009 that remove language excluding income that would result in MAA or MAF ineligibility prior to meeting the have been eligible for and received MAA or MAF for three of the prior six months requirement.

OAR 461-145-0143 about how the Department treats a \$250 federal economic recovery payment made to a client when determining the client's income and resources is being amended to state how the

Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs treat the income of clients who have and have not received the payment and to comply with the American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5).

OAR 461-145-0220 about the treatment of a client's home when the Department is determining a client's assets for individuals receiving long-term care service is being amended to state when the home is excluded from the client's assets.

OAR 461-145-0260 about how the Department treats Indian (Native American) benefits when determining income and resources is being amended to state how the Department treats Individual Indian Money (IIM) accounts in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs.

OAR 461-145-0405 about how the Department treats assets in a client's Plan for Self Support is being amended to state that the assets listed in an approved Plan for Self Support are excluded.

OAR 461-145-0810 about how the Department treats deemed assets is being amended to state that this rule applies only to assets deemed for a sponsored noncitizen.

OAR 461-145-0930 about how the Department determines countable income for self-employed clients is being amended to state more clearly what the term gross sales and receipts encompasses.

OAR 461-150-0055 about eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended to revise how the Department averages income when determining eligibility for the OHP program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0175 about the income standards in the Extended Medical Assistance (EXT) program is being repealed to make permanent the rule suspension adopted on October 1, 2009 because the rule is unnecessary in the context of changes to medical eligibility requirements and the new EXT eligibility period.

OAR 461-155-0180 about the poverty related income standards used in some of the Department's programs is being amended to state the monthly income standard when set at 201 percent of the 2009 federal poverty level. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0225 about the income standards is being amended to state the income standard for the Oregon Health Plan - Persons Under 19 (OHP-CHP) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children.

NOTICES OF PROPOSED RULEMAKING

This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0235 about the premium standards for the Oregon Health Plan Standard (OHP-OPU) program is being amended to reflect the annual increase in the federal poverty guidelines that will be effective January 1, 2010.

OAR 461-155-0250 about the income and payment standards for the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to remove the provisions related to the OSIP program as the Department is ending supplemental income payments in the OSIP program effective January 1, 2010 in response to HB 3065 (2009). This rule also is being amended to state that a client who receives both benefits under Part A of Medicare and SSI is assumed eligible for OSIPM program benefits. This rule also is being amended to state the countable income standard the Department applies to a client in a nonstandard living arrangement.

OAR 461-155-0360 about the Department determines whether an employer-sponsored health insurance plan is cost effective is being amended to state that its provisions apply to the Continuous Eligibility for Medicaid (CEM) program. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-155-0530 regarding special need payments for food for guide dogs and special assistance animals to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM income standard to be eligible for these payments.

OAR 461-155-0580 about special need payments for laundry allowances made to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who have excessive costs for laundry is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments.

OAR 461-155-0630 about special need payments for Oregon Supplemental Income Program Medical (OSIPM) program clients in community based care is being amended to state when spouses who each receive SSI and services in a community based care facility are eligible for a special need payment and how the payment amount is determined.

OAR 461-155-0640 about special need payments for restaurant meals made to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who have medical and nutritional needs that cannot be met with meals purchased with Supplemental Nutrition Assistance Program (SNAP) benefits is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments.

OAR 461-155-0660 about special need payments for accommodation allowances (a payment covering some housing and utility costs of a client) made to Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who temporarily leave their home to stay at an adult foster care facility, assisted living facility, group care home, hospital, nursing facility, residential care facility, specialized living facility, or state psychiatric institution is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments.

OAR 461-155-0670 about special need payments for special diet allowances (a payment for a diet needed to prevent imminent life-threatening harm) made to certain Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients who require a special diet is being amended to allow OSIP and OSIPM program clients with adjusted income below the OSIPM program income standard to be eligible for these payments.

OAR 461-155-0680 about special need payments for supplemental telephone allowance to clients in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to allow these payments for clients with an adjusted income less than the OSIPM program standard.

OAR 461-155-0688 about prescription drug co-payments for individuals in the Oregon Supplemental Income Program-Medical (OSIPM) program who receive SSI as their only income is being adopted to state when the Department makes the co-payments.

OAR 461-155-0693 about transportation services payments for individuals in the Oregon Supplemental Income Program-Medical (OSIPM) program is being adopted to state how the Department makes these payments to these clients.

OAR 461-160-0015 about the resource limits on eligibility for the Department's programs is being amended to state that there is no resource limit for a client applying for Oregon Health Plan - Persons Under 19 (OHP-CHP) program benefits. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-160-0580 related to resource assessments is also being amended for married clients in the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program Medical (OSIPM). The rule is being amended to make it more abundantly clear that the rule applies only to legally married couples.

OAR 461-160-0610 about the liability payment a client in the Oregon Supplemental Income Program Medical (OSIPM) program must make to remain eligible for long-term care services is being amended to state when in an initial month of a long term care placement a client may be exempt from the payments required under this rule. This rule also is being amended to remove references to the Oregon Supplemental Income Program (OSIP).

OAR 461-160-0700 about how the Department uses income when determining eligibility for Oregon Health Plan (OHP) program benefits is being amended to state when an Oregon Health Plan - Persons Under 19 (OHP-CHP) program need group member is eligible for OHP despite not meeting the OHP income standard. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-165-0010 about the legal status of benefit payments the Department makes to clients is being amended to state when Temporary Assistance - Domestic Violence Survivors (TA-DVS) program benefit payments become vested in a TA-DVS program client.

OAR 461-165-0200, 461-165-0210, and 461-165-0230 are being amended to allow the Department to restore Food Stamp benefits used by a former household member when the Department's failure to cancel their EBT card allows unauthorized access.

NOTICES OF PROPOSED RULEMAKING

OAR 461-175-0270 about when a notice is sent to clients assigned to the various Department reporting systems, the type of notice sent, and what the notice must contain is being amended to state the information that is provided in the notice that is sent to clients when an action is taken based on information the client reported on the Monthly Change Report or the Interim Change Report form and that this provision applies to the Supplemental Nutrition Assistance Program (SNAP). This rule also is being amended to change the name of the Food Stamp (FS) program to SNAP program.

OAR 461-180-0085 about the effective date of redetermination for eligibility for benefits in certain Department medical assistance programs is being amended to state that its provisions apply for the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs. The Department is amending this rule to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867). The legislation required the Department to put new programs into place effective October 1, 2009 to ensure eligible children in Oregon have health insurance coverage available. This rule is part of the implementation of the Department's Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for Oregon children. This rule change also makes permanent the changes made by temporary rule effective October 1, 2009.

OAR 461-180-0090 about the effective dates for the initial month of medical benefits is being amended to change the effective date for starting the Medicare Savings Programs (MSPs). Starting January of 2010 the Social Security Administration (SSA) will be sending a data feed from the Low Income Subsidy (LIS) applications they process. Oregon will treat this information as a Medicaid application and use the date SSA received the information from the applicant as the protected effective date for starting benefits for eligible applicants, changing how Oregon determines effective dates currently for MSP applications. Currently Oregon uses the date the state receives a request as the date from which to determine eligibility. These two dates (the date the client requests a LIS and the date Oregon receives the request for Medicaid) may be 60 days or more apart as SSA will process the LIS application before they send the data to the states. This change assures the applicant will have the earlier date used for the eligibility date determination. This rule is also being amended to state the effective date for the initial month of benefits in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM).

OAR 461-190-0199 about the operation of and the eligibility, selection, and participation requirements for the Parents as Scholars (PAS) component of the Job Opportunity and Basic Skills (JOBS) program is being amended to state the documentation a PAS participant must provide prior to the start of each academic term.

OAR 461-193-0031 about the eligibility requirements for Refugee Case Services Project (RCSP) program services is being amended to state a client may meet one of its eligibility provisions by also meeting all Refugee (REF) program eligibility requirements.

OAR 461-193-0121 about how the Department handles Refugee (REF) program inquiries and complaints is being repealed because its relevant provisions have been incorporated into other rules in this division of rules.

OAR 461-193-0240 about when a client is exempt from participating in the New Arrival Employment Services (NAES) program is being amended to expand eligibility to those refugees who are not eligible for Refugee Case Services Project (RCSP) due to having been in the United States longer than eight months and to state an exemption from NAES program participation due to a client's medical condition.

OAR 461-193-0920 about how the Department handles a Refugee (REF) program client's request for review of a decision the Department has made is being repealed because its relevant provisions have been incorporated into other rules in this division of rules.

OAR 461-193-0980 about how the Department handles a Refugee (REF) program client's appeal for review of a staffing deci-

sion the Department has made is being repealed because its relevant provisions have been incorporated into other rules in this division of rules.

OAR 461-193-1360 about the eligibility requirements for transportation support services payments in the New Arrival Employment Services (NAES) program is being repealed because its relevant provisions have been incorporated into OAR 461-193-1380.

OAR 461-193-1370 about the eligibility requirements for child care support services payments in the New Arrival Employment Services (NAES) program is being repealed because its relevant provisions have been incorporated into OAR 461-193-1380.

OAR 461-193-1380 about the standards and eligibility requirements for support services payments in the New Arrival Employment Services (NAES) program is being amended to state the purpose of the support services payments, how the Department authorizes the payments, the eligibility requirements to receive a payment, when the Department denies or reduces a support service payment, verification requirements, and the requirements to receive each type of payment (child care, housing and utilities, transportation, and other items directly related to participation in NAES program activities).

OAR 461-195-0501 about how the Department defines and categorizes overpayments (benefits paid to a client in error, that the Department generally attempts to recover from the client) for programs administered under chapters 410, 411, and 461 of the Oregon administrative rules is being amended to reflect current Department terminology, policy, and practices and to state the definition of an overpayment, when the Department considers a payment received in the initial month of benefits an overpayment, what the Department does not consider an overpayment, and how a child care provider overpayment is determined. This rule also is being amended to state how the Department determines the category of an overpayment (administrative error, client error, fraud, Supplemental Nutrition Assistance Program (SNAP) program provider error, or child care program provider error), to remove the definition of administrative technical overpayment, and the primary cause of the overpayment when an overpayment is caused by both an administrative and client error in the same month. This rule also is being amended to state what the SNAP programs considers to be trading of a controlled substance and that a Temporary Assistance for Needy Families (TANF) program overpayment is waived if it puts a client at greater risk of domestic violence.

OAR 461-195-0511 about how the Department determined and categorized child care provider overpayments is being repealed as it reflected outdated Department terminology, policy, and practices, and its amended relevant provisions incorporated into OAR 461-195-0501, 461-195-0541 and 461-195-0551.

OAR 461-195-0521 about how the Department calculates the amount of a client or provider's overpayment liability is being amended to reflect current Department terminology, policy, and practices and to state the Department calculates the amount of an overpayment by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible. This rule also is being amended to specify how the Department calculates the amount of an overpayment due to failure to report income or earned income, or incorrect prospective budgeting, when credit against an overpayment is allowed, and how an overpayment affects eligibility for other programs.

OAR 461-195-0531 about how the Department established an overpayment is being repealed as it reflected outdated Department terminology, policy, and practices, and its amended relevant provisions incorporated into OAR 461-195-0501.

OAR 461-195-0541 about the individuals liable for repayment of an overpayment is being amended to reflect current Department terminology, policy, and practices and to state who is liable and who is exempted from liability for overpayments in the Department's programs.

NOTICES OF PROPOSED RULEMAKING

OAR 461-195-0551 about the Department's methodology for recovering overpayments is being amended to reflect current Department terminology, policy, and practices and to state how the Department proceeds to recover an overpayment, when the Department reduces current benefits to collect an overpayment, and when the Department may recover an overpayment by offset.

OAR 461-195-0561 about when and how the Department compromises an overpayment claim is being amended to reflect current Department terminology, policy, and practices and to state this rule applies to all Department programs, remove references to the child support program, the restrictions on compromising a claim, when the Department may allow installment payments of a compromised claim, and when the Department may collect the original full amount of a compromised claim.

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

Written comments may be submitted until Wednesday, November 23, 2009 at 5 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Rule Caption: Jan. '10 — Benefit packages, claim re-determination, exclusions and non participating provider revisions

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 709.025, 409.040, 409.050, 409.110 & 409.120

Other Auth.: SB 5529 (2009)

Stats. Implemented: ORS 414.019, 414.025, 414.033, 414.065, 414.095, 414.705, 414.706, 414.707, 414.708, 414.710, 414.727, 414.728, 414.742, 414.743 & SB 5529 (2009)

Proposed Amendments: 410-120-1200, 410-120-1210, 410-120-1230, 410-120-1295, 410-120-1340, 410-120-1380, 410-120-1570, 410-120-1600

Last Date for Comment: 11-20-09

Summary: The General Rules program administrative rules govern DMAP payment for services to clients. DMAP will amend rules as follows:

OAR 410-120-1200, Exclusion: to clarify the agencies intent regarding pain center treatment exclusions.

OAR 410-120-1210, Benefit Packages: to incorporate the 09-11 budget reductions for OHP Plus non-pregnant adult client vision and dental benefits. This reduction is pending the Centers for Medicare and Medicaid (CMS) approval.

OAR 410-120-1230, Co-payment: to exempt from co-payments all Nicotine Replacement Therapy (NRT) products (nicotine gum, nasal spray, lozenges or patches used to quite tobacco use). This revision is pending CMS approval.

OAR 410-120-1295, Non-Participating provider: Having temporarily amended this rule effective October 1, 2009, DMAP will permanently amend with this Notice. House Bill 3259, signed into law 8/4/09, changes the method used to reimburse non-participating

hospitals by FCHPs. This rule will be revised to reflect the new methodology.

OAR 410-120-1340, Payment: to reflect the annual update to the CMS Relative Value Units (RVU) for physician services.

OAR 410-120-1380, Compliance with federal and state regulations: CHIPRA legislation required changes to managed care contracts. This rule is being revised to incorporate the new CFR citations.

OAR 410-120-1570, Claim re-determinations: This rule was revised effective July 2009 however, DMAP is refining the process based on internal processes and discussions with providers.

OAR 410-120-1600, Provider Appeals - Contested Case Hearings - to change prior terminology of "reconsideration," to new term "re-determination."

Other text will be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: Jan. '10 — Oxygen and Oxygen Equipment; Orthotics and Prosthetics; Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses.

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

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

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-122-0182, 410-122-0203, 410-122-0660, 410-122-0662

Last Date for Comment: 11-20-09

Summary: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend as follows:

410-122-0182, Legend: Clarifies intent regarding rented equipment.

410-122-0203, Oxygen and Oxygen Equipment: Clarifies coverage intent for duals and non-duals and oxygen rental equipment.

410-122-0660, Orthotics and Prosthetics: Moves codes L2232, L2750 and L2780 to 410-122-0662.

410-122-0662, Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses: Rule will be rewritten to clarify conditions of coverage.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: 2009-11 legislative budget reductions for OHP Plus non-pregnant adult dental benefits.

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 414.051 & 414.065

Other Auth.: SB 5529 (2009)

Stats. Implemented: ORS 414.065, SB 5529 (2009)

Proposed Amendments: 410-123-1000, 410-123-1160, 410-123-1220, and 410-123-1260

Last Date for Comment: 11-20-09

Summary: The Dental Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend rules listed above to clarify budget reductions in the DMAP Dental Program as imposed by the Legislatively-approved budget

NOTICES OF PROPOSED RULEMAKING

(LAB), which includes the elimination or limitation of some procedures for Oregon Health Plan (OHP) Plus Benefit package non-pregnant adults (age 21 and over) and other limitations for Plus Benefit package clients. DMAP is amending rules for some procedures discussed with the Health Services Commission's Dental Subcommittee to appropriately cover or limit procedures. DMAP is also amending rules to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. DMAP will clarify current OARs to help facilitate provider compliance with eligibility, service coverage and limitations, prior authorizations, and billing requirements. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Rule Caption: January 2010 Age Guidelines for Brokerage child Transports.

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.040, 409.050, 409.065, 409.110 & 409.120

Stats. Implemented: ORS 414.065 & 409.010

Proposed Adoptions: 410-136-0245

Last Date for Comment: 11-20-09

Summary: The Medical Transportation Services Program administrative rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP will include in rule the age guidelines for OHP eligible children who may utilize medical transportation through a transportation brokerage and whose parent or guardian may request the child be transported to medical appointments without an attendant.

This rule is necessary to ensure that the safety and welfare of children is the primary objective in the coordination of child transports to medical appointments. Any guidelines set forth by the Oregon State Department of Human Services Child Welfare and Foster Care programs supersede this rule.

The parties who coordinate, schedule, and transport OHP eligible children to medical appointments may include but are not limited to transportation brokerages contracted with the State of Oregon and DMAP. DHS Child Welfare, Children, Adults and Families, and Seniors and People with Disabilities divisions also transport children to medical and non-medical appointments. For purposes of this proposed rule, age guidelines will be limited to transportation services coordinated through brokerages. DMAP will comply with DHS recommendations for age guidelines. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Rule Caption: 2009-11 legislative budget reductions for OHP Plus non-pregnant adult vision benefits.

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 409.040, 409.110, 414.065 & SB 5529 (2009)

Other Auth.: SB 5529 (2009)

Stats. Implemented: ORS 414.065 & SB 5529 (2009)

Proposed Amendments: 410-140-0050, 410-140-0140, 410-140-0160, 410-140-0200, 410-140-0260

Proposed Repeals: 410-140-0115

Last Date for Comment: 11-20-09

Summary: The Visual Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend the rules listed above to incorporate the 09-11 legislative budget reductions for OHP non-pregnant adult client vision benefit. This reduction is pending the Centers for Medicare and Medicaid (CMS) approval. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Rule Caption: Jan '10 — Update recognized mental health professionals and clarify reasonable costs. Removal of OAR 410-146-0340.

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050 & 430.010

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, Oregon Administrative Rule (OAR) 410 Division 120, and 42USC1396a(bb) & 1396d (United States Code 42, Chapter 7, Subchapter 19). Public Law 93 -638. Section 1603 of Title 25. Viewed on the web. <http://www.gpoaccess.gov/uscode/index.html>

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-146-0021, 410-146-0085, 410-146-0240

Proposed Repeals: 410-146-0340

Last Date for Comment: 11-20-09

Summary: The American Indian/Alaska Native (AI/AN) Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend rules listed above to include all recognized mental health professionals, and to clarify reasonable costs. As a continued effort to make administrative rules more efficient, DMAP will delete rule 410-146-0340 and place the information in the AI/AN Supplemental Information document used in conjunction with rules. This information does not need to be in rule.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Rule Caption: Jan. '10 — Update recognized mental health professionals and clarify reasonable costs. Removal of OAR 410-147-0620.

| Date: | Time: | Location: |
|----------|------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050 & 414.065

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-147-0120, 410-147-0320, 410-147-0400

Proposed Repeals: 410-147-0620

Last Date for Comment: 11-20-09

NOTICES OF PROPOSED RULEMAKING

Summary: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend rules listed above to include all recognized mental health professionals, and to clarify reasonable costs. As a continued effort to make administrative rules more efficient, DMAP will delete rule 410-147-0620 and place the information in the FQHC/RHC Supplemental Information document used in conjunction with rules. This information does not need to be in rule.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: Program eliminated on January 1, 2010; repeal of all administrative rules.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 409.120, 414.065, Ch. 263, OL 2009 (SB 154 (2009))

Stats. Implemented:

Proposed Repeals: 410-149-0000, 410-149-0020, 410-149-0040, 410-149-0060, 410-149-0080

Last Date for Comment: 11-20-09

Summary: The Senior Prescription Drug Assistance Program administrative rules govern the Division of Medical Assistance Programs' administration of a drug discount card to enrollees in the program. The Senior Prescription Drug Assistance Program administrative rules govern the Division of Medical Assistance Programs' administration of a drug discount card to enrollees in the program. ORS 414.432 established the Senior Prescription Drug Assistance Program. This program is eliminated on January 1, 2010, as a result of 2009 Legislation. The program was not effective to provide relief to applicants in their purchase of prescription drugs, and there are no clients in the program. Also, better options exist, such as Medicare Part D and the Oregon Prescription Drug Program.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: Pilot project for prenatal coverage for CAWEM women; adding additional participating counties.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409-010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-120-0030

Proposed Repeals: 410-120-0030(T)

Last Date for Comment: 11-20-09

Summary: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. Having Temporarily amended 410-120-0030 effective October 1, 2009 and subject to approval by the Centers for Medicare and Medicaid Services (CMS), DMAP will permanently amend this rule to add additional counties to participate in the pilot project implemented April 1, 2008, DMAP will add Benton, Clackamas, Hood River, Jackson and Lincoln Counties providing prenatal care during pregnancy and labor and delivery services for CAWEM women. Lack of access to prenatal care may result in

increased risk at birth and in infancy for children, and may result in increased costs of medical care to the state. This pilot is operated under an amendment to Oregon's Children's Health Insurance Program (CHIP) plan. Oregon anticipates receiving federal approval for the pilot project, effective on or after October 1, 2009. Text within this rule specifies effective dates for each county.

Other text will be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: Jan. '10 — Definitions; Complaint Procedures criteria; Notice of Action criteria; Billing and Payments criteria.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

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

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-141-0000, 410-141-0261, 410-141-0263, 410-141-0264, 410-141-0405, 410-141-0420

Last Date for Comment: 11-20-09

Summary: The Oregon Health Plan (OHP or Managed Care) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend rules listed above to update Definitions (410-141-0000), Complaint Procedures (410-141-0261), Notice of Action criteria (410-141-0263), Administrative Hearings typographical (410-141-0264), ENCC criteria (410-141-0405) and Billing and Payment criteria (410-141-0420).

Other text will be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: Removal of Administrative Examination Billing and Procedural Tables.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-17-09 | 10:30 a.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.040, 409.050, 409.065, 409.110 & 409.120

Stats. Implemented: ORS 414.065 & 409.010

Proposed Amendments: 410-150-0080

Proposed Repeals: 410-150-0120, 410-150-0160, 410-150-0240

Last Date for Comment: 11-20-09

Summary: The Administrative Examinations program administrative rules assist DMAP in providing payment for services to certain clients. DMAP will remove certain billing tables and procedure code tables designated for DHS field operation procedures for the Administrative Examination and Report rules and will place these tables in the agency Worker Guide. These tables in rule are not necessary to assist providers in completing examinations requested nor in preparing claims for administrative evaluations and reports.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: Jan. '10 — Development of Enforceable Preferred Drug List (PDL) for Physical Health Drugs and associated Prior Authorization Enhancements. The creation of a Voluntary PDL for Mental Health Drugs

NOTICES OF PROPOSED RULEMAKING

Date: 11-17-09
Time: 10:30 a.m.
Location: HSB Bldg., Rm. 137C
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson

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

Other Auth.: HB 2126, HB 3114 & SB 876

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0000, 410-121-0030, 410-121-0032, 410-121-0040, 410-121-0060, 410-121-0100, 410-121-0135, 410-121-0420

Last Date for Comment: 11-20-09

Summary: The Pharmaceutical Services program administrative rules govern DMAP payment for services to certain clients. The Pharmaceutical Services program rules (Division 121) govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP needs to amend the administrative rules listed above to clarify current policies and procedures for pharmacy providers to ensure DMAP OARs are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. DMAP will amend as follows:

410-121-0000 Forward and Definition of Terms: Adding definitions pursuant to legislatively mandated program changes. Definitions to be amended include physical and mental health drugs, preferred and non-preferred products, and Narrow Therapeutic Index(NTI)

410-121-0030 Practitioner Managed Prescription Drug Plan: Development of an Enforceable Physical Health Preferred Drug List including requirements for prior authorizations, exceptions, and exemptions or "grand-fathering" of currently existing prescriptions and the establishment of a Voluntary Mental Health PDL

410-121-0032 Supplemental Rebate Agreements: Changes in processes and procedures for manufacturers to follow in order to participate in the Supplemental Rebate Program.

410-121-0040 Prior Authorization Required for Drugs and Products: Addition of language reflecting that PA could be required for some non-preferred product and updates to Table 1 & 2 (Drugs Subject to PA) based on Drug Utilization Review (DUR) Board recommendations.

410-121-0060 How to Get Prior Authorizations for Drugs: Language revisions relating to PA response times and processes relating to notification of client and prescriber, including rights to appeal.

410-121-0100 Drug Use Review: Revision of language to be reflective of current Retrospective Drug Utilization Review (Retro-DUR) practices and addition of legislatively mandated review of polypharmacy and psychotropic drug use for children placed in foster care by DHS.

410-121-0135 Pharmacy Management Program: Update of language to reflect current business practices.

410-121-0145 Prescription Requirements: As a result of Federal rule changes, the age at which DMAP may reimburse a pharmacy for distributing the over-the-counter Plan B emergency contraceptive drug product will be lowered to age 17 and older from age 18 and older who are (fee-for-service) Medicaid eligible.

410-121-0420 DESI: Updates to reflect CMS and FDA policy changes.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Rule Caption: Tuberculosis (TB) Targeted Case Management (TCM) program; Human Immunodeficiency Virus (HIV) program; rule consolidation.

Date: 11-17-09
Time: 10:30 a.m.
Location: HSB Bldg. Rm. 137
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 409.010, 414.065 & 414.085

Proposed Adoptions: Rules in 410-138

Proposed Amendments: 410-138-0009, 410-138-0020, 410-138-0300, 410-138-0360, 410-138-0380, 410-138-0560, 410-138-0680

Proposed Repeals: 410-138-0320, 410-138-0340, 410-138-0520, 410-138-0620, 410-138-0720

Last Date for Comment: 11-20-09

Summary: The Targeted Case Management (TCM) Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain targeted client groups. As a result of a State Plan Amendment approved by Centers for Medicare and Medicaid Services (CMS) on March 19, 2009, DMAP will amend rules listed above to bring the HIV TCM program into compliance with current Federal rules and regulations. Contingent upon and immediately upon receipt of CMS approval, DMAP will begin implementation to extend the HIV TCM program to counties statewide. One new rule (410-138-xxxx), 410-138-0300, 410-138-0360 and 410-138-0380 will be made retroactive to January 1, 2009.

DMAP will also adopt rules for a new Tuberculosis TCM program, contingent upon CMS approval, as outlined in a State Plan Amendment approved by CMS on March 10, 2009.

DMAP will consolidate "definitions" rules in various TCM programs, repeal unnecessary definitions rules and correct references. Other text will be revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Department of Human Services, Public Health Division Chapter 333

Rule Caption: Oregon Indoor Clean Air Act.

Date: 11-20-09
Time: 1:30 p.m.
Location: 800 NE Oregon St., Rm. 1A
Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835-433.875 & 433.990(5)

Proposed Amendments: 333-015-0035, 333-015-0040, 333-015-0075, 333-015-0085

Last Date for Comment: 11-23-09, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to permanently amend the following Oregon Administrative Rules related to the Indoor Clean Air Act:

- 333-015-0035: To eliminate requirement for signage on each sleeping room door at hotels and motels.
- 333-015-0040: To clarify outdoor signage requirements for seating and dining areas within 10 feet of entrances, exits, windows that open, and air intake vents.
- 333-015-0075: To create a consistent complaint response procedure for complaints received after a business has successfully completed a remediation plan.
- 333-015-0085: To create a specific schedule of penalties for each type of violation of the Act and for repeat violations.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Implementation of Sections 1 and 2 of House Bill 2726: Oregon's Menu Labeling Law.

| Date: | Time: | Location: |
|----------|---------|---|
| 11-23-09 | 2 p.m. | 501 SW Emigrant Community Rm. Pendleton, OR |
| 11-30-09 | 3 p.m. | Douglas County Health Dept. 621 SW Madrone #101 Roseburg, OR |
| 12-2-09 | 10 a.m. | St. Charles Medical Ctr. Rooms F & G 2500 NE Neff Rd Bend, OR |
| 12-4-09 | 3 p.m. | Portland State Office Bldg. Rm. 1A 800 NE Oregon St. Portland, OR |

Hearing Officer: Jana Fussell

Stat. Auth.: 2009 OL Ch. 314

Stats. Implemented: 2009 OL Ch. 314

Proposed Adoptions: 333-015-0100, 333-015-0105, 333-015-0110, 333-015-0015, 333-015-0120, 333-015-0125, 333-015-0130, 333-015-0135, 333-015-0140, 333-015-0145, 333-015-0150, 333-015-0155, 333-015-0160, 333-015-0165

Last Date for Comment: 12-7-09, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to adopt rules related to the implementation of Sections 1 and 2 the Menu Labeling Act that was passed by the 75th Oregon Legislative Assembly as House Bill 2726. Sections 1 and 2 of HB 2726 require chain restaurants, with 15 or more outlets nationally, to provide certain nutrition information to customers starting in 2010.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

Rule Caption: Traveler's Accommodation Rules — Administrative Cleanup and Removal of Obsolete Language.

| Date: | Time: | Location: |
|---------|-----------|--|
| 12-9-09 | 9:30 a.m. | 800 NE Oregon St., Rm. 1A Portland, OR 97232 |

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 446.330, 448.035 & 624.020

Stats. Implemented: ORS 446.310-446.350, 446.990, 448.005-448.090 & 624.020

Proposed Amendments: 333-029-0025, 333-029-0045, 333-029-0050, 333-029-0060, 333-029-0070, 333-029-0080, 333-029-0115

Proposed Repeals: 333-029-0030

Last Date for Comment: 12-9-09, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to permanently amend and repeal administrative rules related to travelers' accommodations in chapter 333, division 29. The revisions remove obsolete language related to facility plan review. The revisions also update references to other rules and publications, and make grammatical changes. The changes should have little to no impact on present day functions involving either the local public health authority or the industry.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

Rule Caption: Update of public swimming, wading and spa rules to comply with federal legislation.

| Date: | Time: | Location: |
|---------|-----------|--|
| 12-9-09 | 9:30 a.m. | 800 NE Oregon St., Rm. 1A Portland, OR 97232 |

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100 & 448.990

Proposed Adoptions: 333-060-0127, 333-062-0102

Proposed Amendments: 333-060-0125, 333-060-0505, 333-060-0510, 333-062-0100

Last Date for Comment: 12-9-09, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to permanently adopt and amend Oregon Administrative Rules in chapter 333, divisions 60 and 62, related to main drains and suction fittings in public swimming pools, public wading pools and public spa pools. These changes to the state administrative rules bring the OARs into parallel compliance with the Federal Virginia Graeme Baker Pool and Spa Safety Act and clear up any discrepancies between state and federal regulations.

The revisions update Oregon Administrative Rules into parallel compliance with current federal standards and provide direction for new pool construction. The adoption and amendment of rules will address the issue of differences between the two sets of requirements.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

Rule Caption: Establishment of the Oregon POLST (Physician Orders for Life-Sustaining Treatment) Registry.

| Date: | Time: | Location: |
|----------|--------|--|
| 11-25-09 | 3 p.m. | 800 NE Oregon St., Rm. 1A Portland, OR 97232 |

Hearing Officer: Jana Fussell

Stat. Auth.: 2009 OL Ch. 595, § 1182, 1184 & 1186

Stats. Implemented: 2009 OL Ch. 595, § 1184-1186, 1188 & 1189

Proposed Adoptions: 333-270-0010, 333-270-0020, 333-270-0030, 333-270-0040, 333-270-0050, 333-270-0060, 333-270-0070, 333-270-0080

Last Date for Comment: 11-30-09, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to adopt Oregon Administrative Rules, chapter 333, division 270 that will establish the Oregon POLST Registry, including the Oregon POLST Registry Advisory Committee. The purpose of the registry is to collect and disseminate POLST information to help ensure that medical treatment preferences for individuals nearing the end of the individuals' life are honored. The intent of the new rules is to require physicians, nurse practitioners, and physician assistants to submit or cause to be submitted, POLST forms signed on or after December 1, 2009.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

Rule Caption: Repeal of outdated rules that no longer fall under authority of the Public Health Division.

Stat. Auth.: ORS 146

Stats. Implemented: ORS 146.015(2), 146.113 & 146.117

Proposed Repeals: 333-092-0000, 333-092-0005, 333-092-0010, 333-092-0015, 333-092-0020, 333-092-0025, 333-092-0030, 333-092-0035, 333-092-0040, 333-092-0045, 333-092-0050, 333-092-0055, 333-092-0060, 333-092-0065, 333-092-0070, 333-092-0075, 333-092-0080, 333-092-0085, 333-092-0090, 333-092-0095, 333-300-0000

Last Date for Comment: 11-23-09, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to permanently repeal Oregon Administrative Rules chapter 333, division 92 related to Long Term Care Facilities, Nursing Homes for the Mentally Retarded. The authority over long term care facilities was transferred from the Health Division to the Seniors and People with Disabilities (SPD) Division in 1986. Consequently, SPD promulgated administrative rules in 1994 (chapter 309, division 43) relating to Intermediate Care Facilities for Mentally

NOTICES OF PROPOSED RULEMAKING

Retarded and Other Developmentally Disabled Persons that supercede the rules in chapter 333, division 92.

In addition, the Division is proposing to permanently repeal OAR chapter 333, division 300 related to Tissues, Organs or Fluids for Diagnostic, Research or Transplantation Purposes. OAR 333-300-0000 applies to the State Medical Examiner's Office that used to fall under the Health Division, but now falls under State Police. Therefore, the Public Health Division no longer needs this rule in the chapter 333 administrative rules. State Police was contacted regarding their need for this rule and they stated that OAR 333-300-0000 no longer applies to any program operated by the State Police.

Rules Coordinator: Brittany Sande

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

Telephone: (971) 673-1291

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

Rule Caption: Medicaid Nursing Facilities.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 11-16-09 | 1:30 p.m. | Human Services Bldg. 500 Summer St. NE, Rm. 137AB Salem, OR |

Hearing Officer: Staff

Stat. Auth.: ORS 410.070 & 414.065

Other Auth.: HB 2126 (2009 Regular Session)

Stats. Implemented: ORS 410.070 & 414.065

Proposed Amendments: 411-070-0000, 411-070-0005, 411-070-0010, 411-070-0025, 411-070-0027, 411-070-0029, 411-070-0033, 411-070-0035, 411-070-0040, 411-070-0043, 411-070-0080, 411-070-0110, 411-070-0125, 411-070-0130, 411-070-0300, 411-070-0350, 411-070-0359, 411-070-0415, 411-070-0417, 411-070-0430, 411-070-0442, 411-070-0452, 411-070-0470

Proposed Repeals: 411-070-0005(T), 411-070-0442(T)

Last Date for Comment: 11-23-09, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to amend the Medicaid Nursing Facility rules in OAR chapter 411, division 070 to:

- Permanently implement House Bill 2126 (2009 Regular Session) by amending the methodology for establishing nursing facility rates for the 2009-2011 biennium;
- Clarify which nursing facility financial statements are used for rebasing;
- Authorize an add-on to comply with certified nursing assistant staffing levels; and
- Address general housekeeping matters.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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Rule Caption: Medicaid Long Term Care Quality and Reimbursement Advisory Council.

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|--------------|--------------|---|
| Date: | Time: | Location: |
| 12-14-09 | 1:30 p.m. | Human Services Bldg. 500 Summer St. NE, Rm. 137AB Salem, OR |

Hearing Officer: Staff

Stat. Auth.: ORS 410.070 & 410.555

Stats. Implemented: ORS 410.550-410.555

Proposed Adoptions: 411-001-0115, 411-001-0118

Proposed Amendments: 411-001-0100, 411-001-0110, 411-001-0120

Last Date for Comment: 12-21-09, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to amend the Medicaid Long Term Care Quality and Reimbursement Advisory Council

(MLTCQRAC) rules in OAR chapter 411, division 001 to clarify administration, scope, and operation.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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Rule Caption: Long-Term Support for Children with Developmental Disabilities.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 11-20-09 | 10 a.m. | Human Services Bldg. 500 Summer St. NE, Rm. 137AB Salem, OR |

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007 & 430.610-430.670

Proposed Adoptions: 411-308-0010, 411-308-0020, 411-308-0030, 411-308-0040, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-308-0140, 411-308-0150

Proposed Repeals: 411-308-0010(T), 411-308-0020(T), 411-308-0030(T), 411-308-0040(T), 411-308-0050(T), 411-308-0060(T), 411-308-0070(T), 411-308-0080(T), 411-308-0090(T), 411-308-0100(T), 411-308-0110(T), 411-308-0120(T), 411-308-0130(T), 411-308-0140(T), 411-308-0150(T)

Last Date for Comment: 11-23-09, 5 p.m.

Summary: The Department of Human Services (DHS), Seniors and People with Disabilities (SPD) is proposing to permanently adopt rules in OAR chapter 411, division 308 to prescribe standards, responsibilities, and procedures for providing long-term support for children with developmental disabilities who are eligible for crisis diversion services to prevent out-of-home placement of a child with developmental disabilities, or return a child with developmental disabilities back to the home of an out-of-home community placement.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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Department of Justice Chapter 137

Rule Caption: Amends the administrative rules relating to legal sufficiency review of state contracts.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 11-18-09 | 2 p.m. | 1215 State St. NE 3rd Flr. Conference Rm. Salem, OR |

Hearing Officer: Sharman Meiners

Stat. Auth.: ORS 190.430, 190.490, 291.045, 291.047 & 291.049

Stats. Implemented: ORS 190.430, 190.490, 291.045, 291.047 & 291.049

Proposed Amendments: 137-045-0010, 137-045-0015, 137-045-0020, 137-045-0030, 137-045-0035, 137-045-0050, 137-045-0052, 137-045-0055, 137-045-0060, 137-045-0070, 137-045-0080, 137-045-0090

Last Date for Comment: 11-18-09

Summary: Rules concerning the Attorney General's review of state contracts for legal sufficiency are being amended to clarify and reduce review requirements. The amendments confirm that legal sufficiency approval of interstate and international agreements satisfies the Attorney General's review requirements under ORS 190.430 and ORS 190.490. They also exempt interstate and international agreements from review under ORS 190.430 and .490 if the agreements are exempt from legal sufficiency review. They raise the threshold for required review of public contracts for legal sufficiency from \$100,000 to \$150,000. They clarify at what time legal sufficiency approval must be obtained for grants. They clarify the requirement

NOTICES OF PROPOSED RULEMAKING

to obtain authorization before releasing procurement documents and allow Assistant Attorneys General to waive the requirement. They expand the authority of Assistant Attorneys General to specify how contracts may be amended so that the amendments are exempt from later review, adjust exemptions to align with the increase in legal sufficiency threshold, delete the exemption for expired public contracts that are reinstated under the Department of Administrative Services rules (although other exemptions applicable to amendments reinstating such contracts continue to apply) and expand changes to provisions in exempt forms that may be pre-approved by the Attorney-in-Charge of the Business Transactions Section. Defined terms are clarified and examples are added to the definitions of "agency contract administration" and "variable delivery contract." Finally, the time for preparing the report of emergency is modified from "within" to "no later than" 10 business days after execution of a contract.

Regarding the exemptions of classes of contracts from the requirements of ORS 291.047 granted by these rules, the Attorney General determines that the degree of risk assumed by state agencies under such contracts is not materially reduced by legal review of individual contracts within the class.

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4700

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Rule Caption: Amends Attorney General's Model Public Contract Rules, Division 46-49.

| Date: | Time: | Location: |
|----------|--------|---|
| 11-18-09 | 2 p.m. | 1215 State St. NE 3rd Flr. Conference Rm. Salem, OR |

Hearing Officer: Sharman Meiners

Stat. Auth.: ORS 279A.065, 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279C.125, 279B.400, 279B.405, 279B.410, 279C.335, 279C.340, 279C.405 & 2009 OL Ch. 880

Stats. Implemented: ORS 200.035, 200.065, 200.075, 279A.015, 279A.030, 279A.050, 279A.055, 279A.065, 279A.105, 279A.110, 279A.120, 279A.125, 279A.180, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225, 279B.015, 279B.050, 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, 279B.100, 279B.110, 279B.115, 279B.120, 279B.130, 279B.135, 279B.140, 279B.400, 279B.405, 279B.410, 279B.415, 279B.425, 279C.107, 279C.110, 279C.115, 279C.125, 279C.300, 279C.305, 279C.315, 279C.320, 279C.325, 279C.335, 279C.340, 279C.345, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.390, 279C.395, 279C.400, 279C.405, 279C.410, 279C.430, 279C.435, 279C.440, 279C.445, 279C.450, 279C.460, 279C.505 - 580, 279C.585, 279C.590, 279C.605, 279C.650, 279C.655, 279C.660, 279C.665, 279C.670, 279C.800, 279C.830, 279C.835, 279C.870, 305.385, 351.086, 468A.720, 671.530, 701.005, 701.420, 701.055 & 2009 OL Ch. 880

Proposed Amendments: 137-046-0100, 137-046-0110, 137-046-0120, 137-046-0130, 137-046-0200, 137-046-0210, 137-046-0300, 137-046-0310, 137-046-0320, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480, 137-047-0000, 137-047-0100, 137-047-0250, 137-047-0255, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0262, 137-047-0263, 137-047-0265, 137-047-0270, 137-047-0275, 137-047-0280, 137-047-0285, 137-047-0290, 137-047-0300, 137-047-0310, 137-047-0320, 137-047-0330, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0430, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-047-0500, 137-047-0525, 137-047-0550, 137-047-0575, 137-047-0600, 137-047-0610, 137-047-0620, 137-047-0630, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-0720, 137-047-0730, 137-047-0740, 137-047-0745, 137-047-0750, 137-047-0760, 137-047-

0800, 137-047-0810, 137-048-0100, 137-048-0110, 137-048-0120, 137-048-0130, 137-048-0200, 137-048-0210, 137-048-0220, 137-048-0230, 137-048-0240, 137-048-0250, 137-048-0260, 137-048-0300, 137-048-0310, 137-048-0320, 137-049-0100; 137-049-0110, 137-049-0120, 137-049-0130, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210; 137-049-0220, 137-049-0230, 137-049-0240, 137-049-0250, 137-049-0260, 137-049-0270, 137-049-0280, 137-049-0290, 137-049-0300, 137-049-0310, 137-049-0320, 137-049-0330, 137-049-0340, 137-049-0350, 137-049-0360, 137-049-0370, 137-049-0380, 137-049-0390, 137-049-0395, 137-049-0400, 137-049-0410, 137-049-0420, 137-049-0430, 137-049-0440, 137-049-0450, 137-049-0460, 137-049-0470, 137-049-0490, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0630, 137-049-0640, 137-049-0645, 137-049-0650, 137-049-0660, 137-049-0670, 137-049-0680, 137-049-0690, 137-049-0800, 137-049-0810, 137-049-0815, 137-049-0820, 137-049-0830, 137-049-0840, 137-049-0850, 137-049-0860, 137-049-0870, 137-049-0880, 137-049-0890, 137-049-0900, 137-049-0910

Last Date for Comment: 11-18-09

Summary: The rule changes amend the Attorney General's model public contract rules applicable to state and local contracting agencies.

Division 46 has been revised to address 2009 legislative changes affecting public procurements in general. For example, language has been added relating to contracting with disabled veterans. Division 46 has also been revised to clarify several defined terms.

Division 47 has been revised to address 2009 legislative changes affecting public procurements of goods and services, including implementation of HB 2867 (Oregon Laws 2009, Chapter 880) requirements related to feasibility and cost analysis, good cause for not requiring contractors to meet highest performance standards, and consequences of contractors failing to meet performance standards. Clarifications have been added to rules dealing with Competitive Sealed Bidding and Proposals, Procedures for Competitive Range and Discussions and Negotiations for Multi-tiered and Multistep Proposals, Small Procurements, Bids or Proposals are Offers, Late Offers, Late Withdrawals and Late Modifications, Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, Offer Evaluation and Award, Availability of Award Decisions, and Amendments to Contracts and Price Agreements. Division 47 has also been revised to simplify and clarify other provisions.

Division 48 has been revised to address 2009 legislative changes affecting public procurements of Architectural, Engineering and Land Surveying Services, and Related Services. Clarifications have been added to the rule dealing with Applicable Selection Procedures, Pricing Information, and Disclosure of Proposals to reflect the new conflicts of interest requirements imposed by Section 11 of HB 2867. The rule has been revised to increase the small estimated fee amount to \$50,000. Division 48 has also been revised to clarify the use of the defined terms "Procurement" and "Consultant" and to simplify several provisions.

Division 49 has been revised to address 2009 legislative changes and make clarifications affecting public improvement and public works contracting. Revisions include: providing clarity regarding when the first-tier subcontractor disclosure form is required; legislative changes to the procurement requirements for determining an Offeror's responsibility; and legislative changes to the form and manner of withholding of retainage. Division 49 has also been revised to provide other clarifications to existing rules.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

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Rule Caption: Child support enforcement, medical support, house-keeping and legislative changes to child support processes.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 18.005, 18.225, 25.020, 25.080, 25.125, 25.260, 25.321, 25.325, 25.750, 107.108, 180.345, 180.380 & 416.455

Stats. Implemented: ORS 18.005–18.845, 18.180–228, 25.020, 25.080, 25.125, 25.150, 25.164, 25.167, 25.260, 25.270–25.343, 25.387, 25.414, 25.424, 25.610, 25.750–25.783, 107.135, 127.005, 180.345, 180.380, 411.320, 416.400–416.470, 416.422, 416.425 & OL 2009, ch 353

Proposed Adoptions: 137-050-0750, 137-055-3435, 137-055-4210

Proposed Amendments: 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1140, 137-055-1145, 137-055-2360, 137-055-2380, 137-055-3020, 137-055-3080, 137-055-3220, 137-055-3260, 137-055-3300, 137-055-3340, 137-055-3400, 137-055-3420, 137-055-3660, 137-055-4420, 137-055-4450, 137-055-4455, 137-055-4620, 137-055-4640, 137-055-5110, 137-055-5220, 137-055-6022, 137-055-6024, 137-055-6260

Last Date for Comment: 11-30-09, 5 p.m.

Summary: OAR 137-050-0750 is being adopted to set out how medical support is to be included in child support calculations, including defining “reasonable in cost.”

OAR 137-055-1020 is being amended to add the Oregon Health Authority (OHA) in definitions, as well as “medicaid.” Additionally, minor language clean-up is proposed.

OAR 137-055-1090 is being amended to add references to OHA, and minor language clean-ups are proposed.

OAR 137-055-1120 is being amended to add references to OHA. In addition to minor language clean-ups, clarification is being added to provided that if other state agencies make a determination that proceeding with support services on a case is not in the best interest of a child, that determination is sufficient for the administrator (or an authorized representative) to make the same determination.

OAR 137-055-1140 is being amended to remove a reference to “address of record,” a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-1145 is being amended to remove a reference to “address of record,” a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-2360 is being amended to add a new action (changing a money award when custody flip flops) to the list of actions which may be taken without a relief from stay in a chapter 7 or 11 bankruptcy.

OAR 137-055-2380 is being amended to add a new action (changing a money award when custody flip flops) to the list of actions which may be taken without a relief from stay in a chapter 12 or 13 bankruptcy.

OAR 137-055-3020 is being amended to add a reference to OHA.

OAR 137-055-3080 is being amended to remove a reference to “address of record,” a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-3220 is being amended to correct a citation and reference to the child support guidelines.

OAR 137-055-3260 is being amended to remove a reference to “address of record,” a term which was eliminated when the rule (OAR 137-055-1180) was repealed. Additionally, minor language clean-up is proposed, and a citation is updated.

OAR 137-055-3300 is being amended to correct a reference to the child support guidelines and to change the name of the rule.

OAR 137-055-3340 is being amended to reflect how the Child Support Program will establish and modify medical support in conjunction with OAR 137-050-0750.

OAR 137-055-3400 is being amended to correct citations to the case assignment rule.

OAR 137-055-3420 is being amended to correct a reference to the child support guidelines.

OAR 137-055-3435 is being adopted to set out how the Child Support Program will handle changes in physical custody under new provisions in Oregon law.

OAR 137-055-3660 is being amended to make minor language clarifications, by changing “monetary” support to “non-medical” support, and “health care coverage” to “medical” support.

OAR 137-055-4210 is being adopted to set out how the Child Support Program will handle requests from parties to pursue withholders who fail to properly withhold.

OAR 137-055-4420 is being amended to reflect legislation that allows suspension on arrears only cases, and to streamline the suspension process.

OAR 137-055-4450 is being amended to include a citation to statute.

OAR 137-055-4455 is being amended to update the 25-year expiration to 35 years, as the result of legislative changes, and to remove superfluous language.

OAR 137-055-4620 is being amended to correct a reference to the child support guidelines and include a reference to contingent medical support.

OAR 137-055-4640 is being amended to update citations and correct references to the child support guidelines.

OAR 137-055-5110 is being amended to remove a reference to “address of record,” a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-5220 is being amended to remove a reference to “address of record,” a term which was eliminated when the rule (OAR 137-055-1180) was repealed.

OAR 137-055-6022 is being amended to clarify the priority of disbursement of arrears payments to state accounts.

OAR 137-055-6024 is being amended to clarify the priority of disbursement of arrears payment to state accounts when there are multiple cases with the same obligor.

OAR 137-055-6260 is being amended to allow the obligor to consent verbally, rather than in writing, to apply a credit balance to future child support, genetic test fees or arrears.

Rules Coordinator: Vicki Tungate

Address: Department of Justice, 494 State St., Suite 300, Salem, OR 97301

Telephone: (503) 946-6086

Department of Oregon State Police Chapter 257

Rule Caption: Clarifies which tow businesses and individuals are subject to the rules; method of recording hearings.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-24-09 | 10:30 a.m. | 255 Capitol St. Basement Conference Rm. C Salem, OR 97301 |

Hearing Officer: LT. Ethan Wilson

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Proposed Amendments: 257-050-0020, 257-050-0040, 257-050-0050, 257-050-0060, 257-050-0070, 257-050-0090, 257-050-0095, 257-050-0100, 257-050-0110, 257-050-0115, 257-050-0125, 257-050-0130, 257-050-0140, 257-050-0145, 257-050-0150, 257-050-0155, 257-050-0157, 257-050-0170, 257-050-0180, 257-050-0200

Last Date for Comment: 11-20-09

Summary: These amendments will make permanent the amendments contained in the temporary rules which became effective August 6, 2009. The administrative rules in existence prior to the temporary rule amendments referred to the undefined terms of “approved tow business,” “authorized tow business,” and “registered tow business,” as well as the defined terms of “tow business” and “qualified tow business.” Additionally, the rules required that “tow businesses” (when applying for a letter of appointment), or “qualified tow businesses” (after having received a letter of appointment) must be licensed as a “separate legal entity.” Moreover, under ORS Chapter 648, an “entity” for purposes of licensing includes domestic corporations but not assumed business names. The Department currently has several “qualified tow businesses” on the non-prefer-

NOTICES OF PROPOSED RULEMAKING

ence tow rotation list that operate under assumed business names. These rules clearly identify which tow businesses may conduct non-preference tows on behalf of the Department and create a clearer distinction between “tow businesses” generally and “qualified tow businesses” in particular, and clarify that “qualified tow businesses” include tow businesses that operate under assumed business names. These rules further clarify that tow businesses acting through their authorized agents or representatives must complete applications for letters of appointment and certify compliance with all applicable laws and the Department’s administrative rules. These rules also clarify when the Department shall deny, suspend, or revoke either the application of a tow business, or the letter of appointment of a qualified tow business, when the tow business, qualified tow business, or owner or employee of a tow business or qualified tow business, is convicted of a felony conviction. Finally, these rules delete the requirement that Departmental hearings must be recorded on tape, and allows the Department to record hearings by any means, including digital recording.

Rules Coordinator: Cort Dokken
Address: Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97301
Telephone: (503) 934-0228

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

Rule Caption: Permanently adopt Oregon’s new novelty/toylike lighter rules.

Stat. Auth.: 2009 HB 2365

Stats. Implemented: 2009 HB 2365

Proposed Adoptions: 837-046-0000, 837-046-0020, 837-046-0040, 837-046-0060, 837-046-0080, 837-046-0100, 837-046-0120, 837-046-0140, 837-046-0160, 837-046-0180

Last Date for Comment: 11-20-09

Summary: The purpose of these rules is to permanently adopt Oregon’s novelty/toylike lighter rules.

Rules Coordinator: Pat Carroll

Address: Department of Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305

Telephone: (503) 934-8276

.....
**Department of Public Safety Standards and Training
Chapter 259**

Rule Caption: Adopts Minimum Standards for Training DOC Correctional Officers.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-23-09 | 9 a.m. | 4190 Aumsville Hwy SE Salem OR 97317 |

Hearing Officer: Bonnie Narvaez

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-008-0025

Last Date for Comment: 11-23-09, Close of Hearing

Summary: Adopts minimum standards for training correctional officers who are employed by Department of Corrections.

Rules Coordinator: Bonnie Narvaez

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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Rule Caption: Housekeeping — Plain Language Standards.

Stat. Auth.: ORS 181.630 & ORS 181.640

Stats. Implemented: ORS 181.630 & ORS 181.640

Proposed Amendments: 259-008-0000

Last Date for Comment: 11-23-09, Close of Business

Summary: The Oregon Legislature enacted legislation (HB 2702) during the 2007 session, requiring written documents to conform to plain language standards.

Rules Coordinator: Bonnie Narvaez
Address: 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2431

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Rule Caption: Adopts Minimum Standards for Training DOC Correctional Officers and Amends Supervision and Middle Management Training.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-008-0025

Last Date for Comment: 11-23-09, 5 p.m.

Summary: Adopts minimum standards for training correctional officers who are employed by Department of Corrections.

Amends Supervision and Middle Management training requirements for law enforcement officers who are appointed, promoted or transferred into a supervisory or middle management position.

Rules Coordinator: Bonnie Narvaez

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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**Department of Revenue
Chapter 150**

Rule Caption: Inheritance tax extension; 2009 legislation conformity; 1099 filing requirement; “moist snuff” defined; “Oregon sales” defined.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-23-09 | 10 a.m. | 955 Center St. NE Fishbowl Conf. Rm. Salem, OR 97301 |

Hearing Officer: Staff

Stat. Auth.: ORS 305.100 & 314.280

Stats. Implemented: ORS 118.225, 314.280, 314.360, 314.610, 315.204, 315.262, 317.090, 917.097, 317.326 & 323.500

Proposed Adoptions: 150-323.500(9)

Proposed Amendments: 150-118.225, 150-314.280(N), 150-314.360, 150-315.204-(A), 150-315.262, 150-317.090, 150-317.097

Proposed Repeals: 150-305.290, 150-314.610(4), 150-317.326, 150-323.500(9)(T)

Last Date for Comment: 11-23-09, Close of Hearing

Summary: 150-118.225, *Extension of Time to Pay Tax*, is amended to provide that stock may not be used as collateral if an estate requests an extension of time to pay tax under ORS chapter 118.

150-305.290 is repealed as obsolete following changes in federal bankruptcy laws.

150-314.280-(N), *Modified Factors for Financial Organizations*, is amended to conform to statutory changes made by SB 180 (2009 Oregon Laws, chapter 401), which replaced references to “financial organizations” with “financial institutions.”

150-314.360, *Information Return*, is amended to provide that persons who issue Forms 1099 must in some cases file copies of those forms with the department.

150-314.610(4), *Financial Organizations: Definition of “Investment Company”*, is repealed due to statutory changes made by SB 180.

150-315.204-(A), *Dependent Care Credits: General Information*, is amended to reflect statutory changes made in 2009 that extended the date on which the credit is scheduled to sunset.

150-315.262, *Working Family Childcare Credit*, is amended to reflect a 2009 legislative change to the definition of “qualifying child.”

150-317.090, *Minimum Tax*, is amended to clarify the meaning of “Oregon sales” for purposes of the minimum tax changes contained in HB 3405. The statute is also amended to reflect HB 3409’s provision that the corporate minimum tax is not applied to each affiliate in a consolidated filing but instead is imposed once per return. Because HB 3406 is subject to a referendum vote on January 26, 2010, the department will consider public comment on the proposed

NOTICES OF PROPOSED RULEMAKING

amendment but will not adopt the rule until the outcome of the election is final.

150-317.097, *Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit*, is amended to reflect 2009 statutory changes.

150-317.326, *Adjustment to Basis for Recognized Gain*, is repealed as the corresponding statute has been repealed.

150-323.500(9), *Definition of Moist Snuff*, is adopted to provide guidance as to the types of tobacco products that are “moist snuff” in the context of HB 2672 (2009 Oregon Laws, chapter 717) and the temporary rule is repealed.

Rules Coordinator: Debra L. Buchanan

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

Telephone: (503) 945-8653

Rule Caption: Value transmittal, veterans program requirements, exemption requirements, certification, standing for appeal and historic property.

| | | |
|--------------|--------------|--|
| Date: | Time: | Location: |
| 11-23-09 | 10 a.m. | 955 Center St. NE Fishbowl Conf. Rm. Salem, OR 97301 |

Hearing Officer: Staff

Stat. Auth.: ORS 305.100 & 358.505

Stats. Implemented: ORS 306.126, 307.260, 307.270, 307.330, 307.547, 308.875, 309.100, 311.668, 311.688, 311.689, 311.691, 311.706 & 358.505

Proposed Adoptions: 150-307.547, 150-309.100-(D), 150-358.505

Proposed Amendments: 150-306.126(2), 150-307.330, 150-307.270(1)-(A), 150-308.875 (A), 150-311.668(1)(a)-(A), 150-311.668(1)(a)-(B), 150-311.688, 150-311.689, 150-311.691, 150-311.706

Proposed Ren. & Amends: 150-307.250(1)(b) to 150-307.260(3)

Last Date for Comment: 11-23-09, Close of Hearing

Summary: 150-306.126(2), *Transmission of the Values for Principal and Secondary Industrial Properties*, is amended to specify the types of information included in the Value Transmittal Sheet, which is sent to county assessors for all Principle and Secondary Industrial properties valued by the department.

150-307.250(1)(b) is amended and renumbered to 150-307.260(3), *Physician Certification of Disability for Exemption*. The amendment clarifies the filing requirements related to the physician’s certificate annual filing requirements once the veteran has filed for the property tax exemption as described under ORS 307.250(1)(b) and is age 65.

150-307.270(1)-(A), *Property to Which Veteran’s Exemption Applies*, is amended to define “by reason of health” and “basic life needs” for purposes of this exemption. The rule also expands reasons for which a taxpayer may be away from home by reason of health and continue to qualify for the exemption. The rule includes an example of a qualifying temporary absence and an example of an absence by reason of health.

150-307.330, *Exemption of Buildings, Structures and Machinery or Equipment during Construction*, clarifies which property is eligible for exemption under the “Commercial Facilities Under Construction” statute, ORS 307.330. The rule is amended to clearly provide that “modification” of an existing building or structure does not qualify for exemption under ORS 307.330 as the statute states that only “each new building or structure or an addition to an existing building or structure is exempt from taxation.” The amendment also reflects an Oregon Tax Court decision (*North Harbour Corporation v. DOR*) by making clear that the statute does not exclude a one-time income from the sale of property and may apply to property such as a condominium development.

150-307.547, *Certification of Nonprofit Corporation Low Income Housing Exemption to County Assessor*, specifies a latest date by which the governing body must certify the Nonprofit Corporation

Low Income Housing property tax exemption to the county assessor.

150-308.875-(A), *Manufactured Structure Classified as Real or Personal Property*, conforms the rule to statutory changes made by the 2009 legislature to ORS 308.875.

150-309.100-(D), *Definition of Person Who Holds an Interest in the Property and Procedures for Transfers of Ownership or Interest*, is amended to clarify what is meant by “a person who holds an interest” for purposes of appealing to a local board of property tax appeals (BOPTA). The proposed rule provides that a petitioner must: (1) Be an owner or “person who holds an interest” at the time the petition is filed; (2) Have held an interest in the property that obligates the person to pay the taxes imposed on the property on or after July 1 but prior to the time the petition is filed; or (3) Have gained standing as one of the above by the last day for filing a petition with BOPTA.

150-311.668(1)(a)-(A), *Requirements to Qualify for Senior Citizen’s Property Tax Deferral* — The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.668(1)(a)-(B), *Requirements to Qualify for Disabled Citizen’s Property Tax Deferral* — The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.688, *Election by Spouse to Continue Tax Deferral* — The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.691, *Taxes Unpaid Before Approval of Senior Deferral Application* — The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.706, *Requirements to Qualify for Senior Citizen’s Special Assessment Deferral* — The rule is amended to reflect 2007 legislation (HB 2007), which authorized creation of registered domestic partnerships and provided that registered domestic partners have the same privileges, immunities, rights, benefits and responsibilities as married persons.

150-311.689, *Annual Income Requirements to Continue Property Tax Deferral*, is amended to reflect a court ruling stating that income of a claimant’s spouse cannot be considered in the determination of the deferral claimant’s individual federal adjusted gross income, if the deferral claimant’s spouse does not file a joint claim for deferral.

150-358.505 *Determining Value of Historic Property Qualified for Special Assessment*, clarifies the correct procedure for calculating specially assessed and maximum specially assessed values for historic property.

Rules Coordinator: Debra L. Buchanan

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

Telephone: (503) 945-8653

Department of Transportation
Chapter 731

Rule Caption: Revisions to OARs governing the Oregon Innovative Partnerships Program.

Stat. Auth.: ORS 184.616, 184.619 & 367.824

Stats. Implemented: ORS 367.800–367.826

Proposed Adoptions: 731-070-0245

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 731-070-0010, 731-070-0020, 731-070-0030, 731-070-0050, 731-070-0055, 731-070-0060, 731-070-0080, 731-070-0110, 731-070-0120, 731-070-0130, 731-070-0140, 731-070-0160, 731-070-0170, 731-070-0180, 731-070-0190, 731-070-0200, 731-070-0210, 731-070-0220, 731-070-0240, 731-070-0250, 731-070-0260, 731-070-0280, 731-070-0295, 731-070-0300, 731-070-0320, 731-070-0350, 731-070-0360

Proposed Repeals: 731-070-0270

Proposed Ren. & Amends: 731-070-0070 to 731-070-0195

Last Date for Comment: 11-23-09

Summary: ORS 367.800 established the Oregon Innovative Partnerships Program to develop partnerships with private entities or units of local government for expedited project delivery and innovation in transportation projects. These rules are being revised to reflect the 2007 tolling legislation, incorporate a temporary rule promulgated in 2009 and make certain technical clarifications intended to streamline the proposal process including:

- Addition of definitions of “local government,” “sensitive business, commercial or financial information,” and “tollway” in section 0010;

- Expanding ODOT’s discretion to consider and weigh factors, and the require or waive the requirement to include certain kinds of information in 0020 and throughout the rules;

- In 0050 and following, enabling competition based on unsolicited Detailed Proposals as well as unsolicited Conceptual Proposals placing responsibility for selection of proposals with the Director and leaving the Commission to approve or disapprove the Director’s selection;

- In 0210, changing the reporting requirements with regard to identifying Major Subcontractors;

- In 0250, changing the solicitation process by eliminating all of the process requirements that had been included and simply providing that ODOT can specify the proposal content and selection criteria in the solicitation itself; and

- In 0300, giving ODOT discretion to pay for work product developed in the course of developing a proposal.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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

Rule Caption: Describes Circumstances Under Which DMV will Provide a Receipt Notice of Sale or Transfer of a Vehicle.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-23-09 | 1 p.m. | Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR |

Hearing Officer: Davis Eyerly

Stat. Auth.: ORS 184.616, 184.619, 803.112, 803.113, 803.117 & 2009 OL Ch. 579

Stats. Implemented: ORS 803.112, 803.113, 803.117 & 2009 OL Ch. 579

Proposed Amendments: 735-020-0080

Last Date for Comment: 11-23-09

Summary: This rulemaking is needed to implement legislation enacted by the 2009 Legislative Assembly:

Chapter 551, Oregon Laws 2009 amends ORS 803.113 and 803.117, respectively. As amended, ORS 803.113 gives DMV rule-making authority to specify when it will issue a receipt that notice of transfer of an interest in a vehicle has been submitted to DMV. DMV proposes to amend OAR 735-020-0080 to specify when a receipt will be issued.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: Motor Vehicle Insurance Issues — Verification and Proof of Good Faith Belief; Future Financial Responsibility Certificate.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-17-09 | 1 p.m. | DMV Headquarters Conference Rm. 123 1905 Lana Ave Salem, OR |

Hearing Officer: Liz Woods

Stat. Auth.: ORS 184.616, 184.619, 802.010, 806.011, 806.012, 806.150, 806.245, 809.380, 809.417 & 809.450

Stats. Implemented: ORS 806.011, 806.012, 806.075, 806.150, 806.240, 806.245, 806.270, 809.417, 809.380 & 809.450

Proposed Amendments: 735-050-0050, 735-050-0060, 735-050-0062, 735-050-0064, 735-050-0070, 735-050-0080, 735-050-0120

Last Date for Comment: 11-23-09

Summary: Chapter 257, Oregon Laws 2009 (SB 127) amended statutes relating to financial responsibility requirements for motor vehicles. Through this rulemaking, DMV proposes to amend its administrative rules to implement these changes and to clarify language in these administrative rules.

OAR 735-050-0050 deals with the content of a uniform financial responsibility certificate (SR-22). The SR-22 is a standard form used nationwide by insurance carriers when they are required to file a certificate of insurance with the state on behalf of an insured. The proposed amendments to OAR 735-050-0050 update requirements for the SR-22 to implement SB 127 amendments and recognize an additional standard form issued by the American Association of Motor Vehicle Administrators (AAMVA), and to clarify language.

OAR 735-050-0060 is being amended to update the title of the Unit that initially determines if a person had a reasonable and good faith belief of compliance with financial responsibility requirements. Other changes are being made to clarify language.

DMV proposes to amend 735-050-0062, 735-050-0064, 735-050-0070, 735-050-0080 and 735-050-0120 to clarify and update terms.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: Implements chapter 551, Oregon Laws 2009, relating to Vehicle Dealer Consignment Practices and Dealer-Only Auctions.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-23-09 | 1 p.m. | Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR |

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.600, 803.625, 821.060, 821.080, 822.015, 822.035, 822.040, 822.060 & 2009 OL Ch. 551

Stats. Implemented: ORS 822.005–822.080 & 2009 OL Ch. 551

Proposed Adoptions: 735-150-0042, 735-150-0047

Proposed Amendments: 735-150-0010, 735-150-0020, 735-150-0110

Last Date for Comment: 11-23-09

Summary: This rulemaking is needed to implement legislation enacted by the 2009 Legislative Assembly:

In part, chapter 551, Oregon Laws 2009 amends ORS 822.015, to exempt out-of-state licensed vehicle dealers and their authorized

NOTICES OF PROPOSED RULEMAKING

representatives from Oregon vehicle dealer certification requirements when participating in a vehicle auction held by a certified Oregon vehicle dealer (dealer-only auction). The legislative act also amends ORS 822.060 to require DMV to adopt rules specifying which persons and which vehicle dealers may take and sell vehicles on consignment from other jurisdictions and to regulate the taking and selling of consigned vehicles.

Pursuant to the legislation, DMV proposes to adopt OAR 735-150-0042 and 735-150-0047, respectively, to: (1) specify who may take and sell vehicles from other jurisdictions; and (2) establish procedures and requirements for out-of-state licensed vehicle dealers and their authorized representatives to participate in a dealer-only auction.

DMV currently has regulatory authority sufficient to meet the requirements specified under amended ORS 822.060. This includes authority to impose sanctions and civil penalties against dealers and unlicensed dealers found in violation of applicable laws and rules. Consequently, additional rulemaking on this matter is not needed at this time.

The proposed amendments of OAR 735-150-0010, 735-150-0020 and 735-150-0110 update terms, citations and definitions consistent with the legislative amendments. Other non-substantive changes are made to simplify rule language.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: Convictions Used in Driver Improvement and Other Programs Where the Sanction Based on Cumulative Convictions.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 809.480 & 809.605

Stats. Implemented: ORS 807.240, 807.270, 809.480, 809.600(2) & 809.605

Proposed Amendments: 735-064-0220, 735-072-0035

Last Date for Comment: 11-23-09

Summary: ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes.

OAR 735-072-0035 is used only in the Driver Improvement Programs and contains a list of traffic offenses where it takes five offenses listed to equal one driver improvement violation.

During the 2009 legislative session, several bills were enacted creating new traffic offenses or amending current traffic offense statutes where changes are required in OAR 735-064-0220 and 735-072-0035. DMV proposes to amend OAR 735-064-0220 and 735-072-0035 to implement these laws.

DMV proposes to further amend these two rules by listing convictions that involve all-terrain vehicles, motor assisted scooters, snowmobiles, equipment violations and local ordinances to OAR 735-072-0035. These convictions will no longer be used for determining a habitual offender revocation, hardship and probationary permit violations, and to describe a motor vehicle traffic control violation. Instead, these convictions will be listed in OAR 735-072-0035 to determine when a person has attained a driver improvement violation under both the Adult and Provisional Driver Improvement Programs. DMV also proposes to remove any conviction that carries its own suspension or revocation of driving privileges sanction, e.g. failure to install or use an ignition interlock device. Other proposed changes move repealed statutory references and obsolete ACD codes

into new sections. Other changes, such as listing offenses in alphabetical order, are made for clarity.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: ODOT intends to amend rules regarding acceptable payment methods from motor carriers.

Stat. Auth.: ORS 30.071, 184.616, 184.619, 823.011 & 825.502

Stats. Implemented: ORS 30.071, 825.498 & 825.502

Proposed Amendments: 740-055-0020

Last Date for Comment: 11-23-09

Summary: OAR 740-055-0020 describes payment options for motor carriers. The rule needs to be updated to reflect current practice and to address a recent situation when an agent for a motor carrier remitted payment on behalf of the motor carrier with a non-sufficient fund (NSF) check. The current rule does not contemplate such action and is being amended to place responsibility on the motor carrier when an agent provides a NSF check. Other changes clarify that the Department will accept payment from an agent, and a motor carrier that is not registered with ODOT may pay fees and taxes by credit card.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: ODOT intends to amend rules readopting an international agreement and clarifying audit procedures.

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

Stats. Implemented: ORS 825.490, 825.494 & 825.555

Proposed Amendments: 740-200-0040, 740-200-0045

Last Date for Comment: 11-23-09

Summary: The International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants to ensure Oregon remains current with national and international IFTA standards. The proposed changes to OAR 740-200-0045, which talks about standard industry miles per gallon (MPG) averages and how they may be used to determine fuel tax liability when a licensee fails to maintain or provide adequate records, are needed to provide a progressive assessment approach an auditor may use. ODOT auditors were finding that in some cases when they went back and did a second audit and the licensee's record keeping had not improved, they were actually rewarding them for a lack of records. The suggested rule change allows auditors to have the discretion to use the industry average MPG or the default 4.0 MPG based on their understanding of the entire situation.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

NOTICES OF PROPOSED RULEMAKING

Land Conservation and Development Department Chapter 660

Rule Caption: Permanent Rules Adopting management plan for Metolius Area of Critical State Concern.

Date: 12-3-09 **Time:** 5:30-7 p.m. **Location:** Camp Sherman Community Hall
Forest Service Rd 1419
Camp Sherman, OR

Hearing Officer: Richard Whitman

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.405 & 2009 OL Ch. 712

Proposed Adoptions: 660-043-0100

Last Date for Comment: 12-3-09

Summary: The proposed permanent rulemaking adopts OAR chapter 660 division 43, Areas of Critical State Concern (ACSC). 660-043-0100 relates exclusively to the Metolius Area of Critical State Concern and its management plan, as directed by the 2009 legislature in HB 3298. The legislature approved the Metolius Area of Critical State Concern designation and management plan as submitted by the Land Conservation and Development Commission in March, 2009. The legislature approved the ACSC and management plan, and directed the LCDC to adopt the management plan, by administrative rule, with no changes, except for three specific changes. The management plan prohibits new Statewide Planning Goal 8 destination resorts, new golf courses and certain new residential, commercial or other new uses including dwelling units that cause an average annual consumptive use of water in excess of the amount stated in the legislation, depending whether the land is in Area 1 or Area 2 of the management plan referenced by the legislation.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 373-0050, ext. 322

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**Land Use Board of Appeals
Chapter 661**

Rule Caption: Amends Land Use Board of Appeal's administrative rules to implement fee increases in HB 3199.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830

Proposed Amendments: 661-010-0015, 661-010-0038, 661-010-0040, 661-010-0050

Last Date for Comment: 12-1-09

Summary: OAR 661-010-0015 is being amended to conform to HB 3199 (2009) which increases the filing fee for a notice of intent to appeal to \$200 from \$175.

OAR 661-010-0038 is being amended to conform to HB 3199 (2009) which imposes a \$100 filing fee for state agency briefs.

OAR 661-010-0050 is being amended to conform to HB 3199 (2009) which imposes a \$100 filing fee for motions to intervene.

Rules Coordinator: William F. Wilson

Address: Land Use Board of Appeals, 550 Capitol St. NE, Suite 235, Salem, OR 97301-2552

Telephone: (503) 378-2986

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**Landscape Architect Board
Chapter 804**

Rule Caption: Require annual payments of business renewal fees by splitting in half the current fee which is paid biennially.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.365

Proposed Amendments: 804-040-0000

Last Date for Comment: 11-30-09, Close of Business

Summary: The business fee is currently set at \$225.00. The current Administrative Rule language does not declare if it is an annual or biennial fee but reminder notices have been issued on a biennial basis. Per a discussion and vote of the Board at the May 8, 2009

Board Meeting, an annual fee was approved. That fee was set at one-half of the current \$225 fee collected every other year. By this action, the annual fee will be set at \$112.50. There is no fee increase or decrease in the current amount. This revision will allow for an annual payment of half of the current amount for the two-year period.

Rules Coordinator: Susanna Knight

Address: 707 13th Street SE, Salem, OR 97301

Telephone: (503) 589-0093

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**Landscape Contractors Board
Chapter 808**

Rule Caption: Clarifies definitions and notification and continuing education reporting requirements; removes planting of annuals, perennials and bulbs from definition of maintenance; house-keeping.

Date: 11-23-09 **Time:** 9 a.m. **Location:** LCB Office
2111 Front St. NE, Suite 2-101
Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 183 & 671

Proposed Amendments: 808-002-0200, 808-002-0220, 808-002-0500, 808-002-0620, 808-003-0020, 808-003-0055, 808-003-0060, 808-003-0075, 808-003-0080, 808-003-0085, 808-003-0100, 808-003-0125, 808-003-0210, 808-005-0020, 808-040-0020, 808-040-0060

Proposed Repeals: 808-003-0105

Last Date for Comment: 11-23-09, Close of Hearing

Summary: 808-002-0200 Removing the adjustment of sprinkler head nozzles and programming of irrigation controllers from the definition of Casual, Minor, or Inconsequential work. It is being moved to the definition of maintenance; a license will not be required to perform these functions. It also clarifies the repair or maintenance of drainage or irrigation systems is not included in the definition; a license as a landscape contracting business or plumber is required to perform these functions.

808-002-0220 Clarifying to show that a claim must be for work performed subject to ORS 671.510 to 671.760 and within the boundaries of Oregon.

808-002-0500 Eliminates "when performed by a licensed landscape contracting business" when installing fences, decks, arbors, patios, landscape edging, driveways, walkways and retaining walls; it is still landscaping work, even if performed by an unlicensed person.

808-002-0620 Updating to remove decorative vegetation and placing it with trees; remove the replacement of lawns, etc under \$500 because this is listed in ORS 671.530(3) as an exemption to the statute; an exemption does not make this maintenance work. It is part of the Casual, Minor and Inconsequential definition.

808-003-0020 Updating to include other business entities that must be registered with the Secretary of State and what the consequences are for non registration.

808-003-0055 Updating rule due to a portion of the exam now being open book and the exam being proctored by PSI.

808-003-0060 Updates rule for change of exam section name from Laws & Rules to Laws, Rules and Business Practice

808-003-0075 Deletes requirement that the agency will notify the applicant by mail of exam scores. The exam is now proctored by a third party who distributes the scores immediately upon taking the exam.

808-003-0080 Changes scheduling a review of exam with the board office to the designated proctors.

808-003-0085 Deletes requirement that upon caught cheating the applicant must take all future exams in the board office. The board no longer gives the examination in the board office. It further states the designated proctor will not grade that exam.

NOTICES OF PROPOSED RULEMAKING

808-003-0100 Adds entity: Limited Partnership or joint venture and trust to the list of names a license may be issued under. It also adopts the language from 808-003-0105 for clarification.

808-003-0105 This rule is being repealed and the language is being placed in 808-003-0100.

808-003-0125 Updates notification of address change rule to require a notification from both the individual landscape construction professional and the landscape contracting business if a sole proprietor. Also requires notification of a change of managing owner or managing employee and a change in percent of ownership.

808-003-0210 Removes language that is duplicated incorrectly from the statute.

808-005-0020 Adding penalty for failure to notify the LCB of a new or additional business name or personal surname for sole proprietors under which the business is conducted.

808-040-0020 Amends rule to require a certification that the licensee has fulfilled the CEH requirement instead of a listing of classes taken.

808-040-0060 Amends rule to requirement response to audit request and to correction of deficiencies to 21 calendar days to be consistent.

Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 378-5909, et. 223

Rule Caption: Definitions and update of licensed services regarding new legislation, Chapter 483, 2009 Oregon Law.

| Date: | Time: | Location: |
|----------|--------|---|
| 11-23-09 | 9 a.m. | LCB Office 2111 Front St. NE, Suite 2-101 Salem, OR 97301 |

Hearing Officer: Staff
Stat. Auth.: ORS 670.310 & 671.670
Other Auth.: Chapter 483, 2990 Oregon Law
Stats. Implemented: ORS 671.520 & 671.540
Proposed Adoptions: 808-002-0775, 808-002-0808, 808-002-0882, 808-002-0884, 808-002-0895
Proposed Amendments: 808-003-0040
Last Date for Comment: 11-23-09, Close of Hearing
Summary: 808-002-0775 Defines piping.

808-002-0808 Defines repair or maintenance work on piping for an irrigation system.

808-002-0882 Defines under contract for the construction of a new dwelling.

808-002-0884 Defines use of compressed air.

808-002-0895 Defines with the intent of offering for sale.

808-003-0040 Updates services of license types to include maintenance of irrigation systems with the use of compressed air.

Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 378-5909, ext. 223

Oregon Business Development Department Chapter 123

Rule Caption: These rules are to establish policies for mandatory compatibility with Oregon's Planning Goals.

Stat. Auth.: ORS 285B.075(A) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Proposed Amendments: 123-008-0005, 123-008-0010, 123-008-0015, 123-008-0020, 123-008-0025, 123-008-0030
Last Date for Comment: 11-21-09

Summary: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business Development Department and created the Infrastructure Finance Authority, a separate entity with-

in the Department. In addition these rules have been reviewed for clarity.

Rules Coordinator: Janelle Lacefield
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

Rule Caption: These rules cover the operation of the Oregon Business Development Fund.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.050-285B.098
Proposed Amendments: 123-017-0007, 123-017-0008, 123-017-0010, 123-017-0015, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0037, 123-017-0055
Last Date for Comment: 11-21-09

Summary: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business development Department. In addition these rules have been reviewed for clarity and the fees and charges section has been revised.

Rules Coordinator: Janelle Lacefield
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

Rule Caption: These rules have been edited for clarity.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Proposed Amendments: 123-022-0070, 123-022-0080, 123-022-0090, 123-022-0100, 123-022-0110

Last Date for Comment: 11-21-09
Summary: The Small Business Development Center rules have been revised to clean-up old language and ensure compliance with statute. In addition a requirement has been added to evaluate applicants annual work plans.

Rules Coordinator: Janelle Lacefield
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

Rule Caption: These rules have changed methodology used in determining a distressed area.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Proposed Adoptions: 123-024-0045
Proposed Amendments: 123-024-0011, 123-024-0031
Last Date for Comment: 11-21-09

Summary: These rules have changed methodology used in determining a distressed area. In addition, a new temporary method has been added to better suit current economic conditions.

Rules Coordinator: Janelle Lacefield
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

Rule Caption: The Water/Wastewater financing rules have changed to comply with 2009 Legislature.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.560-285B.599
Proposed Amendments: 123-043-0000, 123-043-0010, 123-043-0015, 123-043-0025, 123-043-0035, 123-043-0055, 123-043-0065, 123-043-0075, 123-043-0085, 123-043-0095, 123-043-0102, 123-043-0105, 123-043-0115

Proposed Repeals: 123-043-0045
Last Date for Comment: 11-21-09

NOTICES OF PROPOSED RULEMAKING

Summary: These rules have been revised to include the new Infrastructure Finance Authority brought from the 2009 Legislative session through HB 2152 and revised for clarity.

Rules Coordinator: Janelle Lacefield

Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

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Rule Caption: These rules have been edited for clarity.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)

Stats. Implemented: ORS 285C.060, 285C.175, 285C.215, 285C.606 & 461.740

Proposed Amendments: 123-070-1000, 123-070-1100, 123-070-1150, 123-070-1300, 123-070-1500, 123-070-1600, 123-070-1800, 123-070-1900, 123-070-2300, 123-070-2400

Proposed Repeals: 123-070-1200, 123-070-1700, 123-070-2000

Last Date for Comment: 11-21-09

Summary: The First Source Hiring Agreement rules have been revised to clean up and repeal old language and to ensure compliance with statute. Several rules have been removed because they are unnecessary.

Rules Coordinator: Janelle Lacefield

Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301

Telephone: (503) 986-0036

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Oregon Criminal Justice Commission Chapter 213

Rule Caption: Amends Oregon Sentencing Guidelines in light of HB 3508 (2009) and SB 1087 (2008).

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667, HB 3508 (2009) & HB 1087 (2008)

Proposed Adoptions: 213-018-0022

Proposed Amendments: 213-017-0004, 213-017-0006

Proposed Repeals: 213-017-0004(T), 213-017-0006(T), 213-018-0022(T)

Last Date for Comment: 12-8-09

Summary: The Oregon Legislature passed SB 1087 on February 22, 2008. The legislature referred SB 1087 to a vote of the people at the general election of November 4, 2008 through Ballot Measure 57. Ballot Measure 57 was passed by a majority of the voters at the general election. Section 10 of SB 1087 (2008 Oregon Laws chapter 14) changed the crime of Mail Theft or Receipt of Stolen Mail under ORS 164.162 from a Class A misdemeanor to a Class C felony. The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. The rule change classifies ORS 164.162 as a Crime Category 6 on the Crime Seriousness Scale. This rule change has been approved by the legislature, as required under ORS 137.667(4), in HB 2665 (2009).

The Oregon Legislature voted to suspend implementation of portions of Measure 57 in SB 3508 (2009). Following HB 3508 (2009), Mail Theft or Receipt of Stolen Mail under ORS 164.162 will be classified as a felony effective for sentences imposed prior to February 15, 2010 and for sentences imposed for crimes committed on or after January 1, 2012. During the intervening time period, that portion of Measure 57 that classified Mail Theft or Receipt of Stolen Mail under ORS 164.162 as a felony is suspended and that crime becomes a Class A misdemeanor. The rule change contains language outlining this.

HB 3508 (2009) became effective on July 1, 2009. Section 39 of HB 3508 reclassifies the crime of Assault in the Third Degree from a Class C felony to a Class B felony, if that crime resulted from the operation of a motor vehicle and the defendant was the driver of a

motor vehicle and was driving while under the influence of intoxicants. Section 40 of HB 3508 (2009) requires CJC to classify Assault in the Third Degree that is committed from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving under the influence of intoxicants, as a crime category 8 on the sentencing guidelines grid. The rule amendments and adoption classifies ORS 163.165(2)(b) as a Crime Category 8 on the Crime Seriousness Scale as required by the legislature. The rule changes also include numbering changes necessitated by adding to the list of numerically ordered crimes, and updated statutory citations.

Rules Coordinator: Craig Prins

Address: Oregon Criminal Justice Commission, 885 Summer St. NE, Salem, OR 97301

Telephone: (503) 378-4830

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Oregon Department of Education Chapter 581

Rule Caption: Modifies rule relating to public school employee criminal background checks.

Date:
11-23-09

Time:
1 p.m.

Location:
255 Capitol St. NE
Rm. 251 A/B
Salem, OR

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Proposed Amendments: 581-021-0500

Last Date for Comment: 11-23-09, 5 p.m.

Summary: The 2009 legislature enacted SB 46. The rule amendments implement this bill. The rules require school districts, education services districts, the Oregon School for the Deaf, the Youth Corrections Education Program and public charter schools to request criminal background checks of all nonlicensed school employees. The rule amendments allow an educational entity to hire someone who has knowingly made a false statement as to a crime.

Rules Coordinator: Diane Roth

Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

Telephone: (503) 947-5791

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Rule Caption: Modifies provisions relating to private career schools.

Date:
11-23-09

Time:
1 p.m.

Location:
255 Capitol St. NE
Rm. 251 A/B
Salem, OR

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 345.020

Stats. Implemented: ORS 345.010–345.450

Proposed Adoptions: 581-045-0003

Proposed Amendments: 581-045-0001, 581-045-0006, 581-045-0062

Last Date for Comment: 11-23-09, 5 p.m.

Summary: The 2009 legislature enacted HB 2108. The rules implement this legislation including provisions relating to initial licenses, conditional licenses, school ownership changes and criminal background checks of schools that enrolled persons under the age of 18.

Rules Coordinator: Diane Roth

Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

Telephone: (503) 947-5791

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Rule Caption: Modifies rule relating to criminal background checks of private school employees.

Date:
11-23-09

Time:
1 p.m.

Location:
255 Capitol St. NE
Rm. 251 A/B
Salem, OR

Hearing Officer: Cindy Hunt

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 326.603
Stats. Implemented: ORS 326.603
Proposed Amendments: 581-045-0522, 581-045-0586
Last Date for Comment: 11-23-09, 5 p.m.
Summary: The 2009 legislature enacted SB 46. The rule amendments implement this bill. The rule amendments allow a private school to request a criminal background check of all unlicensed personnel not just those with direct, unsupervised contact with students.
Rules Coordinator: Diane Roth
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

Oregon Government Ethics Commission
Chapter 199

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

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 12-4-09 | 9 a.m. | 3218 Pringle Rd. SE, Suite 220 Salem, OR 97302 |

Hearing Officer: Virginia Lutz

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290, 244.020, 244.025, 244.040, 244.060, 244.100, 171.725, 171.740, 171.745, 171.750, 171.752 & 171.992

Proposed Adoptions: 199-005-0001

Proposed Amendments: 199-005-0003, 199-010-0005, 199-010-0025, 199-010-0035, 199-010-0070, 199-010-0075, 199-010-0080, 199-010-0085, 199-010-0090, 199-010-0095, 199-010-0100, 199-010-0150

Last Date for Comment: 12-4-09, 5 p.m.

Summary: Adopts rules interpreting 2009 revisions to ORS Chapter 244 and 171.725–171.785, and amends rules to address various housekeeping changes. The rules address the following topics: defining additional terms to be used in ethics law and lobby regulation law; interpreting the definition and application of legislative and administrative interest; providing guidelines for compliance in expenditure reporting for lobbyists and the clients or employers they represent; and providing explanation of the application of penalties through charging instruments.

Rules Coordinator: Virginia Lutz

Address: Oregon Government Ethics Commission, 3218 Pringle Rd. SE, Suite 220, Salem, OR 97302

Telephone: (503) 378-5105

Oregon Health Licensing Agency,
Board of Cosmetology
Chapter 817

Rule Caption: Increase Board of Cosmetology fees, including business authorizations.

Stat. Auth.: ORS 676.605, 676.606, 676.615 & 690.235

Stats. Implemented: ORS 676.605, 676.606, 676.615 & 690.235

Proposed Amendments: 817-040-0003

Last Date for Comment: 11-28-09

Summary: The Oregon Health Licensing Agency completed a comprehensive cost allocation analysis in 2008 that, evaluated expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth attrition ratios for each program. Overall agency operational costs, state agency assessments and inflation factors were also reviewed and factored into the new fee structure. The agency withdrew fee increase for the Board of Cosmetology in October 2008 to allow stakeholders time to implement the fee increase for recent graduates entering the cosmetology industry. The fee increase was implemented through temporary rulemaking on July 1, 2009 to avoid a revenue shortfall. The temporary rule will expire on December 25, 2009.

Proposed rules to permanently increase fees was published in the Oregon Bulletin on August 1, 2009. Public comment was collected

from August 1, 2009 to August 31, 2009. Feedback was received from a variety of interested parties in opposition to the proposed fee increases. After further review of the cost allocation for cosmetology, the agency and board reformulated the temporary fee structure to decrease the overall cost of certification to recent graduates using a phase-in method.

Business authorizations have not been increased in a decade, while the cost of doing business has increased. The agency and board are proposing an increase for business authorizations including faculty, independent contractor, certificate of identification and temporary facility. Facilities and temporary facilities will be increased from \$100 to \$150 for a two year authorization. All other business authorizations will be increased by an estimated 25% for a two-year authorization.

Rules Coordinator: Samantha Patnode

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

Telephone: (503) 373-1917

Oregon Housing and Community Services Department
Chapter 813

Rule Caption: The adoption of rules for the General Housing Account Program established by HB 2436 (2009).

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 11-23-09 | 2 p.m. | 725 Summer St. NE, Rm 124A Salem, OR 97301 |

Hearing Officer: H. Jack Duncan

Stat. Auth.: HB 2436 (2009), ORS 458.660, 458.620 & 456.515 - 456.720

Stats. Implemented: HB 2436 (2009), 458.620 & 458.660

Proposed Adoptions: 813-055-0001, 813-055-0010, 813-055-0020, 813-055-0030, 813-055-0040, 813-055-0050, 813-055-0060, 813-055-0070, 813-055-0080, 813-055-0090, 813-055-0100, 813-055-0110

Last Date for Comment: 12-21-09, Close of Hearing

Summary: HB 2436 establishes a \$15 fee for the recording of documents in the deed and mortgage records of the counties. This bill will provide a new revenue source to be used to increase housing opportunities.

The rules as adopted creates the General Housing Account Program as a mechanism to allocate the funds for affordable housing development.

Rules Coordinator: Sandy McDonnell

Address: 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

Telephone: (503) 986-2012

Rule Caption: Amends Homeownership Assistance Program to increase homeownership among minority populations.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 11-23-09 | 2 p.m. | 725 Summer St. NE, Rm 124B Salem, OR 97301 |

Hearing Officer: H. Jack Duncan

Stat. Auth.: HB 2436 (2009), ORS 458.655 & 456.505 - 456.720

Stats. Implemented: HB 2436 (2009) & ORS 458.655

Proposed Amendments: 813-044-0000, 813-044-0010, 813-044-0020, 813-044-0030, 813-044-0040, 813-044-0050

Last Date for Comment: 12-21-09, Close of Hearing

Summary: HB 2436 (2009) establishes a \$15 fee for the recording of documents in the deed and mortgage records of the counties. This bill will provide a new revenue source to be used to increase housing opportunities.

The rule amendments will increase the focus of the Homeownership Assistance Program on minority homeownership.

Rules Coordinator: Sandy McDonnell

Address: 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

Telephone: (503) 986-2012

NOTICES OF PROPOSED RULEMAKING

Oregon Liquor Control Commission Chapter 845

Rule Caption: Adopt two rules governing new special events licenses for Oregon Distillery and Brewery-Public House licensees.

Date: 12-8-09 **Time:** 10 a.m. **Location:** 9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.200 & 471.230

Proposed Adoptions: 845-005-0413, 845-005-0414

Last Date for Comment: 12-22-09

Summary: The Commission is proposing the adoption of 2 new rules, OAR 845-005-0413 & OAR 845-005-0414. These two rules will describe the Special Events licenses that will soon be available to current Oregon Distillery licensees and Brewery-Public House licensees. The 2009 legislature passed Senate Bill (SB) 802 and House Bill (HB) 2528, effective January 1, 2010. SB 802 amends ORS 471.230 creating a new Special Events Distillery license. This new license would authorize providing only tastings of the distilled liquor manufactured by the licensee at a location other than that designated as the Distillery licensee's annually licensed premises for a period not to exceed five days. HB 2528 amends ORS 471.200 creating a new Special Events Brewery-Public House license. This new license would authorize the sale of wine, malt beverages and cider at retail for consumption on or off the licensed premises at a location other than that designated as the Brewery-Public House licensee's annually licensed premises for a period not to exceed five days. Adopting OAR 845-005-0413 Special Events Distillery License and OAR 845-005-0414 Special Events Brewery-Public House License will implement the new statutory language regarding these two new special events licenses.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Rule Caption: Amendments to redemption center rules providing clarity on convenience factors considered when approving a center.

Date: 12-15-09 **Time:** 10 a.m. **Location:** 9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 459A, 459A.735(1), (3) & (4), 459.992 & 471.730

Stats. Implemented: ORS 459A.735

Proposed Amendments: 845-020-0020, 845-020-0025, 845-020-0030

Last Date for Comment: 12-29-09

Summary: The Commission is responsible for regulation of the Beverage Container Act (Bottle Bill). Since its inception the Commission has had statutory authority to approve redemption centers if they will provide a convenient service to consumers for the return of empty beverage containers. However, in the past 30 plus years the Commission has never had to apply that authority in a review of a redemption center application. The Commission has had administrative rules since 1972 that address the approval of and the application for redemption centers (OAR 845-020-0020 & OAR 845-020-0025), and also address sanitation and cleanliness standards (OAR 845-020-0030). But, again, until now, we have never had to apply them. In anticipation of our first redemption center applications, staff undertook to review our existing redemption center rules and amend them as appropriate in an effort to clarify redemption center requirements. In preparation for this rulemaking, staff formed a pre-rulemaking advisory committee made up of our state agency partners, industry, the public, and environmental stakeholders. This group provided the Commission with valuable input into the specific standards

that should apply to prospective redemption centers. Staff recommends amending OAR 845-020-0025 to more completely reflect the key information required on an application for a redemption center as well as amending OAR 845-020-0020 so that the major factors the Commission may consider in approving a redemption center correspond with the required application information. Staff further recommends amending OAR 845-020-0030 by removing references to specific agencies that do not in fact regulate redemption centers.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Oregon Military Department, Office of Emergency Management Chapter 104

Rule Caption: Establish rules for the Uniform Tsunami Warning Signal for the Oregon Coast as enacted by the 2005 Legislative Assembly.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-13-09 | 6-9 p.m. | Community Health Education Center 2950 Sherman Ave. North Bend, OR |
| 11-14-09 | 3-5 p.m. | 9-1-1 Center Stan Sheldon Board Rm. 2311 Third St. Tillamook, OR |

Hearing Officer: Althea Turner

Stat. Auth.: ORS 401.863-401.864

Stats. Implemented: ORS 401.863

Proposed Adoptions: 104-030-0000, 104-030-0010, 104-030-0020, 104-030-0030, 104-030-0040, 104-030-0050, 104-030-0060, 104-030-0070, 104-030-0080

Last Date for Comment: 11-23-09

Summary: 104-030-0000, Purpose; 104-030-0010, Applicability; 104-030-0020, Definitions; 104-030-0030, Guidance on Tone and Signal; 104-030-0040, Guidance on Testing; 104-030-0050, Other Methods of Warning; 104-030-0060, Visual Methods of Warning; 104-030-0070, All Clear Signal; and 104-030-0080, Location of Tsunami Warning Systems.

Rules Coordinator: Cherie Zastoupil

Address: Oregon Military Department, Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062

Telephone: (503) 378-2911, ext. 22221

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Oregon Public Employees Retirement System Chapter 459

Rule Caption: Creates new rules and modifies existing rules within Division 45 — Domestic Relations Officer.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-24-09 | 2 p.m. | PERS Boardroom 11410 SW 68th Pkwy Tigard, OR |

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.465, 238.580, 238.650 7 238A.450

Stats. Implemented: ORS 238.450, 238.465 & 2007 OL Ch. 53

Proposed Adoptions: 459-045-0012, 459-045-0014, 459-045-0016, 459-045-0032, 459-045-0034, 459-045-0036

Proposed Amendments: 459-045-0001, 459-045-0010, 459-045-0020, 459-045-0030, 459-045-0040, 459-045-0050, 459-045-0060, 459-045-0080, 459-045-0090

Proposed Repeals: 459-045-0000

Last Date for Comment: 12-1-09

Summary: Create new rules to address domestic relations orders for alternate payees of members of the Chapter 238A OPSRP Pension Program Individual Account Program (IAP) and the Judge Member program. Modify existing rules to reference Chapter 238A and to streamline processes. Repeal redundant rule.

NOTICES OF PROPOSED RULEMAKING

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

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

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Oregon State Marine Board
Chapter 250

Rule Caption: Rule prohibits motorboats and float planes on Waldo Lake.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 11-23-09 | 6 p.m. | Lane Co. Public Works Goodson Rm. 3040 N Delta Hwy. Eugene, OR 97408 |
| 12-10-09 | 6 p.m. | Bend Fire & Rescue Training Center Classroom 1 63377 Jamison Rd Bend, OR 97701 |

Hearing Officer: Paul Donheffnerr

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.175

Proposed Amendments: 250-020-0221

Last Date for Comment: 12-15-09, 5 p.m.

Summary: This rule will prohibit motorboats and float planes on Waldo Lake. Exemptions include emergency landings or watercraft used for official purposes such as search and rescue, law enforcement and fire suppression with US Forest Service approval. This rule will implement the US Forest Service's plan to create the largest motor-free lake in Oregon.

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309

Telephone: (503) 378-2617

Rule Caption: Rule establishes recreational boating use in Cheadle Lake.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Proposed Amendments: 250-020-0240

Last Date for Comment: 11-30-09, 5 p.m.

Summary: The Marine Board will consider rulemaking to restrict boating on Cheadle Lake to human, sail and electric motors only.

Rules Coordinator: June LeTarte

Address: 435 Commercial Street NE #400 PO Box 14145 Salem OR 97309

Telephone: (503) 378-2617

Rule Caption: Rule will identify and classify personal flotation device (PFD) use.

Stat. Auth.: ORS 830

Other Auth.: HB 2079 (2009)

Stats. Implemented: ORS 830.215

Proposed Amendments: 250-010-0154

Last Date for Comment: 11-30-09, 5 p.m.

Summary: The 2009 Oregon Legislature passed HB 2079 directing the Marine Board to classify and identify the type of personal flotation device (PFD) used by persons on any section of waters rated class III or higher.

Rules Coordinator: June LeTarte

Address: 435 Commercial Street NE #400 PO Box 14145 Salem OR 97309

Telephone: (503) 378-2617

Rule Caption: Rule establishes 100 foot slow-no-wake zone around Foothills Park dock.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Proposed Amendments: 250-020-0032

Last Date for Comment: 11-30-09, 5 p.m.

Summary: The Marine Board will consider rulemaking to establish a 100 foot slow-no-wake zone around the new transient docks on the Willamette River at Foothills Park in Lake Oswego.

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309

Telephone: (503) 378-2617

Oregon State Treasury
Chapter 170

Rule Caption: Monthly Reporting Requirement for Bank Depositories at Increased Collateralization Level.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 11-18-09 | 2 p.m. | 350 Winter St. NE, Suite 100 Salem, OR 97301 |

Hearing Officer: Judy Whaley-Fultz

Stat. Auth.: ORS 295.018(1)(b) & 295.061(1)

Other Auth.: SB 832 (2009)

Stats. Implemented: ORS 295

Proposed Adoptions: 170-040-0110

Last Date for Comment: 11-18-09

Summary: Rule 170-040-0110 requires monthly filing of treasurer Reports when a bank depository is ordered to collateralize at an increased level, but less than 110%.

Rules Coordinator: Sally Wood

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

Telephone: (503) 378-4990

Oregon University System,
Eastern Oregon University
Chapter 579

Rule Caption: Amend special student and course fees.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 579-020-0006

Last Date for Comment: 11-23-09

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

Rules Coordinator: Lara Moore

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

Telephone: (541) 962-3368

Parks and Recreation Department
Chapter 736

Rule Caption: Historic Preservation Officer rules being amended to incorporate changes to process for special assessment of historic properties.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 12-8-09 | 6-7 p.m. | North Mall Office Bldg., Rm. 124A/B (Winter St. Entrance) 725 Summer St. NE Salem, OR |
| 12-9-09 | 6-7 p.m. | City of Portland Bureau of Planning Office 1900 SE 4th, Rm. 2500A Portland, OR |

Hearing Officer: Roger Roper

Stat. Auth.: ORS 183 & 358

Other Auth.: SB 192 (2009)

Stats. Implemented: ORS 183.341 & 358

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 736-050-0112

Proposed Amendments: 736-050-0001, 736-050-0100, 736-050-0105, 736-050-0120, 736-050-0125, 736-050-0135, 736-050-0140

Proposed Repeals: 736-050-0002, 736-050-0005, 736-050-0110, 736-050-0115, 736-050-0130, 736-050-0150

Last Date for Comment: 12-10-09, 5 p.m.

Summary: The rules governing the process for applying for and being granted a special assessment of historic property are being amended to streamline the procedures in accordance with Senate Bill 192, 75th Legislative Assembly.

Rules Coordinator: Joyce Merritt

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

Telephone: (503) 986-0756

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**Secretary of State,
Archives Division
Chapter 166**

Rule Caption: Amends records retention rule for vote by mail elections to conform with statutory requirements.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 12-22-09 | 9 a.m. | State Archives Bldg. 800 Summer St. NE Salem, OR 97310 |

Hearing Officer: Daniel Maguire

Stat. Auth.: ORS 192 & 357

Other Auth.: ORS 254.535

Stats. Implemented: ORS 192.005–192.170 & 357.805–357.895

Proposed Amendments: 166-150-0035

Last Date for Comment: 12-22-09

Summary: The rule amendment states the record retention rule for vote by mail elections to conform with the state and federal statuto-

ry requirements specified in ORS 254.535. The amended rule accurately restates the statutory requirement that ballot return envelopes be retained two year after all elections, regardless of federal or non-federal candidates in the election.

Rules Coordinator: Julie Yamaka

Address: Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310

Telephone: (503) 378-5199

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**Secretary of State,
Elections Division
Chapter 165**

Rule Caption: Adoption of Secret Ballot Waiver Form when Casting Ballot using Facsimile Machine.

Stat. Auth.: ORS 246.150

Stats. Implemented: 2009 OL Ch. 619 (HB 2511)

Proposed Adoptions: 165-007-0300

Last Date for Comment: 11-30-09

Summary: This proposed rule designates the SEL 531, Facsimile Vote Secret Ballot Waiver form, as the form for a long term absent elector who is serving in or has been discharged for not more than 30 days from the Armed Forces or the Merchant Marine to use waive their right to a secret ballot when casting a ballot using a facsimile machine. Additionally, this rule requires each county to incorporate into their Security Plan methods for ensuring the security of ballots cast using a facsimile machine to the greatest extent possible.

Rules Coordinator: Brenda Bayes

Address: Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310

Telephone: (503) 986-1518

ADMINISTRATIVE RULES

Board of Naturopathic Examiners Chapter 850

Rule Caption: Adds an additional fee of \$25 to the annual renewal.

Adm. Order No.: BNE 3-2009

Filed with Sec. of State: 10-6-2009

Certified to be Effective: 10-6-09

Notice Publication Date: 9-1-2009

Rules Amended: 850-030-0035

Subject: This additional fee will increase the cost of the renewal by \$25.00 for all licenses authorized to prescribe. 90% of this fee goes to the Prescription monitoring Program. 10% is reserved by the Board for administration.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-030-0035

Fees for Licensure, Examination and Certification

- (1) Fees schedule:
 - (a) The fee to apply to take the jurisprudence and formulary examinations to be eligible for licensure shall be \$150.
 - (b) The fee for an initial license to practice naturopathic medicine (including reciprocity) shall be \$150.
 - (c) The fee for an initial certificate of special competency in natural childbirth shall be \$60.
 - (d) The annual license renewal fee for an active Naturopathic license shall be \$275.
 - (e) The annual license renewal fee for an inactive license shall be \$125.
 - (f) The annual renewal fee for a retired license shall be \$15.
 - (g) The annual renewal fee for a certificate of special competency in natural childbirth shall be \$60.
 - (h) A late fee of \$75 will be charged for any renewal that does not meet the December 15 deadline per OAR 850-030-0195.
 - (i) The fee to reinstate a lapsed license to active status within 12 months of being lapsed shall be \$275 plus a restoration fee of \$150.
 - (j) The annual fee mandated for all licensees with the authority to prescribe shall be \$25;
 - (k) Duplicate license fee shall be \$25;
 - (l) Wall certificate shall be \$25;
 - (m) The fee for mailing an examination packet shall be \$35 or the current rate charged for the secure over night mailing of examinations;
 - (n) Mailing list in any version shall be \$50;
 - (o) Copies of public documents shall be \$15 for the first ten single-sided pages and 10 cents per page hereafter.
 - (2) All Board fees and fines are non-refundable.
Stat. Auth.: ORS 685.100(6)(b) & 685.100(6)(c)
Stats. Implemented: ORS 685.100 & 685.102
Hist.: NE 1-1987(Temp), f. 9-17-87, ef. 10-1-87; NE 1-1988, f. & cert. ef. 3-15-88; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 1-1998(Temp), f. 7-15-98, cert. ef. 8-3-98 thru 1-30-99; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 2-1999, f. & cert. ef. 9-24-99; BNE 5-2000, f. & cert. ef. 12-6-00; BNE 4-2003, f. & cert. ef. 10-9-03; Renumbered from 850-010-0035, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2008, f. 4-21-08, cert. ef. 6-10-08; BNE 3-2009, f. & cert. ef. 10-6-09

Rule Caption: Incrementally increases CE hours through 2013; reduces restrictions on number and areas of study.

Adm. Order No.: BNE 4-2009

Filed with Sec. of State: 10-6-2009

Certified to be Effective: 10-6-09

Notice Publication Date: 9-1-2009

Rules Amended: 850-030-0195, 850-035-0230, 850-040-0210

Subject: Incrementally increases CE hours from 25 annually to 50 CE hours by 2013. Removes the restrictions on the number of hours obtained in one subject area and sources by which education may be obtained. Requires 2 hours of ethics and 10 hours in pharmacology by obtained annually starting with the 2010 renewal cycle.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-030-0195

License Renewal Requirements

All Naturopathic physicians licensed under ORS Chapter 685, whether active or inactive or retired must complete an annual renewal form furnished by the Board. Specific requirements for each license status, renewal procedures and requirements are as follows:

- (1) A Naturopathic physician holding an initial license:
 - (a) Must complete the renewal form furnished by the Board; and

- (b) Pay the annual renewal fee according to OAR 850-030-0090 and 850-030-0035; and

- (c) Is exempt from completing CE in the initial year of licensure.

- (2) A licensee doing an accredited residency for at least six months in the calendar year must:

- (a) Complete the annual renewal form furnished by the Board; and

- (b) Pay the annual renewal fee according to OAR 850-030-0090 and 850-030-0035; and

- (c) Provide proof of an accredited residency to meet the CE requirement for an active license.

- (3) A Naturopathic physician holding a certificate to practice natural childbirth must complete at least 15 hours of CE each year in obstetrics and sign an affidavit furnished by the Board confirming these hours. The 15 hours in obstetrics may be used to satisfy the requirement of an active license in 850-030-0195(4). The licensee must provide proof of current certification in neonatal resuscitation annually with the renewal.

- (4) To maintain an active license, a licensee must:

- (a) Complete the annual renewal form furnished by the Board; and

- (b) Pay the annual renewal fee according to OAR 850-030-0090 and 850-030-0035; and

- (c) Complete Board approved CE as required under OAR 850-040-0210 for an active license each year and submit a signed affidavit furnished by the Board confirming this.

- (5) At least 10 of the required CE hours must be in the pharmacology or legend drugs.

- (6) A Naturopathic physician holding an inactive license must:

- (a) Complete the renewal form furnished by the Board; and

- (b) Pay the annual renewal fee per OAR 850-030-0035; and

- (c) Complete at least 10 hours of Board approved CE each year and submit a signed affidavit furnished by the Board confirming these hours.

- (7) A retired status Naturopathic license, upon completing the renewal form furnished by the Board and paying the annual renewal fee for a retired license is not required to complete CE for renewal.

- (8) By November 1, the Board will send to all licensees an annual renewal form to the last mailing address on record. For a renewal to be timely, a licensee must submit to the Board a completed renewal application postmarked no later than December 15 each year. A completed renewal application consists of the completed renewal form, the annual license fee if due, and the late fee, if appropriate, and the completed affidavit confirming completion of continuing education as required under sections (1) through (5) of this rule. Failure to meet the December 15 deadline shall result in a late fee of \$75, which must be submitted with the renewal application form. Any licensee who does not receive the renewal form by November 15 should notify the Board. It is the licensee's duty to obtain and submit the renewal form in a timely manner.

- (9) The license of any licensee who fails to submit a completed renewal application by December 31 shall lapse, effective at midnight, December 31.

- (10) Licensees must maintain for a period of at least five years, full and accurate records including verification of attendance to support hours reported on the signed affidavit.

- (11) Each year the Board will audit a number of license renewals. These licensees will be asked to provide their CE documents to verify the signed affidavit. Licensee must provide CE records and verifications that will document compliance with the renewal requirements.

- (12) To apply for reinstatement of a license from inactive to active status a licensee must:

- (a) Complete the reinstatement form furnished by the Board; and

- (b) Pay the appropriate fees per ORS 685.100 and OAR 850-030-0035, and

- (c) Submit an affidavit confirming completion of continuing education as follows:

- (A) If the license is inactive for 12 months or less, the licensee must demonstrate completion of the required hours of approved continuing education during the past 12 months for an active license, with 10 of these hours in pharmacology; and

- (B) If the license is inactive for more than one year, licensee must provide an additional five hours of approved continuing education for each subsequent year or partial year that the license was inactive, in addition to the 10 hours of CE required by OAR 850-030-0195(6).

- (d) If license is inactive for more than five years, licensee must take and pass the state jurisprudence and formulary examinations furnished by the Board.

- (13) After January 1, the Board may reinstate a license that has been lapsed for one year or less, upon submission of the affidavit of continuing education as required for an active license, completion of the renewal form furnished by the Board and paying the appropriate fees per ORS 685.100 and OAR 850-030-0035.

ADMINISTRATIVE RULES

(14) Any licensee who has allowed a license to lapse for more than 12 months must apply and meet the qualifications under ORS 685.060 through 685.085 for licensure.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.100

Hist.: BNE 1-2003, f. & cert. ef. 2-14-03; Renumbered from 850-010-0195, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2008, f. 4-21-08, cert. ef. 6-10-08; BNE 4-2009, f. & cert. ef. 10-6-09

850-035-0230

Requirements for Certification to Practice Natural Childbirth

A naturopathic physician maintaining an active license in Oregon, who wishes to practice natural childbirth must apply to and receive from the board a certificate of special competency in natural childbirth. To receive and maintain a certificate, the licensee must fulfill the following requirements:

(1) Complete at least 200 hours of course work at an approved naturopathic college or hospital in obstetrics and furnish a signed log showing evidence that (a) and (b) and (c) of this subsection have been completed under the direct supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth:

(a) Licensee must have taken part in the care of 50 cases each in prenatal and postnatal care; one case may qualify for both areas of care; and

(b) Licensee must have observed and assisted in the intrapartum care and delivery of 50 natural childbirths in a hospital or alternative birth setting. A minimum of 26 of these births must be under the supervision of a naturopathic doctor. No more than 10 of the 50 births may be under the supervision of a medical doctor. No more than 10 of the births may be observation only. A labor and delivery that starts under the care of a naturopathic doctor and includes hospitalization shall count as a birth; and

(c) Licensee must hold a current neonatal resuscitation certificate.

(2) Licensee must pass a specialty exam in obstetrics given by or approved by the Board, after first completing the 200 hours of coursework as required above, and participating in the care of at least 15 cases each in prenatal, intrapartum, and postnatal care; one case may qualify for all these areas of care.

(3) An application for a certificate of special competency in natural childbirth must be submitted, with appropriate fees, after meeting the requirements in 850-035-0230, within three years of passing the specialty examination.

(4) Licensee holding a natural childbirth certification must annually, including initial year of certification, submit 15 hours of Board approved continuing education in obstetrics, which may be used to satisfy ORS 685.102. Licensee must submit proof of current certification in neonatal resuscitation annually.

(5) Licensing action by the Board under ORS 685.100 shall be deemed to have an equal effect upon a certificate of special competency issued the practitioner, unless specifically provided otherwise in the Board action. When the subject of a disciplinary proceeding under 685.100 relates specifically to the practice of natural childbirth by a licensee who possesses a certificate of special competency, the license action may in lieu of effecting the entire scope of the licensee's practice, suspend, revoke, or curtail only the practitioner's authority under a certificate of special competency.

Stat. Auth.: ORS 183 & 685

Stats. Implemented: ORS 685.100, 685.102, 685.135 & 685.160

Hist.: NE 3-1985(Temp), f. & ef. 9-23-85; NE 1-1986, f. & ef. 4-10-86; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; administrative correction 8-9-99; BNE 1-2001, f. & cert. ef. 2-7-0; Renumbered from 850-010-0230, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 1-2009, f. & cert. ef. 4-30-09; BNE 4-2009, f. & cert. ef. 10-6-09

850-040-0210

Continuing Education

(1) Continuing education (CE) is required as part of the naturopathic physician's license renewal per OAR 850-030-0195. The purpose of CE is to offer education that promotes competency and skills necessary to assure the citizens of Oregon the highest standard of naturopathic medical care.

(2) CE required for an active license is as follows:

(a) For the annual renewal period beginning on January 1, 2010, at least 35 hours of CE, with at least 10 of these hours in pharmacology.

(b) For the annual renewal period beginning on January 1, 2011, at least 40 hours of CE, with at least 10 of these hours in pharmacology.

(c) For the annual renewal period beginning on January 1, 2012, at least 45 hours of CE, with at least 10 of these hours in pharmacology.

(d) Effective January 1, 2013, at least 50 hours of CE every year, with at least 10 of these hours in pharmacology.

(3) Each licensee holding an inactive license must obtain at least 10 hours of CE every year.

(4) A natural childbirth certificate requires 15 hours in obstetrics each year per OAR 850-035-0230, which may be included as part of the annual CE requirement.

(5) New licensees are not required to obtain CE in the initial year of licensure.

(6) Effective January 1, 2010, licensees with an active license must obtain at least two hours of medical ethics education every year, which may be included as part of the annual CE requirement.

(7) Each Licensee must obtain the one-time mandatory pain management education as required by ORS 409.500 through 409.570, within 24 months of initial license renewal.

(8) CE obtained in December not used in the year the hours were obtained, may be used in the following year for CE credit.

(9) CE credit will be rounded to the nearest quarter hour.

(10) Licensees holding an active license must obtain at least 10 hours of Board approved CE annually in pharmacology. These hours may be part of the CE required for renewal. The following are examples of previously approved pharmacy programs:

(a) Substances listed in OAR 850-060-0225 and their application in patient care;

(b) Biopharmacology;

(c) Non-formulary substances or drugs relevant to patient care;

(d) Drug-drug, drug-herb, drug-nutrient interactions or contraindications;

(e) Research of formulary substances and drugs in conjunction with naturopathic medical care.

(11) Any licensee using intramuscular (IM) or subcutaneous (SC) or intravenous (IV) therapeutic injection of vitamins or minerals, or preventive injections (IM, SC, or IV) must have qualifying education per OAR 850-060-0212.

(12) To be considered for approval, programs of continuing education for licensees must:

(a) Be presented by naturopathic physicians, other physicians or other professionally acknowledged health care educators with expertise in the subject matter;

(b) Foster the competency and skills of the naturopathic physician;

(c) Consist of education covering review, new, experimental, research or specialty subjects relevant to the practice of naturopathic medicine;

(d) Exclude the selling or promotion of proprietary products or practice building;

(e) Not misrepresent or mislead the end result/skill to be gained by the education or training offered.

(13) Licensees may receive credit for the qualifying education. Licensees are encouraged to request pre-approval for any program not clearly meeting the criteria in this rule. Continuing education may be approved based on the following criteria:

(a) Continuing Medical Education (CME) provided by recognized professional health care licensing agencies, hospitals, or institutions; programs accredited by the Accreditation Council for Continuing Medical Education (ACCME); the American Council on Pharmaceutical Education (ACPE); or programs approved by the Board. A verification of attendance for all CE courses or activities showing hours claimed or proof of completion must be signed by the program provider;

(b) Video or audio taped CE courses or seminars: Verification of video or audio taped credit for previously Board approved presentations must include an original outline of the presentation as well as the name and date of the presentation and the date of review, length of taped course or seminar and sponsor information;

(c) Literature Review: credit for literature review is determined by the length of the article(s) and the complexity of the topic(s). Articles must be from peer-reviewed publications. Verification must include concise information including an original outline of the literature reviewed;

(d) Internet education: Internet education is accepted for credit in accordance with the standards of the ACCME or ACPE including verification of completion;

(e) Authoring: Credit may be given for being an author of an article related to naturopathic medicine in a professional publication or book. Credit is determined by the length of the article and the complexity of its content. Credit for such activities will be credited in the year the project is completed. Verification must include a copy of the article or book;

(f) CPR: CPR courses in the year taken, with proof of current certification;

(g) Preceptorship: Preceptorship credit must be offered by qualifying persons per (12)(a) of this rule. Verification of preceptor hours must include the date and place, an outline of the information studied, and a signed acknowledgement from the preceptor;

(h) Protocol Writing: Credit may be given for participation in a formal protocol writing process associated with an accredited health care institution or government health care agency. Verification must include a written record of hours of development and research, the names and addresses of the institutions involved, the name of supervisors and their signatures verifying qualified hours;

ADMINISTRATIVE RULES

(i) Research: Credit may be given for participation in research related to the advancement of naturopathic medicine and should be directed by a Board recognized educational or medical institution or organization, or self-directed. Verification must include the type of research being conducted, purpose and summary of research, dates of participation and disclosure of any fiduciary relationships;

(j) Teaching/Presentation: Credit may be given for actual presentation hours for an initial course or initial seminar offering and up to three hours for preparation for each hour of the presentation, when subject is specific to professional level health education;

(k) Graduate Level Education: Credit may be given for participation in an accredited graduate level health related program relevant to the practice of naturopathic medicine;

(l) Participation in the Naturopathic Physicians Licensing Examinations (NPLEX) committee for the development and writing of the NPLEX examinations;

(m) Activities specific to patient charting and record keeping;

(n) Other courses or activities specifically authorized by the Board.

(14) Exception to the CE requirements in OAR 850-040-0210 is allowed for:

(a) A full-time residency, which is CNME or Board approved, requiring at least 6 months of participation in the calendar year;

(b) A fellowship with a Board recognized professional organization, requiring at least six months of active participation in the calendar year.

(15) Credit will not be given for hours received for:

(a) Teaching, except as permitted in OAR 850-040-0210(13)(j);

(b) Community service seminars and activities;

(c) Self-growth/self-help activities;

(d) Practice building activities;

(e) Medical/insurance billing presentations;

(f) Nonprofessional level health related programs presented by a lay person;

(g) Nonprofessional level health related programs presented to the lay public;

(h) Proprietary programs, which promote exclusive services and/or products;

(i) Information not within or directly related to the scope of practice of naturopathic medicine.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.102

Hist.: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 1-1992, f. & cert. ef. 1-15-92; NE 2-1993, f. & cert. ef. 9-23-93; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 6-2000, f. & cert. ef. 12-6-00; BNE 7-2002, f. & cert. ef. 12-10-02; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0210, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2006, f. & cert. ef. 10-13-06; BNE 4-2009, f. & cert. ef. 10-6-09

Rule Caption: Assures the renewal process and CE requirements are met through December 31, 2009.

Adm. Order No.: BNE 5-2009(Temp)

Filed with Sec. of State: 10-13-2009

Certified to be Effective: 10-13-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 850-030-0195, 850-035-0230, 850-040-0210

Subject: The current rules are effective upon filing through 12/31.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-030-0195

License Renewal Requirements

All Naturopathic physicians licensed under ORS Chapter 685, whether active or inactive or retired must complete an annual renewal form furnished by the Board. Specific requirements for each license status, renewal procedures and requirements are as follows:

(1) A Naturopathic physician holding an initial license:

(a) Must complete the renewal form furnished by the Board; and

(b) Pay the annual renewal fee according to OAR 850-030-0090 and 850-030-0035; and

(c) Is exempt from completing CE in the initial year of licensure.

(2) A licensee doing an accredited residency for at least six months in the calendar year must:

(a) Complete the annual renewal form furnished by the Board; and

(b) Pay the annual renewal fee according to OAR 850-030-0090 and 850-030-0035; and

(c) Provide proof of an accredited residency to meet the CE requirement for an active license.

(3) A Naturopathic physician holding a certificate to practice natural childbirth must complete at least 15 hours of CE each year in obstetrics and sign an affidavit furnished by the Board confirming these hours. Seven of the 15 hours in obstetrics may be used to satisfy the requirement of an

active license in 850-030-0195(4). The licensee must provide proof of current certification in neonatal resuscitation annually with the renewal.

(4) To maintain an active license, a licensee must:

(a) Complete the annual renewal form furnished by the Board; and

(b) Pay the annual renewal fee according to OAR 850-030-0090 and 850-030-0035; and

(c) Complete at least 25 hours of Board approved CE per OAR 850-040-0210 each year and submit a signed affidavit furnished by the Board confirming this. At least five of the required 25 CE hours must be in the pharmacology of legend drugs.

(5) A Naturopathic physician holding an inactive license must:

(a) Complete the renewal form furnished by the Board; and

(b) Pay the annual renewal fee per OAR 850-030-0035; and

(c) Complete at least 10 hours of Board approved CE each year and submit a signed affidavit furnished by the Board confirming these hours.

(6) A retired status Naturopathic license, upon completing the renewal form furnished by the Board and paying the annual renewal fee for a retired license is not required to complete CE for renewal.

(7) By November 1, the Board will send to all licensees an annual renewal form to the last mailing address on record. For a renewal to be timely, a licensee must submit to the Board a completed renewal application postmarked no later than December 15 each year. A completed renewal application consists of the completed renewal form, the annual license fee if due, and the late fee, if appropriate, and the completed affidavit confirming completion of continuing education as required under sections (1) through (6) of this rule. Failure to meet the December 15 deadline shall result in a late fee of \$75, which must be submitted with the renewal application form. Any licensee who does not receive the renewal form by November 15 should notify the Board. It is the licensee's duty to obtain and submit the renewal form in a timely manner.

(8) The license of any licensee who fails to submit a completed renewal application by December 31 shall lapse, effective at midnight, December 31.

(9) Licensees must maintain for a period of at least five years, full and accurate records including verification of attendance to support hours reported on the signed affidavit.

(10) Each year the Board will audit a number of license renewals. These licensees will be asked to provide their CE documents to verify the signed affidavit. Licensee must provide CE records and verifications that will document compliance with the renewal requirements.

(11) To apply for reinstatement of a license from inactive to active status a licensee must:

(a) Complete the reinstatement form furnished by the Board; and

(b) Pay the appropriate fees per ORS 685.100 and OAR 850-030-0035, and

(c) Submit an affidavit confirming completion of continuing education as follows:

(A) If the license is inactive for 12 months or less, the licensee must demonstrate completion of 25 hours of approved continuing education during the past 12 months, with five of these hours in pharmacology; and

(B) If the license is inactive for more than one year, licensee must provide an additional five hours of approved continuing education for each subsequent year or partial year that the license was inactive, in addition to the 10 hours of CE required by OAR 850-030-0195(5).

(d) If license is inactive for more than five years, licensee must take and pass the state jurisprudence and formulary examinations furnished by the Board.

(12) After January 1, the Board may reinstate a license that has been lapsed for one year or less, upon submission of the affidavit of continuing education as required for an active license, completion of the renewal form furnished by the Board and paying the appropriate fees per ORS 685.100 and OAR 850-030-0035.

(13) Any licensee who has allowed a license to lapse for more than 12 months must apply and meet the qualifications under ORS 685.060 through 685.085 for licensure.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.100

Hist.: BNE 1-2003, f. & cert. ef. 2-14-03; Renumbered from 850-010-0195, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2008, f. 4-21-08, cert. ef. 6-10-08; BNE 4-2009, f. & cert. ef. 10-6-09; BNE 5-2009(Temp), f. & cert. ef. 10-13-09 thru 12-31-09

850-035-0230

Requirements for Certification to Practice Natural Childbirth

A naturopathic physician licensed in Oregon, who wishes to practice natural childbirth must apply to and receive from the board a certificate of special competency in natural childbirth. To receive and maintain a certificate, the licensee must fulfill the following requirements:

(1) Complete at least 200 hours of course work at an approved naturopathic college or hospital in obstetrics and furnish a signed log showing evidence that (a) and (b) and (c) of this subsection have been completed

ADMINISTRATIVE RULES

under the direct supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth:

(a) Licensee must have taken part in the care of 50 cases each in prenatal and postnatal care; one case may qualify for both areas of care; and

(b) Licensee must have observed and assisted in the intrapartum care and delivery of 50 natural childbirths in a hospital or alternative birth setting. A minimum of 26 of these births must be under the supervision of a naturopathic doctor. No more than 10 of the 50 births may be under the supervision of a medical doctor. No more than 10 of the births may be observation only. A labor and delivery that starts under the care of a naturopathic doctor and includes hospitalization shall count as a birth; and

(c) Licensee must hold a current neonatal resuscitation certificate.

(2) Licensee must pass a specialty exam in obstetrics given by or approved by the Board, after first completing the 200 hours of coursework as required above, and participating in the care of at least 15 cases each in prenatal, intrapartum, and postnatal care; one case may qualify for all these areas of care.

(3) An application for a certificate of special competency in natural childbirth must be submitted, with appropriate fees, after meeting the requirements in 850-035-0230, within three years of passing the specialty examination.

(4) Licensee holding a natural childbirth certification must annually, including initial year of certification, submit 15 hours of Board approved continuing education in obstetrics. Seven of the 15 hours in obstetrics may be used to satisfy ORS 685.102. Licensee must submit proof of current certification in neonatal resuscitation annually.

(5) Licensing action by the Board under ORS 685.100 shall be deemed to have an equal effect upon a certificate of special competency issued the practitioner, unless specifically provided otherwise in the Board action. When the subject of a disciplinary proceeding under ORS 685.100 relates specifically to the practice of natural childbirth by a licensee who possesses a certificate of special competency, the license action may in lieu of effecting the entire scope of the licensee's practice, suspend, revoke, or curtail only the practitioner's authority under a certificate of special competency.

Stat. Auth.: ORS 183 & 685

Stats. Implemented: ORS 685.100, 685.102, 685.135 & 685.160

Hist.: NE 3-1985(Temp), f. & cf. 9-23-85; NE 1-1986, f. & cf. 4-10-86; NE 1-1996, f. & cf. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; administrative correction 8-9-99; BNE 1-2001, f. & cf. 2-7-0; Renumbered from 850-010-0230, BNE 8-2005, f. & cf. 10-27-05; BNE 1-2009, f. & cf. 4-30-09; BNE 4-2009, f. & cf. 10-6-09; BNE 5-2009(Temp), f. & cf. 10-13-09 thru 12-31-09

850-040-0210

Continuing Education

(1) Continuing education (CE) is required as part of the naturopathic physician's license renewal per OAR 850-030-0195. The purpose of CE is to offer education that promotes competency and skills necessary to assure the citizens of Oregon the highest standard of naturopathic medical care.

(a) Each licensee with an active license must obtain at least 25 hours in CE every year, with at least five of these hours in pharmacy;

(b) Each licensee holding an inactive license must obtain at least 10 hours of CE every year;

(c) A natural childbirth certificate requires 15 hours in obstetrics each year per OAR 850-035-0230;

(d) New licensees are not required to obtain CE in the initial year of licensure.

(e) Effective January 1, 2006, licensees with an active license must obtain at least three hours of medical ethics education every three years, which may be included as part of the annual CE requirement,

(f) Licensee must obtain one-time mandatory pain management education as required by ORS 409.500 through 409.570.

(A) If initial licensee was issued prior to January 1, 2006, licensee must obtain and show verification of this education with the renewal no later than December 2008;

(B) If initial license was issued after January 1, 2006 licensee must obtain and show verification of this education with in 24 month of initial licensure;

(C) Credit for this required education will be given in the year education is obtained.

(2) No more than 15 hours of credit will be accepted in one subject area. CE obtained in December not used in the year the hours were obtained, may be used in the following year for CE credit.

(a) CE credit will be rounded to the nearest quarter hour.

(b) At least 10 hours of CE must be obtained through participation by attendance at approved seminars, conferences, grand rounds or other Board approved in-person activities.

(3) Licensees holding an active license must obtain at least five hours of Board approved CE annually in pharmacology. These hours may be part of the 25 hours of CE required for renewal. The following are examples of previously approved pharmacy programs:

(a) Substances listed in OAR 850-060-0225 and their application in patient care;

(b) Biopharmacology;

(c) Non-formulary substances or drugs relevant to patient care;

(d) Drug-drug, drug-herb, drug-nutrient interactions or contraindications;

(e) Research of formulary substances and drugs in conjunction with naturopathic medical care.

(4) Any licensee using intramuscular (IM) or subcutaneous (SC) or intravenous (IV) therapeutic injection of vitamins or minerals, or preventive injections (IM, SC, or IV) must have qualifying education per OAR 850-060-0212.

(5) To be considered for approval, programs of continuing education for licensees must:

(a) Be presented by naturopathic physicians, other physicians or other professionally acknowledged health care educators with expertise in the subject matter;

(b) Foster the competency and skills of the naturopathic physician;

(c) Consist of education covering review, new, experimental, research or specialty subjects relevant to the practice of naturopathic medicine;

(d) Exclude the selling or promotion of proprietary products or practice building;

(e) Not misrepresent or mislead the end result/skill to be gained by the education or training offered.

(6) Licensees may receive credit for the qualifying verification. Licensees are encouraged to request pre-approval for any program not clearly meeting the criteria in this rule.

(a) Continuing Medical Education (CME) provided by recognized professional health care licensing agencies, hospitals, or institutions; programs accredited by the Accreditation Council for Continuing Medical Education (ACCME); the American Council on Pharmaceutical Education (ACPE); or programs approved by the Board. A verification of attendance for all CE courses or activities showing hours claimed or proof of completion must be signed by the program provider;

(b) Video or audio taped CE courses or seminars: Verification of video or audio taped credit for previously Board approved presentations must include an original outline of the presentation as well as the name and date of the presentation and the date of review, length of taped course or seminar and sponsor information;

(c) Literature Review: credit for literature review is determined by the length of the article(s) and the complexity of the topic(s), not to exceed two hours of credit per submission. Verification must include concise information including an original outline on the literature reviewed which must be from a recognized peer review publication with the date of publication and author.

(d) Internet education: Internet education is accepted for credit in accordance with the standards of the ACCME or ACPE including verification of completion;

(e) Authoring: Credit may be given for being an author of an article related to naturopathic medicine in a professional publication or book. Credit is determined by the length of the article and the complexity of its content. Credit for such activities will be credited in the year the project is completed, with no more than 15 hours credited for each original publication. Verification must include a copy of the article or book.

(f) CPR: CPR courses in the year taken, with proof of current certification;

(g) Preceptorship: Preceptorship credit must be offered by qualifying persons per (5)(a) of this rule. Verification of preceptor hours must include the date and place, an outline of the information studied, and a signed acknowledgement from the preceptor;

(h) Protocol Writing: Credit may be given for participation in a formal protocol writing process associated with an accredited health care institution or government health care agency. Verification must include a written record of hours of development and research, the names and addresses of the institutions involved, the name of supervisors and their signatures verifying qualified hours;

(i) Research: Credit may be given for participation in research related to the advancement of naturopathic medicine and should be directed by a Board recognized educational or medical institution or organization, or self-directed. Verification must include the type of research being conducted, purpose and summary of research, dates of participation and disclosure of any fiduciary relationships;

(j) Teaching/ Presentation: Credit may be given for actual presentation hours for an initial course or initial seminar offering and up to three hours for preparation for each hour of the presentation, when subject is specific to professional level health education;

(k) Graduate Level Education: Credit may be given for participation in an accredited graduate level health related program relevant to the practice of naturopathic medicine;

(l) Other courses or activities specifically authorized by the Board.

ADMINISTRATIVE RULES

(7) Licensees may receive limited credit for the following:

(a) Up to a total of 10 hours of credit may be granted for CE obtained by participation on the Naturopathic Physicians Licensing Examinations (NPLEX) committee in the development and writing of the NPLEX examinations.

(b) Up to three hours of credit may be obtained by activities specific to patient charting and record keeping.

(8) Exception to the CE requirements in OAR 850-040-0210 is allowed for:

(a) Licensee maintaining an active license in Oregon but not living and practicing in Oregon may obtain up to 20 hours of CE by nonattendance activities that satisfy the program qualifications in OAR 850-040-0210;

(b) A full-time residency, which is CNME or Board approved, requiring at least six months of participation in the calendar year;

(c) A fellowship with a Board recognized professional organization, requiring at least six months of active participation in the calendar year;

(d) Licensees who have obtained prior Board approval to obtain all 25 hours of CE, including five in pharmacy, by approved audio and video presentations or approved internet education. Documentation supporting this exception must be approved by the Board prior to obtaining all CE by audio and video tapes or internet education.

(9) Credit will not be given for hours received for:

(a) Teaching, except as permitted in OAR 850-040-0210(6)(j);

(b) Community service seminars and activities;

(c) Self-growth/self-help activities;

(d) Practice building activities;

(e) Medical/insurance billing presentations;

(f) Nonprofessional level health related programs presented by a lay person;

(g) Nonprofessional level health related programs presented to the lay public;

(h) Proprietary programs, which promote exclusive services and/or products.

(i) Information not within or directly related to the scope of practice of naturopathic medicine.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.102

Hist.: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 1-1992, f. & cert. ef. 1-15-92; NE 2-1993, f. & cert. ef. 9-23-93; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 6-2000, f. & cert. ef. 12-6-00; BNE 7-2002, f. & cert. ef. 12-10-02; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0210, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2006, f. & cert. ef. 10-13-06; BNE 4-2009, f. & cert. ef. 10-6-09; BNE 5-2009(Temp), f. & cert. ef. 10-13-09 thru 12-31-09

Board of Nursing Chapter 851

Rule Caption: Licensing Fees Increased for Registered Nurses, Licensed Practical Nurses and Certified Nursing Assistants.

Adm. Order No.: BN 5-2009

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 10-7-09

Notice Publication Date: 8-1-2009

Rules Amended: 851-002-0010, 851-002-0040

Subject: These rules pertain to the licensing fees for Registered Nurses, Licensed Practical Nurses and certified Nursing Assistants.

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

851-002-0010

RN/LPN Schedule of Fees

(1) License Renewal — \$145.

(2) Delinquent Renewal — \$12.

(3) License by Endorsement — \$195.

(4) Licensure by Examination — \$160.

(5) Written Verification of License — \$12.

(6) Duplicate License — \$12.

(7) Limited Licenses:

(a) License Memorandum — \$25.

(b) Reentry — \$95.

(c) Extension of Reentry — \$25.

(8) Limited Licenses for Educational Experience:

(a) International Graduate Nursing Students — \$65.

(b) Extension of International Graduate Nursing Students — \$25.

(c) International RN in Short-Term Educational Experience — \$35.

(d) International Exchange Students — \$25.

(e) U.S. RNs in Distance Learning — \$15.

(f) Extension of Distance Learning — \$15.

(9) Reexamination for Licensure — \$25.

(10) Reactivation — \$160.

(11) Reinstatement by Reactivation — \$160.

(12) Retired Nurse Status — \$20.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 17-2002, f. & cert. ef. 10-18-02; BN 6-2003, f. & cert. ef. 7-7-03; BN 5-2007, f. 5-4-07, cert. ef. 7-1-07; BN 5-2009, f. & cert. ef. 10-7-09

851-002-0040

Nursing Assistant Schedule of Fees

(1) Certification by Examination — \$106.

(2) Certification by Endorsement — \$60.

(3) Reexamination — Manual Skills — \$45.

(4) Reexamination — Written — \$25.

(5) Oral Administration of Written Examination — \$35.

(6) Written Verification of Certification — \$10.

(7) Duplicate Certificate — \$10.

(8) CNA Certificate Renewal — \$60.

(9) CNA Reactivation Fee — \$5.

(10) CNA Certification for RN or LPN — \$60.

(11) CNA Certification for Student Nurses — \$60.

(12) Initial Approval CNA Training Program — \$100.

(13) Approval of Revised CNA Training Program — \$75.

(14) Reapproval of CNA Training Program — \$50.

(15) CNA Primary Instructor Approval — \$10.

(16) Initial Approval of CNA Program Director — \$25.

(17) CNA 2 Registration (each category) — \$5.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & cert. ef. 12-1-99; BN 6-2003, f. & cert. ef. 7-7-03; BN 7-2004, f. & cert. ef. 2-26-04; BN 14-2004, f. & cert. ef. 10-26-04; BN 7-2007, f. 6-29-07, cert. ef. 1-1-08; BN 5-2009, f. & cert. ef. 10-7-09

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Adopts rules governing procedures for holding hearings for adults convicted of aggravated murder and murder.

Adm. Order No.: PAR 4-2009(Temp)

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09 thru 3-28-10

Notice Publication Date:

Rules Amended: 255-032-0005, 255-032-0011, 255-032-0015, 255-032-0025, 255-032-0029

Rules Suspended: 255-032-0026

Subject: Division 32 rules govern procedures for holding murder review hearings for adults convicted to aggravated murder under ORS 163.105, and of murder under ORS 163.115 that was committed on or after June 30, 1995. Senate Bill 288, 2007, (Oregon Laws Chapter 717, § 1,2, amended ORS 163.105 and 163.115 to add the offender's right to a subpoena upon a showing of general relevance and responsible scope of the evidence sought, and to add a requirement that the Board's final order shall be accompanied by findings of fact and conclusions of law.

Rules Coordinator: Michelle Mooney—(503) 945-0914

255-032-0005

Prison Term Hearing to Be Held

(1) An adult person convicted of Aggravated Murder under ORS 163.095 shall receive a hearing within one year of sentencing. A person convicted of Murder under ORS 163.115 that was committed on or after June 30, 1995, and who was sentenced to life with a twenty-five (25) year minimum shall receive a hearing within one year of sentencing. At the hearing the Board shall set a review date congruent with the minimum terms set forth in OAR 255-032-0010 rather than a parole release date. In lieu of

ADMINISTRATIVE RULES

holding a hearing, the Board may determine the prison term/murder review date by administrative file pass.

(2) Adult persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.

(3) Adult persons sentenced to life with a twenty (20) or thirty (30) year minimum for aggravated murder shall receive a prison term hearing pursuant to ORS 144.120 if they also have a sentence to the Department of Corrections' custody for a crime other than aggravated murder.

(4) Inmates, who were juveniles and waived to adult court pursuant to ORS 419C.340 through 419C.364, and were under the age of 17 years at the time of their crime(s), and were convicted of Aggravated Murder, per ORS 163.095, and whose crimes were committed after October 31, 1989 and prior to April 1, 1995, shall receive a prison term hearing. At the hearing, the Board shall set a review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Stat. Auth.: ORS 144.120, 163.095, 163.115, 419c.340 & 419c.364

Stats. Implemented: ORS 163.105

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10

255-032-0011

Schedule of Initial Parole Consideration for Inmates Described in OAR 255-032-0005(4)

(1) The Board shall conduct a hearing pursuant to OAR 255-030-0013, 255-030-0015, 255-030-0021, 255-030-0023 and 255-030-0025 through 255-030-0055.

(2) The Board shall set a review date pursuant to Exhibit P-III, or deny parole, pursuant to OAR 255-035-0030.

(3) The method established by sections (1) to (3) of OAR 255-035-0021 shall not apply to inmates described in OAR 255-032-0005(4). To determine the unified range for inmates described in OAR 255-032-0005(4) with consecutive sentences for aggravated murder, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit P-III. The unified range shall be the sum of the ranges established under this section.

(4) The Board may depart from the appropriate matrix range for inmates described in OAR 255-032-0005(4) only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibits E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. The Board may give items of aggravation and mitigation different weight and not necessarily balance them one for one. Exhibit D does not apply to inmates described in OAR 255-032-0005(4). The Board cannot apply aggravating or mitigating factors to adjust an inmate's matrix range more than one level up or down. Mitigating factors cannot reduce an inmate's matrix range below the lowest possible range on the matrix.

(5) If the Board denies parole, the inmate may petition for review after 480 months from the adjusted inception date. If the Board determines, following a review of the inmate's petition and institutional record, there are reasonable grounds to believe that rehabilitation may have occurred and that the possibility of parole should be considered, a review hearing shall be scheduled.

(6) If the Board sets a review date pursuant to Exhibit P-III, the Board shall conduct a progress review five years prior to the established review date. The progress review does not require a hearing with the inmate; however, the inmate may submit materials to be considered. The purpose of the progress review is to determine the inmate's institutional conduct and rehabilitation efforts since the prison term hearing.

(7) The Board may determine a parole release date or future review dates any time after the established review date. The Board may order a psychological evaluation. Refusal to submit to an evaluation if one is ordered will be grounds for automatic deferral of the hearing for up to five years or a lesser time if deemed appropriate by the Board. If parole was previously denied, that decision will remain in effect and further petitions for review will not be considered at less than two (2) year intervals.

(8) At the review hearing, the Board will consider, but is not limited to, the following:

(a) The inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;

(b) The inmate's institutional employment history;

(c) The inmate's institutional disciplinary conduct;

(d) The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate's personality which may promote or hinder conformity to law;

(e) The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcohol;

(f) The inmate's prior criminal history, including the nature and circumstances of previous offenses;

(g) The inmate's conduct during any previous period of probation or parole;

(h) The inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;

(i) The adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;

(j) There is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

NOTE: The decision for the Board shall be whether there are significant indications of reformation and rehabilitation such that the offender does not represent a risk to the community and that it is in the offender's and the community's best interest that he/she be released to the community under conditions of supervision. If the Board does not make the above finding, the Board shall set a subsequent review hearing date not to exceed five (5) years from the present review.

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

Stat. Auth.: ORS 144.110(2)(b), 163.105(1), 161.620 & 144.780

Stats. Implemented:

Hist.: PAR 4-1999, f. & cert. ef. 5-18-99; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10

255-032-0015

Petition/Purpose for Review Hearing

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

(1) Any time after completion of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or

(2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between June 30, 1995 through October 22, 1999; or

(3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before June 30, 1995; or

(4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or

(5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Stat. Auth.: ORS 163.115

Stats. Implemented: ORS 163.105

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 3-2004(Temp), f. & cert. ef. 4-15-04 thru 10-11-04; PAR 6-2004, f. & cert. ef. 6-14-04; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10

255-032-0025

Manner of Review Hearing

(1) The proceedings shall be governed by the procedures for records, disclosure, and notice outlined in Divisions 15 and 30.

(2) At the hearing, the inmate has:

(a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(b) If the inmate is without sufficient funds to employ an attorney, the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 per hour and \$1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.

(c) The right to a subpoena issued by the Board upon a showing of the general relevance and reasonable scope of the evidence sought, and pursuant to Board rules.

(3) The initial testimony of each witness shall not exceed ten minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.

(4) Pursuant to ORS 144.120, the crime victims have the right to appear at the hearing, or to submit a written statement concerning the crime and the person responsible. For the purposes of these rules, victim means any person determined by the prosecuting attorney, the court, or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. The victim may be represented by counsel or a designee of the victim's choice. If a victim chooses to speak, his/her statement should be concluded within 15 minutes. The Board may allow the victim to exceed that period when additional time is needed.

(5) Pursuant to ORS 144.120, the district attorney from the committing jurisdiction has the right to appear at the hearing, or to submit a written statement concerning the crime and the inmate. The district attorney

ADMINISTRATIVE RULES

may be represented by a designee if he/she wishes. The district attorney's statement should be concluded within 15 minutes. The Board may allow the statement to exceed that period when additional time is needed.

(6) If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, or by such other vote as is specified in statute, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition. The Board's final order granting or denying relief shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the Board's order.

(7) When an inmate has a consecutive sentence for a crime other than Aggravated Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the Aggravated Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415

Stats. Implemented:

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 3-2001, f. & cert. ef. 2-6-01; PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10

255-032-0026

Manner of Review Hearing For Hearings Requested Before June 28, 2007

(1) OAR 255-032-0022 to 255-032-0032 apply only to hearings conducted for inmates who:

(a) Were eligible for a murder review hearing prior to June 28, 2007; and

(b) Petitioned the Board for a hearing under ORS 163.105 or 163.115 prior to June 28, 2007; and

(c) Were not granted a hearing on the petition that was filed prior to June 28, 2007.

(2) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS Chapter 183 except that:

(a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 per hour and \$1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.

(3) During hearings of the Board, the chairperson or designated board member shall preside. The presiding member shall designate the order of presentation and questioning. The presiding member shall also determine the scope of questioning and may set time limits and cut off irrelevant questions and irrelevant or unresponsive answers.

(4) At the commencement of the hearing, the presiding board member shall explain the issues involved in the hearing and that the inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time.

(5) Testimony at the hearing shall be taken upon oath or affirmation of the witness from whom it is received. The presiding board member shall administer oaths or affirmations to witnesses.

(6) The initial testimony of each witness shall not exceed three minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.

(7) The record in a Murder Review Hearing must include:

(a) Evidence received or considered;

(b) Stipulations;

(c) Questions and offers of proof, objections and rulings thereon;

(d) Proposed findings and exceptions; and

(e) Any proposed, intermediate, or final order prepared by the Board.

(8) If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.

(9) When an inmate has a consecutive sentence for a crime other than Aggravated Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the Aggravated Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415

Stats. Implemented:

Hist.: PAR 5-2007, f. & cert. ef. 7-30-07; Suspended by PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10

255-032-0029

Subpoenas for a Murder Review Hearing

(1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas on behalf of the inmate.

(2) Witnesses are not required to appear in person unless good cause can be shown why an in-person appearance is necessary. Witnesses may participate via teleconference or videoconference if available.

(3) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board as prescribed by law for witnesses in ORS 44.415(2), provided the Board certifies that the witness's testimony was relevant and material to the hearing.

Stat. Auth.: ORS 44.415, 183.440

Stats. Implemented:

Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10

Board of Psychologist Examiners Chapter 858

Rule Caption: Amends Oregon Board of Psychologist Examiners rules regarding fees.

Adm. Order No.: BPE 1-2009(Temp)

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 10-1-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 858-030-0005

Subject: The Oregon Board of Psychologist Examiners is amending OAR 858-010-0005, 'Fees' to update fees that were changed with the passage of SB 5538-A by the Oregon Legislature and became effective July 1, 2009.

Rules Coordinator: Debra Orman—(503) 378-4154, ext. 21

858-030-0005

Application, Examination and Licensing Fees

(1) **Application and Examination Fees:**

(a) The application fee for licensure as a psychologist or psychologist associate shall be \$300.

(b) The fee for the jurisprudence examination shall be \$150.

(2) **Renewal Fees:**

(a) The license renewal fee for an active psychologist and psychologist associate shall be calculated on an annual base amount of \$375 and be billed on a biennial basis of \$750.

(b) The license renewal fee for a semi-active psychologist and psychologist associate shall be calculated on an annual base amount of \$187.50 and be billed on a biennial basis of \$375.

(c) The license renewal fee for persons granted inactive status shall be \$50; and billed on a biennial basis of \$100.

(d) Effective for the renewal periods beginning January 1, 2010, the Board will phase in a two year license on a birth month renewal schedule.

(e) The Board shall impose a delinquent license fee of \$200 for licenses renewed after January 1 but before February 1 of the first calendar year in the renewal period. The Board shall have discretion to waive the delinquency fee in hardship cases.

(3) **Limited Permit Fee.** The fee for a limited permit to practice in the state shall be \$100.

(4) **Miscellaneous Fees.** Materials and services are available to the public and licensees through the Board and may be purchased in accordance with ORS 192.440(2). The Board shall charge reasonable and actual costs for the following activities:

(a) Verification of Licensure — \$5.00 each written request;

(b) Transfer of Application/Licensure Information — \$20;

(c) Deferment Requests — \$10;

(d) Duplicating requests, including copying and mailing — \$2.50 for the first five copies; \$.25 for each copy thereafter;

(e) Laws and Administrative Rules — \$5;

ADMINISTRATIVE RULES

- (f) Computer diskette or email list of licensees — \$35;
 - (g) Application packet, including laws and administrative rules - \$30.00;
 - (h) Duplicate wall display certificate of licensure — \$12.00; and
 - (i) Cumulative disciplinary report — \$7.50.
- Stat. Auth.: ORS 675.110 & 675.115
Stats. Implemented: ORS 675.110 & 675.115
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 7, f. 10-21-74, ef. 11-11-74; PE 9, f. 2-3-75, ef. 2-25-75; PE 1-1978, f. & ef. 9-5-78; PE 1-1979, f. & ef. 9-5-79; PE 2-1980, f. & ef. 9-23-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1983, f. & ef. 11-1-83; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1992, f. & cert. ef. 7-14-92; PE 2-1993(Temp), f. & cert. ef. 3-18-93; PE 4-1993, f. & cert. ef. 7-19-93; Renumbered from 858-010-0060; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2000, f. 9-7-00, cert. ef. 10-15-00; BPE 2-2001(Temp), f. 8-31-01, cert. ef. 10-12-01 thru 2-27-02; BPE 3-2001(Temp), f. & cert. ef. 10-12-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2009(Temp), f. 9-29-09, cert. ef. 10-1-09 thru 12-31-09

Bureau of Labor and Industries
Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning July 1, 2009.

Adm. Order No.: BLI 21-2009

Filed with Sec. of State: 9-21-2009

Certified to be Effective: 9-21-09

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2009.

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, 2009, 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, 2009, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2009 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 26, 2009).

(b) Amendments/Corrections to July 1, 2009 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 3, 2009).

(c) Amendments/Corrections to July 1, 2009 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 10, 2009).

(d) Amendments/Corrections to July 1, 2009 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 17, 2009).

(e) Amendments/Corrections to July 1, 2009 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 24, 2009).

(f) Amendments/Corrections to July 1, 2009 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 August 14, 2009).

(g) Amendments/Corrections to July 1, 2009 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 11, 2009).

(h) Amendments/Corrections to July 1, 2009 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 18, 2009).

(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, 2009, are available from any office of the Wage and Hour Division of the

Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09

Rule Caption: Amends the prevailing rates of wage of the period beginning July 1, 2009.

Adm. Order No.: BLI 22-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commission of the Bureau of Labor and Industries for the period beginning July 1, 2009.

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, 2009, 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, 2009, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2009 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 26, 2009).

(b) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal

ADMINISTRATIVE RULES

Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 3, 2009).

(c) Amendments/Corrections to July 1, 2009 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 10, 2009).

(d) Amendments/Corrections to July 1, 2009 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 17, 2009).

(e) Amendments/Corrections to July 1, 2009 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 24, 2009).

(f) Amendments/Corrections to July 1, 2009 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 August 14, 2009).

(g) Amendments/Corrections to July 1, 2009 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 11, 2009).

(h) Amendments/Corrections to July 1, 2009 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 18, 2009).

(i) Amendment to Oregon Determination 2009-02 (effective October 1, 2009).

(j) Amendments/Corrections to July 1, 2009 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, 2009).

(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, 2009, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060
Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-

09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09

Rule Caption: Amends the prevailing rates of wage for the period beginning July 1, 2009.

Adm. Order No.: BLI 23-2009

Filed with Sec. of State: 10-8-2009

Certified to be Effective: 10-8-09

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Labor and Industries for the period beginning July 1, 2009.

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, 2009, 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, 2009, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2009 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 26, 2009).

(b) Amendments/Corrections to July 1, 2009 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 3, 2009).

(c) Amendments/Corrections to July 1, 2009 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 10, 2009).

(d) Amendments/Corrections to July 1, 2009 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 17, 2009).

(e) Amendments/Corrections to July 1, 2009 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 24, 2009).

(f) Amendments/Corrections to July 1, 2009 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 August 14, 2009).

(g) Amendments/Corrections to July 1, 2009 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 11, 2009).

(h) Amendments/Corrections to July 1, 2009 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 18, 2009).

(i) Amendment to Oregon Determination 2009-02 (effective October 1, 2009).

(j) Amendments/Corrections to July 1, 2009 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, 2009).

(k) Amendments/Corrections to July 1, 2009 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 2, 2009).

(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, 2009, 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

ADMINISTRATIVE RULES

Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06, cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06, cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07, cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07, cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07, cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09

Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Amended to include the Family Health Insurance Assistance Program (FHIAP) as a qualified status change.

Adm. Order No.: OEBB 17-2009(Temp)

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 10-7-09 thru 4-4-10

Notice Publication Date:

Rules Amended: 111-040-0040

Subject: OAR 111-040-0040 is amended to include the Family Health Insurance Assistance Program (FHIAP) as a qualified status change that is recognized by the Oregon Educators Benefit Board.

Rules Coordinator: April Kelly—(503) 378-6588

111-040-0040

Qualified Status Changes

(1) Active eligible employees experiencing a change in family or work status as noted below during the plan year have 31 calendar days from the date of the event to make changes unless indicated otherwise. The eligible employee may make only those changes that are consistent with the event for themselves and dependents. Please refer to the Qualified Status Change matrix for detail on what changes can occur with each event.

(2) Change in status. Events include:

(a) Gain spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership, 60 days from the event;

(c) Gain dependent by birth, placement for/or adoption, affidavit of dependency or Domestic Partner's children (by affidavit of domestic partnership), 60 days from the event;

(d) Active eligible employee starts new employment and gains eligibility;

(e) Change in employment status by active eligible employee which affects eligibility;

(f) Active eligible employee ends employment or other change in employment status resulting in a loss of eligibility;

(g) Spouse or domestic partner starts new employment or other change in employment status which affects eligibility;

(h) Spouse or domestic partner's employment ends or other change in employment status resulting in a loss of eligibility under their employer's plan;

(i) Event by which dependent child satisfies eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015);

(j) Event by which dependent ceases to satisfy eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015), 60-days from the event;

(k) Changes in the residence of the active eligible employee or family member

(i.e., moving out of the service area of an HMO);

(l) Reinstatement of coverage. Reinstatement can be used in the following situations:

(A) Military (USERRA)

(B) When coverage was continued under COBRA

(C) When coverage was terminated in error and there is no lapse in coverage.

(m) Changes in cost or coverage do not constitute a Qualified Status Change. All changes resulting from a change in cost or coverage must be made during Open Enrollment.

(n) Related laws or court orders. For example: Qualified Medical Child Support Order (QMSCO), Medicare, HIPAA, or Family Health Insurance Assistance Program (FHIAP). Changes are determined by the applicable law or court order.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864

Hist.: OEBB 14-2008, f. & cert. ef. 8-15-08; OEBB 10-2009(Temp), f. 5-4-09, cert. ef. 5-5-09 thru 10-31-09; OEBB 11-2009, f. & cert. ef. 7-31-09; OEBB 17-2009(Temp), f. & cert. ef. 10-7-09 thru 4-4-10

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

Rule Caption: Permanently adopts, amends, and repeals rules filed August 7, 2009 and effective 10/1/09.

Adm. Order No.: PEBB 3-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Adopted: 101-015-0011

Rules Amended: 101-010-0005, 101-020-0005, 101-020-0015, 101-020-0025, 101-020-0037, 101-020-0040, 101-020-0045, 101-020-0060, 101-020-0065, 101-030-0022

Rules Repealed: 101-001-0020, 101-015-0015

Subject: Adoption is necessary to add Dependent Child requirements, including Child by Affidavit to dependent eligibility, refine full-time student definitions and medically necessary leaves of absence, add dependent certification requirement for full-time students and adds removal of dependent who ages off.

Amendments are necessary to clarify, add and delete definitions, add verification requirements to "other medical insurance" documentation, add minimum contribution amount to Dependent Care Flexible Spending Account, add reimbursement for eligible expenses 30 days after cessation of eligibility, add minimum contribution amount to Health Flexible Spending Arrangements, add Qualified Reservist Distribution, add employee request for contribution prepayment prior to leave based on FMLA, CBIW or active military duty leave, and to improve readability.

Repeal is necessary because Rule is not required.

Rules Coordinator: Cherie M. Taylor—(503) 378-6296

101-010-0005

Definitions

Unless the context indicates otherwise, as used in OAR chapter 101, divisions 1 through 60, the following definitions will apply:

(1) "Actively at work" for medical and dental insurance coverage means an active eligible employee at work, in paid regular status and sched-

ADMINISTRATIVE RULES

uled for work during the month of requested insurance coverage, or using accrued leave on the effective date of coverage. Reference optional insurance policies or certificates for plan specific "actively at work" criteria.

(2) "Active Participation" in reference to a Flexible Spending Account (FSA) means an eligible employee currently enrolled and who contributes each month to the account.

(3) "Affidavit of Dependency" means a notarized document that attests a dependent child meets the criteria in section OAR (101-015-0011).

(4) "Affidavit of Domestic Partnership" means a notarized document that attests the eligible employee and one other individual meet the criteria in OAR 101-015-0025(2).

(5) "Benefit amount" means the amount of money paid by a PEBB participating organization on behalf of active eligible employees for the purchase of benefit plans.

(6) "CBIW" means Continuation of Benefits for Injured Workers.

(7) "Certificate of Registered Domestic Partnership" means the certificate issued by an Oregon county clerk to two individuals of the same sex after they file a Declaration of Domestic Partnership with the county clerk.

(8) "COBRA" means the federal Consolidated Omnibus Reconciliation Act.

(9) "Dependent Care Flexible Spending Account (FSA)" means the dependent care assistance program.

(10) "Dependent child" is defined by OAR 101-015-0011

(11) "Domestic partner" means an eligible employee's partner in a registered domestic partnership under Chapter 99 Oregon Laws 2007 or unmarried partner of the same or opposite sex that meets the requirements as outlined in OAR 101-015-0025(2).

(12) "Eligible employee" means and includes:

(a) "Active eligible employee" means an employee of a PEBB participating organization, including state officials, in exempt, unclassified, classified and management service positions who are expected to work at least 90 days; and who work at least half-time or are in a position classified as job share.

(b) "Retired eligible employee" means a previously active eligible employee, who meets retiree eligibility as defined in OAR 101-050-0005. A retired eligible employee is eligible only for those benefit plans established in division 50 of this chapter.

(c) "Other eligible employees" means individuals of self-pay groups as established by ORS 243.140 and 243.200. This group is eligible only for medical or dental benefits as approved by PEBB.

(13) "Family member" means a spouse or dependent child.

(14) "FMLA" means the federal Family Medical Leave Act.

(15) "FTE" means full time equivalent job position.

(16) "Half-time" means an eligible employee who works less than full time but at least:

(a) Eighty paid regular hours per month; or

(b) Eighty paid regular hours per month or .5 FTE for OUS employees; or

(c) Eighty paid regular hours per month and is in a .5 FTE position for the Oregon Judicial Department; or

(d) As defined by collective bargaining.

(17) "Health Flexible Spending Account (FSA)" means the health flexible spending arrangement.

(18) "Imputed value" means a dollar amount established yearly for an insurance premium at fair market value. The IRS views the imputed value as taxable income. The imputed value dollar amount is added to the eligible employee's taxable wages.

(19) "Ineligible individual" means an individual who does not meet the definition of an eligible employee, spouse, domestic partner, or dependent child.

(20) "Job share" means two eligible employees sharing one full time equivalent position. Each eligible employee's percentage of the total position determines the benefit amount the employee receives. The monthly benefit percentage amount remains the same regardless of individual hours worked per month. Job share employees may not donate their portion of the benefit amount to the job share co-worker.

Example 1: John and Jill share one full time equivalent position. When they were hired into the position in July, John's percentage of the total position was 40 percent; Jill's percentage was 60 percent. John worked 70 percent of the available hours in September. John's benefit amount percentage for September remains at 40 percent. Jill's benefit amount percentage remains at 60 percent.

(21) "OFLA" means the Oregon Family Leave Act.

(22) "OSPS" means the Oregon State Payroll System.

(23) "OUS" means the Oregon University System.

(24) "Open enrollment period" means an annual period chosen by PEBB when both active and other eligible employees and COBRA participants can make benefit plan changes or elections for the next plan year.

(25) "Optional insurances" means, but is not limited to:

(a) Dependent life insurance;

(b) Employee, spouse, or domestic partner life insurance;

(c) Accidental Death & Dismemberment (AD&D) insurance;

(d) Short Term Disability insurance;

(e) Long Term Disability insurance;

(f) Flexible Spending Accounts (Health and Dependent Care); and

(g) Long Term Care insurance.

(26) "Paid regular" means in current payroll status, and receiving payment for work time including vacation, sick, holiday or personal leave and compensatory time.

(27) "Pebb.benefits" means the electronic benefit management system sponsored by PEBB. The system allows electronic enrollment and termination of the eligible individual's benefit plans, personal information updates, and the transmittal of data to plans, payroll centers, and third party administrators.

(28) "PEBB participating organization" means a state agency, board, commission, university, or other entity that receives approval to participate in PEBB benefit plans.

(29) "Plan change period" means a period chosen by PEBB when retirees can make limited benefit plan changes.

(30) "Plan year" means a period of twelve consecutive months.

(31) "Qualified status change" (QSC) means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event.

(32) "Reinstate" means to reactivate previous benefits and enrollments, if available, to an eligible employee returning to eligible status within a specific time frame. Reinstated enrollment does not include FSA or Long Term Care.

(32) "Spouse" means a person of the opposite sex who is a husband or wife. A relationship recognized as a marriage in another state between two opposite sex partners will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 302, 659A.060 - 069, 743.600 - 602, 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2006(Temp), f. & cert. ef. 12-14-06 thru 6-12-07; PEBB 1-2007(Temp), f. & cert. ef. 6-11-07 thru 12-8-07; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 1-2008(Temp), f. & cert. ef. 2-4-08 thru 8-1-08; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-015-0011

Dependent Child

(1) In defining dependent child eligibility, PEBB uses the Internal Revenue Code (IRC) 152 as revised by the Working Families Tax Relief Act of 2004. A dependent child must meet the following PEBB eligibility requirements:

(a) The child is an eligible employee's, spouse's, or domestic partner's:

(A) Biological, adopted, or a placed for adoption child; or

(B) Child by Affidavit. A Child by Affidavit includes, but is not limited to, a foster child, a ward of the court, a child under legal guardianship, or the child of a dependent. The child must meet PEBB eligibility requirements. The eligible employee must complete and return to the agency a notarized PEBB Affidavit of Dependency form within five business days of the child's electronic enrollment date or the date the agency receives the enrollment forms. PEBB terminates the child's coverage retroactive to the effective date if the notarized affidavit is not received within the specified time.

(b) The dependent child is not married, does not have a domestic partner, is not in the military and is a member of the eligible employee's household.

(c) Regarding age, the dependent child is:

(A) Under the age of 19 at the end of the calendar plan year.

(B) Between the ages of 19 and up to age 24 during the plan year, and is a full time student who has not attained the age of 24.

(i) Student means an individual who during each of five calendar months during the calendar year is a full-time student at an education organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on.

(ii) It to be full-time, the student must be enrolled for the number of hours or courses the school considers full-time attendance. The term school includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. It does not include on-the-job training courses, correspondence schools, or schools offering courses only through the internet. People who work "co-op" jobs in private industry as part of a school's regular course of classroom and practical training are full-time students.

(iii) Beginning in 2010, seriously ill or injured full time student dependents covered under an eligible employee's plan immediately before the first day of a medically necessary leave of absence, or change in enroll-

ADMINISTRATIVE RULES

ment such as full-time to part-time, may continue coverage for up to one year while on a medically necessary leave of absence. "Medically necessary leave of absence" means a leave of absence from a post-secondary educational institution, or any other change in enrollment at the institution that starts while the child is suffering from a serious illness or injury, is medically necessary, and causes the child to lose student status for purposes of PEBB eligibility. A physician of the dependent must provide a written certification to PEBB stating that the child is suffering from a serious illness or injury and that the leave of absence (or change in enrollment) is medically necessary. The extension of coverage continues until the earlier of one year after the first day of the leave or the date that coverage would otherwise terminate, (e.g., due to an age limitation).

(C) Between the ages of 19 and up to age 24, lives in the eligible employee's household over six months of the calendar year, and the eligible employee provides over half the child's yearly support.

(d) There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability.

(A) The attending physician must submit documentation of the disability to the eligible employee's PEBB medical insurance plan for eligibility approval. Once approved, the medical plan may review the dependent's health status at any time to determine the child's continued PEBB eligibility.

(B) When the dependent child is 24 years of age or older, the disability must have existed before attaining age 24. The child must have had continuous medical insurance coverage, group or individual, prior to attaining age 24 and the insurance must continue until the PEBB insurance effective date.

(C) If the child terminates from PEBB insurance coverage after age 24, the child is ineligible for future enrollment as a dependent child under PEBB coverage.

(e) The child must be a U.S. citizen, national or resident of the U.S. or a resident of Canada or Mexico. When an adopted child or child placed for adoption fails this requirement, they can still be the employees' dependent child if the child has the employee's home as his principal home and is a member of the employees' household, and the employee is a citizen or national of the U.S. Foreign students are not eligible for PEBB coverage.

(f) The child must not qualify as any other person's dependent child, except that a child of divorced or separated parents meeting conditions under IRC 152(e) can be treated as dependent of both parents for the purpose of health insurance coverage.

(2) Eligible employees who want to provide insurance coverage to dependent children that will be between the ages of 19 and up to age 24 must certify during the open enrollment period the dependent's continued eligibility for the following plan year. Dependents not certified during open enrollment will lose coverage the last day of the current plan year. The yearly dependent certification excludes children approved by the insurance plan as incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability.

(3) PEBB terminates all insurance coverage for dependent children the last day of the month in which the child reaches age 24. PEBB will not terminate coverage for children age 24 or older when approved by the insurance plan as incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability.

Stat. Auth.: ORS 243.125
Stats. Implemented: ORS 183, 192 & 243
Hist.: PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0005

Newly Hired and Newly Eligible Employee

(1) A newly hired or newly eligible employee has 60 days from the date of hire or date of eligibility to enroll in PEBB-sponsored benefit plans.

(a) The newly hired eligible employee may enroll in benefit plans for the following month regardless of the number of hours worked in the month.

(b) The eligible employee must be actively at work on the effective date of the insurance coverage.

(c) Benefit plan elections are irrevocable for the plan year except as specified in OAR 101-020-0050.

(d) A newly eligible employee enrolling in PEBB-sponsored benefit plans and terminating employment before the effective date of insurance coverage is not eligible to receive benefits.

Example 1: Sarah was hired and enrolled in benefit plans on June 25. She quit on July 2. Sarah is eligible for insurance coverage effective July 1 through July 31, because she was in paid regular status on July 1.

Example 2: Ron was hired and enrolled in benefit plans on June 25. He quit on June 30. Ron is not eligible for insurance coverage, because he was not in paid regular status on July 1.

(2) An employee that becomes eligible for benefits during or after the open enrollment period but before the start of the new plan year, must receive the opportunity for open enrollment changes.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0015

Opting Out of Medical Insurance Coverage

(1) An eligible employee covered by another employer-sponsored group medical plan may opt out of PEBB-sponsored medical insurance coverage. Opting out is a medical insurance plan election and applies only to the medical insurance benefit. The eligible employee may receive a portion of the benefit amount as cash in lieu of medical insurance coverage as determined by PEBB.

(2) The eligible employee must provide proof of current coverage under another employer-sponsored group medical insurance plan. The employee must provide to the agency documentation of current group medical coverage within five business days of the electronic enrollment or the date the agency receives enrollment forms. Examples of documentation, include but is not limited to, plan identification cards or an employer letter of coverage. If documentation is not received, the employee's medical opt out terminates retroactive to the effective date. PEBB will enroll only the employee in the PEBB state wide medical plan and continue all other employee insurance selections.

(3) Mandatory enrollment in other plans such as dental insurance may be required of eligible employees electing to opt out.

(4) An eligible employee enrolled in Medicare, Medicaid, Veterans' Administration Benefit Programs, TRICARE or Student Health Insurance may not opt out in lieu of enrollment in a PEBB medical insurance plan.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061 - 302

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0025

Removing an Ineligible Individual from Benefit Plans

(1) An ineligible individual must be removed from insurance coverage within 60 days of the loss of eligibility. The eligible employee is responsible for removing ineligible individuals from their insurance coverage by submitting completed enrollment update forms to the agency. Insurance coverage ends the last day of the month that eligibility is lost.

(2) PEBB must review all requests to remove an ineligible individual submitted after 60 days of the loss of eligibility. A COBRA unavailability letter will be sent to ineligible individuals removed due to late notification by the eligible employee.

(3) An eligible employee may be responsible to repay claims paid by benefit plans for an ineligible individual during any period of ineligibility.

(4) PEBB will remove individuals identified as ineligible from insurance coverage retroactive to the end of the month that eligibility is lost, whether or not requested by the employee within the 60 day period.

Example 1: Cindy's divorce was finalized September 14. The spouse lost PEBB eligibility September 30 due to the divorce. Cindy did not submit update forms, instead she removed her spouse during Open Enrollment in October. This resulted in continued coverage for the former spouse to January 1 of the new plan year. The error was identified, PEBB removed Cindy's former spouse from coverage effective September 30 and a COBRA unavailability letter was sent to the former spouse. Cindy may be responsible for claims paid for her former spouse after September 30.

Example 2: John's dependent child, who is not disabled, reaches age 24, PEBB automatically removes the child from coverage the last day of the month in which the child turned 24.

Stat. Auth.: ORS 243.061 - 302
Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0037

Correcting Enrollment and Processing Errors

(1) Employee enrollment errors occur when an eligible employee provides incorrect information or fails to make correct selections when making benefit plan elections. An employee's failure to take enrollment action is not considered an employee error. The eligible employee is responsible for identifying enrollment errors.

(a) PEBB authorizes the agency to correct employee enrollment errors when reported by the employee within 60 days of the original eligibility date or midyear plan change date. Corrections are retroactive to the first of the month following the date the original paper form or electronic equivalent was first received by the agency.

(A) PEBB must review all employee requests to correct enrollment errors received after 60 days of the original eligibility date or the midyear plan change date. If the correction is approved, the effective date is the first of the month following the receipt of the employee's correction request.

ADMINISTRATIVE RULES

(B) Enrollment error correction requests considered beyond 90 days of the eligibility date or the midyear plan change date must demonstrate facts and circumstances that clearly establish an employee error occurred.

Example: As a new employee Anne enrolled in the Dependent Care Flexible Spending Account. Anne does not have any eligible dependents. Six months later Anne realizes the error after her first Health FSA claim is rejected. Anne may request an enrollment correction from PEBB.

(b) PEBB authorizes the agency to correct employee open enrollment errors. The agency must receive employee correction requests after the open enrollment end date but no later than 30 days from receipt of the first paycheck of the new plan year. PEBB must review all employee correction requests received beyond 30 days from receipt of the first paycheck of the new plan year. Open Enrollment employee error corrections are effective the first day of the new plan year.

(2) Administrative processing errors occur when benefit plan elections are processed incorrectly in the payroll and benefit system by the agency, PEBB, or third party administrative staff, or when a newly eligible employee does not receive correct enrollment information or materials within 30 days of the eligibility date.

(a) PEBB authorizes the agency to correct processing errors identified within 60 days of the eligibility date or the midyear plan change date. Corrections are retroactive to the first of the month following the date the paper form or electronic equivalent was first received by the agency. The agency must reconcile all premium discrepancies as described by contract with the insurer.

(b) PEBB must review all processing error correction requests identified after 60 days of the eligibility date or the midyear plan change date. If approved, corrections are retroactive to the first of the month following the date the paper form or electronic equivalent was first received by the agency. The agency must reconcile all premium discrepancies as described by contract with the insurer.

(c) PEBB authorizes the agency to correct open enrollment processing errors. The agency must receive requests for correction after the open enrollment end date but no later than 30 days from receipt of the first paycheck of the new plan year. PEBB must review all open enrollment correction requests received beyond the 30 days from receipt of the first paycheck of the new plan year. All processing error corrections are effective the first day of the new plan year.

(d) When a newly eligible employee fails to receive enrollment information within 30 days of the eligibility date or receives incorrect information, benefit plan elections will be effective retroactive to the first of the month following the eligibility date.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061 - 302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 1-2005, f. & cert. ef. 4-14-05; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 1-2006, f. & cert. ef. 11-28-06; Renumbered from 101-040-0080, PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0040

Late Enrollment

(1) Late enrollment occurs when an eligible employee fails to enroll themselves, eligible family members, domestic partner, or a domestic partner's child in benefit plans within the required time period. Excluding section (4) of this rule, PEBB must review all late enrollment requests.

(2) An enrolled employee requesting late enrollment for a family member, domestic partner, or domestic partner's dependent child must provide supporting documentation that shows an inability to enroll the individual when first eligible because of circumstances beyond the employee's control.

(3) A newly eligible employee approved for late enrollment receives only employee basic life insurance coverage and may only elect medical and dental coverage for themselves, spouse, domestic partner, or dependent children. If late enrollment is approved, benefit coverage is effective the first of the month following receipt of the completed enrollment forms.

(4) Following receipt of the completed forms, agencies are responsible for approving the late enrollment of the employee's biological newborn dependent child during the first twelve months of life. The enrollment is always retroactive to the first of the month following the date of birth.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 1-2006, f. & cert. ef. 11-28-06; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0045

Returning to Work

(1) Refer to the following rules for an employee returning to active or paid regular status from the following qualified protected leave status:

(a) Continuation of Benefits for Injured Workers (CBIW). See OAR 101-030-0010.

(b) Federal Family Medical Leave Act (FMLA). See OAR 101-030-0015.

(c) Oregon Family Leave Act (OFLA). See OAR 101-030-0020.

(d) Active Military Duty Leave (USERRA). See OAR 101-030-0022.

(2) An eligible employee returning from an unprotected leave without pay or a reduction in hours must work at least half-time in the month of return to be eligible for medical, dental, and optional insurance coverages for the following month. The exception is eligible employees in job share positions.

(3) An eligible employee returning to paid regular status within 30 days without a break in coverage will have their previous coverage reinstated and may not make benefit plan changes.

Example: Gary begins leave without pay on May 20. Gary has enough hours for benefits to continue through June; therefore, his scheduled benefit end date is June 30. Gary returns to work on May 25 (within 30 days with no break in benefit coverage). Gary receives insurance for June because he worked enough hours in May to pay for his June benefits. Gary's benefits are reinstated June 1 because he returned to work within 30 days. Gary must work at least half time in June for his benefits to continue in July. Gary is not eligible to make benefit changes.

(4) An eligible employee returning to paid regular status within 12 months of the insurance coverage end date following layoff or termination of employment is not required to work at least half-time in the month they return to be eligible for benefits the following month. The previous enrollments will be reinstated, if available, the first of the month following their return to work. This excludes Flexible Spending Accounts and Long Term Care. The employee may make midyear plan changes within 60 days of the date they return to work.

(5) An eligible employee returning to active or paid regular status after 12 months from the insurance coverage end date must enroll as a newly eligible employee.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061-302 & 659A.060-069

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0060

Dependent Care Flexible Spending Account

(1) An eligible employee may enroll in a pretax Dependent Care Flexible Spending Account (Dependent Care FSA). The employee must enroll each year during open enrollment to participate in a Dependent Care FSA in the new plan year. The employee may enroll for Dependent Care when:

(a) Their expenses qualify for reimbursement for:

(A) The care and well-being of a dependent child under the age of 13; or

(B) The care of a disabled dependent who is incapable of self-care and who spends at least eight hours per day in the employee's home; and

(b) The employee is:

(A) Single, or

(B) Married, and the expenses are necessary for both the eligible employee and the spouse to work, or

(C) Married, and the spouse is either disabled, actively seeking employment, or a full time student for some part of each of five months during the year.

(2) An eligible employee may not allocate more than \$5,000 to any pretax Dependent Care FSA per plan year or more than \$2,500 per plan year if married and filing a separate income tax return.

(3) PEBB requires a minimum monthly contribution amount to participate. An employee may make only one contribution in each month. An employee may not change their monthly contribution unless they experience a qualified mid-year plan change event.

(4) The Dependent Care FSA period of coverage is the plan year. The exception is for employees who terminate participation, in which case it means the portion of the plan year before the active participation end date. Active participation ends the last day of the month that a contribution is received for that month.

(5) Reimbursement of eligible expenses may occur only for the period of coverage in which the participation was active, provided the claim is filed within the eligible plan year. The exception is eligible expenses incurred in the month following participation or cessation of eligibility, if the month is in the current plan year (not the grace period) and the eligible employee files a claim within 90 days after the date participation ends.

(6) Final contribution at termination of employment or leave.

(a) An OSPS employee will not have a contribution taken from their final paycheck.

Example: Ann's last day of work is September 16. Her final check will not have a contribution taken. Ann's participation ends September 30 and her period of coverage could be through October 31.

ADMINISTRATIVE RULES

(b) An OUS employee who meets the 80-hour work rule will have a contribution taken from their final paycheck, in accordance with OAR 101-020-0002.

Example 1: Ann's last day of work is June 6. She has less than 80 hours of work for the month. Ann's final check will not have a contribution taken. Ann's participation ends May 31 and her period of coverage could be through June 30.

Example 2: Ann's last day of work is June 20. She has more than 80 hours of work for the month. Ann's final check will have a contribution taken. Ann's participation ends June 30, and her period of coverage could be through July 31.

(7) The Dependent Care FSA is subject to the "Use It or Lose It" rule. Any funds remaining in the account beyond March 31, of the following plan year forfeit to PEBB

(8) An eligible employee who separates from the employer and later returns to work within 12 months of the separation is not reinstated in the Dependent Care FSA. They may enroll within 60 days of their eligibility date.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061 - 302

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; Renumbered from 101-040-0050, PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-020-0065

Health Flexible Spending Arrangement

(1) An eligible employee may enroll in a pretax Health Flexible Spending Arrangement (Health FSA). The employee must enroll each year during open enrollment to participate in a Health FSA in the new plan year. The Board determines the annual maximum contribution amounts.

(2) PEBB requires a minimum monthly contribution amount to participate. An employee may make only one contribution in each month. An employee may not change their monthly contribution unless they experience a qualified mid-year plan change event.

(3) An eligible employee approved for FMLA, CBIW, or active Military Duty Leave can request to prepay their Health FSA contribution if prepayment:

- (a) Totals the required contribution amount for the leave period;
- (b) Is for the current plan year;
- (c) Is completed by the last paycheck prior to the start of the leave

and;

- (d) Is requested and submitted on the appropriate form to PEBB.

(4) An eligible employee may request a qualified reservist distribution from a Health FSA account when ordered or called to active military duty for a period of at least 180 days or for an indefinite period. The eligible employee must be a member of the Army National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, the Coast Guard Reserve, or the Reserve Corps of the Public Health Service.

(a) The following conditions must be met by the eligible employee in order to elect the qualified reservist distribution:

(A) The order or call to active military duty is on or after the plan year date of January 1, 2009.

(B) Contributions to the Health FSA account for the plan year as of the date of the request for a distribution exceed the reimbursements received from the Health FSA Account for the plan year as of that date.

(C) The agency receives a copy of the order or call to active duty along with the distribution request form. An order or call to active duty of less than 180 days duration must be supplemented by subsequent calls or orders to reach a total of 180 or more days.

(D) During the period beginning with the date of the order or call to active duty and ending on the last eligible day of the plan year during which the order or call occurred, the employee submits a qualified reservist distribution election form to the agency.

Example: An eligible employee is called to active duty on September 13, 2009 and wants a Health FSA qualified reservist distribution. The employee must request the qualified reservist distribution between September 13, 2009 and March 31, 2010.

(b) The distribution amount paid to the eligible employee is equal to the contributions to the Health FSA Account for the plan year as of the date of the distribution request, minus any reimbursements received by the employee for the plan year as of that date. A qualified reservist distribution is included in an eligible employee's gross income and reported as wages for the year it is paid.

Example: An eligible employee elects Health FSA benefits of \$1,000 for the 2009 plan year, and during the first six months of the plan year, makes Health FSA contributions of \$500 and receives Health FSA reimbursements of \$200 for substantiated medical care expenses. The employee is called to active duty for an indefinite period and on June 30 requests a reservist distribution from the agency. The employee will receive a distribution of \$300, and the agency must add that amount to the employees' taxable wages for the 2009 tax year.

(c) An employee forfeits the right to receive reimbursements for medical care expenses incurred during the period that begins on the date of the distribution request and ending on the last day the Plan Year. The Health FSA Account is closed as of the date of request for a reservist distribution.

(5) The Health FSA period of coverage is the plan year. The exception is for employees who terminate participation, in which case it means the portion of the plan year before the active participation end date. Active participation ends the last day of the month that a contribution is received for that month.

(6) Reimbursement of eligible expenses may occur only for the period of coverage in which participation was active, provided the claim is filed within the eligible plan year. OUS and academic OSPS employees that contribute during the plan year based on 9 or 10-month contributions are considered actively participating during the months of no contribution, as scheduled at the time of enrollment.

(7) Final contribution at termination of employment or leave without prepayment.

(a) An OSPS employee will not have a contribution taken from their final paycheck.

Example: Ann's last day of work is September 16. Her final check will not have a contribution taken. Ann's participation ends September 30 and her period of coverage is through September 30.

(b) An OUS employee who meets the 80-hour work rule will have a contribution taken from their final paycheck, in accordance with OAR 101-020-0002.

Example 1: Ann's last day of work is June 6. She has less than 80 hours of work for the month. Ann's final check will not have a contribution taken. Ann's participation ends May 31 and her period of coverage is through June 30.

Example 2: Ann's last day of work is June 20. She has more than 80 hours of work for the month. Ann's final check will have a contribution taken. Ann's participation ends June 30, and her period of coverage is through June 30.

(8) The Health FSA is subject to the "Use It or Lose It" rule. Any funds remaining in the account beyond March 31 following the plan year forfeit to PEBB.

(9) An eligible employee ending employment or on leave of absence may continue to participate in the Health FSA up to the end of the current plan year through COBRA if:

- (a) There is a positive balance in the eligible employee's account; and
- (b) The eligible employee self-pays contributions to the account post-tax.

(10) An eligible employee who separates from the employer and later returns to work within 12 months of the separation is not reinstated in the Health FSA. They may enroll within 60 days of their eligibility date.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061 - 302

Hist.: PEBB 2-2004(Temp), f. 7-13-04, cert. ef. 8-31-04 thru 2-27-05; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; Renumbered from 101-040-0055, PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

101-030-0022

Continuation of Insurance Coverage for Employees on Active Military Leave (USERRA)

(1) The state will continue to pay the benefit amount for medical, dental, and employee basic life insurance coverage in effect at the time an eligible employee begins active military duty. This benefit coverage will continue for the duration of the active military leave, up to 24 consecutive months. The agency may end this coverage before or during the 24 months active duty only if the member submits a signed written request to end the coverages.

(2) An eligible employee may continue the following optional plans during active military duty up to 12 months by self paying premiums or contributions to the agency:

- (a) Optional Life Insurances
- (b) Accidental Death and Dismemberment Insurance
- (c) Health Flexible Spending Account (FSA).

(3) An eligible employee on active military leave during open enrollment may make open enrollment benefit elections. The employee must file a power of attorney with the agency to allow another individual to make plan elections in the employee's absence. Enrollment in a Health FSA must occur during open enrollment in order to participate in the new plan year.

(4) An eligible employee who returns to work within 24 months will have available previous optional plan enrollments reinstated retroactive to the first day of the month the employee returns. A returning employee is not required to work at least half-time in the month they return to be eligible for benefits the following month.

(a) The employee must self-pay premiums for optional insurance plan reinstatements for the month in which they return.

(b) An employee returning to work will not be reinstated in Long Term Care or any FSA, unless they continued contributions to their Health FSA while on military leave.

(c) The employee may make midyear plan changes within 60 days of the date they return to work.

(5) A COBRA qualifying event occurs when an eligible employee:

- (a) Is no longer in active duty status or paid regular status, and does not return to work following the allowed decompression time;
- (b) Remains in active duty status after 24 months of active duty; or
- (c) Terminates employment

Stat. Auth.: ORS 243.061 - 302

ADMINISTRATIVE RULES

Stats. Implemented: ORS 243.061-302 & 408.240
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09

Department of Agriculture
Chapter 603

Rule Caption: Redraws boundary of Willamette Valley Canola protected district; restricts special permits to research.

Adm. Order No.: DOA 14-2009

Filed with Sec. of State: 9-16-2009

Certified to be Effective: 9-16-09

Notice Publication Date: 7-1-2009

Rules Amended: 603-052-0850, 603-052-0860, 603-052-0870, 603-052-0880

Subject: The proposed rule collapses the boundaries of the Willamette Valley Canola Protected District from county lines to a rectangle covering the historical footprint of the specialty seed and vegetable industries. Special permits for growing canola within protected districts would be limited to research including involvement of an accredited university. An application fee of \$2.00/acre would be imposed on applications for special permits.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0850

Rapeseed Control Areas

As provided in ORS 570.450, the department may establish control areas for the production of rapeseed.

Stat. Auth.: ORS 561.190 & 570.450

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09

603-052-0860

Definitions

For purposes of this rule, the following terms are defined as indicated:

(1) "Brassica spp." means any plants in the genus Brassica.

(2) "Cover crop" means any species of rapeseed that is grown as a cover crop and is not allowed to flower.

(3) "Department" means the department of agriculture of the state of Oregon.

(4) "Director" means the director of the department or his duly authorized representative.

(5) "Forage" means any species of rapeseed that is grown for livestock feed and is not allowed to flower.

(6) "Person" means an individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(7) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in, and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land.

(8) "Rapeseed" means plants of the species *Brassica napus*, *Brassica rapa* and *Brassica juncea*, including varieties commonly known as canola.

Stat. Auth.: ORS 561.190 & 570.450

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09

603-052-0870

General Production Area/Protected Districts

Growing rapeseed for oil, seed, forage or cover crop production requires particular attention to maintaining oilseed quality and purity. The protection of oil, seed, forage and cover crop quality and purity is in the public interest, as is the orderly production of such crops. Proper isolation between differing types of rapeseed or other crops susceptible to cross pollination and/or processing problems is required if the public interest in a food, industrial or seed market is to be developed and protected, and established commodity markets are to be preserved. Therefore, the seeding and growing of rapeseed by any person for any purpose in the state of Oregon shall be subject to the regulations of either the general production area or a protected district. Noncompliance with these regulations constitutes an unreasonable interference with the public's rights to use and enjoy rapeseed for oil, seed, forage or cover crops.

Stat. Auth.: ORS 561.190 & 570.450

603-052-0880

General Production Area

(1) All lands in Oregon outside of protected districts are for the purposes of this rule, in the general production area. Rapeseed production in the General Production Area is subject to the following regulations.

(a) Growing Brassica spp. crops for any purpose including oil is allowed.

(b) All rapeseed seed stock which trades in commerce in General Production Areas must be certified seed which has been produced under standards established by the Association of Seed Certifying Agencies and state standards, and must be accompanied by a phytosanitary certificate stating that a test performed on untreated seed was free from blackleg, *Leptosphaeria maculans*; the seed must also be treated (after the phytosanitary test) prior to planting with a fungicide officially approved for blackleg control;

(c) To prevent buildup of blackleg, blackrot, and other diseases and pests, rapeseed may not be grown on the same plot of land more often than two years in every five;

(d) All untagged loads of rapeseed transported through Protected Districts must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss.

Protected Districts

(2) Production of rapeseed for oil or seed is incompatible with production of crops of related species grown for seed or vegetables. Therefore, protected districts are established where rapeseed production for oil or seed is prohibited except under special permit. Production of rapeseed for forage or cover crop in these protected production areas is subject to measures to minimize undesirable cross-pollination, disease and pest buildup, and volunteers. The following rules apply to all land in Protected Districts:

(a) Growing Brassica spp. crops for oil or seed is prohibited, except under special permit as outlined in (5) below and in northeast Oregon. In northeast Oregon's protected district, special permits are not required for growing Brassica spp. crops for oil, but all other requirements, (b) to (h) below, do apply;

(b) All rapeseed seed stock which trades in commerce in Protected Districts must be certified seed which has been produced under standards established by the Association of Seed Certifying Agencies and state standards, and must be accompanied by a phytosanitary certificate stating that a test performed on untreated seed was free from blackleg, *Leptosphaeria maculans*; the seed must also be treated (after the phytosanitary test) prior to planting with a fungicide officially approved for blackleg control;

(c) To prevent buildup of blackleg, blackrot, and other diseases and pests, rapeseed may not be grown on the same plot of land more often than one year in every four years;

(d) To prevent cross-pollination problems, rapeseed must be isolated from other crops with which it will cross-pollinate, by a distance of not less than three miles. In Baker, Union and Willowa counties the required isolation distance shall be not less than two miles;

(e) The location of all rapeseed fields, and experimental plots, must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting. In the Willamette Valley, the recording system used shall be that adopted by the Willamette Valley Specialty Seed Crops Association;

(f) Forage and cover crop rapeseed may be grown but shall not be allowed to flower;

(g) All untagged loads of rapeseed transported within Protected Districts must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss;

(h) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Designation of Protected Districts

(3) The following areas are designated as Protected Districts:

(a) in the Willamette Valley, the area encompassed by a rectangle beginning at the northwest corner of Township 1N, Range 6W and proceeding east to the northeast corner of Township 1N, Range 2E, then south to the southeast corner of Township 19S, Range 2E, then west to the southwest corner of Township 19S, Range 6W, then north to the point of beginning.

(b) in Central Oregon, the entire counties of Crook, Deschutes and Jefferson;

(c) in Northeastern Oregon, the entire counties of Baker, Union and Willowa, except the following part of Willowa County which is designated as a general production area: Township 4N, Range 43E; Township 4N, Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and those por-

ADMINISTRATIVE RULES

tions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E falling within the State of Oregon;

(d) in Malheur County, a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. This strip of land borders Idaho's rapeseed production district IV (IDAPA 02.06.13) where rapeseed production is prohibited. The rest of Malheur Co. is a general production area.

Changes to Rapeseed Control Area Rules

(4) Interested persons may petition the department to amend or repeal these rules, including designation changes creating or removing protected district status, by following the procedures in the Administrative Procedures Act, ORS 183.390. The agency must either deny the petition or initiate rulemaking within 90 days of receiving the petition. In deciding whether to grant or deny a request to amend or repeal these rules, the agency must consider six criteria:

- (a) The continued need for the existing rule;
 - (b) Any complaints and comments about the rule received from the public;
 - (c) The complexity of the rule;
 - (d) The extent to which the rule overlaps, duplicates or conflicts with other state or federal rules and, to the extent feasible, with local government regulations;
 - (e) The degree to which circumstances have changed since the rule was adopted; and
 - (f) The legal basis for the rule.
- (g) If no petitions requesting review of this rule are received by December 31, 2012, the Department shall initiate a review including stakeholder involvement.

Special Permits for Exemptions

(5) The department may issue special permits providing exemptions to the rapeseed control area rules for the purpose of research. Persons requesting a special permit shall petition the Department in writing and include the following conditions:

- (a) Research must include the involvement of an accredited university;
- (b) All conditions of section 2 above (b) to (h) must be met including pinning of fields;
- (c) A nonrefundable application fee of \$2.00/ acre is due upon application to the Department to cover the Department's costs associated with review of the applications;
- (d) Person desiring a special permit under the rapeseed control area rules shall petition the Department in writing;
- (e) The Director of the Department of Agriculture retains the final authority to approve or deny special permit requests. Any action under a special permit shall be subject to any conditions or restrictions set forth in the permit, and these conditions and restrictions may vary depending on the proposed action and its potential risk.

Violations

(6) The Director shall have the authority to require destruction up to bloom of any rapeseed production that violates these rules. In the event that the person or producer of said production does not comply with the destruction order, the Director is authorized to have the production destroyed by a third party. The cost of such destruction is to be charged to the producer. In addition, persons violating these regulations are subject to the penalties provided by ORS 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.190 & 570.450
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 1-2008, f. & cert. ef. 1-7-08; DOA 14-2009, f. & cert. ef. 9-16-09

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

Rule Caption: Establishes an alternate certification process for small wind turbines.

Adm. Order No.: BCD 6-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 7-1-2009

Rules Adopted: 918-311-0080

Subject: The rule establishes an alternate certification process for wind turbines with a capacity of 100kW or less. To be certified under the rule, a manufacturer submits a single turbine for field evaluation and then provides documentation to a jurisdiction that all other tur-

bines of that particular model are the same as the evaluated one. Existing permitting, licensing, and inspection requirements also apply. This rule expires on January 1, 2011.

Rules Coordinator: Shauna M. Parker—(503) 373-7438

918-311-0080

Alternate Certification for Installation of Small Wind Turbines

(1) Wind turbines with a name plate capacity of not more than 100kW that meet the following criteria are considered certified as required by ORS 479.610.

(2) Certification under this rule only applies to small wind turbines where:

(a) The product design is reviewed for compliance with appropriate product safety and functionality standards and stamped by an Oregon-licensed professional electrical engineer; and

(b) The inverter is listed or labeled by a Nationally Recognized Testing Laboratory.

(3)(a) To ensure the safety of the components under this rule:

(A) The manufacturer must submit one of each model of the product to an approved field evaluation firm for evaluation and approval as meeting electrical product safety standards;

(B) The manufacturer must certify that each additional turbine of the same model meets the approved electrical product safety standards of the evaluated model; and

(C) The field evaluation firm will provide for random evaluation of additional units as necessary, in accordance with the recommended practices required by OAR 918-306-0010(2)(c).

(b) If the approved model is changed it must be re-evaluated.

(4) Documentation demonstrating compliance with section (3) of this rule must be provided to the inspecting jurisdiction.

(5) Installations performed under this rule are required to comply with all appropriate permit, inspection, and licensing requirements.

(6) The provisions of this rule expire on January 1, 2011.

Stat. Auth.: ORS 479.760
Stat. Implemented: ORS 479.760
Hist.: BCD 5-2009(Temp) f. & cert. ef. 7-27-09 thru 10-1-09; BCD 6-2009, f. 9-30-09, cert. ef. 10-1-09

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Rule Caption: Corrects fee methodology used for calculating permit fees on additions in residential construction.

Adm. Order No.: BCD 7-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 918-050-0100

Subject: This rule corrects the calculation method used to value permits for additions in residential structures by clarifying that an addition is considered "new construction" not "alteration and repair," consistent with the general understanding among jurisdictions and the trades.

Rules Coordinator: Shauna M. Parker—(503) 373-7438

918-050-0100

Statewide Fee Methodologies for Residential and Commercial Permits

(1) Residential construction permit fees shall be calculated using the following methodologies:

(a) A plumbing permit fee for new construction includes one kitchen and is based on the number of bathrooms, from one to three, on a graduated scale. An additional set fee shall be assessed for each additional bath or kitchen.

(A) No additional fee shall be charged for the first 100 feet of water and sewer lines, hose bibbs, icemakers, underfloor low-point drains, and rain drain packages that include the piping, gutters, downspouts, and perimeter system.

(B) The plumbing permit fee described in this section does not include:

(i) Any storm water retention/detention facility;

(ii) Irrigation and fire suppression systems; or

(iii) Additional water, sewer and service piping or private storm drainage systems exceeding the first 100 feet.

(C) Permit fees for an addition, alteration, or repair shall be calculated based on the number of fixtures, appurtenances, and piping, with a set minimum fee.

(b) A mechanical permit fee shall be calculated per appliance and related equipment, with a set minimum fee.

(c) Effective January 1, 2009, a structural permit fee for new construction and additions shall be calculated using the ICC Building Valuation Data Table current as of April 1 of each year, multiplied by the square

ADMINISTRATIVE RULES

footage of the dwelling to determine the valuation. The valuation shall then be applied to the municipality's fee schedule to determine the permit fee. The plan review fee shall be based on a predetermined percentage of the permit fee set by the municipality.

(A) The square footage of a dwelling, addition, or garage shall be determined from outside exterior wall to outside exterior wall for each level.

(B) The square footage of a carport, covered porch, patio, or deck shall be calculated separately at fifty percent of the value of a private garage from the ICC Building Valuation Data Table current as of April 1.

(C) Permit fees for an alteration or repair shall be calculated based on the fair market value as determined by the building official, and then applying the valuation to the municipality's fee schedule.

(2) Commercial construction permit fees shall be calculated using the following methodologies:

(a) A plumbing permit fee shall be calculated based on the number of fixtures and footage of piping, with a set minimum fee.

(b) A mechanical permit fee shall be calculated based on the value of the mechanical equipment and installation costs and applied to the municipality's fee schedule with a set minimum fee.

(c) A structural permit fee shall be calculated by applying the valuation to the municipality's fee schedule with a minimum set fee. Valuation shall be the greater of either:

(A) The valuation based on the ICC Building Valuation Data Table current as of April 1 of each year, using the occupancy and construction type as determined by the building official, multiplied by the square footage of the structure; or

(B) The value as stated by the applicant.

(C) When the construction or occupancy type does not fit the ICC Building Valuation Data Table, the valuation shall be determined by the building official with input from the applicant.

Stat. Auth.: ORS 455.048 & 455.055

Stats. Implemented: ORS 455.046 & 455.055

Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06;

BCD 5-2007, f. 5-11-07, cert. ef. 7-1-07; BCD 27-2008, f. ef. 12-12-08, cert. ef. 1-1-09; BCD

7-2009, f. 9-30-09, cert. ef. 10-1-09

Rule Caption: Establishes standards in the 2008 ORSC for draining building exteriors and for covering pool drains.

Adm. Order No.: BCD 8-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 5-1-2009

Rules Amended: 918-480-0010

Subject: The rule adopts two mid-cycle amendments to the 2008 Oregon Residential Specialty Code (ORSC). The first amendment clarifies the performance expectation of the new code requirement for Section R703.1, which requires a means of draining water that enters the exterior wall assembly. This amendment lays out the minimum requirements for providing the means of draining. The provisions of this first amendment become effective on January 1, 2010 with a grace period ending March 31, 2010. The second amendment establishes the performance requirements on drain covers for private pools and spas in residential dwellings. The amendment clarifies that the use and installation of drain cover products in Oregon must comply with the requirements set forth in a new federal law that went into effect in December 2008- the Virginia Graeme Baker Pool and Spa Safety Act. The Act requires all swimming pool and spa drain covers available for purchase to meet specific performance expectations. The provisions of this second amendment are effective on October 1, 2009.

Rules Coordinator: Shauna M. Parker—(503) 373-7438

918-480-0010

Amendments to the Oregon Residential Specialty Code

(1) The **Oregon Residential Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Residential Specialty Code** are placed in this rule, showing the section reference and a descriptive caption.

(2) Effective April 1, 2008:

(a) The 2006 Edition of the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials and amended by the division, is adopted to provide the plumbing provisions of the **Oregon Residential Specialty Code**; and

(b) The 2008 Edition of the NFPA 70, National Electrical Code as amended by the division is adopted to provide the electrical provisions of

the **Oregon Residential Specialty Code**. See OAR chapter 918, division 305 for Oregon amendments to NFPA 70, National Electrical Code.

(3) Effective April 1, 2007 Appendix N, Low-Rise Multiple-Family Dwelling Construction is moved from the **2005 Oregon Residential Specialty Code** to the **2007 Oregon Structural Specialty Code**.

(4) During the phase-in period established in OAR 918-480-0005(3), plans designed to the **2005 Oregon Residential Specialty Code** must use the plumbing and electrical provisions included in that 2005 code. Plans that are designed to the **2008 Oregon Residential Specialty Code** must use the plumbing and electrical provisions adopted in this rule.

(5) Effective October 1, 2008, the following sections of the **2008 Oregon Residential Specialty Code** are amended:

(a) Section R 109.1.4.1 Moisture content.

(b) Section R318.2 Moisture content.

(6) Effective February 1, 2009, following sections of the **2008 Oregon Residential Specialty Code** are amended:

(a) Section R602.10.9 Interior braced wall support.

(b) Section R613.2 Window sills is added

(c) Section R.613.2.1 Operation for emergency escape is added

(d) Chapter 43 Referenced Standards.

(7) Effective October 1, 2009, the following sections of the **2008 Oregon Residential Specialty Code** are amended:

(a) Section AG106 Entrapment Protection For Swimming Pool And Spa Suction Outlets is added.

(b) Section AG107 Abbreviations.

(c) Section AG108 Standards.

(8) Effective January 1, 2010, the following sections of the 2008 Oregon Residential Specialty Code are amended:

(A) Section R703.1 General

(B) Section R703.1.1 Exterior Wall Envelope

(b) Changes to the **2008 Oregon Residential Specialty Code** made by subsection (a) of this section are subject to a grace period ending March 31, 2010. During the grace period, the building official must approve installations that meet either the standard adopted under Section R703.1 prior to this amendment or the standard established by this amendment.

NOTE: The amendments are published in their entirety in Table 2-R.

[Publications referenced are available for review at the division. See division web site for information on where to purchase publications.]

Stat. Auth.: ORS 455.020, 455.110, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94;

BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD

3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD

5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-

29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00

cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f.

12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02,

cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02 cert. ef. 10-1-02 thru 3-29-03; BCD 30-

2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03;

BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD

5-2005, f. & cert. ef. 3-28-05; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-

07, cert. ef. 4-1-07; BCD 5-2008, f. 2-22-08, cert. ef. 4-1-08; BCD 13-2008(Temp), f. & cert.

ef. 7-3-08 thru 12-30-08; BCD 21-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 24-2008(Temp),

f. & cert. ef. 10-6-08 thru 4-1-09; BCD 1-2009, f. 1-30-09, cert. ef. 2-1-09; BCD 8-2009, f.

9-30-09, cert. ef. 10-1-09

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

Rule Caption: 2010 Workers' Compensation Premium Assessment Rates.

Adm. Order No.: DO 1-2009

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 1-1-10

Notice Publication Date: 9-1-2009

Rules Amended: 440-045-0020, 440-045-0025

Subject: The director adopts by rule the workers' compensation premium assessment rate that is paid by all employers based on their workers' compensation premium and is collected by the insurer at the time the employer pays the premium. This assessment is used to fund workers' compensation related programs and workplace safety and health programs that serve Oregon employers and workers. In addition, the rule adopts the rate for an additional assessment percentage amount that is collected from all self-insured employers as well as all self-insured employer groups to fund the Self-Insured Employers Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve. These reserves are established to assure benefits are available in the event of a financial failure of a self-insured

ADMINISTRATIVE RULES

employer or self-insured employer group. These rules establish the assessment rate for calendar year 2010.

Rules Coordinator: Kristen Miller—(503) 947-7283

440-045-0020

Assessment Rate

The assessment to be levied against insurers, self-insured employers and self-insured employer groups for Calendar Year 2010 shall be 4.6 percent of direct earned premium and the direct earned premium self-insured employers and self-insured employer groups would have paid had they been insured employers.

Stat. Auth.: ORS 705.135 & 656.612
Stats. Implemented: ORS 656.612 & 656.614
Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05; DO 1-2005, f. 10-20-05, cert. ef. 1-1-06; DO 3-2006, f. 10-19-06, cert. ef. 1-1-07; DO 1-2007, f. 10-4-07, cert. ef. 1-1-08; DO 2-2008, f. 10-1-08, cert. ef. 1-1-09; DO 1-2009, f. 10-7-09 cert. ef. 1-1-10

440-045-0025

Adjustment Reserve Rate

In addition to the assessments established in OAR 440-045-0020, self-insured employer groups and self insured employers for the Calendar Year 2010 shall be assessed an additional 0.2 percent to fund the Self-Insured Employer Group Adjustment Reserve and the Self-Insured Employer Adjustment Reserve.

Stat. Auth.: ORS 705.135 & 656.612
Stats. Implemented: ORS 656.612 & 656.614
Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00, cert. ef. 1-1-01; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05; DO 1-2005, f. 10-20-05, cert. ef. 1-1-06; DO 3-2006, f. 10-19-06, cert. ef. 1-1-07; DO 1-2007, f. 10-4-07, cert. ef. 1-1-08; DO 2-2008, f. 10-1-08, cert. ef. 1-1-09; DO 1-2009, f. 10-7-09 cert. ef. 1-1-10

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Implementation of One Percent Health Insurance Premium Assessment.

Adm. Order No.: ID 7-2009(Temp)

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09 thru 3-26-10

Notice Publication Date:

Rules Adopted: 836-009-0020, 836-009-0025, 836-009-0030, 836-009-0035, 836-009-0040

Subject: House Bill 2116 was enacted by the Legislative Assembly in June 2009 and takes effect September 28, 2009. The bill establishes a one percent assessment on health insurers based on the gross amount of premiums earned by the insurer during each calendar quarter. The bill includes an option for the insurers to include the amount of the assessment in their premium rates. For existing approved rates, insurers may include an additional one percent beginning October 1, 2009, without submitting their premium rate to the Insurance Division for review and approval. If an insurer opts to include the additional one percent, the insurer must include a notice with all consumer billings explaining the increase. The notice must comply with the form of notice prescribed by the Division.

These rules are necessary to fully implement the provisions of chapter 867, Oregon Laws 2009, including clarification of certain terms, information about reporting requirements relating to the assessment and requirements for an insurer that chooses to add the one percent assessment to an existing approved rate.

Because the bill takes effect September 28, 2009 and the assessment applies to the calendar quarter beginning October 1, 2009, it is necessary for the Division to adopt these temporary rules to provide guidance before the insurers must begin implementing the assessment. The Division anticipates adopting permanent rules to replace these temporary rules.

Rules Coordinator: Sue Munson—(503) 947-7272

836-009-0020

Definitions

As used in OAR 836-009-0020(T) to 836-009-0040(T):

(1) "Gross amount of premiums" has the meaning given in ORS 731.808. "Gross amount of premiums" includes premiums earned from riders that are subject to the assessment.

(2) "Health insurer" means any insurer or health care service contractor receiving premiums derived from health plan policies insuring Oregon residents or delivered or issued for delivery in Oregon.

(3) "Health plan" has the meaning given in section 4, chapter 867, Oregon Laws 2009 (Enrolled House Bill 2116).

(4)(a) "Resident of this state" means the person engages in any gainful employment in this state or takes any action to indicate the acquiring of residence in this state. As used in this subsection, "action to acquire residence" includes, but is not limited to, doing any of the following:

(A) Remaining in this state for a consecutive period of six months or more regardless of the domicile of the person.

(B) Placing children in a public school without payment of nonresident tuition fees.

(C) Making a declaration to be a resident of this state for the purpose of obtaining, at resident rates, a state license or tuition fees at an educational institution maintained by public funds.

(b) "Resident of this state" does not include a person who is gainfully employed in this state if the person has taken no other steps to become a resident, including but not limited to, a student at an educational institution maintained by public funds who is paying nonresident tuition rates."

Stat. Auth.: ORS 731.244
Stats. Implemented: Sections 4-8, ch. 867, OI 2009 (Enrolled House Bill 2116)
Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10

836-009-0025

Verified Assessment Reporting and Form

(1) Beginning October 1, 2009, every health insurer shall pay an assessment to the Department of Consumer and Business Services in the amount of one percent of the gross amount of premiums earned during each calendar quarter. The health insurer shall submit the assessment no later than 45 days following the end of each calendar quarter.

(2)(a) A health insurer must pay the assessment on the gross amount of premiums earned from both:

(A) Policies insuring Oregon residents; and

(B) Policies delivered or issued for delivery in Oregon.

(b) A health insurer must pay the assessment under section 5, chapter 867, Oregon Laws 2009 (Enrolled House Bill 2116) on that portion of gross premium earned from policies covering Oregon residents even when such policies are issued in another state.

(3) To calculate the premiums earned for a calendar quarter, the health insurer must:

(a) Deduct returned premiums from premiums received by the insurer and its insurance producers during a calendar quarter.

(b) Include that portion of gross premiums earned from policies covering Oregon residents even when such policies are issued in another state.

(4) In addition to any information requested by the Department of Consumer and Business Services, the health insurer must submit with the assessment a verified form created by the Department of Consumer and Business Services and posted on the department's website and must report:

(a) All of the health plans issued or renewed during the calendar quarter for which the assessment is paid; and

(b) The gross amount of premiums earned by line of insurance from all health plans issued or renewed during the calendar quarter for which the assessment is paid.

(5) The one percent assessment imposed under chapter 867, Oregon Laws 2009 (Enrolled House Bill 2116) is in addition to and not in lieu of any other tax, surcharge, or assessment imposed on the insurer and applies to premiums earned by health insurers from October 1, 2009 through September 30, 2013. The first assessment payment is due no later than February 15, 2010, for the premiums earned during the last calendar quarter of 2009.

Stat. Auth.: ORS 731.244
Stats. Implemented: Sections 4-8, ch. 867, OI 2009 (Enrolled House Bill 2116)
Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10

836-009-0030

One-Time Increase in Existing, Approved Premium Rates

(1) Beginning October 1, 2009, a health insurer may but is not required to increase existing premium rates by up to one percent in accordance with the limitations provided in section 8, chapter 867, Oregon Laws 2009 (Enrolled House Bill 2116). In order to determine the amount of increase of existing rate that is allowed, the insurer shall multiply the existing premium by 1 percent. The result derived from multiplying the premium by .01 is the maximum amount of increase the insurer may add to an existing, approved rate.

(2) If an insurer miscalculates the one-time increase allowed under subsection (1) of this section, and if the insurer has already issued billing statements, the insurer may refund amounts collected in excess of one percent by crediting customers in subsequent billings, by issuing separate refunds, or credit customers by other methods as long as all refunds are

ADMINISTRATIVE RULES

made or the insurer has resolved the issue by the close of the 2009 calendar year. An increase to existing rates may not be applied retroactively.

(3) If the Department of Consumer and Business Services has already approved a health insurer's existing rate, the health insurer should not file for approval of the one-time premium rate increase allowed by subsection (1) of this rule.

(4) If a health insurer that has already had its rates approved does increase its rates by an amount up to the allowed one percent, the insurer must include a notice that explains the rate increase with the first consumer billing reflecting the rate increase. The notice may be printed on the consumer billing, on a sticker affixed to the consumer billing, or on a separate insert with the consumer billing. A health insurer that bills electronically may include the notice electronically or may send the notice separately by mail. The notice should not be sent with subsequent future billings. A health insurer may communicate with customers in other ways but the insurer may not alter, modify, or add to the notice required by this subsection, and a health insurer may not list the assessment as a separate line item on consumer billing statements.

(5) The notice required under subsection (4) of this rule shall be either of the following:

(a) Notice 1: "Your health insurance premium reflects a new one percent tax. These tax funds together with federal matching funds will be used to provide health benefits for uninsured Oregon children;" or

(b) Notice 2: "Beginning [insert date on or after October 1, 2009], your health insurance premium will increase to reflect a one percent tax on health insurance premiums. Funds raised by this tax will be matched more than 2 to 1 by the federal government and will provide access to health care coverage for 80,000 low and moderate-income Oregon children who currently have no health insurance. Ultimately, expanding health care coverage to those who are uninsured is expected to decrease the portion of your premium that currently helps offset the unpaid medical bills of others."

Stat. Auth.: ORS 731.244

Stats. Implemented: Sections 4 to 8, ch. 867, OI 2009 (Enrolled House Bill 2116)

Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10

836-009-0035

Inclusion of Assessment in Future Rate Filings

(1) In future rate filings, a health insurer may include amounts actually paid toward the assessment. In those rate filings, the health insurer should report the amounts actually paid toward the assessment as an element of administrative expense or retention. If a health insurer includes in rate filings the amounts actually paid toward the assessment, the health insurer should not send the notice set out in OAR 836-009-0030(T) (4) with consumer billing statements.

(2) If a health insurer increases an existing, approved rate by the allowed amount, a subsequent rate filing that includes amounts actually paid toward the assessment must include only amounts actually paid toward the assessment in excess of the amounts received as a result of the one percent increase in the existing, approved rate.

Stat. Auth.: ORS 731.244

Stats. Implemented: Sections 4 to 8, ch. 867, OI 2009 (Enrolled House Bill 2116)

Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10

836-009-0040

Assessment Derived from Premiums Derived From Contracts not Subject to Rate Approval

(1) Any health insurer deriving premiums from contracts of insurance not subject to the Department of Consumer and Business Services' rate approval authority may increase existing rates on such contracts by one percent but also must provide one of the notices set out in OAR 836-009-0030(T) with the first consumer billing that reflects the rate increase. The notice must be in the form described in OAR 836-009-0030(T) and may not be altered, modified, or added to. A health insurer subject to the Department of Consumer and Business Services' rate approval authority may not list the assessment as a separate line item on the consumer billing statement. The notice should not be sent with subsequent consumer billings statements.

(2) In order to determine the amount of increase of existing rate that is allowed, the insurer shall multiply the existing premium by one percent. The result derived from multiplying the premium by .01 is the maximum amount of increase the insurer may add to an existing contractual rate.

Stat. Auth.: ORS 731.244

Stats. Implemented: Sections 4 to 8, ch. 867, OI 2009 (Enrolled House Bill 2116)

Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10

Department of Consumer and Business Services, Oregon Medical Insurance Pool Board Chapter 443

Rule Caption: Remove ambiguous language which doesn't clarify how OMIP administers coordination of benefits.

Adm. Order No.: OMIPB 3-2009

Filed with Sec. of State: 10-5-2009

Certified to be Effective: 10-5-09

Notice Publication Date: 9-1-2009

Rules Amended: 443-002-0110

Subject: 443-002-0110 refers to how OMIP administers coordination of benefits if an enrollee is also insured by other health insurance at the time a claim occurs. The current rule reads that OMIP is the secondary payer to any other health insurance acquired after the OMIP effective date. However, an enrollee could have other health insurance prior to the OMIP effective date and maintain that coverage after the OMIP effective date, if the other insurance is not substantially equivalent in benefits to OMIP. This rule clarifies how OMIP has always interpreted ORS 735.625(6) and does not change administration procedures. This rule goes into effect retroactively to January 1, 2009.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0110

Coordination of Benefits

(1) In all instances, OMIP is the payer of last resort and any other health care coverage is the primary payer.

(2) The other insurance cannot be Medicaid (Oregon Health Plan/OHP). Enrollees are not eligible for OMIP coverage if they are enrolled or receiving Medicaid benefits.

(3) As the payer of last resort, OMIP may retroactively pursue claim payments that it made as the primary payer.

(4) This rule applies to all claims submitted to OMIP on or after January 1, 2009.

Stat. Auth.: ORS 735.610(6) & 735.625

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 3-2009, f. & cert. ef. 10-5-09

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

Rule Caption: Adopt changes to the Worker Protection Standard in agriculture, general industry, and forest activities.

Adm. Order No.: OSHA 9-2009

Filed with Sec. of State: 9-21-2009

Certified to be Effective: 9-21-09

Notice Publication Date: 7-1-2009

Rules Adopted: 437-002-0170

Rules Amended: 437-004-6000, 437-007-0010

Subject: In Oregon, Oregon OSHA administers and enforces the pesticide Worker Protection Standard (WPS: 40 CFR 170) as adopted in division 4, Agriculture, Subdivision W, OAR 437-004-6000.

This rulemaking amends OAR 437-004-6000 to reflect non-substantive corrections and technical amendments that were published in the Federal Register from 2006 through 2009.

Oregon OSHA is also amending the pesticide Worker Protection Standard (WPS) in division 7, Forest Activities, Subdivision A, General Requirements, OAR 437-007-0010, to clarify the references in division 7 to the WPS in division 4.

In addition, Oregon OSHA is amending division 2, General Industry, Subdivision Z, Toxic and Hazardous Substances, by adopting a new rule (OAR 437-002-0170) to clarify that under certain circumstances all parts of the Worker Protection Standard (WPS) apply to general industry workplaces, and are a part of division 2 in addition to, and not instead of, any other part of division 2.

Members of the public submitting written comments expressed support for the changes but noted that the proposed amendments (being non-substantive) do not go far enough to improve the protection of Oregon's affected workers from exposure to pesticides. The changes suggested by these commenters were outside the parameters of this rulemaking.

Please visit OR-OSHA's web site at www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

ADMINISTRATIVE RULES

437-002-0170

Worker Protection Standard.

Oregon OSHA administers and enforces the pesticide Worker Protection Standard (WPS – 40 CFR 170) as adopted in OAR 437-004-6000. When a pesticide product with Worker Protection Standard language (“Agricultural Use Requirements”) on the product label is used on plants grown or maintained for sale or resale, such as those at retail nurseries or greenhouses, the WPS applies. Plants grown or maintained for sale or resale include but are not limited to food, feed and fiber plants; ornamental trees and shrubs; turfgrass sod; flowering plants and seedlings. This is consistent with the Environmental Protection Agency’s interpretation and application of the WPS. All parts of the WPS apply (without regard to the scope of Division 4) in addition to, and not instead of, any other part of Division 2, General Industry. Should any conflict exist between the WPS and other Division 2 rules, the employer must comply with the rule offering the most protection to workers. A full text of the Worker Protection Standard is found in Division 4, Agriculture, Subdivision W.

NOTE: 437-002-0170 Worker Protection Standard does not apply when any pesticide is applied in the following circumstances: (See 437-004-6000, 170.103 Exceptions)
For mosquito abatement, or similar wide-area public pest control programs sponsored by governmental entities;
To control pests on livestock or other animals, or in or about animal premises;
To control pests on plants not grown for sale or resale such as ornamental plants in or around habitations, home fruit and vegetable gardens, and home greenhouses;
To control pests on plants that are in ornamental gardens, parks, public or private lawns or grounds that are intended only for aesthetic purposes or climatic modification;
By direct injection into plants; (Direct injection does not include pesticides applied through irrigation water or soil-injection.)
For control of structural pests;
For control of vegetation in non-crop areas;
For control of vertebrate pests;
As attractants or repellents in traps.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001-654.295
Hist.: OSHA 9-2009 f. & cert. ef. 9-21-09

437-004-6000

Adoption by Reference of Federal Standard

Oregon OSHA administers and enforces the Worker Protection Standard (40 CFR 170) as adopted with this rule. All parts of the WPS apply in addition to, and not instead of, any other part of Division 4, Agriculture. Should any conflict exist between the WPS and other Division 4 rules, the employer must comply with the rule offering the most protection to workers. The Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 40 CFR 170, in the Federal Register:

Subpart A – GENERAL PROVISIONS

- (1) 40 CFR 170.1 Scope and purpose, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (2) 40 CFR 170.3 Definitions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (3) 40 CFR 170.5 Removed.
- (4) 40 CFR 170.7 General duties and prohibited actions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (5) 40 CFR 170.9 Violations of this part, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

Subpart B – STANDARD FOR WORKERS

- (6) 40 CFR 170.102 Applicability of this subpart, published 5/3/95, FR vol. 60, no. 85, p. 21952.
- (7) 40 CFR 170.103 Exceptions, published 5/3/95, FR vol. 60, no. 85, p. 21952.
- (8) 40 CFR 170.104 Exemptions, published 12/12/08, FR vol.73, no. 240, pp. 75592-75600.
- (9) 40 CFR 170.110 Restrictions associated with pesticide applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (10) 40 CFR 170.112 Entry restrictions, published 6/21/06, FR vol. 71, no.119, pp.35543-35547; 6/29/07, FR vol. 72, no. 125, p. 35663; 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.
- (11) 40 CFR 170.120 Notice of applications, published 6/26/96, FR vol. 61, no. 124, p. 33207.
- (12) 40 CFR 170.122 Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (13) 40 CFR 170.124 Notice of applications to handler employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (14) 40 CFR 170.130 Pesticide safety training, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.
- (15) 40 CFR 170.135 Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (16) 40 CFR 170.150 Decontamination, published 6/26/96, FR vol. 61, no. 124, p. 33212.

(17) 40 CFR 170.160 Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

Subpart C – STANDARD FOR PESTICIDE HANDLERS

- (18) 40 CFR 170.202 Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (19) 40 CFR 170.203 Exceptions, published 5/3/95, FR vol. 60, no. 85, p. 21952.
- (20) 40 CFR 170.204 Exemptions, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.
- (21) 40 CFR 170.210 Restrictions during applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (22) 40 CFR 170.222 Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (23) 40 CFR 170.224 Notice of applications to agricultural employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (24) 40 CFR 170.230 Pesticide safety training, published 5/3/95, FR vol. 60, no. 85, p. 21953
- (25) 40 CFR 170.232 Knowledge of labeling and site-specific information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (26) 40 CFR 170.234 Safe operation of equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (27) 40 CFR 170.235 Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.
- (28) 40 CFR 170.240 Personal protective equipment, published 9/1/04, FR vol. 69, no. 169, p. 53341; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.
- (29) 40 CFR 170.250 Decontamination, published 6/26/96, FR vol. 61, no. 124, p. 33213; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.
- (30) 40 CFR 170.260 Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 7-2004, f. & cert. ef. 12-30-04; OSHA 9-2006, f. & cert. ef. 9-22-06; OSHA 9-2009 f. & cert. ef. 9-21-09

437-007-0010

Worker Protection Standard

Oregon OSHA administers and enforces the Worker Protection Standard (40 CFR 170) as adopted in OAR 437-004-6000 in Division 4/W. All parts apply without regard to the scope of Division 4 in addition to, and not instead of, any other part of Division 7, Forest Activities. Should any of the parts of these two standards conflict, comply with the part offering the most protection to workers.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08; OSHA 9-2009 f. & cert. ef. 9-21-09

Rule Caption: Adopt changes to Division 1, General Administrative Rules.

Adm. Order No.: OSHA 10-2009

Filed with Sec. of State: 10-5-2009

Certified to be Effective: 10-5-09

Notice Publication Date: 7-1-2009

Rules Amended: 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0420

Subject: The rule being adopted for scheduling fixed site safety enforcement activity changes the previous approach in several ways. First, it eliminates the separate lists based on size, as well as the separate agriculture lists, replacing them with a single targeting system that divides all places of employment in the state into 10 tiers, distinguished by the risk of particular industries in recent years. Using a variety of data about injury and fatality rates on both the state and national level, Oregon OSHA has (in consultation with an ad hoc advisory group formed for the purpose of the scheduling rule) developed a ranked list of industries (using the North American Industri-

ADMINISTRATIVE RULES

al Classification System, or NAICS, Code) and then subdivided that list into 10 separate layers, or tiers.

The highest hazard tier will receive the greatest enforcement presence, while the lowest hazard tiers will receive a minimal enforcement presence.

In this way, Oregon OSHA will focus its safety enforcement resources in those fixed places of employment that have been determined to be the most unsafe. Within each tier, Oregon OSHA's focus will be further sharpened by completely excluding certain places of employment from scheduled safety inspections based on their demonstration by one or more of several specified methods that they are likely to be significantly safer than the norm within their industry. In selecting places of employment within each industry tier after such exclusions have been made, the new rule dictates a random selection process.

At its most basic level, the new fixed site safety enforcement scheduling rule eliminates the previous rule's reliance on whether a disabling claim has occurred at the worksite as the trigger for a worksite's presence on the list and shifts the focus (for the most part) away from employer-specific and location-specific claims data. Oregon OSHA has concluded that such data is not sufficiently reliable from a statistical standpoint as an indicator for the vast majority of worksites in the state, and is largely unavailable in any case for places of employment operated by employers who have multiple locations. In its place, the rule identifies places of employment based on industry, and then bases the likelihood of inspection largely, but not entirely, on the nature of the industry's risk of injury or death.

The new fixed site health scheduling system replaces the current system with a system based on industry risk. Beginning with the work of an expert panel of industrial hygienists and other occupational health professionals, and following an analysis of claims history and violation history within various NAICS codes, Oregon OSHA identified a group of industries where the risk of serious illness or of a health hazard-related death has been determined to be the greatest. In further evaluating both risk and the distribution of inspections following the original proposal, Oregon OSHA decided to divide the industries into three tiers, rather than the two proposed in the original filing. Within those industries, and following the same basic exclusions as those identified for the safety rule, the department will randomly identify and rank places of employment for inspection, with the percentage of locations identified in each industry tier.

In addition to the previously described changes in the fixed site scheduling systems for health and safety enforcement visits, the rule includes several clarifications and technical adjustments to definitions and selected other provisions. However, none of these changes represent a substantive change in Oregon OSHA's application of these terms or business practices.

Please visit OR-OSHA's web site at www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0015

Definitions

The following definitions shall apply to OAR 437, unless the context requires otherwise:

Abatement — Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

Accepted disabling claims — Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

Accepted disabling claims rate — The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

Act — The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

Administrator — The Administrator of the Oregon Occupational Safety and Health Division (Oregon OSHA).

Affected employee — An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date, or variance.

Agent of the employer — The manager, superintendent, foreperson, or other person in charge or control of all or part of the place of employment.

Appeal — A written request for a hearing to contest a citation, notice or order, a proposed assessment of civil penalty, and the period of time fixed for correction of a violation, or any of these, by filing with the Department of Consumer and Business Services, within 30 days after receipt of the citation, notice or order, a written request for a hearing before the Workers' Compensation Board. Such a request need not be in any particular form, but must specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

Audiometric zero — The lowest sound pressure level that the average young adult with normal hearing can hear.

Board — The Workers' Compensation Board created by ORS 656.712.

Catastrophe — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or to an equivalent medical facility.

Citation — A document issued by the Division according to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

Complaint — A written or oral report from an employee, employee representative, or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

(a) Imminent danger

(b) Serious

(c) Other than serious

Compliance officer — A designated Division employee responsible for conducting inspections or investigations; identifying possible violations and hazards; proposing citations, penalties, and correction dates; and to assist employers and employees with information to correct violations and hazards.

Comprehensive consultation — A consultation to cover the entire establishment and entails a physical hazard assessment evaluation and a review of records, written programs, and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

Comprehensive inspection — A substantially complete inspection of the establishment. An inspection may be comprehensive even though, as a result of the exercise of professional judgment, not all potentially hazardous conditions, operations, and practices within those areas are inspected.

Consultant — A designated Division employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees, and other agency staff with information, advice, and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices, and development of safety and health programs.

DART (Days away, restricted, or transferred): The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

NOTE: Lost workday cases include both days away from work and days of restricted time.

Decibel (dB) — Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

Department — The Department of Consumer and Business Services.

Director — The Director of the Department of Consumer and Business Services, or the director's designee.

Division — The Oregon Occupational Safety and Health (Oregon OSHA) Division of the Department of Consumer and Business Services.

Emphasis Program — A special program that targets Division activity to industries that have a high potential for serious injuries or illnesses, according to national or state data.

Employee — Any individual, including a minor, whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise and who is subject to the direction and control of an employer, and includes:

Salaries, elected and appointed officials of the state, state agencies, counties, cities, school districts, and other public corporations.

Any person provided with workers' compensation coverage as a subject worker under ORS Chapter 656, whether by operation of law or by election.

Employee exposure record — A record of monitoring or measuring that contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

Employee medical record — A record that contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(a) The results of medical examinations and tests;

(b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(c) Any employee medical complaints relating to workplace exposure.

Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

ADMINISTRATIVE RULES

Employee representative — A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

Employer:

(a) Any person who has one or more employees, or
(b) Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker according to ORS 656.128, or

(c) Any corporation in relation to the exposure of its corporate officers except for corporations without workers' compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation, or

(d) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is substantially the same entity as the predecessor employer if:

(A) A majority of the current business or enterprise is owned by the former owners or their immediate family members, and

(B) One or more of the following criteria exist for both the current and predecessor business or other enterprise:

Substantially the same type of business or enterprise.

Similar jobs and working conditions.

A majority of the machinery, equipment, facility, or methods of operation.

Similar product or service.

A majority of the same supervisory personnel.

A majority of the same officers and directors.

NOTE: Not every element needs to be present for an employer to be a successor. The cumulative facts will determine the employer's status.

Employer representative — An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

Environmental exposure sampling — Sampling of the workplace environment performed for a variety of reasons including identifying contaminants and their sources, determining worker exposures, and checking the effectiveness of controls.

Establishment — An establishment is a single physical location doing business, offering services, or having industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas, and sanitary services; and similar operations, the establishment is the main or branch office, terminal, station, etc. that either supervise such activities or are the base for personnel to carry out these activities.

(a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) Each of the establishments represents a distinctly separate business;

(B) Each business is engaged in a different economic activity;

(C) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) The employer operates the locations as a single business operation under common management;

(B) The locations are all near each other; and

(C) The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, and a separate 300 Log is not required. Employees who telecommute must be linked to one of the business' establishments under 437-001-0700(15)(c).

Farm operation — Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

Filed — A document is considered to have been filed on the date of postmark if mailed, or on the date of receipt, if transmitted by other means to Oregon OSHA, DCBS, or the WCB.

First aid — Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, or similar injuries that do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though it is provided by a physician or registered professional personnel.

Fixed place of employment — The entire facility maintained by an employer at one general location, and operations provided from that facility, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations, fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months. Forest activities are excluded as are construction sites established for a period of 24 months or less.

Hazard — A condition, practice, or act that could result in an injury or illness to an employee.

Health hazard — Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents, and harmful physical stress agents.

Imminent danger — A condition, practice, or act that exists in any place

of employment and could reasonably be expected to cause death or serious physical harm immediately.

Injury or illness — An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, skin disease, respiratory disorder, or poisoning. (**Note:** Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.)

Inspection — An official examination of a place of employment by a compliance officer to determine if an employer is in compliance with the Act.

(a) Programmed — Inspections conducted under the provisions of OAR 437-001-0057.

(b) Unprogrammed.

(A) Follow-up inspection — An inspection to determine if a previously identified violation has been corrected

(B) Complaint inspection — An inspection made in response to a complaint.

(C) Accident investigation — A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures.

(D) Referral inspection — An inspection made in response to a referral.

Letter of corrective action — A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

Lost workdays — The actual number of days after, but not including, the day of injury or illness when the employee would have worked, but could not perform all or any part of their normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

Medical treatment — Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it include treatment ordinarily considered diagnostic or preventative in nature.

MOD (Experience Rating Modification Factor) — Experience rating recognizes the differences among individual insureds with respect to safety and loss prevention. It compares the experience of individual insureds with the average insured in the same classification. The differences are reflected by an experience rating modification, based on individual payroll and loss records, that may result in an increase, decrease, or no change in premium.

North American Industry Classification System (NAICS) — A classification system developed by the Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity. The 2002 edition of the NAICS manual is used for coding.

Order to correct — A written Division order that directs an employer to abate a violation within a given period of time.

Owner — Every person having ownership, control, or custody of any place of employment or of the construction, repair, or maintenance of any place of employment.

Partial inspection — An inspection with focus limited to certain potentially hazardous areas, operations, conditions, or practices at the establishment. The inspection may include review of injury and illness records and any required programs relative to the inspection.

Person — One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

Personal exposure samples — Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

Physician or other licensed health care professional — A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

Place of employment:

(a) Includes every place that is fixed or movable; indoors, outdoors, or underground; and the premises and structures appurtenant thereto.

(b) Includes every place where an employee works or intends to work either temporarily or permanently.

(c) Includes every place where there is any process, operation, or activity related, either directly or indirectly, to an employer's industry, trade, business, or occupation, including a labor camp provided by an employer for their employees or by another person engaged in providing living quarters or shelters for employees.

(d) Does not include any place where the only employment involves non-subject workers employed in or around a private home.

(e) Does not include any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews, or grandchildren.

Record — Any recorded information regardless of its physical form or character.

Recordable occupational injuries or illnesses — Any occupational injuries or illnesses that result in:

ADMINISTRATIVE RULES

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing their normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Nonfatal cases without lost workdays that result in transferring to another job or terminating employment, require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses that are reported to the employer but are not classified as fatalities or lost workday cases.

Referral — A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

Rule — Any agency directive, standard, regulation or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of the agency and is adopted according to the Administrative Procedure Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations, or statements that do not substantially affect the interests of the public.

Scheduling list — An electronic or paper list of places of employment or employers scheduled for inspection.

Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

Standard industrial classification (SIC) — A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget, for classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity, that is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

Standard threshold shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear. **Substantial failure to comply** — When an employer engaged in the production of crops intended for human consumption fails to provide acceptable and accessible toilet facilities, handwashing facilities, or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

Suspended penalty — A penalty that is determined but not assessed.

Variance — The written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) **Permanent** — A variance that remains in effect until modified or revoked according to OAR 437-001-0430;

(b) **Temporary** — A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) **Research** — A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) **Interim order** — The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

Violation — The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard, or order.

(a) **Specific classifications of violations are:**

(A) **Serious violation** — A violation where there is substantial probability that death or serious physical harm could result from an existing condition, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know about the violation;

(B) **Other than serious violation** — A violation that is other than a serious or minimal violation; and

(C) **Minimal violation** — A violation that does not have a direct or immediate relationship to the safety or health of employees.

(b) **Specific types of the above classifications are:**

(A) **Willful violation** — A violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard, or order.

(B) **Unabated violation** — A violation that has not been fully corrected by the date ordered.

(C) **Repeat violation:**

(i) An employer's second or subsequent violation of the requirements of the same statute, regulation, rule, standard, or order.

(ii) Subsequent violations will not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, "repeat," "repeated," and "repeatedly" are used

synonymously.

(D) **First-instance violation** — An employer's first violation of a particular statute, regulation, rule, standard, or order.

(E) **Egregious** — Those conditions that normally constitute a flagrant violation of the Oregon Safe Employment Act, Oregon OSHA standards, or regulations such that each instance of the violation is cited separately.

(c) **Combined violation** — Multiple violations of the same statute, regulation, rule, standard, or order within an establishment that have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard, or order.

(d) **Grouped violation** — Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment that have been combined as one violation:

(A) To indicate an increase in the severity or probability of the violation, or

(B) Recordkeeping and posting requirements involving the same document, or

(C) The violations are so closely related as to constitute a single hazardous condition.

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

Stats. Implemented: ORS 654.001 - 654.326, 654.412 - 654.423, 654.991

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD, 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 9-1983, f. & ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, F. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 5-1998, f. & cert. ef. 10-15-98; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 5-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; OSHA 1-2008, f. 2-22-08, cert. ef. 3-1-08; OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09; OSHA 10-2009, f. & cert. ef. 10-5-09

437-001-0055

Priority of Inspections

Inspections will be prioritized to predominantly focus enforcement activities on places of employment reasonably believed to be the most unsafe. Inspections should generally be made according to the following priorities:

(1) **Imminent danger** — An inspection should be made as soon as possible after the Division becomes aware of the condition, practice, or act that could reasonably be expected to immediately cause death or serious physical harm.

(2) **Fatality, catastrophe or accident** — An inspection, if appropriate, should be made as soon as possible after the Division becomes aware of a fatality, catastrophe, or accident.

(3) **Complaint** — An inspection may be initiated when the Division receives a complaint, based on the nature and credibility of the allegations.

(4) **Referral** — An inspection may be made if safety or health violations were observed and referred by a Division employee; federal, state, or local government representative, or the media, based on the nature and credibility of the allegations.

(5) **Programmed Inspections** — An inspection may be made by following the provisions in OAR 437-001-0057.

(6) **Follow-up** — An inspection may be initiated when one or more of the following exists:

(a) The employer requests removal of a red warning notice.

(b) A variance request has been denied.

(c) An extension of time has been denied.

(d) The Division believes the employer may not be in compliance with a previously cited violation, or needs monitoring as they progress towards correction of a violation.

(e) The employer is issued an order to correct for one or more violations that if cited could be considered serious.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991

Hist.: 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 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 10-2009, f. & cert. ef. 10-5-09

437-001-0057

Scheduling Inspections

The following rules are intended to predominantly focus enforcement activities on the places of employment that the director reasonably believes to be the most unsafe.

(1) The Division will schedule programmed inspections according to a priority system based on written neutral administrative standards.

(2) The Division will identify the most hazardous industries and places of employment through information obtained from the Department of Consumer and Business Services claim and employer files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Bureau of Labor Statistics Census of Fatal Occupational Injuries, the Oregon Employment Department, and knowledge of recognized safety and health hazards associated with certain processes. Health hazards include carcino-

ADMINISTRATIVE RULES

gens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, harmful physical stress agents, and biological agents.

(3) Scheduling lists will be provided by the Division to its field offices, at least annually.

NOTE: An employer will be exempt from a programmed inspection of a fixed site from seven days prior to the scheduled date of an Oregon OSHA consultation to 60 days after receipt of the written consultation report.

An employer will be exempt from a programmed inspection of a construction, forest activities or Agriculture Labor Housing site from seven days prior to the scheduled date of an Oregon OSHA consultation to 30 days after receipt of the written consultation report.

(4) Scheduling Safety Inspections for Fixed Places of Employment.

(a) The scheduling lists are designed as an electronic scheduling system used by safety enforcement managers to schedule inspections at fixed places of employment for each compliance officer. Places of employment will be listed by North American Industrial Classification System (NAICS) and randomly selected within each tier using the following percentages whenever a list is generated. The scheduling lists will be sorted by field office. Lists are generated using the following percentages: (the percentages will not be affected by the places of employment excluded under (4)(b) below unless the number of exclusions makes it impossible to meet the target percentage; in such a case, all eligible places of employment will be selected.)

(A) 30 percent of places of employment under the NAICS identified as Tier A in Appendix A.

(B) 25 percent of places of employment under the NAICS identified as Tier B in Appendix A.

(C) 20 percent of places of employment under the NAICS identified as Tier C in Appendix A.

(D) 15 percent of places of employment under the NAICS identified as Tier D in Appendix A.

(E) 12.5 percent of places of employment under the NAICS identified as Tier E in Appendix A.

(F) 10 percent of places of employment under the NAICS identified as Tier F in Appendix A.

(G) 7.5 percent of places of employment under the NAICS identified as Tier G in Appendix A.

(H) 5 percent of places of employment under the NAICS identified as Tier H in Appendix A.

(I) 2.5 percent of places of employment under the NAICS identified as Tier I in Appendix A.

(J) No more than 0.05 percent of places of employment under the NAICS not listed in Appendix A.

(b) Places of employment will be exempt from programmed inspections if any of the following conditions apply:

(A) A location has received a comprehensive safety inspection within the previous 36 months.

(B) A location has received Voluntary Protection Program (VPP) status.

(C) A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).

(D) A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.

(E) A location has received two consecutive comprehensive safety inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.

(F) A location has received certification as meeting the British Standards Institute's OHSAS 18001 standards (Occupational Health and Safety Management Systems). Evidence of certification must be provided before the start of an inspection.

(G) A location has a MOD rate of 0.50 and they provide evidence to that effect before the start of an inspection.

(c) The field office managers will provide each compliance officer a list of inspections that are assigned in descending order from tiers A through J. The compliance officer will make a reasonable effort to inspect each place of employment on that list prior to receiving another list; however, failure to inspect all places of employment on a list will not invalidate subsequent inspections. The compliance officer's list will generally be followed in descending order but may be inspected in any order to use the compliance officer's time efficiently.

(5) Scheduling Safety Inspections for Construction and Forest Activities.

(a) Construction and forest activities scheduling lists will be used by safety enforcement managers and compliance staff to focus enforcement efforts on employers with the most hazardous places of employment. Employers will be selected and placed on one of two lists based on the following criteria:

(A) Construction List — The following written neutral administrative standards will be used to select and rank employers on this list. Construction employers that have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 500 construction employers. The employers on this list will be ranked statewide using violation history, weighted claims rate, and weighted claims count as described in subsection (b) of this section. The 500 employers with the most points will be placed on a list.

(B) Forest Activities List — The following written neutral administrative standards will be used to select and rank employers on this list. Forest Activities employers that have one or more accepted disabling claims in the first 12 of the previous 18 months and are ranked in the top 50 forest activities employers. The employers on this list will be ranked statewide using violation history, weighted claims rate, and weighted claims count as described in subsection (b) of this section. The 50 employers with the most points will be placed on a list.

(b) Ranking Factors: Construction and forest activities employers are ranked using violation history, weighted claims rate, and weighted claims count. The rankings from each factor are combined to produce a score for each employer, and the employers are ranked based on their score. The top 500 construction employers will be on one list and the top 50 forest activities employers will be on another list:

(A) Violation History: Employers with a violation history will be assigned points for each violation on citations that have become a final order within the previous 36 months. Willful violations are assigned five points, failure to abate violations four points, repeat violations three points, serious violations two points, and other-than-serious violations one point. Average points per citation will be determined with the employer having the most points receiving a ranking of one followed by the employer with the next highest points receiving a ranking of two, etc. Employers not inspected within 36 months are given a ranking of zero that will put them at the top of this category.

(B) Weighted Claims Count: Selected claims from the first 12 of the previous 18 months are assigned points based on the seriousness of the claim. These points are totaled for each employer. Employers are ranked on the total points with the employer having the most points receiving a rank of one, followed by the second highest weighted claims count receiving a ranking of two, etc.

(C) Weighted Claims Rate: Employers are ranked in this category with the highest weighted claims rate receiving a ranking of one, followed by the second highest weighted claims rate receiving a ranking of two, etc. The weighted claims count described in (B) above is used to determine the claims rate.

NOTE: The selected claims and the points assigned to the selected claims will be identified by the agency in a program directive.

(c) The field office manager will provide selected compliance officers the construction and/or forest activities lists. The compliance officers will make a reasonable effort to locate and inspect those employers on the construction and forest activities lists, however failure to inspect all employers on a list will not invalidate subsequent inspections.

(6) Scheduling Health Inspections for Fixed Places of Employment.

(a) The scheduling lists are designed as an electronic scheduling system used by health enforcement managers to schedule inspections at fixed places of employment for each compliance officer. Places of employment will be listed by NAICS and randomly selected within each tier using the following percentages whenever a list is generated. The scheduling lists will be sorted by field office.

(A) 7.5 percent of places of employment under the NAICS identified as Tier A in Appendix B.

(B) 2.5 percent of places of employment under the NAICS identified as Tier B in Appendix B.

(C) Not more than 0.05 percent of places of employment under NAICS not identified in Tiers A and B of Appendix B.

(b) Places of employment will be exempt from programmed inspections if any of the following conditions apply:

(A) A location has received a comprehensive health inspection within the previous 36 months.

(B) A location has received Voluntary Protection Program (VPP) status.

(C) A location is in its second year, or later, of the Safety and Health Achievement Recognition Program (SHARP).

(D) A location has graduated from the Safety and Health Achievement Recognition Program (SHARP). Locations are exempt from inspection for 36 months after graduation.

(E) A location has received two consecutive comprehensive health inspections with no serious, willful, or egregious violations, and with no inspections of any type resulting in serious, willful, or egregious violations since the date of the first of the two consecutive comprehensive inspections.

(F) A location has received certification as meeting the British Standards Institute's OHSAS 18001 standards (Occupation Health and

ADMINISTRATIVE RULES

Safety Management Systems). Evidence of certification must be provided before the start of an inspection.

(G) A location has a MOD rate of 0.50 and they provide evidence to that effect before the start of an inspection.

(c) The field office managers will provide each compliance officer a list of inspections that are assigned in descending order from the health scheduling lists. The compliance officer will make a reasonable effort to inspect each place of employment on that list prior to receiving another list; however, failure to inspect all places of employment on a list will not invalidate subsequent inspections. The compliance officer's list will generally be followed in descending order, but may be inspected in any order to use the compliance officer's time efficiently.

(7) Scheduling Health Inspections for Nonfixed Places of Employment — An inspection may be scheduled when information such as recognized health hazards known to be associated with certain processes are reasonably thought to exist at a place of employment.

(8) Random Inspections — The Division will conduct random inspections of places of employment that are scheduled and conducted under written neutral administrative standards. Program directives will be issued and changed when the director believes it necessary to preserve the random nature of the inspections.

(9) Emphasis Inspections — An inspection may be made if the place of employment is included in a national or local safety or health emphasis program. Emphasis programs are established by identifying the most hazardous industries and processes through information obtained from the Department of Consumer and Business Services claim files, the Bureau of Labor Statistics Occupational Injury and Illness Survey, the Oregon Employment Department, and knowledge of recognized hazards associated with certain processes. Program directives will be issued to establish and describe emphasis programs and the written neutral administrative standards that will be used to schedule the inspections.

(10) Farm Labor Housing Inspections — Farm labor housing is a national and local emphasis program. A list of all known farm labor housing locations will be sent to field offices annually. Locations may be selected and inspected in any order to make efficient use of available resources. Housing locations not on the list may also be inspected. Farm labor housing is not an agricultural operation; therefore, the agriculture exemption for employers of 10 or fewer permanent, year-round employees does not apply to farm labor housing inspections.

(11) The Division will make reasonable efforts to notify, in writing, each employer whose place of employment is rated as one of the most unsafe places of employment and that there is increased likelihood of inspection of the employer's place of employment and consultative services are available.

(a) Notification will be done on an annual basis and sent by regular mail to the last known address on record with the Division.

(b) Failure to provide notification to an employer under this section will not invalidate a subsequent inspection.

(12) Agricultural employers with 10 or fewer permanent, year-round employees, both full-time and part-time, will be subject to scheduled inspections only if any of the following has occurred:

(a) A valid complaint has been filed according to ORS 654.062, or

(b) Within the preceding two-year period, an accident at the employer's agricultural place of employment resulted in death or a serious disabling injury from a violation of the Oregon Safe Employment Act or rules adopted under the act, or

(c) The employer and principal supervisors of the agricultural establishment have not annually completed at least four hours of instruction on agricultural safety or health rules and procedures. This instruction must be documented.

(A) Instruction includes any instruction conducted or accepted by Oregon OSHA or instruction related to agricultural safety and health that is offered or approved by any public or private college, university, or governmental agency. The employer must maintain documentation of the instruction. The documentation must include the date, provider, subject, and duration of the instruction, and the signature of the person completing the instruction.

NOTE: Certified Applicator Training Core A and B offered by the Oregon Department of Agriculture will satisfy a portion of the required training. One hour credit will be allowed annually for this training.

(B) For purposes of these sections, the time period begins to run when the instruction is received, or

(d) Within the preceding four-year period, the agricultural establishment has not had a comprehensive consultation by an individual acting in a public or private consultant capacity. For purposes of this section, the time period begins to run when the consultation is received, or

(e) If the consultation was done and the agricultural employer has failed to correct violations noted in the consultation report within 90 days after receiving the report.

NOTE: For purposes of determining the number of employees, members of the agricultural employer's immediate family are excluded. This includes grandparents,

parents, children, step-children, foster children, and any blood relative living as a dependent of the core family.

(13) Evaluation of Enforcement Scheduling:

(a) Each year Oregon OSHA will complete a summary evaluation of enforcement scheduling, including (but not limited to) the number of scheduled inspections and the basis for those inspections, the number of attempted scheduled inspections that could not be completed, and the results of those inspections.

(b) At least every three years beginning by July 1, 2012, Oregon OSHA will assess the enforcement scheduling system and other available data to ensure that the scheduling system continues to accomplish its statutory purpose of predominantly focusing Oregon OSHA enforcement resources on those places of employment reasonably believed to be the most unsafe.

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

Stats. Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991

Hist.: 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 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 10-1995, f. & cert. ef. 11-29-95; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 10-2009, f. & cert. ef. 10-5-09

437-001-0420

Decision on Variance Request

(1) If a variance is granted, an order of variance shall be issued. The order shall:

(a) State the name of the employer to whom the variance is granted;

(b) Identify the place of employment at which the variance is applicable;

(c) State the type of variance granted;

(d) State the specific rule to which the variance applies;

(e) Describe the alternative methods or safeguards to be used by the employer while the variance is in effect;

(f) Advise that the employer may be cited for any violation of the conditions established by the variance;

(g) Inform affected employees of their right to appeal the variance decision; and

(h) Inform affected persons that if no appeal is filed within 20 days of receipt of the order, the variance approval becomes a final order of the Director and subject to review only as specified in OAR 437-001-0430.

(2) If a variance is denied, a notice of denial shall be issued. The notice shall:

(a) Give the reasons for the denial;

(b) Notify the employer and employees of their appeal rights;

(c) Inform affected persons that if no appeal is filed within 20 days of receipt of the notice, the variance denial becomes a final decision without affecting the employer's right to submit another application; and

(d) Advise the employer that a compliance inspection may be made within 30 days.

(3) A copy of any variance order or denial must be posted for 20 days.

(4) A variance that has been denied, or that has expired, may be followed by a compliance inspection within 30 days.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.326, 654.412 - 654.423 & 654.991

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 10-2009, f. & cert. ef. 10-5-09

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Department of Consumer and Business Services, Workers' Compensation Board Chapter 438

Rule Caption: Assessed attorney fees — implements amendments to ORS 656.262, 656.308, 656.382 and 656.386 made by HB 3345.

Adm. Order No.: WCB 1-2009

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 1-1-10

Notice Publication Date: 8-1-2009

Rules Amended: 438-005-0055, 438-006-0055, 438-015-0038, 438-015-0055, 438-015-0065, 438-015-0070, 438-015-0110

Subject: Amends rules to implement House Bill 3345 (HB 3345) that, in relevant part, amends ORS 656.262, 656.308, 656.382 and 656.386, which concern various provisions regarding assessed attorney fees available at hearing and on Board review.

Rules Coordinator: Vicky Scott—(503) 378-3298, ext. 329

438-005-0055

Notice of Claim Denial and Hearing Rights

(1) Except for a denial issued under ORS 656.262(15), in addition to the requirements of 656.262, the notice of denial shall specify the factual

ADMINISTRATIVE RULES

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(15) because of a worker's failure to cooperate in the investigation of the claim, in addition to the requirements of 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)

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; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

438-006-0055

Depositions

Depositions of medical or vocational experts are permitted by agreement of the parties, or by approval of an Administrative Law Judge, subject to the provisions of ORS 656.285. Depositions of claimants are permitted in the manner prescribed by ORS 656.262(14). Depositions of other lay witnesses are not permitted over objection unless the Presiding Administrative Law Judge or his or her delegate finds that extraordinary circumstances justify the deposition.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.262(14), 656.388, 656.593 & 656.726(5)

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 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

438-015-0038

Attorney Fees When a Claimant Requests a Hearing on a Responsibility Denial

If the claimant's attorney appears in any proceeding regarding a responsibility denial issued under ORS 656.308(2), and actively and meaningfully participates, and finally prevails against that responsibility denial, the Administrative Law Judge shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee shall not exceed \$2,500. The maximum attorney fee awarded under this rule is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(5)

Stats. Implemented: ORS 656.308(2), 656.386(1) & 656.388(3)

Hist.: WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

438-015-0055

Attorney Fees When a Claimant Requests Review by the Board

(1) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for temporary disability and the Board

awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$5,000.

(2) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent disability and the Board awards additional compensation, the

Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$6,000.

(3) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent total disability and the Board awards additional compensation,

the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed \$16,300.

(4) If a claimant requests review of an Administrative Law Judge's order that upheld a denial of compensability for a claim and the Board orders the claim accepted, the Board shall assess a reasonable attorney fee to be paid by the insurer or self-insured employer to the claimant's attorney.

(5) If a claimant requests review of an Administrative Law Judge's order that upheld a responsibility denial issued under ORS 656.308 and the claimant's attorney actively and meaningfully participates in finally prevailing against the responsibility denial, the Board shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee for prevailing over the responsibility denial shall not exceed \$2,500. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

Stat. Auth.: ORS 656.386(1), 656.386(2), 656.388(3) & 656.726(5)

Stats. Implemented: ORS 656.308(2), 656.386(1), 656.386(2) & 656.388(3)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

438-015-0065

Attorney Fees When Insurer or Self-Insured Employer Requests a Hearing

(1) If an insurer or self-insured employer requests a hearing or otherwise seeks a reduction in compensation and the Administrative Law Judge finds that the compensation awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(2) If an insurer or self-insured employer requests a hearing regarding a reconsideration order rescinding a notice of closure, and the Administrative Law Judge finds that the reconsideration order should not be reversed, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(3) If an insurer or self-insured employer requests a hearing regarding a reconsideration order, and the ALJ finds that the compensation awarded by the reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(4) If an insurer or self-insured employer requests a hearing regarding a claim reclassification order from the Workers' Compensation Division, and the Administrative Law Judge finally determines that the claim should be classified as disabling, the Administrative Law Judge may award a reasonable assessed fee.

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(5)

Stats. Implemented: ORS 656.382(2), 656.386(3) & 656.388(3)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

438-015-0070

Attorney Fees When Insurer or Self-Insured Employer Requests or Cross-Requests Review by the Board

(1) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order and the Board finds that the compensation awarded to the claimant should not be disallowed or reduced, the Board shall award a reasonable assessed fee to the claimant's attorney.

(2) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order regarding a reconsideration order rescinding a notice of closure, and the Board finds that the reconsideration order should not be reversed, the Board shall award a reasonable assessed fee to the claimant's attorney.

(3) If an insurer or self-insured employer requests or cross-requests review of the Administrative Judge's order regarding a reconsideration order, and the Board finds that the compensation awarded by the reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the Board shall award a reasonable assessed fee to the claimant's attorney.

ADMINISTRATIVE RULES

(4) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(5)
Stats. Implemented: ORS 656.382(2), 656.386(3) & 656.388(3)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

438-015-0110

Attorney Fees in Cases Involving ORS 656.262(11)(a)

If the Director, an Administrative Law Judge, the Board, or the Court find that the insurer or self-insured employer unreasonably delayed or unreasonably refused to pay compensation, or unreasonably delayed acceptance or denial of a claim, an assessed attorney fee shall be awarded in a reasonable amount that:

(1) Is proportionate to the benefit to the claimant;

(2) Takes into consideration the factors set forth in OAR 438-015-0010(4), giving primary consideration to the results achieved and to the time devoted to the case; and

(3) Does not exceed \$3,000, absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

Stat. Auth.: ORS 656.283, 656.388 & 656.726(5)
Stats. Implemented: ORS 656.262(11)(a)
Hist.: WCB 3-2003, f. 12-12-03 cert. ef. 1-1-04; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

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

Rule Caption: Reporting workers' compensation medical billing data to the State of Oregon.

Adm. Order No.: WCD 2-2009

Filed with Sec. of State: 10-5-2009

Certified to be Effective: 1-1-10

Notice Publication Date: 8-1-2009

Rules Amended: 436-160-0002, 436-160-0003, 436-160-0004, 436-160-0080, 436-160-0410, 436-160-0420

Subject: Amendments to OAR chapter 436, division 160, "Electronic Data Interchange" – these rules: Adopt the *EDI Implementation Guide for Medical Bill Payment Records, Release 1.1*, dated July 1, 2009; clarify medical bill reporting requirements, including procedures for functional and detailed reporting acknowledgments; reduce the reporting time frame from 90 to 60 days from the date a medical bill was paid; establish the acceptable threshold for uncorrectable bills; require reporting of denied medical payments if the workers' compensation claim has been accepted; clarify mandatory trigger or implementation notes for a number of data elements in the medical bill data element requirement table; and require reporting of some new medical billing data elements: date transmission sent, time transmission sent, billing provider country code, facility country code, rendering bill provider country code, rendering line provider country code, days/units paid, and service adjustment units.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; or e-mail fred.h.bruyns@state.or.us. Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-160-0002

Purpose

The director's purpose is to require workers' compensation proof of coverage and medical data reporting via electronic data interchange.

Stat. Auth.: ORS 656.264 & 656.726(4)
Stats. Implemented: ORS 656.017, 656.407, 656.419, 656.423 & 656.427
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 2-2009, f. 10-5-09 cert. ef. 1-1-10

436-160-0003

Applicability of Rules

(1) These rules apply to workers' compensation related transactions filed with the director via electronic data interchange on or after the effective date of these rules.

(2) The director may, unless otherwise obligated by statute, waive any procedural rules in this rule division as justice so requires.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.726(4)
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2009, f. 10-5-09 cert. ef. 1-1-10

436-160-0004

Adoption of Standards

(1) For proof of coverage, the director adopts, by reference, *IAIABC EDI Implementation Guide for Proof of Coverage*, Release 2.1, dated June 1, 2007, including the definition of standards and procedures, unless otherwise provided in these rules.

(2) For medical bill data, the director adopts, by reference, *IAIABC EDI Implementation Guide for Medical Bill Payment Records*, Release 1.1, dated July 1, 2009, unless otherwise provided in these rules.

(3) Copies of the standards described in sections (1) and (2) are available from the IAIABC Web site: <http://www.iaiaabc.org/i4a/pages/index.cfm?pageid=3339>.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.264
Stats. Implemented: ORS 656.017, 656.407, 656.419, 656.423 & 656.427
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 2-2009, f. 10-5-09 cert. ef. 1-1-10

436-160-0080

Acknowledgements

(1) Proof of Coverage:

(a) The director will respond to the sender with an electronic transaction accepted or transaction rejected acknowledgement of the insurer's transactions.

(b) The insurer must correct and resubmit any transactions rejected for which law or rule require filing, reporting, or notice to the director.

(2) Insurers are not required to resubmit reprocessed transactions.

(3) Medical Bill Data:

(a) The sender will receive both TA1 and 997 interchange and functional acknowledgements (as defined by ANSI X12N) for each medical bill batch submitted, unless technical errors in the file prevent 997 processing. In addition, the sender will receive an 824 detailed acknowledgement (as defined by ANSI X12N) for each medical bill batch submitted, if the batch has successfully passed the 997 edits. An 824 detailed acknowledgment will contain transaction accepted (TA) or transaction rejected (TR) acknowledgement of all of the insurer's transactions in the batch.

(b) The insurer must correct and resubmit any transactions rejected for which law or rule require filing, reporting, or notice to the director.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.264
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 2-2009, f. 10-5-09 cert. ef. 1-1-10

436-160-0410

Medical Bill Electronic Filing Requirements

(1) The chart in Appendix "B" shows all medical bill data elements accepted via EDI in Oregon, and whether the data element is mandatory (M), conditional (C), or optional (O) for each transaction type.

(2) Unless otherwise provided in these rules, the data elements must have the meaning provided in the data dictionary pursuant to OAR 436-160-0004.

(3) Transactions will be rejected if mandatory or required conditional data elements are omitted or submitted in a format that is not capable of being processed by the division's information processing system designated for medical bill transactions.

(4) Optional data element(s) in a transaction will be ignored if the optional data element is either omitted, or submitted in a format that is not capable of being processed by the division's information processing system designated for medical bill transactions.

(5) Unless otherwise provided in these rules, an insurer approved for production transmissions will transmit medical bill data via EDI, and will not submit the same medical bill data via Bulletin 220 proprietary format to the director.

Stat. Auth.: ORS 656.726(4)
Stat. Implemented: ORS 656.264
Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 2-2009, f. 10-5-09 cert. ef. 1-1-10

436-160-0420

Medical Bill Acknowledgement

(1) The sender will receive both TA1 and 997 interchange and functional acknowledgements (as defined by ANSI X12N) for each medical bill

ADMINISTRATIVE RULES

batch submitted, unless technical errors in the file prevent 997 processing. In addition, the sender will receive an 824 detailed acknowledgement (as defined by ANSI X12N) for each medical bill batch submitted, if the batch has successfully passed the 997 edits. The detailed acknowledgement will indicate either a transaction accepted (TA) or a transaction rejected (TR) acknowledgement for each individual transaction.

(2) A TA1, 997, or 824 error will be sent for all transactions incapable of being processed by the division's information processing system, including, but not limited to:

(a) An omitted mandatory data element;

(b) An improperly populated data element field, e.g., numeric data element field is populated with alpha or alphanumeric data, or is not a valid value according to the standards adopted in 436-160-0004;

(c) Transactions or electronic records within the transaction which require matching and cannot be matched to the division's database, e.g., cancellation of an original bill that does not match on Unique Bill ID;

(d) Illogical data in mandatory or required conditional field, e.g., payment date is after reporting date;

(e) Duplicate transmission or duplicate transaction within the transmission;

(f) Invalid bill submission reason code; or

(g) Illogical event sequence relationship between transactions, e.g., cancellation transaction submitted before an original bill is accepted.

(3) A transaction accepted acknowledgement will be sent for all transactions that are in a format capable of being processed by the division's information processing system and are not rejected pursuant to section (2) of this rule.

(4) An insurer's obligation to file medical bill data for the purposes of this rule is not satisfied unless the director acknowledges acceptance of the transaction.

Stat. Auth.: ORS 656.726(4)

Stat. Implemented: ORS 656.264

Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2009, f. 10-5-09 cert. ef. 1-1-10

Department of Corrections Chapter 291

Rule Caption: Imposition of Administrative Sanctions/Interventions on Transitional Leave Inmates.

Adm. Order No.: DOC 16-2009(Temp)

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09 thru 3-30-10

Notice Publication Date:

Rules Amended: 291-058-0046

Subject: Amendment of this rule is necessary to allow inmates on transitional leave from an Alternative Incarceration Program to receive jail as an administrative sanction to address violation of conditions of supervision.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-058-0046

Imposition of Administrative Sanctions/Interventions on Transitional Leave Inmates

(1) The process to impose administrative sanctions or interventions on inmates on short-term transitional leave shall be the same as for offenders on probation, parole, post-prison supervision, and compact cases with the restrictions listed in subsections (2) through (9) below.

(2) Only violations in the "System Response"; "Behavior Level 1"; and "Behavior Level 2" columns on the Administrative Sanctions Sanctioning Grid (Attachment A) shall be addressed with an administrative sanction or intervention response.

(3) Violations found to be in the "Behavior Level 3" of Attachment A shall be addressed in accordance with the Department's rule on Short-Term Transitional Leaves, Emergency Leaves and Supervised Trips, specifically OAR 291-063-0036(2) and (3).

(4) If the indicated level of sanction response is considered to be insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including returning the inmate to a Department of Corrections facility, may be imposed only after consultation and agreement of the unit supervisor.

(a) For revocation recommendations under this section, an inmate may be returned to the releasing institution only after consultation with the unit supervisor and the agreement of the institution functional unit manager or designee.

(b) For revocations, supervising officers shall use the process outlined in subsection (3) above.

(5) Section 3 Crime Seriousness/Criminal History Grid (1, 2, 3, 4C-4I, 5G-5I) on Attachment A shall be used for all inmates on short-term tran-

sitional leave regardless of where they would be placed on the Sentencing Guidelines Grid.

(6) The maximum number of units available for short-term transitional leave violations shall be determined by the process outlined in 291-058-0045 with the above listed limitations in subsections (2) and (3) above.

(7) Use of jail sanctions for inmates on 90-day transitional leave from an Alternative Incarceration Program (AIP) must be agreed upon by both Department of Corrections and the local county. A jail sanction cannot exceed three days. Credit for sanction units for work crew, community service, restitution or work release centers, and house arrest shall be distributed according to Attachment B.

(8) Sanction reports shall be forwarded to the releasing institution. The institution functional unit manager or designee shall have the override authority of other releasing authorities. The sanction report shall be submitted via FAX transmittal or electronically the same day the sanction is imposed. The institution functional unit manager or designee may override the given sanction at any time without time limitations.

(9) The Notice of Rights form (CD 1497) developed specifically for violations of short-term transitional leave shall be utilized when serving the Notice of Rights to the inmate.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075

Hist.: DOC 8-2009, f. & cert. ef. 5-29-09; DOC 16-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

Department of Fish and Wildlife Chapter 635

Rule Caption: Non Fin-clipped Coho Closure In the Coos River and Bay Sport Salmon Fishery.

Adm. Order No.: DFW 113-2009(Temp)

Filed with Sec. of State: 9-18-2009

Certified to be Effective: 9-18-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 635-016-0090

Rules Suspended: 635-016-0090(T)

Subject: Amended rule closes the Coos River and Bay upstream to the Doris Place Boat Ramp at river mile 0.25 on the Millicoma River and upstream to the confluence with Besse Cr. at river mile 6.25 on the South Fork Coos River to retention of non fin-clipped adult coho salmon from 11:59 p.m. September 18 through December 31, 2009. This closure is necessary due to attainment of the 1,000 non-fin-clipped adult coho allocation.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-016-0090

Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the 2009 Oregon Sport Fishing Regulations, the following restrictions apply to angling in waters of the Southwest Zone:

(a) All waters of the Umpqua River Basin (including Smith River), Coquille River Basin, and Elk River Basin that are open for Chinook salmon are limited to no more than 1 non fin-clipped adult Chinook salmon retained per day and 5 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 5 adult non fin-clipped Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(b) All waters of the Coos River Basin and Rogue River Basin that are open for Chinook salmon are limited to no more than 2 adult non fin-clipped Chinook salmon retained per day, and no more than 10 total adult non fin-clipped Chinook in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(A) Rogue River mainstem from Gold Ray Dam to Dodge Bridge: from 12:01 a.m. August 1 thru 11:59 p.m. August 31, 2009 only adult

ADMINISTRATIVE RULES

fin-clipped Chinook salmon may be retained. Non fin-clipped jacks may be retained. Catch limits and other restrictions listed in the 2009 Oregon Sport Fishing Regulations for the Southwest Zone remain in effect.

(c) All waters of Floras Creek, Floras Lake, New River, New Lake, Sixes River, Hunter Creek, Pistol River, and Chetco River that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 2 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 2 adult Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(d) All waters of the North Fork Smith River (Umpqua River Basin) are closed for Chinook salmon between August 1 and December 31, 2009.

(e) Within the Coos River Basin the following additional rules apply:

(A) All waters of the Millicoma River upstream of the Doris Place Boat Ramp at river mile 0.25 are closed for Chinook salmon between August 1 and December 31, 2009, and closed for steelhead from August 1 through November 14;

(B) All waters of the South Fork Coos River upstream from the confluence with Besse Cr. at river mile 6.25 are closed for Chinook salmon from August 1 through December 31, 2009, and closed for steelhead from August 1 through November 14; and

(C) All waters of the Coos River and Bay upstream to the Doris Place Boat Ramp at river mile 0.25 on the Millicoma River and upstream to the confluence with Besse Cr. at river mile 6.25 on the South Fork Coos River are closed for non fin-clipped coho salmon from 11:59 p.m. September 18 through December 31, 2009 due to attainment of the 1,000 non-flipped adult coho quota.

(f) Within the Coquille River Basin the following additional rules apply:

(A) All waters of the Coquille River Basin upstream of the Highway 42S bridge (Sturdivant Park) at river mile 24.0 are closed for Chinook salmon between August 1 and December 31, 2009, and closed for steelhead from August 1 through November 14;

(B) Open for non fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at river mile 24.0 from September 1 through the earlier of November 30 or attainment of an adult coho quota of 1,500 non-flipped coho. The daily catch limit may include one adult non fin-clipped coho salmon per day and one non fin-clipped jack coho salmon, and no more than 5 total adult non fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(g) All waters of Floras Creek upstream of the County Road 124 bridge over Floras at river mile 5.0 are closed for Chinook salmon between August 1 and December 31, 2009.

(h) All waters of the Sixes River upstream of Edson Cr. are closed for Chinook salmon between August 1 and December 31, 2009.

(i) All waters of the Chetco River upstream of the Highway 101 Bridge are closed to angling from August 1 through November 6, 2009, and are closed for Chinook salmon upstream of the US Forest Service Bridge at river mile 10.5 from August 1 through December 31, 2009.

(j) All waters of the Winchuck River are closed to Chinook angling from August 1 through December 31, 2009.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; FWC 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; FWC 70-1998, f. & cert. ef. 8-28-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 36-1999, f. & cert. ef. 5-20-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-

2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09

Rule Caption: Additional Fishing Period Authorized for Treaty Indian Gill Net Fishery In Columbia River Zone 6.

Adm. Order No.: DFW 114-2009(Temp)

Filed with Sec. of State: 9-18-2009

Certified to be Effective: 9-21-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-041-0075

Rules Suspended: 635-041-0075(T)

Subject: Amended rule extends the ongoing Treaty Indian gill net fishery in the Columbia River above Bonneville Dam (Zone 6). One 84 hour fishing period (3.5 days) was authorized from 6:00 a.m. Tuesday, September 22 through 6:00 p.m. Friday, September 25, 2009. Modifications are consistent with action taken September 17, 2009 by the Columbia River Compact agencies of Oregon and Washington in concert with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0075

Fall Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Saturday, August 1, 2009 until further notice.

(a) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, shad, catfish, yellow perch and bass landed in mainstem platform hook and line and Yakama Nation Zone 6 tributary fisheries, and in the Yakama Nation fishery on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(2) Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may be taken by gill net for commercial purposes from the mainstem Columbia River, Zone 6 during the following periods: 6:00 a.m. Monday, September 14 through 6:00 p.m. Friday, September 18, 2009 (108 hours); and 6:00 a.m. Tuesday, September 22 through 6:00 p.m. Friday, September 25, 2009 (84 hours).

(a) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad.

(b) No minimum mesh size restriction is in effect through September 18, 2009.

(3) Closed areas, including the smaller Spring Creek sanctuary (approximately 0.5 miles upstream to 0.5 miles downstream of the hatchery ladder) remain in effect.

(4) Sturgeon taken in the fisheries described in sections (1) and (2) above may not be sold. Sturgeon may not be retained in the Yakama fishery below Bonneville. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be retained for subsistence.

(5) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 25-1979, f. & cert. ef. 8-2-79; FWC 36-1979(Temp), f. & cert. ef. 8-22-79; FWC 47-1979(Temp), f. & cert. ef. 9-21-79; FWC 44-1980(Temp), f. & cert. ef. 8-22-80; FWC 46-1980(Temp), f. & cert. ef. 9-13-80; FWC 33-1981(Temp), f. & cert. ef. 9-15-81; FWC 58-1982(Temp), f. & cert. ef. 8-27-82; FWC 62-1982(Temp), f. & cert. ef. 9-7-82; FWC 63-1982(Temp), f. & cert. ef. 9-14-82; FWC 75-1982 (Temp), f. & cert. ef. 10-29-82; FWC 36-1983, f. & cert. ef. 8-18-83; FWC 49-1983(Temp), f. & cert. ef. 9-26-83; FWC 51-1983(Temp), f. & cert. ef. 9-30-83; FWC 55-1983(Temp), f. & cert. ef. 10-4-83; FWC 46-1984, f. & cert. ef. 8-30-84; FWC 55-1984(Temp), f. & cert. ef. 9-10-84; FWC 58-1984(Temp), f. & cert. ef. 9-17-84; FWC 61-1984 (Temp), f. & cert. ef. 9-21-84; FWC 70-1984(Temp), f. & cert. ef. 10-9-84; FWC 47-1985, f. & cert. ef. 8-23-85; FWC 60-1985(Temp), f. & cert. ef. 9-13-85; FWC 63-1985(Temp), f. & cert. ef. 9-24-85; FWC 42-1986, f. & cert. ef. 8-15-86; FWC 53-

ADMINISTRATIVE RULES

1986(Temp), f. & cert. ef. 9-4-86; FWC 54-1986(Temp), f. & cert. ef. 9-5-86; FWC 57-1986(Temp), f. & cert. ef. 9-11-86; FWC 60-1986(Temp), f. & cert. ef. 9-26-86; FWC 62-1986(Temp), f. & cert. ef. 10-2-86; FWC 63-1987, f. & cert. ef. 8-7-87; FWC 74-1987(Temp), f. & cert. ef. 9-4-87; FWC 75-1987(Temp), f. & cert. ef. 9-1-87; FWC 78-1987(Temp), f. & cert. ef. 9-15-87; FWC 80-1987(Temp), f. & cert. ef. 9-18-87; FWC 87-1987(Temp), f. & cert. ef. 10-9-87; FWC 89-1987(Temp), f. & cert. ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988(Temp), f. & cert. ef. 9-28-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 87-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 96-1989(Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. & cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. & cert. ef. 9-7-90, cert. ef. 9-10-90; FWC 98-1990(Temp), f. & cert. ef. 9-17-90; FWC 85-1991, f. & cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. & cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. & cert. ef. 9-2-92; FWC 87-1992(Temp), f. & cert. ef. 9-4-92, cert. ef. 9-7-92; FWC 91-1992(Temp), f. & cert. ef. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. & cert. ef. 9-23-92; FWC 105-1992(Temp), f. & cert. ef. 10-2-92, cert. ef. 10-5-92; FWC 107-1992 (Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. & cert. ef. 8-6-93, cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. & cert. ef. 9-17-93, cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. & cert. ef. 8-26-94, cert. ef. 10-12-94; FWC 61-1994(Temp), f. & cert. ef. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 8-29-94; FWC 68-1995(Temp), f. & cert. ef. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. & cert. ef. 9-12-95, cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. & cert. ef. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. & cert. ef. 9-6-96, cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. & cert. ef. 8-29-97, cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. & cert. ef. 9-16-97, cert. ef. 9-17-97; FWC 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; DFW 76-1998(Temp), f. & cert. ef. 9-8-98 thru 9-25-98; DFW 77-1998(Temp), f. & cert. ef. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; DFW 79-1998(Temp), f. & cert. ef. 9-21-98, cert. ef. 8-25-98 thru 9-25-98; DFW 80-1998(Temp), f. & cert. ef. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 62-1999(Temp), f. & cert. ef. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; DFW 65-1999(Temp), f. & cert. ef. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; DFW 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; DFW 72-1999(Temp), f. & cert. ef. 9-21-99, cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. & cert. ef. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. & cert. ef. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. & cert. ef. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. & cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 94-2001(Temp), f. & cert. ef. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 100-2001(Temp), f. & cert. ef. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. & cert. ef. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. & cert. ef. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. & cert. ef. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. & cert. ef. 9-12-03, cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. & cert. ef. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. & cert. ef. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. & cert. ef. 10-12-04, cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 71-2006(Temp), f. & cert. ef. 8-1-06 thru 12-31-06; DFW 86-2006(Temp), f. & cert. ef. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 94-2006(Temp), f. & cert. ef. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; DFW 101-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 107-2006(Temp), f. & cert. ef. 9-28-06, cert. ef. 10-3-06 thru 12-31-06; DFW 115-2006(Temp), f. & cert. ef. 10-13-06, cert. ef. 10-15-06 thru 12-31-06; Administrative correction 1-16-07; DFW 60-2007(Temp), f. & cert. ef. 8-1-07 thru 12-31-07; DFW 77-2007(Temp), f. & cert. ef. 8-17-07, cert. ef. 8-22-07 thru 12-31-07; DFW 88-2007(Temp), f. & cert. ef. 9-10-07, cert. ef. 9-11-07 thru 12-31-07; DFW 95-2007(Temp), f. & cert. ef. 9-25-07 thru 12-31-07; DFW 100-2007(Temp), f. & cert. ef. 9-28-07, cert. ef. 10-3-07 thru 12-31-07; DFW 110-2007(Temp), f. & cert. ef. 10-16-07, cert. ef. 10-20-07 thru 12-31-07; DFW 106-2008(Temp), f. & cert. ef. 9-4-08, cert. ef. 9-6-08 thru 10-31-08; DFW 109-2008(Temp), f. & cert. ef. 9-12-08, cert. ef. 9-15-08 thru 10-31-08; DFW 112-2008(Temp), f. & cert. ef. 9-17-08, cert. ef. 9-18-08 thru 10-31-08; DFW 117-2008(Temp), f. & cert. ef. 9-22-08 thru 10-31-08; DFW 122-2008(Temp), f. & cert. ef. 9-29-08 thru 10-31-08; DFW 125-2008(Temp), f. & cert. ef. 10-6-08, cert. ef. 10-7-08 thru 10-31-08; DFW 134-2008(Temp), f. & cert. ef. 10-17-08 thru 10-31-08; DFW 141-2008(Temp), f. & cert. ef. 11-10-08, cert. ef. 11-12-08 thru 11-30-08; DFW 88-2009(Temp), f. & cert. ef. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 95-2009(Temp), f. & cert. ef. 8-19-09, cert. ef. 8-24-09 thru 12-31-09; DFW 111-2009(Temp), f. & cert. ef. 9-11-09, cert. ef. 9-13-09 thru 9-30-09; DFW 114-2009(Temp), f. & cert. ef. 9-18-09, cert. ef. 9-21-09 thru 10-31-09

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Rule Caption: Non Fin-clipped Coho Closure In the Nehalem and Yaquina River Sport Salmon Fisheries.

Adm. Order No.: DFW 115-2009(Temp)

Filed with Sec. of State: 9-22-2009

Certified to be Effective: 9-22-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 635-014-0090

Rules Suspended: 635-014-0090(T)

Subject: Amended rule closes all waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at river mile 18.3 and all waters of Big Elk Creek (Yaquina River Basin) and Nehalem Bay upstream to the Miami-Foley Bridge on the South Fork Nehalem River and upstream to North Fork Road Bridge (at Aldervale) on the North Fork for retention of non fin-clipped adult coho salmon from 11:59 p.m. September 23 through December 31, 2009. This closure is necessary due to attainment of the 1,000 in the

non-clipped Nehalem and the 500 non fin-clipped adult coho allocation in the Yaquina.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-014-0090

Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Fishhawk Lake (Nehalem Basin) is open for trout angling through October 31, 2009.

(a) Retention of trout is allowed, 2 per day; 2 daily limits in possession; 8-inch minimum length;

(b) Angling restricted to artificial flies and lures only through August 31, 2009.

(3) Notwithstanding all other requirements provided in the 2009 Oregon Sport Fishing Regulations, the following additional rules apply to angling in waters of the Northwest Zone:

(a) All waters of the Necanicum River, Sand Lake, Nestucca River Basin (including the Little Nestucca River), Salmon River, and Siuslaw River Basin that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 5 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 5 adult non fin-clipped Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(b) In those waters of the Necanicum River listed as open for Chinook or steelhead angling, fin-clipped coho may be retained as part of the adult and jack salmon daily bag limit.

(A) Retention of trout is allowed, 2 per day; 2 daily limits in possession; 8-inch minimum length;

(B) Angling restricted to artificial flies and lures only May 23 through August 31, 2009.

(c) In those waters of the Nehalem River Basin listed as open for salmon or steelhead in the 2009 Oregon Sport Fishing Regulations, the daily catch limit is 2 adult salmon or steelhead in combination except:

(A) Closed for Chinook salmon from August 1 through December 31, 2009;

(B) From August 1 through December 31, the daily catch limit increases to three total adult salmon or steelhead in combination if at least 1 retained salmon is an adult coho with a healed fin clip; and

(C) Open for adipose fin-clipped coho inland from the tips of the jetties upstream to Miami River-Foley Creek Road bridge as per zone regulations. All retained coho salmon must have a healed fin-clip, except:

(i) All waters of the Nehalem Bay upstream to the Miami-Foley Bridge on the South Fork Nehalem River and upstream to North Fork Road Bridge (at Aldervale) on the North Fork are closed to the retention of non-fin-clipped coho salmon from 11:59 PM September 23 through December 31 due to the attainment of an adult coho quota of 1,000 non-fin-clipped coho.

(d) In those waters of the Tillamook Basin (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers), listed as open for salmon or steelhead in the 2009 Oregon Sport Fishing Regulations, the daily catch limit is 2 adult salmon or steelhead except:

(A) In those waters open for Chinook salmon the daily catch limit may include no more than 1 adult non fin-clipped Chinook salmon per day and 5 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 5 adult non fin-clipped Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009; and

(B) In those waters open for coho salmon from August 1 through October 31, the daily catch limit increases to three total adult salmon or steelhead in combination if at least 1 of the retained salmon is an adult coho with a healed fin clip.

(e) In all waters of the Siletz River Basin, Yaquina River Basin, Alsea River Basin, and Yachats River Basin open for Chinook salmon, the daily catch limit may include no more than 1 adult non fin-clipped Chinook salmon per day and 2 adult non fin-clipped Chinook salmon in the season-

ADMINISTRATIVE RULES

al aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 2 adult non fin-clipped Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(f) Within the Siletz River Basin the following additional rules apply:

(A) Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at river mile 8 is closed for Chinook salmon from August 1 through December 31, 2009; and

(B) All waters of the Siletz River (including all tributaries) upstream of Morgan Park at river mile 25.0 are closed for Chinook salmon from August 1 through December 31, 2009.

(g) Within the Yaquina River Basin the following additional rules apply:

(A) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at river mile 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31, 2009; and

(B) All retained coho salmon must have a healed fin-clip. All waters of the Yaquina River and bay upstream to the confluence of the Yaquina River and Big Elk Creek at river mile 18.3 are closed to the retention of non fin-clipped coho salmon from 11:59 p.m. September 23 through December 31, 2009 due to attainment of the 500 non-finclipped adult coho quota.

(h) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) upstream of the lower Drift Creek Wilderness Area boundary at river mile 10.5 are closed for Chinook salmon from August 1 through December 31, 2009; and (B) all waters of the Alsea River upstream of the confluence with Five Rivers at river mile 21; and

(C) all waters of Five Rivers are closed for Chinook salmon from August 1 through December 31, 2009.

(i) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at river mile 30 are closed for Chinook salmon from August 1 through December 31, 2009;

(B) All waters of Lake Creek are closed for Chinook salmon from August 1 through December 31, 2009.

(j) In those waters of Bear Creek, Big Creek, Clatskanie River, Gnat Creek, John Day River, Klaskanine River, Lewis & Clark River, Young's Bay, and Young's River during open seasons for coho salmon the additional rules apply:

(A) Effective September 1, 2009 the daily bag limit in the aggregate is 2 adult salmon or steelhead per day, with the exception that one additional adult adipose fin-clipped coho may be retained per day for a total aggregate of 3 adult fish, of which no more than 2 may be a Chinook or fin-clipped steelhead, harvested daily.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 12-1998(Temp), f. & cert. ef. 2-24-98 through 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert.

ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09

Rule Caption: Directed Commercial Sardine Fishery Closes September 23, 2009.

Adm. Order No.: DFW 116-2009(Temp)

Filed with Sec. of State: 9-23-2009

Certified to be Effective: 9-23-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 635-004-0017

Rules Suspended: 635-004-0017(T)

Subject: This amended rule closes the third period of the directed commercial sardine fishery effective September 23 through December 31, 2009. Previous rule modifications included reductions to the directed fishery allocations for the second and third periods by 750 mt and 450 mt respectively; and closure of the directed sardine fishery second allocation period. These modifications conform to federal rule changes published in the Federal Register on June 30, July 17, and September 23, 2009.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0017

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.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, provides requirements for commercial sardine fishing in the Pacific Ocean. 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 635-004-0016, the National Oceanic and Atmospheric Administration (NOAA), by means of the Federal Register/Vol. 74, No. 124/Tuesday, June 30, 2009, announced inseason management measures effective July 1, 2009, including but not limited to, reductions to the directed fishery allocations for the second and third periods by 750 mt and 450 mt respectively.

(4) Notwithstanding the regulations as defined in OAR 635-004-0016, the National Oceanic and Atmospheric Administration (NOAA), by means of the Federal Register/Vol. 74, No. 136/Friday, July 17, 2009, announced inseason management measures effective July 18, 2009, including but not limited to, closure of the directed sardine fishery through September 14, 2009.

(5) Notwithstanding the regulations as defined in OAR 635-004-0016, the National Oceanic and Atmospheric Administration (NOAA), by means of the Federal Register/Vol. 74, No. 183/Wednesday, September 23, 2009, announced inseason management measures effective September 23, 2009, including but not limited to, closure of the directed sardine fishery through December 31, 2009.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 38-2009, f. & cert. ef. 4-22-09; DFW 78-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 12-28-09; DFW 85-2009(Temp), f. 7-17-09, cert. ef. 7-18-09 thru 12-31-09; DFW 116-2009(Temp), f. & cert. ef. 9-23-09 thru 12-31-09

Rule Caption: Late Fall Commercial Salmon Gill Net Fishery in the Mainstem Columbia River.

Adm. Order No.: DFW 117-2009(Temp)

Filed with Sec. of State: 9-23-2009

Certified to be Effective: 9-24-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-042-0060

Subject: Amended rule sets the late fall fishing periods and areas in the Columbia River for the commercial harvest, retention and sales of adult salmon and white sturgeon beginning September 24, 2009. The proposed seasons provide opportunity for the commercial gill net fleet to harvest part of their pre-season allocation. Revisions are

ADMINISTRATIVE RULES

consistent with action taken September 23, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and white sturgeon may be taken by gill nets for commercial purposes from the Columbia River during the open fishing periods and areas identified in sections (2) through (4) below. Retention of green sturgeon is prohibited.

(a) In sections (2) through (4) below: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect. Lewis-B includes all of the area from the upper boundary of the Lewis-B sanctuary downstream to a line projected from the red navigation Marker 62 at the head of Deer Island, Oregon, across to the green navigation Marker 63 at Martin Island, Washington.

(b) In sections (2) through (4) below: a maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) of the open fishing periods and the weekly aggregate white sturgeon limit applies to the Columbia River mainstem only. The Columbia River Select Areas are currently closed to the retention of white sturgeon.

(c) In sections (2) through (4) below: nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 0.375-inches or greater.

(2) Season 1: 9:00 p.m. Thursday, September 24 to 5:00 a.m. Friday, September 25, 2009 (8 hours); and 9:00 p.m. Monday, September 28 to 5:00 a.m. Tuesday, September 29, 2009 (8 hours) in Zones 4-5.

(a) Gear is restricted to gill nets with a 8-inch minimum and 9.75-inch maximum mesh size.

(3) Season 2: 6:00 a.m. to 6:00 p.m. Monday, September 28, 2009 (12 hours); and

6:00 a.m. to 6:00 p.m. Wednesday, September 30, 2009 (12 hours) in Zones 1-3.

(a) Gear is restricted to 6-inch maximum mesh size restriction, unslackened floater gillnet.

(4) Season 3: 6:00 a.m. to 6:00 p.m. Tuesday, September 29, 2009 (12 hours) in Zones 1-5.

(a) Gear is restricted to gill nets with a 9-inch minimum and 9.75-inch maximum mesh size.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & cert. 9-10-79; FWC 45-1979(Temp), f. & cert. 9-21-79; FWC 52-1979(Temp), f. & cert. 11-2-79; FWC 48-1980(Temp), f. & cert. 9-19-80; FWC 51-1980(Temp), f. & cert. 9-22-80; FWC 55-1980(Temp), f. & cert. 9-26-80; FWC 56-1980(Temp), f. & cert. 9-29-80; FWC 58-1980(Temp), f. & cert. 10-17-80; FWC 37-1981(Temp), f. & cert. 9-24-81; FWC 38-1981(Temp), f. & cert. 9-29-81; FWC 69-1982(Temp), f. & cert. 9-30-82; FWC 72-1982(Temp), f. & cert. 10-20-82; FWC 56-1983(Temp), f. & cert. 10-5-83; FWC 54-1984(Temp), f. & cert. 9-10-84; FWC 59-1984(Temp), f. & cert. 9-18-84; FWC 66-1984(Temp), f. & cert. 9-26-84; FWC 68-1984(Temp), f. & cert. 10-2-84; FWC 58-1985(Temp), f. & cert. 9-13-85; FWC 62-1985(Temp), f. & cert. 9-24-85; FWC 66-1985(Temp), f. & cert. 10-11-85; FWC 54-1986(Temp), f. & cert. 9-5-86; FWC 64-1986(Temp), f. & cert. 10-3-86; FWC 67-1986(Temp), f. & cert. 10-17-86; FWC 74-1987(Temp), f. & cert. 9-4-87; FWC 75-1987(Temp), f. & cert. 9-11-87; FWC 80-1987(Temp), f. & cert. 9-18-87; FWC 87-1987(Temp), f. & cert. 10-9-87; FWC 91-1987(Temp), f. & cert. 10-16-87; FWC 85-1988(Temp), f. & cert. 9-9-88; FWC 93-1988(Temp), f. & cert. 9-16-88; FWC 99-1988(Temp), f. & cert. 10-7-88; FWC 100-1988(Temp), f. & cert. 10-24-88; FWC 94-1989(Temp), f. & cert. 9-15-89; FWC 97-1989(Temp), f. & cert. 9-21-89; FWC 109-1989(Temp), f. & cert. 10-6-89; FWC 113-1989(Temp), f. & cert. 11-9-89; FWC 100-1990(Temp), f. & cert. 9-18-90; FWC 101-1990(Temp), f. & cert. 9-19-90; FWC 102-1990(Temp), f. & cert. 9-20-90; FWC 114-1990, f. & cert. 10-8-90; FWC 105-1991, f. & cert. 9-20-91; FWC 118-1991, f. & cert. 10-4-91; FWC 122-1991(Temp), f. & cert. 10-18-91; FWC 129-1991(Temp), f. & cert. 11-1-91; FWC 113-91; FWC 97-1992(Temp), f. & cert. 9-22-92; FWC 100-1992(Temp), f. & cert. 9-25-92; FWC 107-1992(Temp), f. & cert. 10-9-92; FWC 109-1992(Temp), f. & cert. 10-20-92; FWC 110-1992(Temp), f. & cert. 10-22-92; FWC 80-1995(Temp), f. & cert. 9-27-95; FWC 10-9-95; FWC 46-1996, f. & cert. 8-23-96; FWC 58-1996(Temp), f. & cert. 9-27-96; FWC 60-1996(Temp), f. & cert. 10-7-96; FWC 62(Temp), f. & cert. 10-18-96; FWC 10-21-96; FWC 61-1997(Temp), f. & cert. 9-23-97; FWC 62-1997(Temp), f. & cert. 10-6-97; FWC 64-1997(Temp), f. & cert. 10-14-97; FWC 65-1997(Temp), f. & cert. 10-20-97; FWC 68-1997(Temp), f. & cert. 11-3-97; FWC 79-1999(Temp), f. & cert. 10-8-99; FWC 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. & cert. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & cert. 9-15-00; FWC 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & cert. 10-6-00; FWC 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & cert. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & cert. 10-27-00; FWC 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & cert. 9-21-01; FWC 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & cert. 12-31-01; DFW 106-2001(Temp), f. & cert. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & cert. 10-10-02; FWC 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & cert. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & cert. 9-12-03; FWC 915-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & cert. 9-22-03; FWC 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & cert. 10-10-03; FWC 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & cert. 10-21-03; FWC 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & cert. 9-17-04; FWC 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & cert. 10-1-04; FWC 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. 10-19-04 thru 12-31-04;

Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & cert. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. 10-4-05; FWC 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. & cert. 10-21-05; FWC 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. & cert. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. & cert. 9-22-06; FWC 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. & cert. 9-29-06; FWC 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. & cert. 10-4-06; FWC 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & cert. 10-12-06 thru 12-31-06; DFW 120-2006(Temp), f. & cert. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 91-2007(Temp), f. & cert. 9-18-07; FWC 9-19-07 thru 12-31-07; DFW 94-2007(Temp), f. & cert. 9-21-07; FWC 9-24-07 thru 12-31-07; DFW 97-2007(Temp), f. & cert. 9-26-07; FWC 9-26-07 thru 12-31-07; DFW 98-2007(Temp), f. & cert. 9-26-07; FWC 9-27-07 thru 12-31-07; DFW 99-2007(Temp), f. & cert. 9-28-07; FWC 10-1-07 thru 12-31-07; DFW 104-2007(Temp), f. & cert. 10-3-07 thru 12-31-07; DFW 107-2007(Temp), f. & cert. 10-10-07 thru 12-31-07; DFW 109-2007(Temp), f. & cert. 10-16-07; FWC 10-17-07 thru 12-31-07; DFW 111-2007(Temp), f. & cert. 10-22-07; FWC 10-23-07 thru 12-31-07; DFW 112-2007(Temp), f. & cert. 10-24-07; FWC 10-25-07 thru 12-31-07; DFW 113-2008(Temp), f. & cert. 9-17-08; FWC 9-18-08 thru 12-31-08; DFW 119-2008(Temp), f. & cert. 9-24-08 thru 12-31-08; DFW 127-2008(Temp), f. & cert. 10-7-08; FWC 10-8-08 thru 12-31-08; DFW 132-2008(Temp), f. & cert. 10-15-08 thru 12-31-08; DFW 136-2008(Temp), f. & cert. 10-21-08 thru 12-31-08; DFW 117-2009(Temp), f. & cert. 9-23-09; FWC 9-24-09 thru 10-31-09

Rule Caption: Bag Limit for Hatchery Coho Increased In the Lower Willamette River.

Adm. Order No.: DFW 118-2009(Temp)

Filed with Sec. of State: 9-28-2009

Certified to be Effective: 9-28-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: The amended rule allows the sport harvest of three hatchery coho in the Lower Willamette River as shown on page 55, Section 1 of the 2009 Oregon Sport Fishing Regulations. This modification allows sport anglers opportunities to harvest substantial numbers of coho that are returning to hatchery facilities.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Effective September 1, 2009 through December 31, 2009 the Santiam River is open to the harvest of coho salmon as follows: Mainstem (open September 1, 2009 through December 31, 2009); North Fork up to Stayton-Scio Bridge in Stayton (open September 1, 2009 through December 31, 2009); North Fork from Stayton-Scio Bridge in Stayton up to Big Cliff Dam (open November 1, 2009 through December 31, 2009); South Fork up to Grant Street Bridge in Lebanon (open September 1, 2009 through December 31, 2009); South Fork from Grant Street Bridge in Lebanon up to Foster Dam (open November 1, 2009 through December 31, 2009)

(4) Effective September 1, 2009 the daily bag limit for adult salmon or steelhead is 2 per day, 20 per year. 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Clackamas and Sandy rivers and Eagle Creek a tributary of the Clackamas River one additional adipose fin-clipped coho salmon may be retained per day for a total aggregate of three fish harvested daily. The daily bag limit described in section (4) above is a combined total for all open waters.

ADMINISTRATIVE RULES

(5) Effective September 1, 2009 the daily bag limit for adult salmon or steelhead is 2 per day, 20 per year. 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Tualatin and Yamhill rivers one additional coho salmon may be retained for a total aggregate of three fish harvested daily and in the Molalla, Santiam rivers (described in section (3) above), and Willamette River (river section 2 only) one additional coho salmon or adipose fin-clipped steelhead may be retained per day for a total aggregate of three fish harvested daily. The daily bag limit described in section (5) above is a combined total for all open waters.

(6) Effective September 1, 2009 the daily bag limit for adult salmon or steelhead is 2 per day, 20 per year. 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Lower Willamette River (section 1 only) one additional adipose fin-clipped coho salmon may be retained per day for a total aggregate of three fish harvested daily. The daily bag limit described in section (6) above is a combined total for all open waters.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09

Rule Caption: Treaty Indian Gill Net Fishing Period Authorized In Columbia River Zone Six.

Adm. Order No.: DFW 119-2009(Temp)

Filed with Sec. of State: 9-28-2009

Certified to be Effective: 9-29-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-041-0075

Rules Suspended: 635-041-0075(T)

Subject: Amended rule adopts a 2.5 day (60 hour) fishing period for the ongoing Treaty Indian gill net fishery in the Columbia River above Bonneville Dam (Zone 6). The fishing period was authorized from 6:00 a.m. Tuesday, September 29 through 6:00 p.m. Thursday, October 1, 2009. Modifications are consistent with action taken Sep-

tember 25, 2009 by the Columbia River Compact agencies of Oregon and Washington in concert with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0075

Fall Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Saturday, August 1, 2009 until further notice.

(a) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, shad, catfish, yellow perch and bass landed in mainstem platform hook and line and Yakama Nation Zone 6 tributary fisheries, and in the Yakama Nation fishery on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(2) Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may be taken by gill net for commercial purposes from the mainstem Columbia River, Zone 6 during the following periods: 6:00 a.m. Tuesday, September 29 through 6:00 p.m. Thursday, October 1, 2009 (60 hours).

(a) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad.

(b) No minimum mesh size restriction is in effect through October 1, 2009.

(3) Closed areas: All standard dam and river mouth sanctuaries are in effect including the standard (large) Spring Creek Sanctuary are in effect.

(4) Sturgeon taken in the fisheries described in sections (1) and (2) above may not be sold. Sturgeon may not be retained in the Yakama fishery below Bonneville. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be retained for subsistence.

(5) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 25-1979, f. & cert. ef. 8-2-79; FWC 36-1979(Temp), f. & cert. ef. 8-22-79; FWC 47-1979(Temp), f. & cert. ef. 9-21-79; FWC 44-1980(Temp), f. & cert. ef. 8-22-80; FWC 46-1980(Temp), f. & cert. ef. 9-13-80; FWC 33-1981(Temp), f. & cert. ef. 9-15-81; FWC 58-1982(Temp), f. & cert. ef. 8-27-82; FWC 62-1982(Temp), f. & cert. ef. 9-7-82; FWC 63-1982(Temp), f. & cert. ef. 9-14-82; FWC 75-1982(Temp), f. & cert. ef. 10-29-82; FWC 36-1983, f. & cert. ef. 8-18-83; FWC 49-1983(Temp), f. & cert. ef. 9-26-83; FWC 51-1983(Temp), f. & cert. ef. 9-30-83; FWC 55-1983(Temp), f. & cert. ef. 10-4-83; FWC 46-1984, f. & cert. ef. 8-30-84; FWC 55-1984(Temp), f. & cert. ef. 9-10-84; FWC 58-1984(Temp), f. & cert. ef. 9-17-84; FWC 61-1984(Temp), f. & cert. ef. 9-21-84; FWC 70-1984(Temp), f. & cert. ef. 10-9-84; FWC 47-1985, f. & cert. ef. 8-23-85; FWC 60-1985(Temp), f. & cert. ef. 9-13-85; FWC 63-1985(Temp), f. & cert. ef. 9-24-85; FWC 42-1986, f. & cert. ef. 8-15-86; FWC 53-1986(Temp), f. & cert. ef. 9-4-86; FWC 54-1986(Temp), f. & cert. ef. 9-5-86; FWC 57-1986(Temp), f. & cert. ef. 9-11-86; FWC 60-1986(Temp), f. & cert. ef. 9-26-86; FWC 62-1986(Temp), f. & cert. ef. 10-2-86; FWC 63-1987, f. & cert. ef. 8-7-87; FWC 74-1987(Temp), f. & cert. ef. 9-4-87; FWC 75-1987(Temp), f. & cert. ef. 9-1-87; FWC 78-1987(Temp), f. & cert. ef. 9-15-87; FWC 80-1987(Temp), f. & cert. ef. 9-18-87; FWC 87-1987(Temp), f. & cert. ef. 10-9-87; FWC 89-1987(Temp), f. & cert. ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988(Temp), f. 9-27-88, cert. ef. 9-28-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 97-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 96-1989(Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. 9-7-90, cert. ef. 9-10-90; FWC 98-1990(Temp), f. 9-14-90, cert. ef. 9-17-90; FWC 85-1991, f. 8-7-91, cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. 9-17-91, cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. 9-1-92, cert. ef. 9-2-92; FWC 87-1992(Temp), f. 9-4-92, cert. ef. 9-7-92; FWC 91-1992(Temp), f. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. 9-22-92, cert. ef. 9-23-92; FWC 105-1992(Temp), f. 10-2-92, cert. ef. 10-5-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. 9-17-93, cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. 8-26-94, cert. ef. 8-29-94; FWC 61-1994(Temp), f. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. 9-12-95, cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. 9-6-96, cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. 8-29-97, cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. 9-16-97, cert. ef. 9-17-97; DFW 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; DFW 76-1998(Temp), f. & cert. ef. 8-9-98 thru 9-25-98; DFW 77-1998(Temp), f. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; DFW 79-1998(Temp), f. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; DFW 80-1998(Temp), f. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 62-1999(Temp), f. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; DFW 65-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; DFW 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; DFW 72-1999(Temp), f. 9-21-99, cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. 9-11-00, cert.

ADMINISTRATIVE RULES

ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 100-2001(Temp), f. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. 9-12-03, cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. 10-12-04, cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 71-2006(Temp), f. 7-31-06, cert. ef. 8-1-06 thru 12-31-06; DFW 86-2006(Temp), f. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 94-2006(Temp), f. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; DFW 101-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 107-2006(Temp), f. 9-28-06, cert. ef. 10-3-06 thru 12-31-06; DFW 115-2006(Temp), f. 10-13-06, cert. ef. 10-15-06 thru 12-31-06; Administrative correction 1-16-07; DFW 60-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 12-31-07; DFW 77-2007(Temp), f. 8-17-07, cert. ef. 8-22-07 thru 12-31-07; DFW 88-2007(Temp), f. 9-10-07, cert. ef. 9-11-07 thru 12-31-07; DFW 95-2007(Temp), f. 9-21-07, cert. ef. 9-25-07 thru 12-31-07; DFW 100-2007(Temp), f. 9-28-07, cert. ef. 10-3-07 thru 12-31-07; DFW 110-2007(Temp), f. 10-16-07, cert. ef. 10-20-07 thru 12-31-07; DFW 106-2008(Temp), f. 9-4-08, cert. ef. 9-6-08 thru 10-31-08; DFW 109-2008(Temp), f. 9-12-08, cert. ef. 9-15-08 thru 10-31-08; DFW 112-2008(Temp), f. 9-17-08, cert. ef. 9-18-08 thru 10-31-08; DFW 117-2008(Temp), f. & cert. ef. 9-22-08 thru 10-31-08; DFW 122-2008(Temp), f. & cert. ef. 9-29-08 thru 10-31-08; DFW 125-2008(Temp), f. 10-6-08, cert. ef. 10-7-08 thru 10-31-08; DFW 134-2008(Temp), f. & cert. ef. 10-17-08 thru 10-31-08; DFW 141-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 11-30-08; DFW 88-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 95-2009(Temp), f. 8-19-09, cert. ef. 8-24-09 thru 12-31-09; DFW 111-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 9-30-09; DFW 114-2009(Temp), f. 9-18-09, cert. ef. 9-21-09 thru 10-31-09; DFW 119-2009(Temp), f. & cert. ef. 9-29-09 thru 10-31-09

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Rule Caption: Late Fall Commercial Salmon Gill Net Fishery in the Mainstem Columbia River Extended.

Adm. Order No.: DFW 120-2009(Temp)

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 9-30-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-042-0060

Rules Suspended: 635-042-0060(T)

Subject: Amended rule extends the ongoing late fall salmon fishery with four additional fishing periods in the Columbia River for the commercial harvest, retention and sales of adult salmon and white sturgeon beginning September 30, 2009. The proposed seasons provide opportunity for the commercial gill net fleet to harvest part of their pre-season allocation. Revisions are consistent with action taken September 29, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and white sturgeon may be taken by gill nets for commercial purposes from the Columbia River during the open fishing periods and areas identified in sections (2) through (3) below. Retention of green sturgeon is prohibited.

(a) In sections (2) through (3) below: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect. Lewis-B includes all of the area from the upper boundary of the Lewis-B sanctuary downstream to a line projected from the red navigation Marker 62 at the head of Deer Island, Oregon, across to the green navigation Marker 63 at Martin Island, Washington.

(b) In sections (2) through (3) below: a maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) of the open fishing periods and the weekly aggregate white sturgeon limit applies to the Columbia River mainstem only. The Columbia River Select Areas are currently closed to the retention of white sturgeon.

(c) In sections (2) through (3) below: nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 0.375-inches or greater.

(2)(a) Season 1: 7:00 p.m. Wednesday, September 30 to 7:00 a.m. Thursday, October 1, 2009 (12 hours); 7:00 p.m. Thursday, October 1 to 7:00 a.m. Friday, October 2, 2009; and 7:00 p.m. Sunday, October 4 to 7:00 a.m. Monday, October 5, 2009 (12 hours) in Zones 4-5.

(b) Gear is restricted to gill nets with a 8-inch minimum and 9.75-inch maximum mesh size.

(3)(a) Season 2: 7:00 a.m. to 7:00 p.m. Monday, October 5, 2009 (12 hours) in Zones 1-3.

(b) Gear is restricted to 6-inch maximum mesh size restriction, un-slackened floater gillnet.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. 9-15-89, cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. 9-29-06, cert. ef. 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. 10-4-06, cert. ef. 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & cert. ef. 10-12-06 thru 12-31-06; DFW 120-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 91-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 94-2007(Temp), f. 9-21-07, cert. ef. 9-24-07 thru 12-31-07; DFW 97-2007(Temp), f. 9-25-07, cert. ef. 9-26-07 thru 12-31-07; DFW 98-2007(Temp), f. 9-26-07, cert. ef. 9-27-07 thru 12-31-07; DFW 99-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 104-2007(Temp), f. & cert. ef. 10-3-07 thru 12-31-07; DFW 107-2007(Temp), f. & cert. ef. 10-10-07 thru 12-31-07; DFW 109-2007(Temp), f. 10-16-07, cert. ef. 10-17-07 thru 12-31-07; DFW 111-2007(Temp), f. 10-22-07, cert. ef. 10-23-07 thru 12-31-07; DFW 112-2007(Temp), f. 10-24-07, cert. ef. 10-25-07 thru 12-31-07; DFW 113-2008(Temp), f. 9-17-08, cert. ef. 9-18-08 thru 12-31-08; DFW 119-2008(Temp), f. & cert. ef. 9-24-08 thru 12-31-08; DFW 127-2008(Temp), f. 10-7-08, cert. ef. 10-8-08 thru 12-31-08; DFW 132-2008(Temp), f. 10-14-08, cert. ef. 10-15-08 thru 12-31-08; DFW 136-2008(Temp), f. & cert. ef. 10-21-08 thru 12-31-08; DFW 117-2009(Temp), f. 9-23-09, cert. ef. 9-24-09 thru 10-31-09; DFW 120-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09

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Rule Caption: Fishing Times Authorized In the Deep River Select Area Fishery Modified.

Adm. Order No.: DFW 121-2009(Temp)

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 9-30-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-042-0180

Rules Suspended: 635-042-0180(T)

Subject: Amended rule expands the number of hours per day fishing is allowed in the fall commercial salmon Select Area fishery in Deep River from fourteen to seventeen.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the town of Deep River through 12:00 midnight Saturday, September 5, 2009. Effective Sunday, September 6, 2009 salmon may be taken but sturgeon may not be retained.

(2) The Fall fishing season is open:

(a) 7:00 p.m. on Monday, Tuesday, Wednesday, and Thursday nights to 9:00 a.m. the following morning (14 hours) from September 14 through September 29, 2009; and

(b) 4:00 p.m. on Monday, Tuesday, Wednesday, and Thursday nights to 9:00 a.m. the following morning (17 hours) from September 30 through October 30, 2009.

(3)(a) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) During the fall season, outlined above in sections (2)(a) and (2)(b) above, it is *unlawful* to use a gill net having a mesh size that is more than 6-inches.

(4) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) through 12:00 midnight Saturday, September 5, 2009 and no sturgeon may be retained effective 12:01 a.m. Sunday, September 6, 2009. During the fishing periods identified in sections (2)(a) and (2)(b) above, the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries only.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. & cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03 thru 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. & cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. & cert. ef. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. & cert. ef. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. & cert. ef. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. & cert. ef. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. & cert. ef. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. & cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. & cert. ef. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. & cert. ef. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. & cert. ef. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. & cert. ef. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. & cert. ef. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. & cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. & cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. & cert. ef. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. & cert. ef. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. & cert. ef. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. & cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09

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Rule Caption: Late Fall Commercial Salmon Gill Net Fishery in the Mainstem Columbia River Rescinded.

Adm. Order No.: DFW 122-2009(Temp)

Filed with Sec. of State: 10-5-2009

Certified to be Effective: 10-5-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-042-0060

Rules Suspended: 635-042-0060(T)

Subject: Amended rule rescinds a previously scheduled late fall salmon fishery in the Columbia River for the commercial harvest, retention and sales of adult salmon and white sturgeon effective October 2, 2009. The season was scheduled for Oct. 5. Revisions are consistent with action taken October 2, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and white sturgeon may be taken by gill nets for commercial purposes from the Columbia River during the open fishing periods and areas identified in section (2) below. Retention of green sturgeon is prohibited.

(a) In section (2) below: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect. Lewis-B includes all of the area from the upper boundary of the Lewis-B sanctuary downstream to a line projected from the red navigation Marker 62 at the head of Deer Island, Oregon, across to the green navigation Marker 63 at Martin Island, Washington.

(b) In section (2) below: a maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) of the open fishing periods and the weekly aggregate white sturgeon limit applies to the Columbia River mainstem only. The Columbia River Select Areas are currently closed to the retention of white sturgeon.

(c) In section (2) below: nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 0.375-inches or greater.

(2)(a) Season 1: 7:00 p.m. Wednesday, September 30 to 7:00 a.m. Thursday, October 1, 2009 (12 hours); 7:00 p.m. Thursday, October 1 to 7:00 a.m. Friday, October 2, 2009 (12 hours); and 7:00 p.m. Sunday, October 4 to 7:00 a.m. Monday, October 5, 2009 (12 hours) in Zones 4-5.

(b) Gear is restricted to gill nets with a 8-inch minimum and 9.75-inch maximum mesh size.

Stat. Auth.: ORS 496.118 & 506.119
Stats. Implemented: ORS 506.109, 506.129 & 507.030
Hist.: FWC 40-1979, f. & cert. ef. 9-10-79; FWC 45-1979(Temp), f. & cert. ef. 9-21-79; FWC 52-1979(Temp), f. & cert. ef. 11-2-79; FWC 48-1980(Temp), f. & cert. ef. 9-19-80; FWC 51-1980(Temp), f. & cert. ef. 9-22-80; FWC 55-1980(Temp), f. & cert. ef. 9-26-80; FWC 56-1980(Temp), f. & cert. ef. 9-29-80; FWC 58-1980(Temp), f. & cert. ef. 10-17-80; FWC 37-1981(Temp), f. & cert. ef. 9-24-81; FWC 38-1981(Temp), f. & cert. ef. 9-29-81; FWC 69-1982(Temp), f. & cert. ef. 9-30-82; FWC 72-1982(Temp), f. & cert. ef. 10-20-82; FWC 56-1983(Temp), f. & cert. ef. 10-5-83; FWC 54-1984(Temp), f. & cert. ef. 9-10-84; FWC 59-1984(Temp), f. & cert. ef. 9-18-84; FWC 66-1984(Temp), f. & cert. ef. 9-26-84; FWC 68-1984(Temp), f. & cert. ef. 10-2-84; FWC 58-1985(Temp), f. & cert. ef. 9-13-85; FWC 62-1985(Temp), f. & cert. ef. 9-24-85; FWC 66-1985(Temp), f. & cert. ef. 10-11-85; FWC 54-1986(Temp), f. & cert. ef. 9-5-86; FWC 64-1986(Temp), f. & cert. ef. 10-3-86; FWC 67-1986(Temp), f. & cert. ef. 10-17-86; FWC 74-1987(Temp), f. & cert. ef. 9-4-87; FWC 75-1987(Temp), f. & cert. ef. 9-11-87; FWC 80-1987(Temp), f. & cert. ef. 9-18-87; FWC 87-1987(Temp), f. & cert. ef. 10-9-87; FWC 91-1987(Temp), f. & cert. ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. & cert. ef. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. & cert. ef. 9-15-89, cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. & cert. ef. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. & cert. ef. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. & cert. ef. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. & cert. ef. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. & cert. ef. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. & cert. ef. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. & cert. ef. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; DFW 79-1999(Temp), f. & cert. ef. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. & cert. ef. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & cert. ef. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & cert. ef. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & cert. ef. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & cert. ef. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & cert. ef. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & cert. ef. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & cert. ef. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & cert. ef. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & cert. ef. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & cert. ef. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. & cert. ef. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. & cert. ef. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. & cert. ef. 9-29-06, cert. ef. 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. & cert. ef. 10-4-06, cert. ef. 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & cert. ef. 10-12-06 thru 12-31-06; DFW 120-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 91-2007(Temp), f. & cert. ef. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 94-2007(Temp), f. & cert. ef. 9-21-07, cert. ef. 9-24-07 thru 12-31-07; DFW 97-2007(Temp), f. & cert. ef. 9-25-07, cert. ef. 9-26-07 thru 12-31-07; DFW 98-2007(Temp), f. & cert. ef. 9-26-07, cert. ef. 9-27-07 thru 12-31-07; DFW 99-2007(Temp), f. & cert. ef. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 104-2007(Temp), f. & cert. ef. 10-3-07 thru 12-31-07; DFW 107-2007(Temp), f. & cert. ef. 10-10-07 thru 12-31-07; DFW 109-2007(Temp), f. & cert. ef. 10-16-07, cert. ef. 10-17-07 thru 12-31-07;

ADMINISTRATIVE RULES

DFW 111-2007(Temp), f. 10-22-07, cert. ef. 10-23-07 thru 12-31-07; DFW 112-2007(Temp), f. 10-24-07, cert. ef. 10-25-07 thru 12-31-07; DFW 113-2008(Temp), f. 9-17-08, cert. ef. 9-18-08 thru 12-31-08; DFW 119-2008(Temp), f. & cert. ef. 9-24-08 thru 12-31-08; DFW 127-2008(Temp), f. 10-7-08, cert. ef. 10-8-08 thru 12-31-08; DFW 132-2008(Temp), f. 10-14-08, cert. ef. 10-15-08 thru 12-31-08; DFW 136-2008(Temp), f. & cert. ef. 10-21-08 thru 12-31-08; DFW 117-2009(Temp), f. 9-23-09, cert. ef. 9-24-09 thru 10-31-09; DFW 120-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; DFW 122-2009(Temp), f. & cert. ef. 10-5-09 thru 10-31-09

Rule Caption: Season for Fin-clipped Coho In the Clackamas and Sandy Rivers and Eagle Creek Extended.

Adm. Order No.: DFW 123-2009(Temp)

Filed with Sec. of State: 10-5-2009

Certified to be Effective: 10-5-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: This rule modification is needed to allow sport anglers increased opportunities to harvest excess hatchery coho that are returning to Sandy Hatchery on the Sandy River and Eagle Creek National Fish Hatchery on the Clackamas River. The extended season on the Clackamas and Sandy rivers and Eagle Creek will begin October 5, 2009.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The 2009 Oregon Sport Fishing Regulations provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2009 Oregon Sport Fishing Regulations.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3)(a) Effective September 1, 2009 through December 31, 2009 the Santiam River is open to the harvest of coho salmon as follows:

(b) Mainstem (open September 1, 2009 through December 31, 2009); North Fork up to Stayton-Scio Bridge in Stayton (open September 1, 2009 through December 31, 2009); North Fork from Stayton-Scio Bridge in Stayton up to Big Cliff Dam (open November 1, 2009 through December 31, 2009); South Fork up to Grant Street Bridge in Lebanon (open September 1, 2009 through December 31, 2009); South Fork from Grant Street Bridge in Lebanon up to Foster Dam (open November 1, 2009 through December 31, 2009)

(4)(a) Effective September 1, 2009 the daily bag limit for adult salmon or steelhead is 2 per day, 20 per year. 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Clackamas and Sandy rivers and Eagle Creek a tributary of the Clackamas River one additional adipose fin-clipped coho salmon may be retained per day for a total aggregate of three fish harvested daily.

(b) The daily bag limit described in section (4) above is a combined total for all open waters.

(5)(a) Effective September 1, 2009 the daily bag limit for adult salmon or steelhead is 2 per day, 20 per year. 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Tualatin and Yamhill rivers one additional coho salmon may be retained for a total aggregate of three fish harvested daily and in the Molalla, Santiam rivers (described in section (3) above), and Willamette River (river section 2 only) one additional coho salmon or adipose fin-clipped steelhead may be retained per day for a total aggregate of three fish harvested daily.

(b) The daily bag limit described in section (5) above is a combined total for all open waters.

(6)(a) Effective September 1, 2009 the daily bag limit for adult salmon or steelhead is 2 per day, 20 per year. 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Lower Willamette River (section 1 only) one additional adipose fin-clipped coho salmon may be retained per day for a total aggregate of three fish harvested daily.

(b) The daily bag limit described in section (6) above is a combined total for all open waters.

(7) Effective October 5, 2009, the open season for adipose fin-clipped coho salmon in the Clackamas and Sandy rivers and Eagle Creek is extended through December 31, 2009. The daily bag limit for adipose fin-clipped coho salmon in the Clackamas and Sandy rivers and Eagle Creek will remain at 3 fish per day through December 31, 2009. All other regulations as provided in the 2009 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09

Rule Caption: Late Fall Commercial Gill Net Fisheries Authorized In the Columbia River Below Bonneville Dam.

Adm. Order No.: DFW 124-2009(Temp)

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 10-7-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-042-0060

Rules Suspended: 635-042-0060(T)

Subject: Amended rule sets two new fishing periods for the ongoing late fall salmon fishery in the mainstem Columbia River for the commercial harvest, retention and sales of adult salmon and white sturgeon beginning October 7, 2009. The proposed seasons provide

ADMINISTRATIVE RULES

opportunity for the commercial gill net fleet to harvest part of their pre-season allocation. Revisions are consistent with action taken October 6, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and white sturgeon may be taken by gill nets for commercial purposes from the Columbia River during the open fishing periods and areas identified in sections (2) through (3) below. Retention of green sturgeon is prohibited.

(a) In sections (2) through (3) below: Elokomina-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal rivers sanctuaries are in effect. Lewis-B includes all of the area from the upper boundary of the Lewis-B sanctuary downstream to a line projected from the red navigation Marker 62 at the head of Deer Island, Oregon, across to the green navigation Marker 63 at Martin Island, Washington.

(b) In sections (2) through (3) below: a maximum of eight white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) of the open fishing periods and the weekly aggregate white sturgeon limit applies to the Columbia River mainstem only. The Columbia River Select Areas are currently closed to the retention of white sturgeon.

(c) In sections (2) through (3) below: nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 0.375-inches or greater.

(2)(a) Season 1: 7:00 p.m. Wednesday, October 7 to 7:00 a.m. Thursday, October 8, 2009 (12 hours) in Zones 4-5.

(b) Gear is restricted to gill nets with a 8-inch minimum and 9.75-inch maximum mesh size.

(3)(a) Season 2: 7:00 a.m. to 7:00 p.m. Thursday, October 8, 2009 (12 hours) in Zones 1-5.

(b) Gear is restricted to 9-inch minimum mesh size restriction.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. & cert. ef. 10-21-88; FWC 94-1989(Temp), f. & cert. ef. 9-15-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. & cert. ef. 11-1-91; FWC 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. & cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. & cert. ef. 10-19-92; FWC 100-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. & cert. ef. 9-27-95; FWC 46-1996, f. & cert. ef. 9-23-96; FWC 58-1996(Temp), f. & cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. & cert. ef. 10-18-96; FWC 61-1997(Temp), f. & cert. ef. 9-23-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; FWC 79-1999(Temp), f. & cert. ef. 10-8-99; FWC 101-1999(Temp), f. & cert. ef. 10-27-99; FWC 83-1999(Temp), f. & cert. ef. 10-26-99; FWC 107-1999(Temp), f. & cert. ef. 11-4-99; FWC 115-999; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & cert. ef. 9-15-00; FWC 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & cert. ef. 10-6-00; FWC 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & cert. ef. 10-27-00; FWC 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), f. & cert. ef. 9-21-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & cert. ef. 9-21-01; FWC 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & cert. ef. 10-8-01; FWC 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & cert. ef. 10-10-02; FWC 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & cert. ef. 10-24-02; FWC 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & cert. ef. 9-12-03; FWC 915-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & cert. ef. 9-22-03; FWC 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & cert. ef. 10-10-03; FWC 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & cert. ef. 10-21-03; FWC 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & cert. ef. 9-17-04; FWC 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & cert. ef. 10-1-04; FWC 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction 2-18-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05; FWC 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. & cert. ef. 10-21-05; FWC 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. & cert. ef. 9-15-06; FWC 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. & cert. ef. 9-22-06; FWC 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. & cert. ef. 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. & cert. ef. 10-4-06; FWC 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & cert. ef. 10-12-06 thru 12-31-06; DFW 120-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 91-2007(Temp), f. & cert. ef. 9-19-07 thru 12-31-07; DFW 94-2007(Temp), f. & cert. ef. 9-21-07; FWC 9-24-07 thru 12-31-07; DFW 97-2007(Temp), f. & cert. ef. 9-25-07; FWC 9-26-07 thru 12-31-07; DFW 98-2007(Temp), f. & cert. ef. 9-27-07 thru 12-31-07; DFW 99-2007(Temp), f. & cert. ef. 10-1-07 thru 12-31-07; DFW 104-2007(Temp), f. & cert. ef. 10-3-07 thru 12-31-07; DFW 107-2007(Temp), f. & cert. ef. 10-10-07 thru 12-31-07; DFW 109-2007(Temp), f. & cert. ef. 10-16-07; FWC 10-17-07 thru 12-31-07; DFW 111-2007(Temp), f. & cert. ef. 10-23-07 thru 12-31-07; DFW 112-2007(Temp), f. & cert. ef. 10-24-07; FWC 10-25-07 thru 12-31-07; DFW 113-2008(Temp), f. & cert. ef. 9-17-08; FWC 9-18-08 thru 12-31-08; DFW 119-2008(Temp), f. & cert. ef. 9-24-08 thru 12-31-08; DFW 127-2008(Temp), f. & cert. ef. 10-7-08; FWC 10-8-08 thru 12-31-08; DFW 132-2008(Temp), f. & cert. ef. 10-14-08; FWC 10-15-08 thru 12-31-08; DFW 136-2008(Temp), f. & cert. ef. 10-21-08 thru 12-31-08; DFW 117-2009(Temp), f. & cert. ef. 9-23-09; FWC 9-24-09 thru 10-31-09; DFW 120-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; DFW 122-2009(Temp), f. & cert. ef. 10-5-09 thru 10-31-09; DFW 124-2009(Temp), f. & cert. ef. 10-7-09 thru 10-31-09

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Rule Caption: Establish 2010 Seasons and Regulations for Game Mammals.

Adm. Order No.: DFW 125-2009

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 10-7-09

Notice Publication Date: 8-1-2009

Rules Amended: 635-008-0050, 635-065-0720

Subject: Amended rules relating to eviction from department managed lands. Amend rules to remove an inaccurate OAR reference (housekeeping).

Rules Coordinator: Therese Kucera—(503) 947-6033

635-008-0050

Fish and Wildlife Commission to Post and Enforce Rules

In compliance with authority contained in ORS 496.146(9), and penalties prescribed in 496.992, the following rules are adopted to protect wildlife, fish, lands, and appurtenances or management activities and objectives on lands where title to, or control of, rests in the State of Oregon, acting by and through its Department of Fish and Wildlife. In addition to the requirements and restrictions contained in chapter 635, divisions 011, 021, 045, 046, 050, 051, 052, 053, 054, and 060; the following rules shall apply to all Department wildlife areas referenced in chapter 635, division 008 except as modified by the rules for individual wildlife areas.

(1) In order to further the purposes of ORS 496.012 or to protect public safety, portions of wildlife areas may be posted and closed to all entry. Entering an area posted "closed to entry" is prohibited except by permit.

(2) Leaving garbage and litter on the area is prohibited.

(3) Posted Refuges and Safety Zones are closed to hunting and shooting.

(4) Motor vehicles are prohibited except on parking areas and open roads or as provided for in the following rules.

(5) A permit is required to remove firewood, cut trees, dig or remove artifacts or archeological specimens, minerals, sand, gravel, rock, or any other article, product or material found on the area except for fish and wildlife taken as permitted by law.

(6) A permit is required to graze livestock except riding and pack animals in actual use for recreational purposes. Trespass livestock may be removed and/or impounded at the owner's expense in compliance with ORS Chapter 607.

(7) No person shall display behavior which unreasonably deters, distracts or hinders others in the peaceable enjoyment of the area.

(8) The Department may evict any person from the area for any violation of any Department rule or regulation, or when continued presence of that person could cause a threat to the rights and safety of others or property.

(9) No person, commercial vendor or company shall dispense or sell material, goods or items on the area, except by permit.

Stat. Auth.: ORS 498

Stats. Implemented: ORS 498

Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70; ef. 9-11-70; GC 252, f. 5-11-72; ef. 6-1-72; Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82; Renumbered from 635-008-0005; FWC 53-1994, f. & cert. ef. 8-25-94; DFW 93-2009, f. & cert. ef. 8-12-09; DFW 125-2009, f. & cert. ef. 10-7-09

635-065-0720

Bows and Arrows

Hunters shall use:

(1) Any long, recurve, or compound bow with 40-pound or heavier pull rating to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(2) Any long, recurve, or compound bow to hunt western gray squirrels.

(3) Any long, recurve, or compound bow with a 50-pound or heavier pull rating to hunt bighorn sheep, Rocky Mountain goat, or elk.

ADMINISTRATIVE RULES

(4) Only unbarbed fixed position blade broadheads at least 7/8-inch wide to hunt game mammals other than western gray squirrel. Possession of moveable blade broadheads is prohibited when hunting game mammals, except western gray squirrels may be hunted with moveable blade broadheads.

(5) A long, recurve, or compound bow and shall not possess any crossbow while hunting within an authorized bowhunting area or season.

(6) Only a long, recurve, or compound bow during any authorized pronghorn antelope, deer or elk bowhunting season to hunt pronghorn antelope, deer, or elk.

(7) For hunting seasons designated as bowhunting, hunters shall only use the bows legal for the species being hunted. Bows may be used during controlled antlerless deer seasons. Bows shall not be used during any designated rifle hunt.

(8) Hunters shall not use any electronic device(s) attached to bow or arrow.

(9) Hunters shall not use any device secured to or supported by the bow for the purpose of maintaining the bow at full draw (Persons unable to comply because of a disability may be eligible for a temporary permit from the Department).

(10) Hunters shall not use any device secured to or supported by a bow's riser which supports or guides an arrow from a point rearward of a bow's brace height (i.e. the position of the bows string when the bow is undrawn).

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 125-2009, f. & cert. ef. 10-7-09

Rule Caption: Commercial Dungeness Gear Requirements, Permit Renewal Date Appeals, and Fishing Privileges.

Adm. Order No.: DFW 126-2009

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 10-7-09

Notice Publication Date: 8-1-2009

Rules Amended: 635-005-0055, 635-006-0145, 635-006-1065

Rules Repealed: 635-005-0055(T)

Subject: Rule modifications regarding commercial Dungeness gear requirements and permit renewal date appeal, and regarding suspension or revocation of all commercial fishing privileges. House-keeping and technical corrections to the regulations were made wherever necessary to ensure rule consistency.

Rules Coordinator: Therese Kucera—(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 (6 mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and the Department 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 (7)(g)(E) of this rule, and a request for replacement tags under subsection (7)(g)(C) of this rule, the Director or the Director's 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 (7)(g)(C). The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's 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 Department buoy brand registered to that vessel and a Department 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 commercial crab pot(s) of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) No more than twenty-five (25) such pots may be retrieved per trip during December 1 until the second Monday in June of the following year and no more than fifty (50) such pots may be retrieved per trip during the second Monday in June through August 28; and

(B) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(C) Crab from the retrieved pot(s) shall not be retained; and

ADMINISTRATIVE RULES

(D) 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

(E) Any retrieved crab pot(s) must be transported to shore during the same fishing trip that retrieval took place; or that:

(F) During August 29 through October 31, an unlimited number of such pots may be retrieved per trip and transported to shore during the same fishing trip; 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) Under a waiver granted by the Department to allow one time change of buoy tags associated with a Dungeness crab permit transfer under OAR 635-006-1095(7) provided that:

(A) A request must be in writing and a waiver approved and issued prior to change of buoy tags.

(B) A copy of the waiver must be on board the vessel making the change of buoy tags. (Contact Department of Fish and Wildlife License Services, Salem for guidelines.)

(e) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08; DFW 59-2008(Temp), f. & cert. ef. 6-11-08 thru 8-28-08; DFW 98-2008(Temp), f. 8-19-08, cert. ef. 8-29-08 thru 10-31-08; Administrative correction 11-18-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 145-2008(Temp), f. 11-24-08, cert. ef. 12-1-08 thru 5-29-09; DFW 54-2009(Temp), f. 5-19-09, cert. ef. 5-29-09 thru 8-28-09; DFW 101-2009(Temp), f. 8-27-09, cert. ef. 8-29-09 thru 10-31-09; DFW 126-2009, f. & cert. ef. 10-7-09

635-006-0145

Commercial Fishing License

(1) A commercial fishing license is issued in accordance with ORS 508.035 and 508.235 of the commercial fishing laws and is required for each individual who for commercial purposes:

(a) Takes or assists in the taking of any food fish or shellfish from the waters or land of this state;

(b) Operates or assists in the operation of any boat or fishing gear for the taking of food fish in the waters of this state; or

(c) Lands food fish from the waters of the Pacific Ocean at any point in this state.

(2) A commercial fishing license shall be in the possession of the licensee when engaged in the taking or landing of food fish or shellfish when taken for commercial purposes.

(3) It is *unlawful* for a licensed commercial fisher to keep any food fish or shellfish taken under such license for personal use.

(4) It is *unlawful* for a person to participate in any commercial fishery if that person's commercial fishing license is suspended or revoked.

Stat. Auth.: ORS 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.109, 506.119 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-040-0065, Renumbered from 635-036-0545; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 126-2009, f. & cert. ef. 10-7-09

635-006-1065

Review of Denials (Restricted Participation Systems)

(1) An individual whose application for issuance or renewal of a limited entry permit is denied by the Oregon Department of Fish and Wildlife (Department) may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board (Board). The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(c) Shrimp — see ORS 508.910;

(d) Scallop — see ORS 508.867;

(e) Roe-herring — see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin — see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab — see ORS 508.941. For the Ocean Dungeness crab fishery, a permit holder may request review of the Department's initial crab pot allocation, the Department's denial of replacement of lost buoy tags, or denial of permit renewal by doing so in writing to the Commercial Fishery Permit Board. The Board may adjust the number of crab pots allocated to a permit or approve replacement of lost buoy tags as follows:

(A) The Board may adjust the number of crab pots allocated to a permit:

(i) Based on additional landings documentation supplied by permit holder according to criteria under OAR 635-006-1015(1)(g)(E); or

(ii) The crab pot allocation may be increased by one tier as described under OAR 635-006-1015(1)(g)(E) based on circumstances during the qualifying seasons described in OAR 635-006-1015(1)(g)(E) beyond the control of the permit holder which created undue hardship as defined by OAR 635-006-1095(7)(d).

(B) The Board may approve replacement of lost buoy tags due to a catastrophic loss as defined under OAR 635-005-0055(1)(6)(g)(B).

(C) The Board may waive the permit renewal date requirement if the Board finds that strict adherence to this requirement would create undue hardship to the individual seeking to renew a permit. For this purpose, undue hardship has the same meaning as in OAR 635-006-1095(7)(d).

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Oregon Fish and Wildlife Commission (Commission), but may be appealed as provided in ORS 183.480 to ORS 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to OAR 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS

ADMINISTRATIVE RULES

183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 and 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party, including the Department, must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(e) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

- (i) Three members shall be chosen to represent the sardine industry.
- (ii) Two members shall be chosen to represent the public.
- (B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).

(7) Brine shrimp fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(c) A party must petition for Board review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 126-2009, f. & cert. ef. 10-7-09

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Rule Caption: Revised Nearshore Species Cumulative Trip Limits for the Commercial Nearshore Fishery.

Adm. Order No.: DFW 127-2009(Temp)

Filed with Sec. of State: 10-8-2009

Certified to be Effective: 10-10-09 thru 12-31-09

Notice Publication Date:

Rules Amended: 635-004-0033

Rules Suspended: 635-004-0033(T)

Subject: This amended rule prohibits the retention of Cabezon for the remainder of period 5 (October 10—October 31) and period 6 (November 1—December 31) of the Limited Entry Black/Blue Rockfish fishery permitted by vessels, with or without a Nearshore Endorsement. Modifications limit daily landing of Black and Blue Rockfish to 15 pounds for the remainder of period 5 and period 6. Modifications also reduce the cumulative trip limit from 1000 pounds to 400 pounds for period 6. Previously reduced cumulative trip limits for greenling species remain in effect. The Oregon Fish and Wildlife Commission previously established cumulative trip limits and commercial nearshore harvest and landing caps for 2009 to limit total catch to sustainable levels.

Rules Coordinator: Therese Kucera—(503) 947-6033

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) Quillback Rockfish;
- (m) Treefish;
- (n) Black Rockfish;
- (o) Blue Rockfish;
- (p) Cabezon;
- (q) Canary Rockfish;
- (r) Greenling;
- (s) Tiger Rockfish;
- (t) Vermilion Rockfish;
- (u) Widow Rockfish;
- (v) Yelloweye Rockfish;
- (w) Yellowtail Rockfish;
- (x) Darkblotched Rockfish;
- (y) Pacific Ocean Perch;
- (z) Longspine Thornyhead;
- (aa) Shortspine Thornyhead;
- (bb) Arrowtooth Flounder;
- (cc) Dover Sole;
- (dd) Petrale Sole;
- (ee) Rex Sole;
- (ff) Other Flatfish;
- (gg) Lingcod;
- (hh) Sablefish;
- (ii) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. sericeus*).

(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 2009, the commercial harvest cap for black rockfish is 139.2 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 2009, the commercial landing caps are:

- (a) Black rockfish, 137.9 metric tons.
- (b) Black rockfish and blue rockfish combined of 141.9 metric tons.
- (c) Other nearshore rockfish, 14.3 metric tons.
- (d) Cabezon, 31.3 metric tons.
- (e) 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);

ADMINISTRATIVE RULES

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) 800 pounds in period 1;
 - (b) 1000 pounds in period 2;
 - (c) 1600 pounds in each of periods 3 and 4;
 - (d) 15 pounds per day not to exceed 1200 pounds in period 5; and
 - (e) 15 pounds per day not to exceed 400 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 for periods 1, 2 and 3;
 - (c) 1,250 pounds of Cabezon for period 4 and period 5 from September 1 through October 9;
 - (d) 0 (zero) pounds of Cabezon from October 10 through December 31;

- (e) 450 pounds of greenling species in period 1;
- (f) 250 pounds of greenling species in each of periods 2 and 3; and
- (g) 150 pounds of greenling species in periods 4, 5 and 6.

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. 1-1-84; 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. & ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & 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. & 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. & 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. & ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & ef. 2-10-93; FWC 1-1994, f. & ef. 1-14-94; FWC 32-1994, f. & 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. & 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. & 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. & 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. & 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. & 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. & 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; Administrative Correction 1-24-08; DFW 70-2008(Temp), f. 6-26-08, cert. ef. 7-1-08 thru 12-27-08; DFW 123-2008(Temp), f. 9-30-08, cert. ef. 10-2-08 thru 12-31-08; DFW 154-2008(Temp), f. 12-29-08, cert. ef. 1-1-09 thru 6-29-09; DFW 21-2009(Temp), f. 7-26-09, cert. ef. 3-1-09 thru 8-27-09; DFW 39-2009, f. & ef. 4-27-09; DFW 75-2009(Temp), f. 6-26-09, cert. ef. 7-1-09 thru 12-28-09; DFW 127-2009(Temp), f. 10-8-09, cert. ef. 10-10-09 thru 12-31-09

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Rule Caption: Adipose Fin-clipped Steelhead Sport Bag Limit Increased In Four Northeast Oregon Rivers.

Adm. Order No.: DFW 128-2009(Temp)

Filed with Sec. of State: 10-12-2009

Certified to be Effective: 10-18-09 thru 4-15-10

Notice Publication Date:

Rules Amended: 635-019-0090, 635-023-0134

Subject: Amended rules increase the daily bag limit for adipose fin-clipped steelhead from 3 to 5 per day in the Snake, lower Grande Ronde, Wallowa and Imnaha rivers beginning October 18, 2009 through April 15, 2010. The increase is in response to large numbers of hatchery and wild steelhead currently migrating through the Columbia and Snake rivers. Bag limits would increase only in areas where hatchery fish are expected to return in abundance, to help reduce the surplus at hatchery trapping facilities as well as reducing numbers of hatchery steelhead straying into natural production areas.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any

inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Notwithstanding, all other specifications and restrictions as outlined in the 2009 and 2010 Oregon Sport Fishing Regulations, the following conditions apply:

(a) The bag limit for adipose fin-clipped steelhead is 5 per day beginning 12:01 a.m. Sunday, October 18, 2009 through Thursday, April 15, 2010 in: the lower Grande Ronde River from the Oregon/Washington border upstream to the Wallowa River; the Imnaha River from the mouth upstream to Big Sheep Creek; Big Sheep Creek from the mouth upstream to Little Sheep Creek; and the Wallowa River from the mouth upstream to Trout Creek.

(b) Anglers must cease fishing once the daily adult bag limit is attained.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 and 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10

635-023-0134

Snake River Fishery

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Notwithstanding, all other specifications and restrictions as outlined in the 2009 and 2010 Oregon Sport Fishing Regulations, the following conditions apply:

(a) The bag limit for adipose fin-clipped steelhead is 5 per day, of which no more than 3 may be 32 inches in total length or longer beginning 12:01 a.m. Sunday, October 18, 2009 through Thursday, April 15, 2010;

(b) Anglers must cease fishing once the daily adult bag limit is attained; and

(c) Barbless hooks are required.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10

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Rule Caption: Commercial Sales from the Treaty Indian Platform and Hook-and-Line Fishery Ends.

Adm. Order No.: DFW 129-2009(Temp)

Filed with Sec. of State: 10-13-2009

Certified to be Effective: 10-14-09 thru 10-31-09

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Amended: 635-041-0075

Rules Suspended: 635-041-0075(T)

Subject: Amended rules closes the treaty Indian platform and hook-and-line fishery in the Columbia River above Bonneville Dam (Zone 6) to commercial sales of all species effective 6:00 p.m. Friday, October 16, 2009. The fishery remains open for subsistence use under all other existing regulations. Modifications are consistent with action taken October 12, 2009 by the Columbia River Compact agencies of Oregon and Washington in concert with the Columbia River treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0075

Fall Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Saturday, August 1, 2009 until 6:00 p.m. Friday, October 16, 2009.

(a) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, shad, catfish, yellow perch and bass landed in mainstem platform hook-and-line and Yakama Nation Zone 6 tributary fisheries, and in the Yakama Nation fishery on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(b) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(c) The platform hook-and-line fishery will remain open for subsistence use under all other existing regulations after 6:00 p.m. Friday, October 16, 2009.

(2) Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may be taken by gill net for commercial purposes from the mainstem Columbia River, Zone 6 during the following period: 6:00 a.m. Tuesday, September 29 through 6:00 p.m. Thursday, October 1, 2009 (60 hours).

(a) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad.

(b) No minimum mesh size restriction is in effect through October 1, 2009.

(3) Closed areas: All standard dam and river mouth sanctuaries are in effect including the standard (large) Spring Creek Sanctuary are in effect.

(4) Sturgeon taken in the fisheries described in sections (1) and (2) above may not be sold. Sturgeon may not be retained in the Yakama fishery below Bonneville. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be retained for subsistence.

(5)(a) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

(b) Effective 6:00 p.m. Friday, October 16, 2009 a Yakama Nation Transfer Permit is required for the commercial sale of fish caught in the Klickitat and Drano Lake Yakama Nation tributary fisheries.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 25-1979, f. & ef. 8-2-79; FWC 36-1979(Temp), f. & ef. 8-22-79; FWC 47-1979(Temp), f. & ef. 9-21-79; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 46-1980(Temp), f. & ef. 9-13-80; FWC 33-1981(Temp), f. & ef. 9-15-81; FWC 58-1982(Temp), f. & ef. 8-27-82; FWC 62-1982(Temp), f. & ef. 9-7-82; FWC 63-1982(Temp), f. & ef. 9-14-82; FWC 75-1982(Temp), f. & ef. 10-29-82; FWC 36-1983, f. & ef. 8-18-83; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 51-1983(Temp), f. & ef. 9-30-83; FWC 55-1983(Temp), f. & ef. 10-4-83; FWC 46-1984, f. & ef. 8-30-84; FWC 55-1984(Temp), f. & ef. 9-10-84; FWC 58-1984(Temp), f. & ef. 9-17-84; FWC 61-1984 (Temp), f. & ef. 9-21-84; FWC 70-1984(Temp), f. & ef. 10-9-84; FWC 47-1985, f. & ef. 8-23-85; FWC 60-1985(Temp), f. & ef. 9-13-85; FWC 63-1985(Temp), f. & ef. 9-24-85; FWC 42-1986, f. & ef. 8-15-86; FWC 53-1986(Temp), f. & ef. 9-4-86; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 57-1986(Temp), f. & ef. 9-11-86; FWC 60-1986(Temp), f. & ef. 9-26-86; FWC 62-1986(Temp), f. & ef. 10-2-86; FWC 63-1987, f. & ef. 8-7-87; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987 (Temp), f. & ef. 9-1-87; FWC 78-1987(Temp), f. & ef. 9-15-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 89-1987(Temp), f. & ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988 (Temp), f. & cert. ef. 9-27-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 87-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 96-1989 (Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. & cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. & cert. ef. 9-7-90; FWC 98-1990(Temp), f. & cert. ef. 9-17-90; FWC 85-1991, f. & cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. & cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. & cert. ef. 9-2-92; FWC 87-1992(Temp), f. & cert. ef. 9-7-92; FWC 91-1992(Temp), f. & cert. ef. 9-16-92; FWC 91-92; FWC 96-1992(Temp), f. & cert. ef. 9-22-92; FWC 92-92; FWC 105-1992(Temp), f. & cert. ef. 10-5-92; FWC 107-1992 (Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. & cert. ef. 8-6-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. & cert. ef. 9-17-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. & cert. ef. 8-26-94; FWC 61-1994(Temp), f. & cert. ef. 9-7-94; FWC 61-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. & cert. ef. 8-25-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. & cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. & cert. ef. 9-2-96; FWC 51-1996(Temp), f. & cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. & cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. & cert. ef. 9-16-97; FWC 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; FWC 76-1998(Temp), f. & cert. ef. 9-8-98 thru 9-25-98; FWC 77-1998(Temp), f. & cert. ef. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; FWC 79-1998(Temp), f. & cert. ef. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; FWC 80-1998(Temp), f. & cert. ef. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; FWC 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; FWC 62-1999(Temp), f. & cert. ef. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; FWC 65-1999(Temp), f. & cert. ef. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; FWC 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; FWC 72-1999(Temp), f. & cert. ef. 9-21-99, cert. ef. 9-22-99 thru 10-22-99; FWC 74-1999(Temp), f. & cert. ef. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; FWC 50-2000(Temp), f. & cert. ef. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; FWC 60-2000(Temp), f. & cert. ef. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; FWC 61-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; FWC 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; FWC 87-2001(Temp), f. & cert. ef. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; FWC 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; FWC 94-2001(Temp), f. & cert. ef. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; FWC 100-2001(Temp), f. & cert. ef. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; FWC 89-2002(Temp), f. & cert. ef. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; FWC 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; FWC 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; FWC 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; FWC 113-2002(Temp), f. & cert. ef. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; FWC 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; FWC 81-2003(Temp), f. & cert. ef. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; FWC 91-2003(Temp), f. & cert. ef. 9-12-03, cert. ef. 9-16-03 thru 12-31-03; FWC 97-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; FWC 101-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; FWC 103-2003(Temp), f. & cert. ef. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; FWC 104-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; FWC 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; FWC 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; FWC 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; FWC 104-2004(Temp), f. & cert. ef. 10-12-04, cert. ef. 10-13-04 thru 12-31-04; FWC 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction 2-18-05; FWC 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; FWC 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; FWC 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; FWC 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; FWC 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; FWC 71-2006(Temp), f. & cert. ef. 7-31-06, cert. ef. 8-1-06 thru 12-31-06; FWC 86-2006(Temp), f. & cert. ef. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; FWC 94-2006(Temp), f. & cert. ef. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; FWC 101-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; FWC 107-2006(Temp), f. & cert. ef. 9-28-06, cert. ef. 10-3-06 thru 12-31-06; FWC 115-2006(Temp), f. & cert. ef. 10-13-06, cert. ef. 10-15-06 thru 12-31-06; Administrative correction 1-16-07; FWC 60-2007(Temp), f. & cert. ef. 7-30-07, cert. ef. 8-1-07 thru 12-31-07; FWC 77-2007(Temp), f. & cert. ef. 8-17-07, cert. ef. 8-22-07 thru 12-31-07; FWC 88-2007(Temp), f. & cert. ef. 9-10-07, cert. ef. 9-11-07 thru 12-31-07; FWC 95-2007(Temp), f. & cert. ef. 9-21-07, cert. ef. 9-25-07 thru 12-31-07; FWC 100-2007(Temp), f. & cert. ef. 9-28-07, cert. ef. 10-3-07 thru 12-31-07; FWC 110-2007(Temp), f. & cert. ef. 10-16-07, cert. ef. 10-20-07 thru 12-31-07; FWC 106-2008(Temp), f. & cert. ef. 9-4-08, cert. ef. 9-6-08 thru 10-31-08; FWC 109-2008(Temp), f. & cert. ef. 9-12-08, cert. ef. 9-15-08 thru 10-31-08; FWC 112-2008(Temp), f. & cert. ef. 9-17-08, cert. ef. 9-18-08 thru 10-31-08; FWC 117-2008(Temp), f. & cert. ef. 9-22-08 thru 10-31-08; FWC 122-2008(Temp), f. & cert. ef. 9-29-08 thru 10-31-08; FWC 125-2008(Temp), f. & cert. ef. 10-6-08, cert. ef. 10-7-08 thru 10-31-08; FWC 134-2008(Temp), f. & cert. ef. 10-17-08 thru 10-31-08; FWC 141-2008(Temp), f. & cert. ef. 11-10-08, cert. ef. 11-12-08 thru 11-30-08; FWC 88-2009(Temp), f. & cert. ef. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; FWC 95-2009(Temp), f. & cert. ef. 8-19-09, cert. ef. 8-24-09 thru 12-31-09; FWC 111-2009(Temp), f. & cert. ef. 9-11-09, cert. ef. 9-13-09 thru 9-30-09; FWC 114-2009(Temp), f. & cert. ef. 9-18-09, cert. ef. 9-21-09 thru 10-31-09; FWC 119-2009(Temp), f. & cert. ef. 9-29-09 thru 10-31-09; FWC 129-2009(Temp), f. & cert. ef. 10-13-09, cert. ef. 10-14-09 thru 10-31-09

Rule Caption: Late Fall Commercial Gill Net Fishery In the Columbia River Below Bonneville Dam Continued.

Adm. Order No.: DFW 130-2009(Temp)

Filed with Sec. of State: 10-13-2009

Certified to be Effective: 10-13-09 thru 10-31-09

Notice Publication Date:

Rules Amended: 635-042-0060

Rules Suspended: 635-042-0060(T)

Subject: Amended rule sets four new fishing periods for the ongoing late fall salmon fishery in the mainstem Columbia River for the commercial harvest, retention and sales of adult salmon and white sturgeon beginning October 13, 2009. The proposed seasons provide opportunity for the commercial gill net fleet to harvest part of their pre-season allocation. Revisions are consistent with action taken October 12, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and white sturgeon may be taken by gill nets for commercial purposes from the Columbia River during the open fishing periods and areas identified in sections (2) through (3) below. Retention of green sturgeon is prohibited.

(a) In sections (2) through (3) below: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal rivers sanctuaries are in effect. Lewis-B includes all of the area from the upper boundary of the Lewis-B sanctuary downstream to a line projected from the red navigation

ADMINISTRATIVE RULES

Marker 62 at the head of Deer Island, Oregon, across to the green navigation Marker 63 at Martin Island, Washington.

(b) In sections (2) through (3) below: a maximum of seven white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) of the open fishing periods and the weekly aggregate white sturgeon limit applies to the Columbia River mainstem only. The Columbia River Select Areas are currently closed to the retention of white sturgeon.

(c) In sections (2) through (3) below: nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 0.375-inches or greater.

(2) Season 1:

(a) 7:00 p.m. Tuesday, October 13 to 7:00 a.m. Wednesday, October 14, 2009 (12 hours) in Zones 4-5;

(b) 7:00 p.m. Thursday, October 15 to 7:00 a.m. Friday, October 16, 2009 (12 hours) in Zones 4-5; and

(c) 7:00 p.m. Sunday, October 18 to 7:00 a.m. Monday, October 19, 2009 (12 hours) in Zones 4-5.

(d) Gear is restricted to gill nets with a 8-inch minimum and 9.75-inch maximum mesh size.

(3) Season 2:

(a) 7:00 a.m. to 7:00 p.m. Wednesday, October 14, 2009 (12 hours) in Zones 1-5.

(b) Gear is restricted to 9-inch minimum mesh size restriction.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & ef. 9-9-88; FWC 93-1988(Temp), f. & ef. 9-16-88; FWC 99-1988(Temp), f. & ef. 10-7-88; FWC 100-1988(Temp), f. & ef. 10-21-88; FWC 94-1989(Temp), f. & ef. 9-15-89; FWC 97-1989(Temp), f. & ef. 9-21-89; FWC 109-1989(Temp), f. & ef. 10-6-89; FWC 113-1989(Temp), f. & ef. 11-9-89; FWC 100-1990(Temp), f. & ef. 9-18-90; FWC 101-1990(Temp), f. & ef. 9-19-90; FWC 102-1990(Temp), f. & ef. 9-20-90; FWC 114-1990, f. & ef. 10-8-90; FWC 105-1991, f. & ef. 9-20-91; FWC 118-1991, f. & ef. 10-4-91; FWC 122-1991(Temp), f. & ef. 10-18-91; FWC 129-1991(Temp), f. & ef. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & ef. 9-22-92; FWC 100-1992(Temp), f. & ef. 9-27-92; FWC 107-1992(Temp), f. & ef. 10-9-92; FWC 109-1992(Temp), f. & ef. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & ef. 10-22-92; FWC 80-1995(Temp), f. & ef. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & ef. 8-23-96; FWC 58-1996(Temp), f. & ef. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & ef. 10-7-96; FWC 62(Temp), f. & ef. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. & ef. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & ef. 10-6-97; FWC 64-1997(Temp), f. & ef. 10-14-97; FWC 65-1997(Temp), f. & ef. 10-20-97; FWC 68-1997(Temp), f. & ef. 11-3-97; DFW 79-1999(Temp), f. & ef. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. & ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & ef. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & ef. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & ef. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & ef. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & ef. 12-31-01; DFW 106-2001(Temp), f. & ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & ef. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & ef. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & ef. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & ef. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & ef. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & ef. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & ef. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & ef. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. & ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & ef. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. & ef. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. & ef. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. & ef. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. & ef. 9-29-06, cert. ef. 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. & ef. 10-4-06, cert. ef. 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & ef. 10-12-06 thru 12-31-06; DFW 120-2006(Temp), f. & ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 91-2007(Temp), f. & ef. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 94-2007(Temp), f. & ef. 9-21-07, cert. ef. 9-24-07 thru 12-31-07; DFW 97-2007(Temp), f. & ef. 9-25-07, cert. ef. 9-26-07 thru 12-31-07; DFW 98-2007(Temp), f. & ef. 9-26-07, cert. ef. 9-27-07 thru 12-31-07; DFW 99-2007(Temp), f. & ef. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 104-2007(Temp), f. & ef. 10-3-07 thru 12-31-07; DFW 107-2007(Temp), f. & ef. 10-10-07 thru 12-31-07; DFW 109-2007(Temp), f. & ef. 10-16-07, cert. ef. 10-17-07 thru 12-31-07; DFW 111-2007(Temp), f. & ef. 10-22-07, cert. ef. 10-23-07 thru 12-31-07; DFW 112-2007(Temp), f. & ef. 10-24-07, cert. ef. 10-25-07 thru 12-31-07; DFW 113-2008(Temp), f. & ef. 9-17-08, cert. ef. 9-18-08 thru 12-31-08; DFW 119-2008(Temp), f. & ef. 9-24-08 thru 12-31-08; DFW 127-2008(Temp), f. & ef. 10-7-08, cert. ef. 10-8-08 thru 12-31-08; DFW 132-2008(Temp), f. & ef. 10-14-08,

cert. ef. 10-15-08 thru 12-31-08; DFW 136-2008(Temp), f. & ef. 10-21-08 thru 12-31-08; DFW 117-2009(Temp), f. & ef. 9-23-09, cert. ef. 9-24-09 thru 10-31-09; DFW 120-2009(Temp), f. & ef. 9-30-09 thru 10-31-09; DFW 122-2009(Temp), f. & ef. 10-5-09 thru 10-31-09; DFW 124-2009(Temp), f. & ef. 10-7-09 thru 10-31-09; DFW 130-2009(Temp), f. & ef. 10-13-09 thru 10-31-09

Rule Caption: Adipose Fin-clipped Steelhead Sport Bag Limit Increased In Four Northeast Oregon Rivers.

Adm. Order No.: DFW 131-2009(Temp)

Filed with Sec. of State: 10-14-2009

Certified to be Effective: 10-18-09 thru 4-15-10

Notice Publication Date:

Rules Amended: 635-019-0090

Rules Suspended: 635-019-0090(T)

Subject: Amended rules increase the daily bag limit for adipose fin-clipped steelhead from 3 to 5 per day in the Snake, lower Grande Ronde, Wallowa and Imnaha rivers beginning October 18, 2009 through April 15, 2010. Modifications increase the daily bag limit for adipose fin-clipped steelhead from 3 to 5 per day in Big Sheep Creek, from the mouth upstream to Little Sheep Creek, beginning January 1, 2010. These increases are in response to large numbers of hatchery and wild steelhead currently migrating through the Columbia and Snake rivers. Bag limits would increase only in areas where hatchery fish are expected to return in abundance, to help reduce the surplus at hatchery trapping facilities as well as reducing numbers of hatchery steelhead straying into natural production areas.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The 2009 Oregon Sport Fishing Regulations provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2009 Oregon Sport Fishing Regulations.

(2) Notwithstanding, all other specifications and restrictions as outlined in the 2009 and 2010 Oregon Sport Fishing Regulations, the following conditions apply:

(a) The bag limit for adipose fin-clipped steelhead is 5 per day beginning 12:01 a.m. Sunday, October 18, 2009 through Thursday, April 15, 2010 in: the lower Grande Ronde River from the Oregon/Washington border upstream to the Wallowa River; the Imnaha River from the mouth upstream to Big Sheep Creek; and the Wallowa River from the mouth upstream to Trout Creek.

(b) The bag limit for adipose fin-clipped steelhead is 5 per day beginning 12:01 a.m. Friday, January 1, 2010 through Thursday, April 15, 2010 in Big Sheep Creek from the mouth upstream to Little Sheep Creek.

(c) Anglers must cease fishing once the daily adult bag limit is attained.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 and 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & ef. 10-1-98, cert. ef. 1-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-

ADMINISTRATIVE RULES

2007(Temp), f. 5-9-07, cert. ef. 10-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10

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

Rule Caption: Updates to Criminal Records Check Rules for Providers Licensed, Certified, or Regulated by the Department.

Adm. Order No.: DHSD 7-2009

Filed with Sec. of State: 10-1-2009

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Rules Amended: 407-007-0200, 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0280, 407-007-0290, 407-007-0300, 407-007-0320, 407-007-0330, 407-007-0340, 407-007-0350, 407-007-0355, 407-007-0370

Subject: The Department of Human Services (Department) is updating the term "criminal history check" to "criminal records check" to closer align with statutory language. Other minor grammatical adjustments are also being addressed.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0200

Purpose and Scope

(1) Purpose. The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the reasonable screening of subject individuals to determine if they have a history of criminal behavior such that they should not be allowed to oversee, live or work closely with, or provide services to vulnerable individuals.

(2) Rule applicability. These rules apply to evaluating criminal records and potentially disqualifying conditions of a subject individual when conducting fitness determinations based upon such information. The fact that a subject individual is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640, 441.055, 443.730, 443.735, 678.153

Stats. Implemented: ORS 181.534, 181.537, 409.010, 411.060, 411.122

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0210

Definitions

As used in OAR 407-007-0200 to 407-007-0370, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Appointing Authority" means the individual designated by the qualified entity responsible for appointing authorized designees and contact persons. Examples include but are not limited to a human resources staff with the authority to offer and terminate employment, business owner, a member of the board of directors, director, or program administrator.

(2) "Approved" means, with regard to a fitness determination, that a subject individual, following a final fitness determination, is eligible to perform in positions covered by these rules.

(3) "Authorized Designee" (AD) means an individual who is designated by the Department, or an approved qualified entity and authorized by the Department, to receive and process criminal records check request forms from subject individuals and criminal records information from the Department. The AD conducts fitness determinations under the authority of the Department.

(4) "Background Check Unit" means the Department's Background Check Unit (BCU).

(5) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(6) "Client" means any individual who receives services, care, or funding for care, through the Department.

(7) "Closed Case" means a criminal records check application that has been closed without a final fitness determination.

(8) "Contact Person" (CP) means an individual who is designated by the Department or an approved qualified entity to receive and process criminal records check request forms from subject individuals, but who is not authorized to receive criminal records information from the Department. The CP is not allowed to make final fitness determinations. The CP is allowed to make the preliminary fitness determinations under the authority

of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(9) "Criminal Records Check" means obtaining and reviewing criminal records as required by these rules. The result of a criminal records check is a fitness determination or a closed case. The criminal records check includes any or all of the following:

(a) Oregon criminal records check. Criminal offender information is obtained from the Oregon Department of State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Oregon Department of Transportation Drivers and Motor Vehicles Division (DMV), local or regional criminal records information systems, or other official law enforcement agency or court records in Oregon.

(b) National criminal records check. Criminal records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information.

(c) State-specific criminal records check. Criminal records are obtained from law enforcement agencies, courts or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(10) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintaining an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement (confinement shall not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities), and release, and includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(11) "Denied" means, with regard to a fitness determination, that an subject individual, following a fitness determination including a weighing test, is not eligible to work, volunteer, be employed, or hold a position covered by these rules; or be certified, licensed, registered or otherwise authorized by the Department to provide care in an environment covered by these rules.

(12) "Department" means the Department of Human Services (DHS).

(13) "Fitness Determination" means the outcome of an application and preliminary review, or the outcome of an application and completed criminal records check including gathering other information as necessary, in a case that is not closed.

(14) "Good Cause" means a valid and sufficient reason for not complying with time frames set during the criminal records check process or contested case hearing process, and may include an explanation of circumstances beyond an subject individual's reasonable control.

(15) "Hearing Representative" means an employee of the Department representing the Department in a contested case hearing.

(16) "Other Criminal Records Information" means information obtained and used in the criminal records check process that is not "criminal offender information" from OSP. "Other criminal records information" includes police investigations and records, justice records, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal records check forms, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(17) "Position" means the position listed on the DHS Criminal History Request form for the applicant subject individual. The position determines whether the individual is a subject individual under these or Department program rules. The duties or obligations of a position are considered in making a fitness determination.

(18) "Probationary Status" means a condition in which a subject individual may be hired on a preliminary basis and allowed by the qualified entity to work, volunteer, be trained, or reside in an environment following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe after a preliminary fitness determination and prior to a final fitness determination.

(19) "Qualified Entity" (QE) means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(20) "Restricted Approval" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may care, or the information to which the subject individual has access.

(21) "Subject Individual" (SI) means an individual from whom the Department may require fingerprints for the purpose of conducting a national criminal records check. An SI is required to complete a criminal records check pursuant to these rules.

ADMINISTRATIVE RULES

(a) Inclusion. An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care, or has access to client information or funds, within any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(C) Any direct care staff secured by any long term care facility licensed by the Department pursuant to ORS chapter 441 through the services of a personnel services or staffing agency who works in the long term care facility.

(D) Except as provided in section (21)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident, household member, or boarder.

(E) An individual working for a private, licensed child caring agency or system of care contractor providing child welfare services pursuant to ORS chapter 418.

(F) A homecare worker, personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(G) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Child Care Division of the Oregon Employment Department (OED). This includes all individuals who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children (see OAR 461-165-0180).

(H) An AD or CP in any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(I) An individual providing certified nursing assistant classes for employment to staff within a long term care facility.

(J) A student at a long term care facility who is enrolled in a certified nursing assistant class for employment at the facility.

(K) Any individual serving as an owner, operator or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(L) Notwithstanding subsection (21)(b) of this rule, any individual who is required to complete a criminal records check pursuant to a contract with the Department or by other program rules, if the requirement is within the statutory authority granted to the Department. Specific statutory authority or reference to these rules, and the positions under the contract subject to a criminal records check, must be specified in the contract.

(b) Exclusion. An SI does not include:

(A) Any individual under 16 years of age.

(B) An individual receiving training in a Department-licensed or Department-certified facility as a part of the required curriculum through any college, university or other training program and who is not an employee in the facility in which training is provided. Facilities must ensure that all such students or interns have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0320; and

(ii) Not allowed to have unsupervised access to vulnerable individuals.

(C) Residents of facilities licensed, certified, or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal records check is received from the Department. The only circumstance in which the Department will allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (21)(a)(A) – (21)(a)(C) and 21(a)(E) to (21)(a)(L) of this rule.

(D) Individuals who live in or visit relative adult foster homes. This exemption does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the OED.

(F) Individuals employed by a private business that provides services to clients and the general public and that is not regulated by the Department.

(G) Individuals employed by a business that provides appliance repair or structural repair to clients and the general public, and who are temporarily providing such services in an environment regulated by the Department. The QE shall ensure active supervision of these individuals while on the QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(H) Individuals employed by a private business in which a client of the Department is working as part of a Department-sponsored employment service program. This exclusion does not apply to an employee of a busi-

ness that receives funds from the Department for care provided by the employee.

(I) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005.

(J) Volunteers who are not under the direction and control of any entity licensed, certified, registered, or otherwise regulated by the Department.

(K) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(L) Individuals working in restaurants or at public swimming pools.

(M) Hemodialysis technicians.

(N) Individuals employed by alcohol and drug programs that are certified, licensed, or approved by the Department's Addictions and Mental Health Division to provide prevention, evaluation, or treatment Services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal records checks in accordance with these rules.

(O) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(P) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal records check when being considered for a specific position.

(Q) Provider group categories that were authorized for payment by the Department for care if the provider group categories were not covered by a Department criminal record check process prior to 2004.

(R) Emergency medical technicians and first responders certified by the Department's Emergency Medical Services and Trauma Systems program.

(S) An individual employed by an entity that provides services solely contracted under ORS 414.022.

(22) "Weighing Test" means a process carried out by one or more ADs in which available information is considered, resulting in the outcome of a preliminary or final fitness determination. A weighing test is only conducted when an SI has potentially disqualifying crimes or conditions.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0220

Criminal History Check Required

(1) Who conducts criminal records check.

(a) The Department and QEs. The Department, or a QE authorized by the Department, shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(b) OSP. If a nationwide criminal records check of an SI is necessary, OSP shall provide the Department results of a criminal records check conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(2) When criminal records check is required (new checks and re-checks). An SI is required to have a check in the following circumstances:

(a) New SI. An individual who becomes an SI on or after the effective date of these rules.

(b) Employer change. The SI changes employers for a different QE. If the SI's employer merges with another QE or changes names, this action is not considered a change of employers.

(c) Position change. Except as provided in section (3) of this rule, the individual, whether previously considered an SI or not, changes positions, and the new position requires a criminal records check.

(d) Qualification change. The individual, whether previously considered an SI or not, changes Department-issued licenses, certifications, or registrations, and the license, certification, or registration requires a criminal records check under these rules.

(e) Criminal records check required by regulation or contract. A check is required by federal or state laws or regulations, other administrative rules adopted by the Department, or by contract with the Department.

(f) Criminal records check is justified. The Department or the AD has reason to believe that a check is justified. Examples include but are not limited to any indication of possible criminal behavior and quality assurance monitoring of a previously conducted criminal records check.

(3) When a criminal records check is not required.

(a) Criminal records check not required. A new check is not required only under the following circumstances:

ADMINISTRATIVE RULES

(A) A personal care services provider, respite care provider, or an independent provider who is paid with Department funds changes or adds clients, and the prior, documented criminal records check conducted within the previous 24 months through the Department has been approved without restrictions.

(B) The SI is a child care provider as described in OAR 461-165-0180 who has been approved without restrictions and who changes or adds clients.

(C) The SI has been offered a new position, there is no change of employer, there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

(i) The previous fitness determination identified no potentially disqualifying record and the AD determines that the previous fitness determination is sufficient for the new position.

(ii) The AD determines that the new position requires the same or less contact with vulnerable individuals, personal information, financial information, or client funds.

(b) Documentation. When a criminal records check is not required under these rules, written documentation must indicate why a new check was not completed.

(4) Criminal records check not a screening tool. Criminal records checks are completed on SIs who otherwise meet the qualifications of the position in question. A criminal records check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0230

Qualified Entity

(1) Approval required. A QE and its appointing authority must be approved in writing by the Department pursuant to these rules in order to appoint an AD or CP. Unless specifically indicated in these rules, all QEs and appointing authorities discussed are considered approved.

(2) Appointment of ADs and CPs. Unless indicated under section (3) of this rule, all QEs are responsible for ensuring the completion of criminal records checks for SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE. The QE's appointing authority must appoint ADs or CPs within 30 days of Department approval.

(a) ADs required. Except as provided in section (3) of this rule, appointing authorities in all QEs shall appoint one or more ADs, or have a written agreement with another QE to handle AD responsibilities.

(b) CPs optional. Appointing authorities in all QEs may also appoint one or more CPs, or may have a written agreement with another QE to handle CP responsibilities.

(3) Department ADs for fitness determinations. The Department's appointing authorities shall appoint ADs and CPs within the Department. Department-employed ADs shall make fitness determinations for the following QEs:

(a) Private QEs with fewer than 10 employees. These QEs are not eligible to appoint ADs. These QEs shall do one of the following:

(A) Use another QE to handle AD responsibilities instead of using the Department. If another QE is used, there must be a written agreement between the two QEs. The QE must provide the Department with a copy of the agreement.

(B) Appoint one or more CPs, or have a written agreement with another QE to handle CP responsibilities. The QE must provide the Department with a copy of the agreement.

(b) QEs with SIs not under their direction and control. The Department shall make fitness determinations for QEs with SIs not under the direction and control of the QE but who provide care under programs administered by the QE.

(A) For these SIs, the QE shall appoint one or more CPs, or use an AD or CP appointed under section (2) of this rule to handle CP responsibilities.

(B) Notwithstanding section (3)(b)(A), the QE may appoint an AD for these SIs if the QE chooses to do so, or is required to do so under other Department program administrative rules or contract with the Department. The QE shall notify the Department in writing which programs are affected and which AD will handle the responsibilities for each program.

(c) QEs allowed only CPs by administrative rule or department program. Administrative rules governing a type of QE may prohibit AD appointment or may allow only CP appointment. Department program offices may determine that certain types of QEs may only appoint CPs for the criminal records check process.

(d) QEs in certain circumstances. Department-employed ADs may make fitness determinations at the Department's discretion. Examples include but are not limited to initial opening of a new QE, newly effective

administrative rules creating a new type of QEs, or an investigation or review of the QE by the Department.

(4) Revocation of QE approval. Approval of the QE to appoint or maintain ADs may be revoked by the Department if the Department is investigating a compliance issue or determines that the QE, or an AD or CP appointed by the QE, has failed to comply with these rules.

(a) Communication with program office. BCU and the appropriate entity or program office within the Department shall work together regarding any compliance issues.

(b) Plan of action. The Department may develop a plan of action to resolve the compliance issues.

(5) Managing criminal records check process. The QE's appointing authority shall appoint ADs and CPs as needed to remain in compliance with these rules. If a QE no longer has an AD or CP for any reason, the appointing authority shall ensure that new ADs or CPs are appointed within 30 days.

(6) Training and technical assistance. The Department shall provide QEs with periodic training and on-going technical assistance.

(7) Department decision final. Any decisions made by the Department in regard to these rules are final and may not be overturned by any QE, its ADs, or its CPs.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0240

Authorized Designees and Contact Persons

(1) Requirements. All requirements in this section must be completed within a 90-day time period. To receive Department approval, all ADs and CPs must meet the following requirements:

(a) Employment. ADs and CPs for the Department must be employed by the Department. For QEs, the ADs and CPs must be one of the following:

(A) Employed by the agency for which they will handle criminal records check information.

(B) Contracted with the QE to perform as an AD or CP.

(C) Employed by another similar QE or a parent QE (e.g., assisted living facility AD helping another assisted living facility).

(b) Application. An appointing authority shall appoint an AD or CP in writing on a form provided by the Department. The applicant AD or CP shall complete the form and submit it to the Department for processing and registration.

(c) Criminal records check. The Department shall conduct an Oregon criminal records check, a national criminal records check, and if necessary, state-specific criminal records checks. The AD or CP must have:

(A) No conviction for a potentially disqualifying permanent review crime;

(B) No convictions for any other crime in the past 15 years;

(C) No potentially disqualifying conditions; and

(D) If an AD, Criminal Justice Information Systems (CJIS) clearance and approval to view criminal records in accordance with OSP rules.

(d) Training. Complete a training program and successfully pass any testing as required by the Department.

(2) Denial of AD or CP status. An individual's status as an AD or CP shall be denied if the individual does not meet the requirements to be an AD or CP. Once denied, the individual can no longer perform the duties of an AD or CP. There are no exceptions for individuals who do not meet the requirements to be an AD or CP.

(3) Responsibilities.

(a) Responsibilities of both ADs and CPs. An AD or CP shall:

(A) Demonstrate understanding of and adherence to these rules in all actions pertaining to the criminal records check process.

(B) Act as the Department's designee in any action pursuant to these rules and the criminal records check process. The AD or CP may not advocate for an SI during any part of the criminal records check process, including the contesting of a fitness determination.

(C) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules.

(D) Verify the identity of a SI. This includes asking the SI for current and valid government-issued photo identification (e.g. drivers license) and confirming the information on the photo identification with the SI, the information written on the DHS Criminal History Request form, and the information written on the fingerprint card if a national criminal records check is conducted. Note: If an AD or CP is verifying the identity of an SI who is being rechecked, review of government-issued photo identification may not be necessary, but the AD or CP shall verify the SI's name, any aliases or previous names, and the SI's current address.

ADMINISTRATIVE RULES

(E) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold a position before the completion of a preliminary fitness determination and submission of the DHS Criminal History Request form to the Department along with a fingerprint card if the SI discloses out of state criminal records or residency.

(F) Ensure that when an SI is granted probationary status, the need for active supervision pursuant to OAR 407-007-0320(1)(d) is understood by each individual responsible for ensuring that active supervision is provided.

(G) Notify the Department of any changes regarding a SI who still has a criminal records check being processed, including but not limited to change of address or change in employment status.

(H) Monitor status of criminal records check applications and investigate any delays in processing.

(I) Ensure that required documentation required by these rules is processed and maintained in accordance with these rules.

(J) Notify the BCU immediately if arrested, charged, or convicted of any crime.

(b) Specific CP limits on preliminary fitness determinations. The CP may review the DHS Criminal History Request form completed by the SI to determine if the SI has any potentially disqualifying crimes or conditions.

(A) The CP may allow the SI to work or function on probationary status only after the CP has reviewed the DHS Criminal History Request form and determined there is no indication that the SI has any potentially disqualifying crimes or conditions.

(B) The CP shall not allow an SI who discloses any potentially disqualifying crimes or conditions to work or function on probationary status.

(C) If the SI discloses potentially disqualifying crimes or conditions, the CP shall forward the DHS Criminal History Request form to an AD for preliminary fitness determination, or to the BCU for processing if there is no local AD available.

(c) Specific AD responsibilities. In addition to the responsibilities listed in (3)(a) of this rule, an AD shall:

(A) Review the completed DHS Criminal History Request form (if not already done so by a CP) and conduct a preliminary fitness determination to determine eligibility for probationary status before forwarding the DHS Criminal History Request form to the BCU.

(B) Conduct a final fitness determination.

(C) Participate in the appeal process if requested by the Department.

(4) AD conflict of interest. An AD must not have access to LEDS information or make a fitness determination if there is a conflict of interest between the AD and the SI.

(a) Conflict exists. A conflict of interest exists includes but is not limited to the following circumstances:

(A) The AD is related to the SI. In this context, "related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or cousin.

(B) The AD has a close personal or financial relationship, other than an employee-employer relationship, with the SI.

(b) Department completes determination. When there is a conflict of interest and the QE has no other ADs available to conduct the fitness determination, the Department shall complete the fitness determination.

(5) Termination of AD or CP status.

(a) Position ends. When the AD's or CP's position with the QE ends or when the QE terminates the appointment, the Department's registration of an AD or CP is revoked. The QE shall notify the Department immediately upon the end of the position or the termination of the appointment.

(b) Noncompliance with rules. The Department or the QE shall suspend or revoke the appointment if a AD or CP fails to comply with responsibilities or fails to continue to meet the requirements for AD or CP, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If the Department takes the action, it must immediately notify the QE in writing.

(6) Appeal rights. Denial or termination of AD or CP status is not subject to appeal rights unless the denial or termination results in loss of employment or position. Individuals losing employment or position have the same hearing rights as other SIs under these rules.

(7) Not transferable. If an AD or CP leaves employment of the QE for any reason, the individual will no longer be considered an AD or CP. If the individual finds employment with another QE, a new appointment, application, and registration must be conducted.

(8) Review of appointment. The Department shall review and update appointments of ADs and CPs, up to and including a new application, criminal records check, and recertification training, to assure that all requirements are met:

(a) Scheduled review. Every three years; or

(b) Justified review. If the Department has reason to believe the individual no longer meets the qualifications to be an AD or CP such as but not limited to indication of criminal behavior.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0250

Oregon Criminal History Check Process

(1) Forms required. A QE and SI shall use the Department's form to request the criminal records check. The DHS Criminal History Request form shall include the following:

(a) Identifying information required. Indication of what identifying information and other information the SI is required to provide for the criminal records check process, including but not limited to name, aliases, date of birth, address, recent residency information, drivers license, disclosure of criminal record, and disclosure of other information to be considered in the event of a weighing test.

(b) Notice regarding Social Security number. A notice regarding disclosure of Social Security number indicating that:

(A) Disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(c) Fingerprinting. A notice that the SI is subject to fingerprinting as part of a criminal records check.

(2) Review of DHS Criminal History Request form. The BCU shall review each form received for completeness and timeliness. If the BCU rejects the form, the QE's AD or CP shall immediately resolve the reasons for rejection and re-submit the form, or remove the SI from the position.

(3) Oregon criminal records check.

(a) Obtaining information. Using information submitted on the DHS Criminal History Request form, the Department obtains criminal offender information from LEDS and requests other criminal records information as needed.

(b) QE access. Only an approved QEs holding a contract with OSP for LEDS access may obtain criminal offender information. The QE's AD may:

(A) Receive and evaluate Oregon criminal records information from the Department as allowed by applicable statutes.

(B) Conduct fitness determinations.

(c) Handling of information. Criminal offender information obtained through LEDS shall be handled in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(4) National criminal records check.

(a) Fingerprints required. In addition to an Oregon criminal records check, a fingerprint-based national criminal records check is required under any of the following circumstances:

(A) The SI has lived outside Oregon:

(i) Child care providers (18 months). The SI is a child care provider or other individual included in OAR 461-165-0180 who has lived outside Oregon for 60 or more consecutive days during the previous 18 months.

(ii) All other SIs (5 years). The SI is has lived outside Oregon for 60 or more consecutive days during the previous five years.

(B) The LEDS check, SI disclosures, or any other information obtained by the Department indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state drivers license.

(D) The Department has reason to question the identity or criminal record of the SI.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(F) The SI is an AD or CP.

(b) Fingerprints may be required. In addition to an Oregon criminal records check, the Department may require a fingerprint-based national criminal records check if the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(c) Fingerprinting a juvenile. Consent of the parent or guardian is required to obtain fingerprints from an SI under 18 years of age.

(d) Processing. The SI shall complete and submit a fingerprint card when requested by the Department.

(A) The SI shall use a fingerprint card (e.g. FBI Form FD 258) provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0250(1)(b).

(B) The SI shall submit the card within 21 days of the request to the BCU.

ADMINISTRATIVE RULES

(i) If the card is not received within 21 days, the Department will close the application. When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) The Department may extend the time allowed for good cause.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(5) State-specific criminal records check. The Department may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) Out-of-state history. When the Department has reason to believe that out-of-state criminal history may exist.

(b) Illegible fingerprints. When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) Incomplete information. When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) State not included in FBI. When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) Other reasons. When, based on available information, the Department has reason to believe that a state-specific check is necessary.

(6) Additional information required. To complete a criminal records check and fitness determination, the Department may require additional information from the SI including but not limited to additional criminal, judicial, or other background information; or proof of identity.

(7) Imminent danger.

(a) New criminal records check. If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable individuals, the Department shall conduct a new criminal records check on an SI without the completion of a new DHS Criminal History Request form.

(b) Opportunity to disclose. If the Department determines that a fitness determination based on the new criminal records check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before the completion of the fitness determination.

(8) Documentation. All criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHS 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHS 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHS 2-2009, f. & cert. ef. 4-1-09; DHS 7-2009, f. & cert. ef. 10-1-09

407-007-0280

Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The list includes offenses that are crimes and are not intended to include offenses that are classified or treated as violations (see ORS 161.505 to 161.565).

(1) Permanent review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

(a) ORS 162.155, Escape II;

(b) ORS 162.165, Escape I;

(c) ORS 162.285, Tampering with a witness;

(d) ORS 162.325, Hindering prosecution;

(e) ORS 163.005, Criminal homicide;

(f) ORS 163.095, Aggravated murder;

(g) ORS 163.115, Murder;

(h) ORS 163.118, Manslaughter I;

(i) ORS 163.125, Manslaughter II;

(j) ORS 163.145, Criminally negligent homicide;

(k) ORS 163.160, Assault IV;

(L) ORS 163.165, Assault III;

(m) ORS 163.175, Assault II;

(n) ORS 163.185, Assault I;

(o) ORS 163.187, Strangulation;

(p) ORS 163.190, Menacing;

(q) ORS 163.200, Criminal mistreatment II;

(r) ORS 163.205, Criminal mistreatment I;

(s) ORS 163.207, Female genital mutilation;

(t) ORS 163.208, Assault of public safety officer;

(u) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;

(v) ORS 163.225, Kidnapping II;

(w) ORS 163.235, Kidnapping I;

(x) ORS 163.257, Custodial interference I;

(y) ORS 163.275, Coercion;

(z) ORS 163.355, Rape III;

(aa) ORS 163.365, Rape II;

(bb) ORS 163.375, Rape I;

(cc) ORS 163.385, Sodomy III;

(dd) ORS 163.395, Sodomy II;

(ee) ORS 163.405, Sodomy I;

(ff) ORS 163.408, Unlawful sexual penetration II;

(gg) ORS 163.411, Unlawful sexual penetration I;

(hh) ORS 163.415, Sexual abuse III;

(ii) ORS 163.425, Sexual abuse II;

(jj) ORS 163.427, Sexual abuse I;

(kk) ORS 163.435, Contributing to the sexual delinquency of a minor;

(LL) ORS 163.445, Sexual misconduct;

(mm) ORS 163.452, Custodial sexual misconduct I;

(nn) ORS 163.454, Custodial sexual misconduct II;

(oo) ORS 163.465, Public indecency;

(pp) ORS 163.515, Bigamy;

(qq) ORS 163.525, Incest;

(rr) ORS 163.535, Abandonment of a child;

(ss) ORS 163.537, Buying or selling a person under 18 years of age;

(tt) ORS 163.545, Child neglect II;

(uu) ORS 163.547, Child neglect I;

(vv) ORS 163.555, Criminal nonsupport;

(ww) ORS 163.575, Endangering the welfare of a minor;

(xx) ORS 163.670, Using child in display of sexually explicit conduct;

(yy) ORS 163.673, Dealing sexual condition of children;

(zz) ORS 163.675, Sale sexual condition of children;

(aaa) ORS 163.680, Paying for sexual view of children;

(bbb) ORS 163.684, Encouraging child sexual abuse I;

(ccc) ORS 163.686, Encouraging child sexual abuse II;

(ddd) ORS 163.687, Encouraging child sexual abuse III;

(eee) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;

(fff) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;

(ggg) ORS 163.693, Failure to report child pornography;

(hhh) ORS 163.700, Invasion of personal privacy;

(iii) ORS 163.732, Stalking;

(jjj) ORS 163.750, Violating court's stalking protective order;

(kkk) ORS 164.057, Aggravated theft I;

(LLL) ORS 164.055, Theft I;

(mmm) ORS 164.075, Theft by extortion;

(nnn) ORS 164.085, Theft by deception;

(ooo) ORS 164.125, Theft of services;

(ppp) ORS 164.135, Unauthorized use of a vehicle;

(qqq) ORS 164.225, Burglary I;

(rrr) ORS 164.215, Burglary II;

(sss) ORS 164.315, Arson II;

(ttt) ORS 164.325, Arson I;

(uuu) ORS 164.377, Computer crime;

(vvv) ORS 164.395, Robbery III;

(www) ORS 164.405, Robbery II;

(xxx) ORS 164.415, Robbery I;

(yyy) ORS 165.013, Forgery I;

(zzz) ORS 165.022, Criminal possession of a forged instrument I;

(aaaa) ORS 165.055, Fraudulent use of a credit card;

(bbbb) ORS 165.065, Negotiating a bad check;

(cccc) ORS 165.581, Cellular counterfeiting I;

(dddd) ORS 165.800, Identity theft;

(eeee) ORS 166.005, Treason;

(ffff) ORS 166.085, Abuse of corpse II;

(gggg) ORS 166.087, Abuse of corpse I;

(hhhh) ORS 166.155, Intimidation II;

(iiii) ORS 166.165, Intimidation I;

(jjjj) ORS 166.220, Unlawful use of weapon;

(kkkk) ORS 166.270, Possession of weapons by certain felons

(LLLL) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;

(mmmm) ORS 166.275, Possession of weapons by inmates of institutions;

(nnnn) ORS 166.429, Firearms used in felony;

(oooo) ORS 166.720, Racketeering activity unlawful;

(pppp) ORS 167.012, Promoting prostitution;

(qqqq) ORS 167.017, Compelling prostitution;

(rrrr) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;

ADMINISTRATIVE RULES

(ssss) ORS 167.065, Furnishing obscene materials to minors;
(tttt) ORS 167.070, Sending obscene materials to minors;
(uuuu) ORS 167.075, Exhibiting an obscene performance to a minor;
(vvvv) ORS 167.080, Displaying obscene materials to minors;
(wwww) ORS 167.087, Disseminating obscene material;
(xxxx) ORS 167.212, Tampering with drug records;
(yyyy) ORS 167.262, Adult using minor in commission of controlled substance offense;
(zzzz) ORS 167.315, Animal abuse II;
(aaaa) ORS 167.320, Animal abuse I;
(bbbb) ORS 167.322, Aggravated animal abuse I;
(cccc) ORS 167.333, Sexual assault of animal;
(dddd) ORS 181.599, Failure to report as sex offender;
(eeee) ORS 433.010, Spreading disease (willfully) prohibited;
(ffff) ORS 475.525, Sale of drug paraphernalia prohibited;
(gggg) ORS 475.805, Providing hypodermic device to minor prohibited;
(hhhh) ORS 475.840, Prohibited acts generally (regarding drug crimes);
(iiii) ORS 475.846, Unlawful manufacture of heroin;
(jjjj) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;
(kkkk) ORS 475.850, Unlawful delivery of heroin;
(LLLL) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;
(mmmm) ORS 475.854, Unlawful possession of heroin;
(nnnn) ORS 475.856, Unlawful manufacture of marijuana;
(oooo) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;
(pppp) ORS 475.860, Unlawful delivery of marijuana;
(qqqq) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;
(rrrr) ORS 475.864, Unlawful possession of marijuana;
(ssss) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;
(tttt) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
(uuuu) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
(vvvv) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
(wwww) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
(xxxx) ORS 475.876, Unlawful manufacture of cocaine;
(yyyy) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;
(zzzz) ORS 475.880, Unlawful delivery of cocaine;
(aaaa) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;
(bbbb) ORS 475.884, Unlawful possession of cocaine;
(cccc) ORS 475.886, Unlawful manufacture of methamphetamine;
(dddd) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school;
(eeee) ORS 475.890, Unlawful delivery of methamphetamine;
(ffff) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;
(gggg) ORS 475.894, Unlawful possession of methamphetamine;
(hhhh) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school;
(iiii) ORS 475.906, Penalties for distribution to minors;
(jjjj) ORS 475.910, Application of controlled substance to the body of another person;
(kkkk) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy);
(LLLL) ORS 677.080, Prohibited acts (regarding the practice of medicine);
(mmmm) ORS 685.990, Penalties (pertaining to naturopathic medicine);
(nnnn) Any federal crime;
(oooo) Any U.S. military crime;
(pppp) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
(qqqq) Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD;
(rrrr) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD;

(sssss) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155;

(ttttt) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1) as determined by the AD;

(uuuuu) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1) as determined by the AD;

(2) Ten-year review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal records check due to imminent risk.

- (a) ORS 133.076 Failure to appear on criminal citation;
- (b) ORS 162.015, Bribe giving;
- (c) ORS 162.025, Bribe receiving;
- (d) ORS 162.065, Perjury;
- (e) ORS 162.075, False swearing;
- (f) ORS 162.117, Public investment fraud;
- (g) ORS 162.145, Escape III;
- (h) ORS 162.175, Unauthorized departure;
- (i) ORS 162.185, Supplying contraband;
- (j) ORS 162.195, Failure to appear II;
- (k) ORS 162.205, Failure to appear I;
- (L) ORS 162.247, Interfering with a peace officer;
- (m) ORS 162.265, Bribing a witness;
- (n) ORS 162.275, Bribe receiving by a witness;
- (o) ORS 162.295, Tampering with physical evidence;
- (p) ORS 162.305, Tampering with public records;
- (q) ORS 162.315, Resisting arrest;
- (r) ORS 162.335, Compounding;
- (s) ORS 162.355, Simulating legal process;
- (t) ORS 162.365, Criminal impersonation;
- (u) ORS 162.367, Criminal impersonation of peace officer;
- (v) ORS 162.369, Possession of false law enforcement identification card;
- (w) ORS 162.375, Initiating a false report;
- (x) ORS 162.385, Giving false information to police officer for a citation;
- (y) ORS 162.405, Official misconduct II;
- (z) ORS 162.415, Official misconduct I;
- (aa) ORS 162.425, Misuse of confidential information;
- (bb) ORS 163.195, Recklessly endangering another person;
- (cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
- (dd) ORS 163.245, Custodial interference II;
- (ee) ORS 163.467, Private indecency;
- (ff) ORS 164.043, Theft III;
- (gg) ORS 164.045, Theft II;
- (hh) ORS 164.095, Theft by receiving;
- (ii) ORS 164.140, Criminal possession of rented or leased personal property;
- (jj) ORS 164.162, Mail theft or receipt of stolen mail;
- (kk) ORS 164.235, Possession of a burglary tool or theft device;
- (LL) ORS 164.255, Criminal trespass I;
- (mm) ORS 164.265, Criminal trespass while in possession of firearm;
- (nn) ORS 164.272, Unlawful entry into motor vehicle;
- (oo) ORS 164.354, Criminal mischief II;
- (pp) ORS 164.365, Criminal mischief I;
- (qq) ORS 164.369, Interfering with police animal;
- (rr) ORS 165.007, Forgery II;
- (ss) ORS 165.017, Criminal possession of a forged instrument II;
- (tt) ORS 165.032, Criminal possession of a forgery device;
- (uu) ORS 165.037, Criminal simulation;
- (vv) ORS 165.042, Fraudulently obtaining a signature;
- (ww) ORS 165.070, Possessing fraudulent communications device;
- (xx) ORS 165.074, Unlawful factoring of credit card transaction;
- (yy) ORS 165.080, Falsifying business records;
- (zz) ORS 165.085, Sports bribery;
- (aaa) ORS 165.090, Sports bribe receiving;
- (bbb) ORS 165.095, Misapplication of entrusted property;
- (ccc) ORS 165.100, Issuing a false financial statement;
- (ddd) ORS 165.102, Obtaining execution of documents by deception;
- (eee) ORS 165.540, Obtaining contents of communication;
- (fff) ORS 165.543, Interception of communications;
- (ggg) ORS 165.570, Improper use of 9-1-1 emergency reporting system;
- (hhh) ORS 165.572, Interference with making a report;

ADMINISTRATIVE RULES

(iii) ORS 165.577, Cellular counterfeiting III;
(jjj) ORS 165.579, Cellular counterfeiting II;
(kkk) ORS 165.692, Making false claim for health care payment;
(LLL) ORS 166.015, Riot;
(mmm) ORS 166.023, Disorderly conduct I;
(nnn) ORS 166.025, Disorderly conduct II;
(ooo) ORS 166.065, Harassment;
(ppp) ORS 166.076, Abuse of a memorial to the dead;
(qqq) ORS 166.090, Telephonic harassment;
(rrr) ORS 166.116, Interfering with public transportation;
(sss) ORS 166.180, Negligently wounding another;
(ttt) ORS 166.190, Pointing firearm at another;
(uuu) ORS 166.240, Carrying of concealed weapon;
(vvv) ORS 166.250, Unlawful possession of firearms;
(www) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
(xxx) ORS 166.382, Possession of destructive device prohibited;
(yyy) ORS 166.384, Unlawful manufacture of destructive device;
(zzz) ORS 166.470, Limitations and conditions for sales of firearms;
(aaaa) ORS 166.480, Sale or gift of explosives to children;
(bbbb) ORS 166.649, Throwing an object off an overpass II;
(cccc) ORS 166.651, Throwing an object off an overpass I;
(dddd) ORS 166.660, Unlawful paramilitary activity;
(eeee) ORS 167.007, Prostitution;
(ffff) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
(gggg) ORS 167.222, Frequenting a place where controlled substances are used;
(hhhh) ORS 167.325, Animal neglect II;
(iiii) ORS 167.330, Animal neglect I;
(jjjj) ORS 167.355, Involvement in animal fighting;
(kkkk) ORS 167.365, Dogfighting;
(LLLL) ORS 167.370, Participation in dogfighting;
(mmmm) ORS 167.820, Concealing the birth of an infant;
(nnnn) ORS 192.865 Criminal penalty (pertaining to Address Confidentiality Program);
(oooo) ORS 411.630, Unlawfully obtaining public assistance;
(pppp) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(qqqq) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(rrrr) ORS 417.990, Penalty for placement of children in violation of compact;
(ssss) ORS 418.130, Unauthorized use and custody of records; of temporary assistance for needy families program;
(tttt) ORS 418.140, Sharing assistance prohibited;
(uuuu) ORS 418.250, Supervision of child-caring agencies;
(vvvv) ORS 418.327, Licensing of certain schools and organizations offering residential programs;
(wwww) ORS 418.630, Operate uncertified foster home;
(xxxx) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property;
(yyyy) ORS 475.990, Commercial drug offense;
(zzzz) ORS 475.912, Unlawful delivery of imitation controlled substance;
(aaaaa) ORS 475.916, Prohibited acts involving records and fraud;
(bbbbb) ORS 475.950, Failure to report precursor substances transaction;
(ccccc) ORS 475.955, Failure to report missing precursor substances;
(ddddd) ORS 475.960, Illegally selling drug equipment;
(eeeee) ORS 475.965, Providing false information on precursor substances report;
(ffffff) ORS 657A.280, Failure to certify child care facility;
(ggggg) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
(hhhhh) ORS 807.620, Giving false information to police officer
(iiiiii) ORS 811.060, Vehicular assault of bicyclist or pedestrian
(jjjjj) ORS 811.140, Reckless driving.
(kkkkk) ORS 811.540, Fleeing or attempting to elude police officer.
(LLLLL) ORS 811.700, Failure to perform duties of driver when property is damaged.
(mmmmm) ORS 811.705, Failure to perform duties of driver to injured persons.
(nnnnn) ORS 819.300, Possession of a stolen vehicle.
(ooooo) ORS 830.475, Failure to perform the duties of an operator (boat).
(ppppp) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.
(qqqqq) Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a

threat or jeopardizes the safety of vulnerable persons, as determined by the AD.

(rrrrr) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it cannot be considered potentially disqualifying under this section.

(sssss) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.

(ttttt) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2) as determined by the AD.

(uuuuu) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2) as determined by the AD.

(3) Five-year review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal records check due to imminent risk.

(a) ORS 162.085, Unsworn falsification;
(b) ORS 162.235, Obstructing governmental or judicial administration;

(c) ORS 164.245, Criminal trespass II;
(d) ORS 164.335, Reckless burning;
(e) ORS 164.345, Criminal mischief III;
(f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;

(g) ORS 166.075, Abuse of venerated objects;
(h) ORS 166.095, Misconduct with emergency telephone calls;
(i) ORS 167.340, Animal abandonment;
(j) ORS 811.182, Criminal driving while suspended or revoked;
(k) ORS 813.010, Driving under the influence of intoxicants (DUII);
(L) ORS 830.315, Reckless operation of a boat.

(m) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;
(n) ORS 830.730, False information to peace officer or State Marine Board;

(o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155;

(p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3) as determined by the AD;

(q) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3) as determined by the AD;

(4) Evaluation based on Oregon laws. Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) Juvenile records. Under no circumstances shall a SI be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

(6) Adult records. Under no circumstances shall an SI be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0290

Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) False statement. A "false statement" by the SI to the QE, AD, or Department, including provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records.

(2) Sex offender. The SI is a registered sex offender in Oregon or any other jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender as provided in ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

ADMINISTRATIVE RULES

(3) Warrants. An outstanding warrant against the SI for any crime in any jurisdiction.

(4) Deferred sentence, diversion program. The SI has a deferred sentence, conditional discharge, or is participating in a diversion program for any potentially disqualifying crime.

(5) Probation, parole, or post-supervision. The SI is currently on probation, parole, or post-prison supervision for any crime, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) Parole or probation violation. The SI is found in violation of post-prison supervision, parole, or probation for any crime regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date) within five years or less from the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(7) Unresolved arrests, charges or indictments. An unresolved arrest, charge, or a pending indictment, for any crime in any jurisdiction.

(8) Juvenile adjudication. Adjudication in a juvenile court, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(9) Guilty except for insanity. A finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," or similarly worded disposition regarding a potentially disqualifying crime.

(10) Child protective services in certain department programs. Child protective services reports that show behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals. This potentially disqualifying condition only applies when Department administrative rules specifically require a protective services background check as part of the application process including but not limited to child foster homes, adoptive families, licensed private child caring agencies, or child care providers.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0300

Other Information Considered

(1) Consideration of other information. If a SI has potentially disqualifying crimes or conditions, the AD shall perform a weighing test, considering the potentially disqualifying crimes or conditions and any other information disclosed by the SI or which is otherwise known by the AD. This information includes but is not limited to:

(a) Potentially disqualifying crimes or conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions and the details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(b) Age. Age of the SI at time of the potentially disqualifying crime or condition.

(c) Relationships. Domestic relationships or situations, when applicable.

(d) Supporting facts. Facts that support the conviction or potentially disqualifying condition.

(e) Time. Passage of time since commission of the potentially disqualifying crime or condition.

(f) Other laws. Consideration of Oregon or federal laws, regulations, or rules covering the position, facility, employer, or QE, in regard to the potentially disqualifying crimes or conditions.

(g) Additional criminal activity or other related behavior. Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal record.

(h) Incarceration. Periods of incarceration.

(i) Community supervision. Status of and compliance with parole, post-prison supervision, or probation.

(j) Expungement. Whether a conviction was set aside and the legal effect of setting aside the conviction.

(k) Related alcohol and drug issues. Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions, including history of use, manufacturing, delivery, treatment, rehabilitation, and relapse.

(l) Related treatment. Evidence of other treatment or rehabilitation related to criminal activity, potentially disqualifying conditions, or other factors listed in this rule. This includes but is not limited to assessments, evaluations, or risk assessments before or after treatment or rehabilitation.

(m) Repetition. Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not

limited to patterns of criminal activity or behavior related to potentially disqualifying conditions, or the SI's acceptance of responsibility for past actions, as determined by the AD.

(n) Changes. Changes in circumstances subsequent to the criminal activity or disqualifying condition.

(o) Abuse or neglect. Information from Department protective services investigations and other investigations.

(p) Education. History of high school, college, or other education related accomplishments.

(q) Work. Work history (employee or volunteer).

(r) Licensing or certification. History regarding licensure, certification, or training for licensure or certification.

(s) Work reference letters. Written recommendations from current or past employers, including Department client employers.

(t) Disclosure. Indication that criminal records or potentially disqualifying conditions have been disclosed to employer, Department client, or QE.

(u) Cooperation and honesty. Indication of the SI's cooperation and honesty during the criminal records check process.

(v) Relevancy of history to position. The AD shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit. If the SI is seeking to provide care for specific individuals, the AD will consider the impact of denial or approval on the individual, particularly with regard to emotional harm, safety, and best interests of the individual.

(2) Fitness determination with available information. If the AD requests other information for the purpose of conducting a weighing test, and the SI does not respond in a stated time period, the AD shall make a fitness determination, if possible, based on the potentially disqualifying crimes or conditions and the available information, or close the case.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0320

Fitness Determinations

(1) Preliminary fitness determination. A preliminary fitness determination is required to determine if an SI may work, volunteer, be employed, or otherwise perform in positions prior to a final fitness determination. The Department or QE may not allow an SI to work, volunteer, or otherwise perform in positions covered by these rules prior to the completion of a preliminary fitness determination.

(a) DHS Criminal History Request form completed. A DHS Criminal History Request form must have been completed by the SI and reviewed by the AD or CP.

(b) Probationary status not allowed by program rules. If probationary status is not allowed by program rules, then a preliminary fitness determination is not required, and the QE may not allow an SI to work, volunteer, or otherwise perform in positions covered by these rules prior to the completion of the final fitness determination.

(c) Preliminary fitness determination outcomes. After review of the DHS Criminal History Request form, the AD or CP shall make one of the following determinations:

(A) Probationary status. Probationary status is applicable only during the timeframe prior to a final fitness determination. An SI may be hired or accepted into a position on a preliminary basis and allowed to participate in training, orientation, and work activities of volunteering, employment, or other positions covered by these rules, under the one of the following circumstances:

(i) If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the AD or CP have no reason to believe the SI has potentially disqualifying history.

(ii) When the SI discloses convictions or arrests for a potentially disqualifying crime, or any other potentially disqualifying condition, the SI may be hired on a preliminary basis only after the completion of a weighing test by an AD. The SI may be placed on probationary status only if, based on information available at the time, the AD determines that more likely than not that the SI poses no potential threat to vulnerable individuals.

(B) No hiring allowed. The AD may not place an SI on probationary status if the local AD or Department determines that:

(i) The SI may pose a potential threat to vulnerable individuals;

(ii) The SI is currently involved in contesting a criminal records check under these or other Department criminal records check rules; or

(iii) The SI has previously been denied under these rules or other Department criminal records check rules.

(iv) This prohibition against hiring may only be waived by the Department.

ADMINISTRATIVE RULES

(d) Active supervision. An SI who is on probationary status shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules.

(A) At all times the individual providing active supervision shall follow all of these conditions:

(i) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and within hearing, except as provided in subsection (1)(d)(B) of this rule;

(ii) Know where the SI is and what the SI is doing; and

(iii) Periodically observe the actions of the SI.

(B) A client of the Department, an adult client's adult relation, or a child's parent or guardian, may provide active supervision without a criminal records check:

(i) The client may actively supervise a homecare worker, personal care services provider, or independent provider if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the AD.

(ii) A child's parent or guardian has the responsibility for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(e) Exemption from active supervision. An SI who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules or prior Department criminal records check rules may function on probationary status without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption is not allowed in any of the following situations:

(A) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(B) If there is evidence of criminal activity within the previous 24 months.

(C) If, as determined by the AD or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(f) Revocation. Revocation of probationary status is not subject to hearing or appeal. The QE or the Department may immediately revoke probationary status based on any of the following reasons:

(A) There is any indication of falsification of application.

(B) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions, or any out of state arrests or convictions.

(C) The QE or Department determines that probationary status is not appropriate, based on the application, criminal record, position duties, or program rules.

(g) Hiring or placement not required. Nothing in this rule is intended to require that an SI who is eligible for probationary status be hired or accepted into a position covered by these rules on a preliminary basis or be allowed to participate in training, orientation, and work activities of volunteering, employment, or other positions covered by these rules.

(2) Final fitness determination. The AD shall conduct a final fitness determination after all necessary criminal records checks have been completed. The AD may obtain and consider additional information as necessary to complete the final fitness determination.

(a) Final fitness determination outcomes. The AD may make one of the following fitness determinations:

(A) Approved. The AD may approve an SI if:

(i) The SI has no potentially disqualifying crimes or potentially disqualifying conditions; or

(ii) The SI has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test, the AD determines that more likely than not that the SI poses no risk to vulnerable individuals.

(B) Approved with restrictions. The AD may approve an SI with restrictions if the AD determines that more likely than not that the SI poses no risk to the physical, emotional or financial well-being of vulnerable individuals, if certain restrictions are placed on the SI. Such restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new criminal records check and fitness determination shall be completed on the SI before removing a restriction.

(C) Denied. The AD shall deny an SI whom it determines, after a weighing test, more likely than not poses a risk to the physical, emotional or financial well-being of vulnerable individuals.

(b) Fitness determination by the Department.

(A) The Department shall complete a fitness determination for any SI for whom a national or state-specific criminal records check is completed.

(B) The Department may make the fitness determination for any new DHS Criminal History Request form received regarding an SI with the following history:

(i) The SI has previously been denied under these rules or other Department criminal records check rules; or

(ii) The SI has a history of previous fitness determinations requiring weighing tests which were completed by the Department.

(C) If after conducting a criminal records check the Department determines that, based on the presence of a potentially disqualifying crime or condition, there is a potential for imminent danger to vulnerable individuals, the Department may make a fitness determination.

(D) The Department shall conduct a fitness determination if requested by a QE when the QE is temporarily unable to provide an AD to conduct a fitness determination.

(E) If an AD requests technical assistance, the Department may provide technical assistance or make the fitness determination.

(F) If the Department has reason to believe a fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal records check and conduct a fitness determination.

(G) The Department may review fitness determinations made by local ADs and make a new fitness determination at its discretion.

(H) The Department may conduct the fitness determination if the QE or AD is under investigation regarding compliance with these rules.

(c) Department decision. A QE, including its ADs and CPs, may not overturn a fitness determination made by the Department.

(3) Closed case.

(a) Incomplete application. If the SI discontinues the application or fails to cooperate with the criminal records check process, the application is considered incomplete and will be closed. Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(A) The SI refuses to be fingerprinted when required by these rules.

(B) The SI fails to respond within a stated period of time to a request for corrections to the application, fingerprints or provide any other information necessary to conduct a criminal records check and there is not enough information available to make a fitness determination.

(C) The SI withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the QE or Department.

(D) The SI is determined to be ineligible for the position for reasons other than the criminal records check.

(b) No hearing rights. When the application is closed without a final fitness determination, there is no right to contesting the closure.

(4) Notice to SI. Upon completion of a final fitness determination, the Department or AD making the decision shall provide written notice to the SI. The notice shall:

(a) Format. Be in a format approved by the Department;

(b) Appeal rights. If denied or approved with restrictions, include information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing; and

(c) Timely delivery. Be mailed or hand-delivered to the SI as soon as possible, but no later than 14 calendar days after the decision. The effective date of action shall be recorded on the form.

(5) Termination following denial or closed case. When an SI is denied or a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules. A denial or closed case applies only to the position and application in question. A denial or closed case shall result in immediate dismissal.

(6) Documentation. Preliminary and final fitness determinations must be documented in writing, including any details as needed including but not limited to the weighing test, restrictions in a restricted approval, the potentially disqualifying crimes or convictions in a denial, or the reasons for a closed case.

(7) No binding precedent. The Department or AD shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0330

Contesting a Fitness Determination

(1) Fitness determinations to contest. A final fitness determination of denied or approved with restrictions is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination.

(2) Work pending appeal prohibited. If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered; or otherwise perform in positions covered by these rules. An SI

ADMINISTRATIVE RULES

appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) Employment not guaranteed. If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) Criminal record disputed. If an SI wishes to challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Department, the SI may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process.

(5) Legal representation. An SI may represent himself or herself or have a legal representative during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(6) Challenging the fitness determination. An SI who wishes to challenge an adverse fitness determination may appeal the determination by requesting a contested case hearing. The appeal process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure, "Office of Administrative Hearings," OAR 137-003-0501 to 137-003-0700. The SI must be notified of the opportunity for appeal on a form available from the Department.

(a) Appeal. To request a contested case hearing, the SI shall complete and sign the hearing request form. The form is provided to the SI at the time of the notice of denial and is also available by contacting the BCU.

(b) Deadline for appeal. The completed and signed form must be received by the Department no later than 45 days after the notice of the fitness determination is signed by the AD.

(c) Untimely appeal. In the event an appeal is not timely, the Department will determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) Hearing on timeliness. The Department may refer an untimely request to the Office of Administrative Hearings (OAH) for a hearing on the issue of timeliness.

(7) Informal administrative review.

(a) Department conducts review. When an SI requests a contested case hearing, the Department may conduct an informal administrative review before referring the appeal to OAH.

(b) Participation. The SI must participate in the informal administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(8) Criminal records check. The Department may conduct additional criminal records checks during the appeal process to update or verify the SI's criminal records.

(9) Contested case hearing.

(a) Procedural documents and exhibits. The Department shall provide to the administrative law judge and the SI a complete copy of available information. The notice of contested case and prehearing summary shall be mailed by certified mail through the U.S. Postal Service. All other documents may be mailed by regular first class mail.

(b) Public attendance. The informal conference and hearing are not open to the public.

(c) New fitness determination. The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(d) Coordination with licensure or certification hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) Proposed and final orders.

(a) Notice of fitness determination as final order. In the following situations, the notice of fitness determination issued is final as if the SI never requested a hearing:

(A) Failure to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(B) Withdrawal of the request for hearing at any time during the appeal process.

(b) Informal disposition. The Department may make an informal disposition based on the informal administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(c) Dismissal order.

(A) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by the Department or the OAH. The SI may cancel the withdrawal in writing up to 14 calendar days after the date of withdrawal.

(B) The Department shall dismiss a hearing request when the SI fails to participate in the informal administrative review. Failure to participate in the informal administrative review shall result in termination of hearing

rights. The order is effective on the due date for participation in the informal administrative review. The Department will review a good cause request to reinstate hearing rights if received in writing by the Department within 14 days.

(C) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department will review a good cause request to reinstate hearing rights if received in writing by the Department within 14 days.

(d) Order after hearing. After a hearing, the administrative law judge issues a proposed and final order.

(A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(e) Reconsideration and rehearing. Final orders after a contested case hearing are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(f) Results to QE. The Department may provide the QE with the results of the appeal.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 183.341, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0340

Record Keeping, Confidentiality

(1) LEDS reports. All LEDS reports are confidential and shall be maintained by the AD in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS access. LEDS reports are confidential and may only be shared with another AD if there is a need to know consistent with these rules.

(b) SI Access. The LEDS report and photocopies of the LEDS report shall not be shown or given to the SI.

(2) National (FBI) information. The results of a national criminal records check provided by the FBI or the OSP are confidential and may not be disseminated by the Department with following exceptions:

(a) SI access. If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the records if requested.

(b) Contested case hearing exhibits. The state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(3) Department forms and other documentation. All completed DHS Criminal History Request forms, other criminal records information, and other records collected or developed during the criminal records check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) Retention. All criminal records check documents shall be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law. The Department may not re-create notices of fitness determinations to replace destroyed or lost originals.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0350

Immunity from Liability

(1) Fitness determination. The Department, QE, AD, or CP, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537 that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) Hiring. The Department, QE, AD, or CP, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the QE's decision if they in good faith comply with:

(a) ORS 181.537; and

ADMINISTRATIVE RULES

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) Dissemination of information. No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0355

Agreements With Other Entities

The Department and the Oregon State Board of Nursing (Board) shall enter into an interagency agreement to share the results of national criminal records checks conducted pursuant to these rules on SIs who are subject to criminal records check by both the Department and the Board.

Stat. Auth.: ORS 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 678.153, 409.010
Hist.: DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

407-007-0370

Variations

(1) Criteria for a variance. The Department may grant a variance to any section of these rules based upon a demonstration by the QE that the variance would not pose a significant risk to physical, emotional or financial well-being of children, the elderly, or individuals with disabilities.

(2) Variance application. The QE requesting a variance must submit in writing an application to the Department that contains the following:

(a) Rule citation. The section of the rule from which the variance is sought;

(b) Reason. The reason for the proposed variance;

(c) Alternative. The alternative practice, service, method, concept, or procedure proposed; and

(d) Compliance plan. A plan and timetable for compliance with the section of the rule from which the variance is sought.

(e) Safety ensured. An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance is in effect.

(3) Department review. The Department's Director or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the QE of the decision within 60 calendar days of the receipt of the request by the Department with a copy to other relevant sections of the Department.

(5) Appeal application. Appeal of the denial of a variance request must be made in writing to the Department's Director, whose decision is final.

(6) Duration of variance. The duration of the variance must be determined by the Department. All variances must be reapplied for before the variance expires.

(7) Implementation. The QE may implement a variance only after receipt of written approval from the Department.

(8) No precedent. Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent requests for variances.

Stat. Auth.: ORS 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0370, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09

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Rule Caption: Abuse Check Rules for Department Employees and Volunteers.

Adm. Order No.: DHSD 8-2009(Temp)

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09 thru 3-29-10

Notice Publication Date:

Rules Adopted: 407-007-0400, 407-007-0410, 407-007-0420, 407-007-0430, 407-007-0440, 407-007-0450, 407-007-0460

Subject: The Department of Human Services is implementing ORS 409.027 to conduct abuse checks on employees and volunteers. The Department shall conduct an abuse check on subject individuals who are offered employment or volunteer placement with the Department. If the individual has potentially disqualifying abuse (a finding in an abuse investigation of founded or substantiated, with the subject individual having been determined responsible for the abuse), the Depart-

ment shall conduct a weighing test to determine fitness for the position being sought. Subject individuals denied employment have contested case hearing rights. Subject individuals currently employed or in volunteer placement, or those offered employment or placement, are required to notify the Department's Office of Human Resources within 5 calendar days of being notified of being an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation. The Office of Human Resources may remove an employee or volunteer from placement and duties during or following an abuse investigation. The Office of Human Resources may investigate during or following an abuse investigation to determine whether to take any action, up to and including dismissal or removal from employment.

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

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

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0400

Definitions

As used in OAR 407-007-400 to 407-007-0460, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Abuse" has the meaning given it in the Department administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of screening subject individuals as allowed by ORS 409.027.

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department pursuant to ORS 124.085, 419B.030 or 430.757, or a similar report filed in another state.

(4) "Approved" means that a subject individual, following a fitness determination, is fit to work, volunteer, be employed, or otherwise perform in a position where the subject individual may provide care.

(5) "Care" is defined as treatment, education, training, instruction, placement services, recreational opportunities or case management, supervision of such services for clients of the Department, or Department administration and support services for clients of the Department.

(6) "Closed case" means an abuse check that has been closed without a fitness determination.

(7) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, or otherwise perform services in positions covered by these rules.

(8) "Department" means the Department of Human Services (DHS).

(9) "Director" means the Director of the Department or the Director's designee.

(10) "Fitness determination" means the outcome of an abuse check and, if necessary, a weighing test. Outcomes are approved or denied.

(11) "Founded or substantiated" has the meanings given these terms in the Department administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(12) "Office of Human Resources" means the Department's Office of Human Resources in the Department's Administrative Services Division.

(13) "Potentially disqualifying abuse" means:

(a) The finding of an abuse investigation report is founded or substantiated; and

(b) The subject individual is determined to have been responsible for the abuse.

(14) "Subject individual," means an individual who is:

(a) An employee. Employees include:

(A) An individual who seeks to be employed by the Department to provide care or a Department Jobs Plus client who seeks placement at a Department site; or

(B) An individual who is currently employed by the Department to provide care or a Department Jobs Plus client who is currently placed at a Department site.

(b) A volunteer. Volunteers include:

(A) An individual or student, who seeks to be a volunteer to provide care on behalf of the Department;

(B) A Department Work Experience client who seeks placement at a volunteer at a Department site;

(C) An individual or student currently volunteering to provide care on behalf of the Department, over whom the Department has direction and control; or

ADMINISTRATIVE RULES

(D) A Department Work Experience client who is placed at a Department site.

(15) "Weighing test" means a process carried out by the Department in which available information is considered in making a fitness determination. A weighing test is only conducted under these rules when a subject individual has potentially disqualifying abuse.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.025, 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

407-007-0410

Purpose

(1) Abuse check of department employees and volunteers. The purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the abuse check of Department employees, Department volunteers, or persons offered employment or placement by the Department to determine if they are fit to provide care.

(2) Confidentiality. To protect the confidentiality of information contained in abuse investigation reports otherwise protected under these rules, abuse investigation reports may be used jointly among the organizational units under the guidance of the Director for screening subject individuals pursuant to ORS 409.027 and OAR 407-007-0400 to 407-007-0460. Such reports shall be maintained as confidential pursuant to ORS 409.027 and other applicable state and federal laws.

(a) Abuse investigation reports used for screening subject individuals must be used as such for the purpose of protecting vulnerable children and adults served by the Department from abuse, but may not be used for decisions directly affecting vulnerable individuals unless the vulnerable individual is also a subject individual under these rules.

(b) Abuse investigation reports used for screening subject individuals may not be disclosed to any other person or entity outside of the Department without a protective order limiting further disclosure of the confidential information.

(3) Rule applicability. Although criminal records checks may occur concurrently with abuse checks performed under these rules and may share similar processes, the abuse check process is separate and distinct from the criminal records checks that may be performed under OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

407-007-0420

Reporting Abuse Allegations Required

(1) Subject individuals covered by this rule. This rule applies to any subject individual who is:

- (a) A current Department employee;
- (b) A current Department volunteer; or
- (c) An individual seeking Department employment or volunteer placement who has been offered Department employment or volunteer placement pending the completion of the abuse check process.

(2) Report required. A subject individual shall notify the Office of Human Resources within five calendar days of being notified that he or she has been identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

407-007-0430

Applicants to the Department for Employment or Volunteer Position

(1) Subject individuals covered by this rule. Subject to any applicable collective bargaining agreements, this rule applies to any subject individual who is:

- (a) Offered employment or volunteer placement with the Department;
- (b) Offered a change in employment or volunteer placement within the Department.

(2) When abuse check is required. The Department may require a subject individual to have an abuse check in the following circumstances:

(a) A subject individual is offered employment or a volunteer placement with the Department.

(b) A subject individual is currently employed by or volunteering with the Department and is offered a new position within the Department. A change in a position requiring an abuse check may be due but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall. In order for the check to be required, there must be, as determined by the Office of Human Resources, either:

- (A) A significant change in position duties or responsibilities; or
 - (B) A change in position classification.
- (3) Obtaining information.

(a) Using identifying information submitted on the Department's Background Check Request form (DHS 301HR), the Department may conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(b) In order to complete an abuse check and fitness determination, the Department may require additional information from the subject individual including but not limited to additional background information or documentation regarding circumstances since the abuse occurred.

(c) If a subject individual is a represented Department employee, the process for obtaining additional information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(4) Start date for employment or placement. The Department may not determine a start date for a subject individual until the completion of an abuse check and a fitness determination of approval.

(5) Weighing test. If a subject individual has potentially disqualifying abuse, the Department shall conduct a weighing test in order to make a fitness determination. Factors to consider in a weighing test include but are not limited to:

(a) The details regarding the abuse including but not limited to:

- (A) Circumstances leading to the incident of abuse;
- (B) The nature or type of abuse; and
- (C) Other information gathered during the scope of the abuse investigation.

(b) The date of abuse incident and abuse investigation, and the age of the subject individual at the time of the abuse.

(c) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration to completeness, objectivity, and sufficiency.

(d) Due process provided to the subject individual after the abuse investigation.

(e) Required action resulting from the founded or substantiated abuse, including but not limited to training, counseling, corrective or disciplinary action, and the subject individual's compliance.

(f) Circumstances related to the subject individual including but not limited to work history, education history, and other personal information provided by the subject individual.

(g) Changes in circumstances subsequent to the potentially disqualifying abuse.

(h) The relevancy of the abuse to the position the subject individual is seeking.

(6) Fitness determination. After an abuse check, the Department shall complete the fitness determination.

(a) Approved. The Department may approve a subject individual if:

- (A) The subject individual has no potentially disqualifying abuse; or
- (B) The subject individual has potentially disqualifying abuse but, after a weighing test, the Department determines that more likely than not the subject individual poses no risk to the Department, its clients, or vulnerable persons.

(b) Denied. The Department shall deny a subject individual who has potentially disqualifying abuse and, after a weighing test, the Department determines that more likely than not the subject individual poses a risk to the Department, its clients, or vulnerable individuals.

(7) Closed case.

(a) If the subject individual discontinues the application or fails to cooperate with the abuse check process, the application is considered incomplete and shall be closed.

(b) When the application is closed without a final fitness determination, the subject individual does not have a right to contest the closure.

(8) Notice to subject individual. Upon completion of a fitness determination or in a closed case, the Department shall provide written notice to the subject individual. The notice shall:

- (a) Be in a Department approved format;
- (b) Include an effective date of action on the notice; and
- (c) For an outcome of denied:

(A) Include the reasons for the denial; and

(B) Include information regarding appeal rights. A statement shall be included that indicates that the notice becomes a final order in the event of a withdrawal during the contested case hearing process or a failure to appear at the contested case hearing.

(9) Termination following denial or closed case. When a subject individual is denied or a case is closed, the individual may not work, volunteer, be employed, or otherwise perform in the position for which the subject individual is seeking. If a current Department employee or volunteer is denied, the Office of Human Resources shall determine if the subject individual may be able to continue in the current position from which the subject individual is seeking to change.

(a) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:

- (A) Relevant collective bargaining contractual provisions;

ADMINISTRATIVE RULES

(B) Statutory provisions for unrepresented or management services employees; or

(C) Relevant Department or statewide policies or procedures.

(b) For subject individuals who are current volunteers or current Work Experience clients, a denial or closed case shall result in immediate dismissal.

(10) Documentation. Fitness determinations shall be documented in writing and include all necessary details including but not limited to the potentially disqualifying abuse, the weighing test, or the reasons for a closed case.

(11) No binding precedent. The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.

(12) Contesting a fitness determination. Only subject individuals offered employment or a Jobs Plus position may contest the fitness determination.

(a) The contested case hearing process, pursuant to ORS chapter 183 and OAR 407-007-0080, shall proceed if the subject individual requests a contested case hearing. Subject individuals must request a hearing within 15 calendar days after the effective date of action listed on the notice of fitness determination.

(b) The subject individual's hearing rights pertain to the action of denial of employment or placement, not the outcome of the abuse investigation.

(c) The only remedy that may be awarded is a fitness determination that the subject individual is approved or denied. 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.

(d) Subject individuals may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the subject individual.

(13) Rechecks on volunteers. Subject individuals in volunteer or Work Experience placements must have a new abuse check every three years from the date of placement.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.010 & 409.027

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

407-007-0440

Current Employees of the Department

(1) Subject individuals covered by this rule. This rule applies to any subject individual who is a current Department employee.

(2) Abuse allegation during employment. If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, all relevant abuse investigation and licensing rules shall apply.

(3) Office of Human Resources review of potentially disqualifying abuse.

(a) If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may initiate an investigation during or following the investigation of the alleged abuse to determine whether to take any action, up to and including dismissal or removal from employment.

(b) If the abuse investigation results in potentially disqualifying abuse, the Office of Human Resources shall initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal or removal from employment, is justified.

(c) If the Office of Human Resources learns of potentially disqualifying abuse from previous investigations that may be inconsistent with a subject individual's current position, the Office of Human Resources may initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal or removal from employment, is justified.

(d) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:

(A) Relevant collective bargaining agreements;

(B) Statutory provisions for unrepresented or management services employees; or

(C) Relevant Department or statewide policies or procedures.

(4) Other related proceedings. A pending related action, such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue shall not automatically be grounds for the subject individual to seek to detain or stay either the review of the founded or substantiated disposition or any resulting disciplinary action. The Department may detain or stay either the review of the founded or substantiated abuse disposition or any resulting disciplinary action based on pending related action such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

407-007-0450

Current Volunteers of the Department

(1) Subject individuals covered by this rule. This rule applies to any subject individual who is a current volunteer.

(2) Duties during abuse investigation and review. If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may remove the subject individual from placement and duties at any time during the investigation or any subsequent review.

(3) Placement after abuse investigation. If removed from the placement, the subject individual may reapply for a placement under OAR 407-007-0430.

Stat. Auth.: ORS 409.027, 409.050

Stats. Implemented: ORS 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

407-007-0460

Confidentiality

All abuse information and other records collected or developed during the abuse check process shall be kept confidential and disseminated only on a need-to-know basis as permitted by applicable Oregon statutes and Oregon administrative rules.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10

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 11-2009(Temp)

Filed with Sec. of State: 9-25-2009

Certified to be Effective: 9-25-09 thru 12-28-09

Notice Publication Date:

Rules Adopted: 413-090-0021, 413-090-0133, 413-090-0135, 413-090-0136

Rules Amended: 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, 413-020-0255, 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, 413-090-0050, 413-090-0110, 413-090-0120, 413-090-0130, 413-090-0140, 413-090-0150

Rules Suspended: 413-020-0200(T), 413-020-0210(T), 413-020-0230(T), 413-020-0233(T), 413-020-0236(T), 413-020-0240(T), 413-020-0245(T), 413-020-0255(T), 413-090-0000(T), 413-090-0005(T), 413-090-0010(T), 413-090-0021(T), 413-090-0030(T), 413-090-0040(T), 413-090-0050(T), 413-090-0110(T), 413-090-0120(T), 413-090-0130(T), 413-090-0135(T), 413-090-0140(T), 413-090-0150(T)

Subject: These rules about payments to foster parents and relative caregivers are being changed because the Department is redesigning the rates and structures for these payments (rate redesign) and these rules require further clarification. These rules set the requirements and responsibilities for the Department and foster parents and relative caregivers of an eligible child around assistance payments, payment structure, and eligibility requirements for enhanced supervision and personal care services payments. These rules also are being amended, adopted, and suspended so that the Department will be in compliance with federal requirements and timelines in response to

ADMINISTRATIVE RULES

a federal audit, to clarify the use of Title XIX personal care services payments, to comply with federal requirements regarding case planning and length of time a child can be away from a substitute care placement while the payment continues, and to implement the new payment structure for foster care maintenance payments when a child is in a home certified by the Department.

OAR 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, and 413-020-0255 — which were amended by temporary rule on July 1, 2009 and concern the Department's responsibilities in monitoring and managing the enhanced supervision needs of a child or young adult in substitute care — are being amended to reflect current Department terminology, policy, and practices. OAR 413-020-0210 about the definitions used in OAR 413-020-0200 to 413-020-0255 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-020-0230 also is being amended to state under which circumstances the Department must complete and how the Department reviews a CANS (Child and Adolescent Needs and Strengths) screening. OAR 413-020-0233 also is being amended to describe the requirements of the Department in developing a supervision plan for a child or young adult in substitute care. OAR 413-020-0236 also is being amended to state the Department methodology and considerations when developing a supervision plan. OAR 413-020-0240 also is being amended to state when a physical restraint may be used even if the certified family has not attended Behavior Crisis Management Training or the child or young adult does not have a supervision plan. OAR 413-020-0245 also is being amended to explain the Department's responsibilities when monitoring a child or young adult's enhanced supervision needs. OAR 413-020-0255 also is being amended to explain the training required of a certified family when a supervision plan includes the use of physical restraint as a supervision action or activity.

OAR 413-090-0000 and 413-090-0010 — which were amended by temporary rule on July 1, 2009, August 12, 2009, and September 1, 2009; OAR 413-090-0005 — which was amended by temporary rule on July 1, 2009 and September 1, 2009; OAR 413-090-0030, 413-090-0040, and 413-090-0050 — which were amended on July 1, 2009; and OAR 413-090-0021 — which was adopted July 1, 2009 and concern the Department's responsibilities in determining and providing the foster care base rate, level of care, Chafee housing, and independent living housing subsidy payments for a child or young adult in substitute care are being amended to reflect current Department terminology, policy, and practices. OAR 413-090-0000 also is being amended to remove references to family group home care and residential treatment service providers as payments for those services are not covered by these rules (OAR 413-090-0000 to 413-090-0050). OAR 413-090-0010 also is being amended to explain how the Department determines the level of care and the payment to a foster parent or relative caregiver for each level of care when an eligible child or young adult requires enhanced supervision. OAR 413-090-0021 also is being amended to state when the Department will adjust a child or young adult's level of care payment, and how the Department proceeds if the adjustment decreases or terminates the payment. OAR 413-090-0030 also is being amended to remove language permitting payment or utilization credits for residential treatment stays for a child or young adult in substitute care. OAR 413-090-0050 also is being amended to allow an extension beyond 180 days for a foster parent or relative caregiver moving out of Oregon to continue to receive current foster care payments when the licensure or certification process in a receiving state has not been completed.

OAR 413-090-0110 — which was amended by temporary rule on July 1, 2009 and concerns the definitions used in these rules, OAR 413-090-0120 about the scope of personal care services, OAR 413-090-0130 — which was amended by temporary rule on July 1, 2009 and August 12, 2009 and concerns the eligibility requirements for personal care services, OAR 413-090-0135 — which was adopted

by temporary rule on July 1, 2009 and amended by temporary rule on August 12, 2009 and concerns provider eligibility to provide personal care services, OAR 413-090-0140 — which was amended by temporary rule on July 1, 2009 and concerns the periodic review of a client's eligibility for personal care services, and OAR 413-090-0150 — which was amended by temporary rule on July 1, 2009 and August 12, 2009 and concerns payment determinations are being amended; and OAR 413-090-0133 about how the Department conducts a personal care services assessment and OAR 413-090-0136 about how the Department develops a personal care services plan for a child or young adult in substitute care are being adopted to clarify the Department's policy for this program, include definitions used throughout the personal care services rules, reflect current Department terminology, and bring the personal care services program into compliance with federal requirements.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-020-0200

Purpose

The purpose of these rules (OAR 413-020-0200 to 413-020-0255), is to describe the responsibilities of the Department to:

- (1) Identify the supervision needs of a child or young adult in substitute care with a certified family;
- (2) Assess whether a certified family is managing the enhanced supervision needs of a child or young adult;
- (3) Describe the responsibilities of the certified family and the Department when physical restraint is used; and
- (4) Provide training and support services to a certified family who is having difficulty managing the supervision needs of a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2003, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0210

Definitions

The following definitions apply to OAR 413-020-0200 to 413-020-0255:

- (1) "BRS" means Behavior Rehabilitation Service, a Medicaid funded program that provides behavioral intervention, counseling, or skill building services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.
- (2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, service planning, and determining the supervision needs of the child or young adult. The Department uses two versions of the CANS Comprehensive Screening Tool, one for an individual birth through five years old and another version for an individual six through twenty years old.
- (3) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.
- (4) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.
- (5) "Child" means a person under 18 years of age.
- (6) "Enhanced supervision" means the additional support, direction, observation, and guidance provided by a certified family to a child or young adult to promote and ensure the safety and well-being of a child or young adult, beyond the level of supervision that typically is required for a child or young adult of the same age.
- (7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.
- (8) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.
- (9) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. Physical restraint does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

ADMINISTRATIVE RULES

(10) "Physical Restraint Incident Report" means a written description of an event involving a child or young adult that requires the relative caregiver or foster parent to use physical restraint.

(11) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(12) "Supervision plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent in providing the additional support, observation, direction, and guidance necessary to promote and ensure a child or young adult's safety and well-being.

(13) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SCF 8-1997, f. 8-12-97, cert. ef. 8-25-97; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0230

Referral for and Review of the CANS Screening

(1) The caseworker of the child or young adult must complete a CANS screening referral:

(a) Effective January 1, 2010, within the first twenty days of a child's entry into substitute care and when the child is living with a certified family;

(b) Within twelve months from the date of the initial CANS screening when the screening results indicated a level of care;

(c) When a child or young adult moves from a BRS placement into a certified family; and

(d) When there has been an observed, documented, ongoing change in a child or young adult's behavior or functioning.

(2) The CANS screening is:

(a) Conducted by an individual trained and certified to conduct a CANS screening; and

(b) Submitted to the Level of Care Manager who reviews the ratings submitted by the CANS screener and determines the level of care.

(3) The CANS results form documents:

(a) The rating on each element of the CANS screening tool; and

(b) The child or young adult's presenting behaviors and functioning, the supervision necessary to promote the safety and well-being of the child or young adult, and recommendations for services based on the needs identified.

(4) A copy of the CANS results form is sent to the caseworker and to the certified family.

(5) When the caseworker receives the CANS results form, the caseworker must:

(a) Contact the certified family to review the supervision recommendations;

(b) When the CANS screening results indicate the child or young adult currently has suicidal ideation or intent, the caseworker must review the supervision plan developed during the screening process within 24 hours of receipt of the CANS results and modify the plan, if appropriate;

(c) Gather information regarding the child or young adult's strengths and supervision needs; and

(d) Incorporate the needs and strengths identified in the CANS results and any services arranged for the child or young adult in the case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0233

When a Supervision Plan is Required

(1) When it is determined through a CANS screening that a child or young adult is eligible for enhanced supervision, the caseworker may develop a supervision plan with the relative caregiver or foster parent.

(2) When the relative caregiver or foster parent requests a supervision plan to manage a child or young adult's enhanced supervision needs, the caseworker must develop a supervision plan for the child or young adult within 30 days.

(3) When the CANS screening results indicate the child or young adult currently has suicidal ideation or intent, the caseworker must confirm the supervision plan developed during the screening process within 24 hours of receipt of the CANS screening results.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0236

Developing a Supervision Plan

(1) Within 30 days of determining a need for, or the caseworker receiving a relative caregiver or foster parent request for, a supervision plan, the caseworker must:

(a) Meet with the relative caregiver or foster parent to explain the identified needs and the supervision requirements necessary to promote the safety and well-being of the child or young adult; and

(b) Develop a supervision plan with the certified family that meets the supervision needs of the child or young adult when the results of the CANS screening indicate a level of care.

(A) Level 1 (moderate needs) means the certified family must provide an environment with the additional support, direction, observation, and guidance from the certified family to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(B) Level 2 (intermediate needs) means the certified family must provide a structured environment, additional support, direction, observation, and guidance to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(C) Level 3 (advanced needs) means the certified family must provide a highly structured environment, additional support, direction, observation, and guidance to ensure a child or young adult's safety and well-being, beyond the level of supervision that typically is required for a child or young adult of the same age.

(2) The supervision plan must include:

(a) The supervision actions or activities that are to be provided by the certified family to meet the child or young adult's identified needs, such as proactive use of space, routine, structure of the environment, positive reinforcement, and de-escalation techniques;

(b) The actions and assistance the Department is to provide to support the certified family in addressing the needs of the child or young adult and maintaining the child or young adult in the home;

(c) The persons responsible for monitoring the child or young adult's supervision needs and supervision actions and activities;

(d) How the persons responsible for monitoring the supervision plan are to communicate with each other; and

(e) When the supervision plan is to be reviewed, which must be at least every 90 days from the date the supervision plan is signed by the caseworker and the certified family.

(3) The supervision plan must be:

(a) Signed by the caseworker and the certified family; and

(b) Approved by the caseworker's supervisor.

(4) Before a supervision plan may include physical restraint as a supervision action or activity:

(a) The certified family must have completed the physical restraint training requirements described in OAR 413-020-0255;

(b) The certified family must agree to document each use of physical restraint in writing on a Physical Restraint Incident Report as soon as reasonably possible after each use; and

(c) The certified family must agree to orally report the circumstances of each physical restraint to the caseworker or the caseworker's supervisor within one business day and submit the Physical Restraint Incident Report to the caseworker within two business days.

(5) A supervision plan that includes the use of physical restraint as a supervision action and activity must:

(a) Focus on intervention strategies designed to modify a child or young adult's behavior without the need for physical restraint;

(b) Explain that a physical restraint is to be used only when the child or young adult's behavior poses an imminent danger to self or others, and when no alternate actions are sufficient to stop a child or young adult's behavior; and

(c) Be approved by the Child Welfare program manager.

(6) The caseworker must provide a copy of the signed supervision plan to the certified family, provide a copy to the certified family's certifier, and file a copy in the child or young adult's case file.

(7) The caseworker must summarize the supervision plan in the Department's information system in the child or young adult's case notes and in the provider notes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0240

Use of Physical Restraint

(1) A *physical restraint* only may be used if the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and good judgment indicates that a physical restraint may be implemented safely.

ADMINISTRATIVE RULES

(a) The certified family may use a physical restraint under the circumstances described in this section even if:

(A) The certified family has not attended Behavior Crisis Management Training; or

(B) The child or young adult does not have a supervision plan.

(b) Physical restraint must be implemented with the least force necessary to prevent the risk of harm to self or others and must end as soon as the risk of harm no longer exists.

(2) Any time a physical restraint is used, the certified family must:

(a) Document the use of the physical restraint in writing on a Physical Restraint Incident Report as soon as reasonably possible after the incident;

(b) Report the circumstances of the physical restraint to the caseworker or the caseworker's supervisor within one business day; and

(c) Submit the written documentation of the circumstances of each physical restraint to the caseworker within two business days.

(3) If the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, but good judgment indicates that a physical restraint cannot be implemented, the certified family must call the local law enforcement agency to request intervention. The certified family must:

(a) Orally report the incident to the caseworker and the caseworker's supervisor as soon as reasonably possible; and

(b) Document the incident in writing in a Physical Restraint Incident Report and submit written documentation to the caseworker within two business days.

(4) If the child or young adult is injured during the incident, whether or not a physical restraint is used, the certified family immediately must notify the Department's emergency 24-hour contact.

(5) Mechanical restraint or seclusion of a child or young adult is prohibited in an emergency or at any other time. For the purposes of this rule:

(a) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child or young adult's body as a means of controlling his or her physical activities to protect the child, young adult, or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from medicinal, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

(b) "Seclusion" means the involuntary confinement of a child or young adult alone in a specifically designed room from which the child or young adult is physically prevented from leaving.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0245

Responsibilities in Monitoring a Child or Young Adult's Supervision Needs

(1) During each face to face contact described in OAR 413-080-0059, the caseworker must determine:

(a) Whether the certified family is meeting the supervision needs of the child or young adult; and

(b) Whether the supervision needs of the child or young adult have changed.

(2) If the supervision needs of the child or young adult are not being met, the caseworker must assess the safety of the child or young adult as required by OAR 413-080-0059(2)(b).

(3) If, after assessing the safety of the child or young adult, the caseworker determines that the child or young adult is currently safe in the home but his or her supervision needs are not being met, the caseworker must:

(a) Consult with the certifier or the certifier's supervisor to determine if available resources or training are able to provide the additional support the certified family may need to meet the child or young adult's supervision needs;

(b) Review the supervision plan to determine whether the plan needs to be revised or, if a supervision plan is not in place, determine whether a supervision plan needs to be developed as outlined in OAR 413-020-0233;

(c) Meet with the certified family to revise or develop a supervision plan according to OAR 413-020-0236 or, if the caseworker determines that a supervision plan is not necessary, to discuss supervision requirements necessary to meet the child or young adult's needs or additional resources available to the certified family.

(4) When there is a current supervision plan, the caseworker must:

(a) Review the supervision plan within the timeline agreed to in the plan;

(b) Assess the effectiveness of the supervision actions and activities provided by the certified family in meeting the child or young adult's supervision needs; and

(c) Continue, end, or revise the supervision plan as appropriate.

(A) The supervision plan may end when the plan successfully has reduced or eliminated the need for enhanced supervision and the child or young adult is no longer exhibiting the supervision needs identified in the CANS screening results.

(B) The supervision plan must be revised when additional supervision actions or activities are needed to meet the child or young adult's supervision needs. The caseworker must follow OAR 413-020-0236 when revising a supervision plan.

(5) If the supervision needs of the child or young adult have changed, the caseworker must determine whether a new CANS screening is required under OAR 413-020-0230(1)(d).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-020-0255

Training and the Planned Use of Physical Restraint

(1) The Department has approved Behavior and Crisis Management Training as the standard training curriculum for certified families who require training on crisis management and the use of a physical restraint. The training curriculum focuses on strengthening a certified family's supervision skills and instructs the certified family in the use of a physical restraint as a supervision action.

(2) When a supervision plan includes the planned use of physical restraint the caseworker must consult with the certifier to confirm that the certified family has completed Behavior Crisis Management Training prior to the implementation of a supervision plan that includes the use of physical restraint as a supervision action or activity.

(3) A foster care coordinator or designee may approve comparable behavior and crisis management training obtained by a certified family for a specific child or young adult in place of Behavior and Crisis Management Training if:

(a) The training was selected by a school district and used in the school; or

(b) The training was approved by the Additions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0000

Purpose

These rules, OAR 413-090-0000 to 413-090-0050, describe the responsibilities of the Department for payment of costs on behalf of an eligible child or young adult, including payment to:

(1) A foster parent or relative caregiver for:

(a) The foster care base rate;

(b) The level of care, if any; and

(c) The cost of housing the child of a dependent parent, unless the dependent parent receives benefits under a program administered by the Department of Human Services under chapter 461 of the Oregon Administrative Rules.

(2) An eligible child or young adult who is in the legal custody of the Department, living independently, and receiving an independent living housing subsidy.

(3) An individual eligible for a Chafee housing payment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0005

Definitions

The following definitions apply to OAR 413-090-0000 to 413-090-0050:

(1) "Adoption assistance" means financial and medical coverage granted to an adoptive family to offset the costs of adopting an eligible adoptive child and may include cash payments, medical coverage, an agreement only, or special payments.

(2) "CAF" means the Children, Adults and Families Division of the Department of Human Services.

(3) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on a child or young adult's needs and strengths for the purposes of case planning, serv-

ADMINISTRATIVE RULES

ice planning, and determining the supervision needs of the child or young adult. The Department used two versions of the CANS Comprehensive Screening Tool, one for an individual birth through five years old and another version for an individual six through twenty years old.

(4) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(5) "Chafee housing" means a payment to assist in covering the costs of room and board made to an eligible individual between 18 and 20 years of age who was discharged from the care and custody of the Department or one of the federally recognized tribes on or after reaching 18 years of age.

(6) "Child" means a person under 18 years of age.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Dependent parent" means a child or young adult in the legal custody of the Department who is the parent of a child.

(9) "Eligible child" means a child or young adult in the legal or physical custody of the Department who is receiving a substitute care service.

(10) "Enhanced supervision" means the additional support, direction, observation, and guidance provided by a certified family to a child or young adult to promote and ensure the safety and well-being of a child or young adult, beyond the level of supervision that typically is required for a child or young adult of the same age.

(11) "Foster parent" means a person who operates a home that has been approved by Child Welfare to provide care for an unrelated child or young adult placed in the home by the Department.

(12) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is in the care and custody of the Department and living independently.

(13) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.

(14) "Relative caregiver" means a person who operates a home that has been approved by Child Welfare to provide care for a related child or young adult who is placed in the home by the Department.

(15) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0010

Eligibility for Payments

(1) Family Foster Care.

(a) The Department reimburses a foster parent or relative caregiver a base rate on behalf of an eligible child or young adult in the Department's physical or legal custody who is placed by the Department in the foster parent or relative caregiver's home. Payment for the base rate is made on a monthly basis, or prorated for a portion of a month, after the month in which the care has been provided. The reimbursement period includes the day the child or young adult enters the home, but excludes the day the child or young adult leaves the home.

(b) The base rate payment is:

(A) \$639 per month for a child five years or younger;

(B) \$728 per month for a child 6 through 12 years of age; and

(C) \$823 per month for a child or young adult 13 through 20 years of age.

(c) The base rate is designed to reimburse the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(A) Food — including the cost to cover a child or young adult's special or unique nutritional needs;

(B) Clothing — including purchase and replacement;

(C) Housing — including maintenance of household utilities, furnishings, and equipment;

(D) Daily supervision — including teaching and directing to ensure safety and well-being at level which is appropriate based on the child or young adult's chronological age;

(E) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(F) Transportation — including gas and oil, vehicle maintenance and repair, associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) Shelter Care. The Department reimburses a foster parent or relative caregiver a shelter care rate on behalf of an eligible child or young adult

during the first 20 days of substitute care after the Department has obtained physical or legal custody of the child or young adult. The daily shelter care rate is \$24.60 for a child five years or younger, \$28.00 for a child 6 through 12 years of age, and \$31.60 for a child or young adult 13 through 20 years of age.

(3) Enhanced Shelter Care. The Department reimburses a foster parent or relative caregiver an enhanced shelter care rate on behalf of an eligible child or young adult during the first 20 days of substitute care in the first foster care or relative caregiver home after a child or young adult has resided in a residential treatment placement unless a level of care has been determined. The daily enhanced shelter care rate is \$29.40 for a child five years or younger, \$33.50 for a child 6 through 12 years of age, and \$37.90 for a child or young adult 13 through 20 years of age.

(4) Level of Care. The Department reimburses a foster parent or relative caregiver on behalf of an eligible child or young adult when the CANS screening results indicate the child or young adult needs enhanced supervision. A CANS screener rates each element of a child or young adult's behavior and functioning on a scale of zero to three and the ratings determine whether a child or young adult meets the criteria for one of three levels of care. The levels of care are set forth as Exhibit 1.

(a) The payment for Level 1 (moderate needs) is \$212 per month.

(b) The payment for Level 2 (intermediate needs) is \$414 per month.

(c) The payment for Level 3 (advanced needs) is \$850 per month.

(5) The Department reimburses a foster parent or relative caregiver for room and board at the applicable base rate in subsection (1)(b) of this rule for the child of a dependent parent unless the dependent parent receives benefits under programs administered by the Department of Human Services under chapter 461 of the Oregon Administrative Rules or has other means of financial support.

(6) The Department reimburses an eligible individual a Chafee housing or an independent living housing subsidy payment up to a maximum of \$600 per month of eligibility.

(7) Payments prohibited. The Department may not authorize payment for the care of a child or young adult to more than one certified family per day.

(8) A payment by the Department under this rule to a foster parent or relative caregiver is inalienable by any assignment or transfer and exempt from execution, levy, attachment, and garnishment under the laws of the state of Oregon.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.470, 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 28-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 10-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0021

Periodic Review of Eligibility for Level of Care Payments

(1) When the Department conducts a new CANS screening under Child Welfare Policy I-B.1.6, "Enhanced Supervision" OAR 413-020-0230 and the results indicate the child or young adult's level of care has changed, the Department adjusts the child or young adult's level of care payment accordingly.

(2) If the adjustment decreases or terminates the level of care payment, the Department follows Child Welfare Policy I-A.5.1, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0030

Payment for Temporary Absences from Family Foster Care

(1) The Department may continue the base rate and any level of care payment to the foster parent or relative caregiver during a child or young adult's temporary absence from the home for 14 days or less, when:

(a) The plan is for the child or young adult to return to the care of the same foster parent or relative caregiver; and

(b) No other foster parent or relative caregiver is receiving a base rate or level of care payment for the child or young adult during the period of the absence.

(2) The caseworker may authorize the base rate or level of care payment for up to seven days for a child or young adult's temporary absence from the home of the foster parent or relative caregiver for a home visit, vacation, or special activity or when the child or young adult has run away from the home.

(3) The caseworker must obtain authorization for continuation of the base rate or level of care payment from the District Manager or designee if

ADMINISTRATIVE RULES

the child or young adult's temporary absence from the home of the foster parent or relative caregiver is more than seven days but less than the maximum of fourteen days.

(4) Hospitalization. The Department may continue the base rate and any level of care payment to the foster parent or relative caregiver when the child or young adult requires hospitalization for medical treatment and the foster parent or relative caregiver continues to exercise caregiving responsibilities in anticipation of the return of the child or young adult. (Hospitalization for medical treatment is not considered a substitute care placement with a duplicate payment.)

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0040

Payments During Adoptive Supervision

The Department provides a payment for a family foster care base rate and any enhanced supervision payment to a foster parent or relative caregiver after a child is free for adoption, has been placed in a home designated by the Department's Adoption Program manager as the child's adoptive placement until Adoption Assistance payments commence. See Child Welfare Policy I-G.3.1, "Adoption Assistance" OAR 413-130-0000 to 413-130-0130 for the eligibility requirements of the Adoption Assistance Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0050

Family Foster Care and Relative Caregiver Out-of-State Payment Rates

(1) A foster parent or relative caregiver who receives Department approval to move out-of-state with a child that the Department has placed in the home may continue to receive current foster care payments for that child for up to 180 days or until licensed or certified in the receiving state, whichever is earlier.

(2) The Administrator of the Office of Permanency and Safety for Children or the Foster Care Program Manager may extend the 180 day limit for continuing to receive current foster care payments when the licensure or certification process in the receiving state has not been completed.

(3) Once the home is licensed or certified in the receiving state, the Department authorizes payment at the receiving state's established foster care payment rates.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0110

Definitions

The following definitions apply to OAR 413-090-0100 to 413-090-0210:

(1) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(2) "Child" means a person under 18 years of age.

(3) "Contract Registered Nurse" means a licensed registered nurse under a contract with the Department of Human Services who provides nursing assessment, consultation, teaching, delegation, or on-going nursing services to a child or young adult in the care or custody of the Department.

(4) "Delegated nursing task" means a task, normally requiring the education and license of a Registered Nurse (RN) and within the RN scope of practice to perform, that an RN authorizes an unlicensed person to perform.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Legally responsible relative" means the parent or stepparent of a child or young adult or a person related to the child or young adult by blood or marriage who has legal custody or legal guardianship of the child or young adult.

(8) "Level of personal care" means the payment to a qualified provider for performing the personal care services for an eligible child or young adult.

(9) "Personal Care RN Manager" means a Registered Nurse (RN) who is a licensed registered nurse employed by the Department of Human Services to provide oversight of Contract Registered Nurses and personal care services authorized through the Children, Adults, and Families Division of the Department of Human Services.

(10) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication and oxygen management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(11) "Personal care services assessment" means an evaluation by a registered nurse of a child or young adult's ability to perform the functional activities required to meet daily needs.

(12) "Personal care services plan" means a written plan to provide personal care services for the child or young adult documenting:

(a) The determination that the individual is a qualified provider;

(b) The frequency or intensity of each personal care service to be provided; and

(c) The date personal care services begin.

(13) "Qualified provider" means an individual who:

(a) Is authorized by the Department through the contract Registered Nurse or Personal Care RN Manager;

(b) Demonstrates by background, skills, and abilities the capability to safely and adequately provide the authorized personal care services;

(c) Maintains a drug-free household;

(d) Has been approved through the background check process described in Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parents, Other Persons in Household and Adoptive Parents for Children in the Care or Custody of DHS", OAR 413-120-0400 to 413-120-0470 or under OAR 407-007-0200 to 407-007-0370; and

(e) Is not a legally responsible relative of the child or young adult eligible for personal care services.

(14) "Registered nurse" means an individual licensed and registered to practice nursing.

(15) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0120

Scope of Services

(1) Personal care services are provided directly to the eligible child or young adult and do not include respite or other services, nor are they implemented for the purpose of benefiting others in the household or the household in general.

(2) Personal care services include:

(a) Mobility, transfers, repositioning — assisting a child or young adult with ambulation or transfers with or without an assistive device, turning the individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(b) Basic personal hygiene — providing or assisting a child or young adult with needs such as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(c) Toileting, bowel and bladder care — assisting a child or young adult to and from bathroom, on and off a toilet, commode, bedpan, urinal or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing the individual or adjusting clothing related to toileting, emptying catheter drainage bag or assistive device, ostomy care or bowel care;

(d) Nutrition — preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes and utensils within reach for eating;

ADMINISTRATIVE RULES

(e) Medication and oxygen management — assisting with ordering, organizing and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply; and

(f) A delegated nursing task.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0130

Personal Care Services Eligibility

To receive personal care services while living with a certified family, a child or young adult in the care or custody of the Department must:

(1) Be eligible to receive medical services funded through either Title XIX of the Social Security Act or the state general fund;

(2) Have no available resources from the natural support system of friends, neighbors, or other community resources to provide personal care services; and

(3) Have a documented, diagnosed physical or mental impairment and require personal care services as determined by a personal care services assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0133

Conducting a Personal Care Services Assessment

(1) When a child or young adult with a diagnosed physical or mental impairment appears to require personal care services and the caseworker becomes aware of the apparent need for personal care services, the caseworker must refer the child or young adult to the Contract Registered Nurse for an assessment.

(2) Upon receipt of a referral, the Contract Registered Nurse or the Personal Care RN Manager conducts the assessment.

(3) To conduct the personal care services assessment, the Contract Registered Nurse or the Personal Care RN Manager:

(a) Reviews available medical records of the child or young adult;

(b) Meets with the child or young adult and the relative caregiver or foster parent;

(c) Gathers information about the child or young adult's condition and functioning;

(d) Assesses the child or young adult's ability to perform functional activities necessary to meet his or her daily needs at a level appropriate for the child or young adult's chronological age;

(e) Documents the findings of the personal care services assessment; and

(f) Submits the personal care services assessment to the Personal Care RN Manager.

(4) The Personal Care RN Manager must:

(a) Review the personal care services assessment;

(b) Apply the rating scale to the personal care services assessment and record the points on the personal care services assessment results summary;

(c) Submit the completed personal care services assessment results summary to the Level of Care Manager who determines a level of personal care; and

(d) When the personal care services assessment scores a child or young adult's level of personal care needs at Level 4, convene a meeting with the foster parent or relative caregiver and others involved in the child or young adult's care to determine the additional payment and the intensive personal care services required to meet the child or young adult's identified needs.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0135

Provider Eligibility

For a provider to provide personal care services covered under OAR 413-090-0150, the Contract Registered Nurse or Personal Care RN Manager must:

(1) Determine the individual is a qualified provider under OAR 413-090-0110(9); and

(2) When the personal care services require the provider to perform a delegated nursing task, the Contract Registered Nurse or Personal Care RN

Manager must follow the applicable requirements in OAR 851-047-0000 to 851-047-0040 when delegating the nursing task, and leave procedural guidance for the provider, which is not transferable to another individual.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0136

Developing the Personal Care Services Plan

(1) After conducting the personal care services assessment and determining that a child or young adult is eligible for personal care services, the Contract Registered Nurse or Personal Care RN Manager must develop a personal care services plan.

(2) The personal care services plan must:

(a) Specify the frequency or intensity of each personal care service;

(b) Identify the qualified provider to provide the personal care service;

(c) If the plan includes a delegated nursing task, the personal care services plan must include:

(A) The written authorization of the registered nurse permitting the qualified provider to perform the delegated nursing task;

(B) The written instructions on how to perform the task;

(C) How frequently the child or young adult is to be reassessed with respect to the delegated nursing task; and

(D) How frequently the qualified provider is to be supervised and reevaluated.

(d) Identify the date that the personal care services are to begin and the date that the plan ends; and

(e) Be signed by the Contract Registered Nurse or Personal Care RN Manager and each qualified provider providing services under the plan.

(3) If the Contract Registered Nurse or Personal Care RN Manager determines that the child or young adult requires a delegated nursing task, the Contract Registered Nurse or Personal Care RN Manager must follow the requirements in OAR 851-047-0000 to 851-047-0040.

(a) An authorization permitting a qualified provider to perform a nursing task does not permit the qualified provider to perform the task for a different child or young adult and the authorization may not be transferred to another qualified provider.

(b) The skill of the qualified provider and the condition of the child or young adult must be reevaluated as appropriate.

(c) The registered nurse may rescind the delegation, as provided in OAR 851-047-0030(7), and revise the personal care services plan accordingly.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0140

Periodic Review of Personal Care Services Eligibility

(1) A child or young adult's eligibility for personal care services must be reviewed annually from the initial date of the personal care services plan, unless an earlier date for reassessment has been approved in the personal care services plan.

(2) The child or young adult's caseworker may refer the child or young adult for a reassessment earlier than the date approved in the personal care services plan if the child or young adult's need for personal care services has changed. The Personal Care RN Manager must approve the referral.

(3) The Department must send a notice to the foster parent or relative caregiver, on behalf of the child or young adult, at least 14 days prior to conducting a reassessment. The notice must include:

(a) A description and explanation of the assessment process;

(b) An explanation of the process for appealing the results of the assessment; and

(c) A description of the foster parent or relative caregiver's right, on behalf of the eligible child or young adult, to set the date, time and place of the assessment at a location that is convenient for him or her and to invite other persons to participate in the assessment.

(4) The Contract Registered Nurse or Personal Care RN Manager follows the process set forth in OAR 413-090-0133 when conducting a reassessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

413-090-0150

Payment Determination

(1) Payment for providing the personal care services identified in the personal care services plan is based on the child or young adult's personal

ADMINISTRATIVE RULES

care services at a level of personal care that corresponds to the needs identified in the personal care services assessment and is determined by the Department. The levels of personal care are set forth as **Exhibit 1**.

(a) If the child or young adult qualifies as Level 1 (moderate to intermediate care), the payment is \$207 per month.

(b) If the child or young adult qualifies as Level 2 (intermediate to advanced care), the payment is \$413 per month.

(c) If the child or young adult qualifies as Level 3 (advanced to intensive care), the payment is \$620 per month.

(d) If the child or young adult qualifies as Level 4 (intensive care), the payment is an amount authorized by the Department based on the intensity and frequency of the personal care services in conjunction with all other medical services provided for the child or young adult.

(2) Payment for personal care services is effective on the first day of the month in which an approved personal care services plan was signed or the first day the child or young adult was placed in the home, whichever is later.

(3) Personal care authorizations in effect prior to July 1, 2009 remain in effect through August 31, 2009 without the required annual review, unless the child or young adult is no longer placed with the authorized foster parent or relative caregiver.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 9-2009(Temp), f. & cert. ef. 8-12-09 thru 12-28-09; CWP 11-2009(Temp), f. & cert. ef. 9-25-09 thru 12-28-09

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 12-2009

Filed with Sec. of State: 9-28-2009

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Rules Adopted: 413-070-0909

Rules Amended: 413-070-0900, 413-070-0905, 413-070-0915, 413-070-0917, 413-070-0920, 413-070-0925, 413-070-0930, 413-070-0935, 413-070-0937, 413-070-0940, 413-070-0945, 413-070-0955, 413-070-0960, 413-070-0965, 413-070-0970

Rules Repealed: 413-070-0910, 413-070-0950, 413-070-0980, 413-070-0981, 413-070-0982

Subject: OAR 413-070-0900, 413-070-0905, 413-070-0915, 413-070-0917, 413-070-0920, 413-070-0925, 413-070-0930, 413-070-0935, 413-070-0937, 413-070-0940, 413-070-0945, 413-070-0955, 413-070-0960, 413-070-0965, and 413-070-0970 about the Department's Guardianship Assistance Program are being amended, OAR 413-070-0909 about the Department's Guardianship Assistance Program is being adopted, and OAR 413-070-0910, 413-070-0950, 413-070-0980, 413-070-0981, and 413-070-0982 about the Department's Guardianship Assistance Program are being repealed, to comply with the requirements of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The Department had administered its Guardianship Assistance Program as a demonstration project approved by the federal Department of Health and Human Services under a waiver allowed by Section 1130 of the Social Security Act (Title IV-E). The Department cannot claim federal financial participation for relative guardianships established after September 30, 2008 and prior to submission of an approved state Title IV-E plan necessitating these rule amendments and suspensions. These rules also are being adopted, amended, and repealed to correct and update these rules to be consistent with Department policy and practice, remove language referring to the demonstrations project and waiver program, and remove language that does not need to appear in administrative rule. These rules also are being amended and repealed to clarify the Department's policies for this program, include definitions used throughout the guardianship assistance program rules, reflect current Department terminology, and bring the guardianship assistance program into compliance with federal requirements. These rules also are being adopted, amended, and repealed to make permanent temporary changes adopted on March 31, 2009 and July 1, 2009.

OAR 413-070-0900 about the purpose of OAR 413-070-0900 to 413-070-0970 is being amended to restate that the purpose of these

rules is to put forth the Department criteria on eligibility for a subsidized guardianship as a permanency planning option for a child in substitute care.

OAR 413-070-0905 about the definitions used in OAR 413-070-0900 to 413-070-0970 is being amended to state the definitions used throughout the guardianship assistance program rules and reflect current Department terminology.

OAR 413-070-0909 about the funding sources for payments made for guardianship assistance is being adopted to comply with federal requirements for administration of a federally funded guardianship assistance program.

OAR 413-070-0910 about Department values is being repealed to streamline the rules by removing unnecessary statements.

OAR 413-070-0915 about which children are eligible to participate in the Guardianship Assistance program is being amended to state that a child is eligible to participate when other preferred permanency plan options are not in the child's best interests. This rule also is being amended to state that a child eligible for the Guardianship Assistance program remains eligible for the program when removed from the guardianship placement and placed in substitute care. This rule also is being amended to state that a child not Title IV-E eligible is eligible for guardianship assistance if he or she meets all other Guardianship Assistance program eligibility criteria.

OAR 413-070-0917 about the additional Guardianship Assistance program eligibility requirements for a child in the care and custody of a tribe is being amended to state that a foster home certified by a tribe meets the Department's foster home licensing requirements; and that a participating tribe agrees to document how continued placement with the current caregiver in a guardianship is in the best interests of the child; and that if the tribe reestablishes custody of a child formerly in a guardianship placement, the tribe must notify within 30 days and provide a copy of the court order terminating the guardianship to the Department's Adoption and Guardianship Program.

OAR 413-070-0920 about when the Department or a participating tribe may consider legal guardianship as a permanency plan for a child is being amended to state that a child must have been in the Department's or participating tribe's legal custody for a minimum of six months if the prospective guardian is a relative or twelve months if the prospective guardian is not a relative; the child must be eligible for a Title IV-E foster care payment; the child must have lived the past six consecutive months with the prospective guardian; and each sibling in the same placement is eligible to be placed with the same guardian, providing at least one sibling meets all eligibility criteria, regardless of the timing of each individual placement. This rule also is being amended to state that the requirement that a child cannot safely return home is met when reunification with a parent of the child is not possible within a reasonable timeframe and the Department determines that adoption is not an appropriate plan for the child and to state that the Department must document in the child's case record that the Department and prospective guardian agree that the child and guardian can maintain a stable relationship and function effectively without Department supervision. This rule also is being amended to state that a child is eligible if each legal parent has consented to the guardianship placement or has been given adequate notice under the law. This rule also is being amended to state that the Department must consult with the child, if age 14 or older, regarding the guardianship placement. This rule is being amended further to state that if the child is a Title IV-E eligible Indian child, as defined by the Indian Child Welfare Act (ICWA), and in the care and custody of the Department, the plan for guardianship placement with the current caregiver is approved by the participating tribe.

OAR 413-070-0925 about the eligibility requirements for a guardian in the Guardianship Assistance program is being amended to restate requirements the guardian must meet, including providing a safe home for the child for the past six consecutive months and

ADMINISTRATIVE RULES

agreeing to comply with the requirements of the Department of Justice, Division of Child Support.

OAR 413-070-0930 about the determination of Guardianship Assistance program payments and medical benefits is being amended to state that the guardianship assistance payment can be no greater than the Department's foster care base rate under OAR 413-090-0000 to 413-090-0500 based upon the age of the child; to restate the guardian must be the designated payee for any of the child's benefits except child support and tribal dividend payments; and to restate that the child's benefit income does not include tribal dividend payments. This rule also is being amended to restate that a child residing outside of Oregon may receive guardianship assistance benefits based on the basic foster care maintenance rate of the child's state of residence and state that as long as the payment can be identified as a program payment and is kept separate from other money in the guardian's possession a guardianship assistance payment is inalienable and not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon. This rule also is being amended to state that a guardianship assistance benefit payment does not automatically increase and a guardian may request an increase due to the age of the child, cost of living increases, or other legislatively approved increases to the basic foster care base rate payment; and that any retroactive increase may only be commencing on the first day of the month in which the increase was requested. This rule also is being amended to state that the Department may adjust guardianship assistance benefits when the child's income used to calculate the basic guardianship assistance monthly benefit payment changes and that a child eligible for Guardianship Assistance program benefits is eligible for medical benefits under OAR 413-100-0400 to 413-100-0610.

OAR 413-070-0935 about the guardianship agreement between the Department and the guardian is being amended to state the agreement must include the additional services and assistance for which the child and guardian are eligible under the agreement and the procedure by which the guardian may apply for additional services; that the Department pays for nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total of these expenses does not exceed \$2,000; that the agreement remains in effect without regard to the state of residency of the guardian; that the guardian understands Guardianship Assistance program benefits may be terminated or suspended under OAR 413-070-0930 (for failure to comply with OAR 413-070-0925(4)) or OAR 413-070-0940; and that the guardian agrees to comply with the Guardianship Assistance program reporting requirements under OAR 413-070-0955. This rule also is being amended to state the Department must provide the guardian with a copy of the guardianship agreement and to restate that the Department may review the agreement at the Department's discretion.

OAR 413-070-0937 about the court order of guardianship is being amended to state that when the Department determines that guardianship is the appropriate placement for a child, the Department establishes a guardianship under ORS 419B.365 or ORS 419B.366 and as provided under ORS 419B.367 to 419B.369; the Department will not pursue a court order establishing a guardianship until an application is approved by the Department; and that the caregiver is ineligible for foster care maintenance payments once the guardianship is effective and Department custody of the child is terminated by court order.

OAR 413-070-0940 about when the Department suspends or terminates Guardianship Assistance program benefits is being amended to restate the circumstances under which the Department must suspend or terminate benefits as well as when the Department may suspend or terminate benefits. This rule also is being retitled "Suspension or Termination of Guardianship Assistance Benefits" to better reflect the rule's content.

OAR 413-070-0945 about when the Department reviews eligibility for the Guardianship Assistance program and the reports the guardian must submit to the court is being amended to restate that

the Department may review eligibility on at least an annual basis and that the guardian must submit a written report to the court that issued the guardianship order within 30 days after each annual anniversary of the court appointment of guardianship.

OAR 413-070-0950 about eligibility retention by a child in the Guardianship Assistance program is being repealed because its relevant provisions now appear in OAR 413-070-0915.

OAR 413-070-0955 about changes that must be reported by a guardian in the Guardianship Assistance program is being amended to state a guardian must report the following: the child's absence of longer than thirty days from or no longer living in the guardian's home, adoption, death, emancipation, incarceration for more than three consecutive months, marriage, or placement into substitute care with no plan for the child to return to the care of the guardian; when custody or guardianship is granted to another individual; the guardian is no longer legally responsible for the financial support of the child or the child is no longer receiving financial support from the guardian; and the guardian is planning to move out of Oregon; The rule also is being amended to state that the reports may be made orally or in writing.

OAR 413-070-0960 about special payments to guardians for vendor attorney and legal expenses in the Guardian Assistance Program is being amended to restate that the Department may pay for some costs incurred by a guardian in the establishment of a guardianship of a child, and payment is not authorized for legal services authorized to defend or retain guardianship upon challenge by another party once the guardianship has been established.

OAR 413-070-0965 about the application requirements for the Guardianship Assistance Program is being amended to retitle the rule "Application Requirements", state that guardianship assistance applicants must complete and sign an application and return it to the Department branch office managing the child's case, that applying for guardianship assistance is voluntary, and that an application may be withdrawn at any time by the applicant.

OAR 413-070-0970 about the social and support services available to children and guardians in a guardianship is being amended to state that the child and guardian in the guardianship have access to local Department services after establishment of the guardianship, and that the Department caseworker provides the guardian, guardian's family, and the child with the contact information for social and support services.

OAR 413-070-0980 about what happens when legislative or executive branch actions make it necessary for the Department to reduce Guardianship Assistance Program benefit levels is being repealed to streamline the rules by removing unnecessary and redundant statements.

OAR 413-070-0981 about the monthly payment amounts made under all guardianship agreements is being repealed because Guardianship Assistance Program payment rates are covered by OAR 413-070-0930.

OAR 413-070-0982 about a client's rights to a contested case hearing is being repealed to streamline the rules by removing unnecessary statements now covered by OAR 413-010-0500.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0900

Purpose

The purpose of these rules, OAR 413-070-0900 to 413-070-0970, is to describe the Department responsibility to determine eligibility for *guardianship assistance* for a child in Oregon. *Guardianship assistance* for a child from another state placed with a guardian in Oregon is the responsibility of the sending state.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

ADMINISTRATIVE RULES

413-070-0905

Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0970:

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a *child* that includes building relationships with significant people in the child's life that may continue after *substitute care*. APPLA is the least preferred permanency plan of the four permanency plan options for a *child* and is appropriate only in very limited circumstances.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to provide care, in the home in which he or she resides, to a *child* or young adult in the care or custody of the Department.

(3) "Child" means a person under 18 years of age.

(4) "Court" means a Circuit Court for the State of Oregon with jurisdiction to order and monitor a legal guardianship of a *child*.

(5) "Enhanced supervision" means the additional support, direction, regulation, and guidance provided to a *child* or young adult.

(6) "Guardianship assistance" means financial assistance or medical benefits to a child's guardian on behalf of an eligible *child* under guardianship. Benefits may be in the form of a monthly *guardianship assistance payment*, Medicaid coverage, and nonrecurring legal costs incurred in establishing the guardianship.

(7) "Guardianship assistance payment" means a monthly cash payment made by the Department to the guardian on behalf of the eligible *child*.

(8) "Parent" means the biological or adoptive mother or the legal father of the *child*. A legal father is a man who has adopted the *child* or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile *court*. In cases involving an Indian *child* under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the *child* by assuming or attempting to assume responsibilities normally associated with parenthood unless a *court* finds that the putative father is not the legal father.

(9) "Permanency Committee" means a group of three individuals, responsible for making a decision regarding a child's permanency plan when the *child* likely is not returning to his or her *parent*.

(a) The committee must:

(A) Include two Department staff and may include a community partner, all of whom are approved by the District Manager or designee; and

(B) When the *child* is an ICWA *child*, and a *Permanency Committee* is appropriate, identify an individual from a federally recognized *tribe* as one of the three individuals on the committee; and

(C) Have an identified chairperson approved by the District Manager or designee.

(b) The *Permanency Committee* members must:

(A) Be knowledgeable of permanency issues;

(B) Be knowledgeable of the importance of cultural connections;

(C) Have no personal or professional relationship to the *child* or prospective placement resource; and

(D) Represent multiple child welfare offices.

(10) "Qualified alien" means, but is not limited to, a permanent resident, an asylee, or a refugee under 8 USC 1641(b), as described in OAR 413-130-0045.

(11) "Relative" means a specified *relative* as defined in Child Welfare Policy I-E.6.1, "Title IV-E Foster Care and General Assistance" OAR 413-100-0000 to 413-100-0320.

(12) "Substitute care" means the out-of-home placement of a *child* or young adult who is in the legal or physical custody and care of the Department.

(13) "Tribe" means a federally recognized Indian *tribe* in Oregon with a Title IV-E agreement with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0909

Funding of Guardianship Assistance

(1) Non-relative *guardianship assistance* established under the Title IV-E Waiver Project is funded by Title IV-E waiver funds until the waiver expires or is terminated. At that time the Oregon general fund provides monies for any current and new non-relative guardianship.

(2) Effective July 1, 2009, newly established *relative* caretaker *guardianship assistance* is funded with Guardianship Assistance program funds as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

(3) Funding of *relative* caretaker *guardianship assistance* established under the Title IV-E waiver project between January 1, 2009 and June 30, 2009 is transferred from the Title IV-E waiver project to the Guardianship Assistance program as authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0915

Child Title IV-E Eligibility for Guardianship Assistance

(1) A *child* is eligible for *guardianship assistance* if:

(a) The Department determines other permanency options, return to a *parent* or adoption, are not in the child's best interest or an existing APPLA plan is determined to no longer be in the child's best interest; and

(b) But for receipt of SSI, the *child* was eligible for Title IV-E maintenance payments for the past six consecutive months while residing in the home of the prospective guardian.

(2) A *child* eligible for *guardianship assistance* remains eligible when the *child* is placed in *substitute care* and subsequently returns to the guardian. The *child* remains eligible for *guardianship assistance* without regard to whether the *child* is deprived of parental support at the time of the child's return to the guardian's care and without regard to the child's eligibility status while in *substitute care*.

(3) A *child* not eligible for Title IV-E is eligible for *guardianship assistance* if he or she has a sibling who is a Title IV-E eligible *child* in an assisted *guardianship* with the same guardian.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0917

Child Eligibility When in the Care and Custody of a Tribe

In addition to the other Guardianship Assistance program criteria under these rules, OAR 413-070-0900 to 413-070-0970, the following requirements apply to a *child* in the care and custody of a tribe:

(1) A *child* eligible for benefits under Title IV-E in the legal care and custody of a *tribe* is eligible for *guardianship assistance*.

(2) A *child* receiving a Title IV-E payment in the legal care and custody of a *tribe* and placed with a *certified family* is eligible for *guardianship assistance*.

(3) A *child* living in a foster home certified by a *tribe* and meeting the standards of the tribe for a licensed foster home is eligible for *guardianship assistance*.

(4) When a child is in the legal care and custody of a tribe and in a guardianship authorized by the tribe, there must be tribal agreement to:

(a) Conduct and prepare a written home study, of the Department's design, of the guardian; and

(b) Document how continued placement in a guardianship is in the best interests of the *child* and meets the child's needs for safety and permanency.

(5) If the *tribe* reestablishes custody of a *child* in a guardianship placement established under these rules, OAR 413-070-0900 to 413-070-0970, the *tribe*:

(a) Must notify the Department's Adoption and Guardianship Program within 30 days of the change in the child's placement; and

(b) Provide the Department's Adoption and Guardianship Program with a copy of the *court* order terminating the guardianship within 30 days of the termination.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0920

Guardianship Placement

(1) The Department or a participating *tribe* may consider guardianship as the permanency plan for a *child* when all of the following conditions are met:

(a) The child is a United States citizen or *qualified alien*.

(b) The *child* has been in the Department's or participating tribe's legal custody for a minimum of:

(A) Six months, if the prospective guardian is the child's *relative*; or

ADMINISTRATIVE RULES

(B) Twelve months, if the prospective guardian is not the child's relative.

(c) The *child*:

- (A) Has a stable positive relationship with the prospective guardian;
- (B) Demonstrates a strong attachment to the prospective guardian;
- (C) Has lived for six consecutive months in the home of the prospective guardian; and

(D) Was Title IV-E eligible during the period of time described in paragraph (C) of this subsection.

(d) The prospective guardian of the *child* is a relative or, if the prospective guardian is not a relative, the *child* is 12 years of age or older.

(e) The *child* cannot safely return home. This requirement is met when:

(A) Reunification with a *parent* of the *child* is not possible within a reasonable timeframe;

(B) The Department determines that adoption is not an appropriate permanency plan under Child Welfare Policy I-F.2, "Determining the Appropriateness of Adoption as a Permanency Plan for a Child" OAR 413-110-0300 to 413-110-0360 and Child Welfare Policy I-F.3.2.1, "Termination of Parental Rights" OAR 413-110-0200 to 413-110-0252;

(C) The Department determines through a *Permanency Committee* review that guardianship is an appropriate permanency plan for the *child*; and

(D) The *court* approves a *guardianship* permanency plan for the child under Child Welfare Policy I-E.3.6, "Achieving Permanency" OAR 413-070-0500 to 413-070-0517.

(f) The Department and the prospective guardian agree, and the Department documents in the child's case record, that the *child* and the prospective guardian maintain a stable relationship and function effectively without Department supervision.

(g) A Department or participating tribe's *Permanency Committee* formally assesses the prospective guardian and finds that guardianship is in the child's best interests because the prospective guardian meets the safety, permanency, and well-being needs of the *child*.

(h) Each *parent* with legal rights or standing consents to the permanency plan of guardianship or has been given adequate notice under state or tribal law.

(i) The Department has consulted with the *child*, if 14 years of age or older, regarding guardianship as the permanency plan.

(j) The *child* is a United States citizen or *qualified alien* and under the care of a prospective guardian.

(k) If the *child* is a Title IV-E eligible Indian *child*, as defined by the Indian Child Welfare Act (ICWA), and in the care and custody of the Department, the permanency plan for guardianship also is approved by the participating *tribe*.

(2) The sibling of a Title IV-E eligible *child* may be placed with the same guardian in a guardianship if the Department and prospective guardian agree that the placement is appropriate. The sibling does not have to be placed with the guardian at the same time as the Title IV-E eligible *child*. The sibling does not have to meet the eligibility criteria for guardianship assistance to receive a *guardianship assistance payment* or for the legal guardian to be reimbursed for the nonrecurring expenses related to the costs of the legal guardianship.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0925

Approval of Guardianship Assistance

The Department may approve *guardianship assistance* on behalf of an eligible *child* when the requirements of all of the following sections are met. The prospective guardian:

(1) Is certified under Child Welfare Policy II-B.1 "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396 or meets tribal certification standards.

(2) Has an updated home study documenting how the prospective guardian meets the child's best interests and needs for safety and permanency.

(3) Has adequate means of financial support and connections to community resources.

(4) Agrees to comply with all of the following requirements of the Department of Justice, Division of Child Support (DCS) by:

(a) Submitting an application for child support services in connection with each of the child's parents.

(b) Assigning to the Department the right to receive:

(A) All current support payments; and

(B) Any support payment accruing before the *child* is placed with the guardian.

(c) Cooperating with DCS and the Department as required by the rules of the Child Support Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0930

Determination of Guardianship Assistance Payments and Medical Benefits

(1) When *guardianship assistance* is authorized by the Adoption and Guardianship program, the *guardianship assistance* benefits must be negotiated. The amount of the *guardianship assistance* payment may not exceed the amount of the base foster care rate the *child* is eligible to receive while in foster care. The guardianship assistance payment must be reduced by other financial benefits received by the *child* with the exception of *child* support and tribal dividend payments.

(2) The *guardianship assistance payment* is negotiated prior to the completion of the *guardianship assistance* agreement. The amount of the payment is established and paid as follows:

(a) The monthly *guardianship assistance payment* is determined by negotiation between the Department and the prospective guardian, taking into consideration relevant factors which include, but are not limited to:

(A) The needs of the *child*;

(B) The services required to meet the needs of the *child*;

(C) The cost of the services required to meet the needs of the *child*;

(D) The guardian's ability to provide the services required to meet the needs of the *child*; and

(E) The community resources available to the *child* and guardian.

(b) Medicaid coverage, private insurance, public education, and all community resources must be considered as resources for the *child* and the guardian when determining the amount of the *guardianship assistance payment*.

(c) The Department considers all sources of income, except *child* support and tribal dividend payments, available to the *child* when determining the monthly *guardianship assistance payment*.

(3) If the *child* is receiving a level of care payment, as indicated by a Child and Adolescent Needs and Strengths assessment under Child Welfare Policy I-E.5.1, "Payment for Foster Care Base Rate, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050, at the time of negotiation, the full amount of the level of care payment is provided as part of the *guardianship assistance payment* without negotiation.

(4) Except for child support and tribal dividend payments, the guardian must be the designated payee for any *guardianship assistance* benefit the *child* receives, however the guardian may assign to the Department benefits received irregularly by the guardian on behalf of the *child* to avoid adjustment of the *guardianship assistance* benefits.

(5) The *guardianship assistance payment* is contingent upon the guardian's continued compliance with the requirements of the Department of Justice, Division of Child Support (see OAR 413-070-0925). The Department may terminate or suspend *guardianship assistance* benefits effective the date the Department determines the guardian has failed to comply with this section of this rule.

(6) A *child* residing outside of the State of Oregon may receive a *guardianship assistance payment* based on the base foster care rate the *child* would receive if the *child* was in foster care in that state.

(7) The effective date of the negotiated *guardianship assistance payment* is the later of:

(a) The date all parties have signed the *guardianship assistance* agreement (see OAR 413-070-0935); or

(b) The date of the *court* order of guardianship.

(8) If a *child* receiving *guardianship assistance* benefits is placed in *substitute care* and the plan is for the child to return to the guardian's home, the Department may adjust, continue, or suspend the *guardianship assistance* benefits to reflect the guardian's continued expenses on behalf of the *child*. If the *child* returns to the care of the guardian, the Department reviews the *guardianship assistance* benefits and adjusts the benefits as appropriate.

(9) A *guardianship assistance payment* to a guardian who was a Department certified foster parent for the *child* prior to becoming a *court* designated guardian is inalienable, not assignable or transferable, and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon, as long as the payment can be identified as a *guardianship assistance* program payment and is kept separate from other money in the guardian's possession.

ADMINISTRATIVE RULES

(10) The Department unilaterally may amend, suspend, or terminate the *guardianship assistance* agreement with notice to the guardian of the intended action when an action by a state or federal *court* or a law adopted through a state or federal legislative or executive branch action necessitates a suspension, termination, or change in *guardianship assistance*.

(11) The *guardianship assistance payment* does not increase automatically. A guardian may request that the Department consider renegotiation of the *guardianship assistance* agreement up to the amount a *child* in foster care receives. The request must be in writing and must document the circumstances of the guardian and the needs of the *child*.

(12) The Department may authorize a renegotiated *guardianship assistance payment* increase for the period commencing the first day of the month in which the Department receives the written request.

(13) The Department may adjust the *guardianship assistance* benefits if a child's income changes. The guardian is responsible for notifying the Department of any change in the child's income within 30 days of the effective date of any such change.

(14) A *child* eligible for *guardianship assistance* is eligible for medical benefits under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility" OAR 413-100-0400 to 413-100-0610.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0935

Requirements for the Guardianship Assistance Agreement

(1) A *guardianship assistance* applicant must complete and sign an application, and return the application to the local Department office providing case management for review and eligibility determination.

(2) A guardian is not required to apply for *guardianship assistance* and applying is voluntary. An applicant may withdraw an application at any time before the *court* establishes the guardianship.

(3) Before a guardian may receive *guardianship assistance*, there must be a written *guardianship assistance* agreement between the Department and the guardian. The *guardianship assistance* agreement must include each of the following:

(a) The amount of the *guardianship assistance payment*.

(b) The basis and requirements for periodic changes in the *guardianship assistance payment*.

(c) The additional services and assistance for which the *child* and guardian are eligible under the agreement.

(d) The limitation on Department payments for nonrecurring expenses associated with obtaining legal guardianship of the *child*.

(e) The effective date of the agreement.

(f) A statement indicating mutual understanding amongst the parties that no retroactive *guardianship assistance payment* may be authorized except as provided under OAR 413-070-0930.

(g) A statement indicating that in the event a legislative or executive branch action affecting the Department's budgeting or spending authority makes it necessary for the Department to implement budget reductions to the Guardianship Assistance program, a *guardianship assistance payment* on behalf of the *child* may not be reduced without the agreement of the guardian. However, budget reductions may result in a reduced *guardianship assistance payment* under any new agreement.

(h) A statement indicating that the guardian must submit an application for child support enforcement services for each of the child's parents.

(i) A statement indicating that the guardian agrees to cooperate with child support enforcement services under OAR 413-070-0925(4).

(j) A statement indicating that the guardian understands a *guardianship assistance payment* is contingent upon the guardian's cooperation with the requirements under OAR 413-070-0925(4).

(k) A statement indicating that the guardian understands that a *guardianship assistance payment* may be terminated or suspended under OAR 413-070-0930 for failure to comply with OAR 413-070-0925(4), or under 413-070-0940.

(l) A statement indicating that the *child* for whom the Department is providing the *guardianship assistance payment* remains eligible for medical assistance once the *guardianship* is established.

(m) A statement indicating that the guardian understands Oregon law (see ORS 192.520) allows the Department of Human Services' Oregon Health Plan (OHP) and the OHP managed care plans to exchange the following protected health information without the guardian's authorization for the purpose of treatment activities related to the behavioral or physical health of the *child*:

(A) The child's name and Medicaid recipient number;

(B) The name of the child's hospital or medical provider;

(C) The hospital or medical provider's Medicaid number;

(D) Each diagnosis for the *child*;

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

(n) A statement indicating that the guardian agrees to comply with the Guardianship Assistance program reporting requirements under OAR 413-070-0930(13), 413-070-0945(4), and 413-070-0955.

(o) A statement indicating that a *guardianship assistance payment* remains in effect without regard to the state of residency of the guardian.

(4) The Department must provide the guardian with a copy of the *guardianship assistance* agreement.

(5) The Department may review any *guardianship assistance* agreement at any time.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0937

Court Order of Guardianship

When the Department determines that guardianship is the appropriate permanency plan for a *child*, the Department establishes a guardianship under ORS 419B.365 or 419B.366 and as provided under ORS 419B.367 to 419B.369.

(1) The Department may not pursue a *court* order establishing a guardianship until the Department's Adoption and Guardianship Program Office approves a *guardian assistance* application for the *child*.

(2) A *court* order approves guardianship and terminates Department or tribal care, custody, and supervision of the *child*; or, if the *child* has been committed permanently to the Department, the *court* guardianship order sets aside or modifies the order of permanent commitment, relieving the Department of responsibility for the *child*.

(3) The guardian is not eligible for a foster care base rate and *enhanced supervision* payments once the guardianship is effective and the Department's custody of the *child* is terminated by *court* order.

(4) The Department may not approve *guardianship assistance* if the *court* establishes guardianship and orders the Department to continue supervision of the *child* or guardian.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0940

Suspension or Termination of Guardianship Assistance Benefits

(1) The Department must terminate or suspend *guardianship assistance* benefits on the day when any one of the following occurs:

(a) The *child* reaches 18 years of age or is emancipated, whichever comes first;

(b) Child custody or guardianship is awarded to another individual;

(c) The *child* dies;

(d) The *child* marries;

(e) The *child* is adopted;

(f) The *child* is placed in *substitute care* with no plan for the *child* to return to the care of the guardian; or

(g) The guardian dies or terminates the guardianship.

(2) The Department may terminate or suspend a *guardianship assistance payment* when any one of the following occurs:

(a) The *child* is incarcerated for more than three consecutive months;

(b) The *child* is out of the guardian's home for more than a 30-day period or is no longer living in the home;

(c) The guardian is no longer legally responsible for the financial support of the *child* or the *child* is no longer receiving financial support from the guardian; or

(d) The Department determines the guardian has failed to comply with the requirements of the Department of Justice, Division of Child Support as required under OAR 413-070-0925(4).

(3) The Department may terminate a *guardianship assistance* agreement upon 30 days written notice to the guardian when the guardian is no longer responsible for the *child* or is no longer providing support to the *child*, or in the event of legal or legislative action requiring discontinuance of *guardianship assistance*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

ADMINISTRATIVE RULES

413-070-0945

Annual Reviews of Eligibility and Required Annual Reporting

(1) The Department may review eligibility for a *guardianship assistance payment* on at least an annual basis.

(2) The guardian, within 30 days after each annual anniversary of the *court* appointment of guardianship, must file a written report with the *court* and submit a copy of the report to the Department's Adoption and Guardianship Program.

(3) When the *court* does not require an annual report as part of the appointment of guardianship, the Department requires the guardian to submit an annual report to the Adoption and Guardianship Program. The Adoption and Guardianship Program must notify the guardian that the *guardianship assistance* may be terminated in the event the guardian fails to submit the required report.

(4) A review of the child's Title IV-E eligibility is not required for 12 months after the *guardianship assistance* application is signed, and during this time period it is not necessary to confirm that the *child* continues to be deprived of parental support as long as the *child* meets all other eligibility requirements to receive *guardianship assistance*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0955

Changes That Must be Reported

A guardian receiving a *guardianship assistance payment* must report immediately, orally or in writing, to the Department's Adoption and Guardianship Program any of the changes described in OAR 413-070-0940, a change of address, or that the guardian is planning to move out of the state of Oregon.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0960

Special Payments; Vendor Attorney and Legal Expenses

(1) To the extent the total cost of such expenses does not exceed \$2,000, the Department may pay for some costs incurred by the guardian in the establishment of a *guardianship* of a *child* under Child Welfare Policy I-E.5.5, "Payments for Providing Direct Client Legal Services" OAR 413-090-0500 to 413-090-0550.

(2) The Department may authorize payment for reimbursement of or payment for the cost to publish notice to each absent parent of the Department's intent to establish guardianship of a *child*.

(3) The Department may not authorize payment for legal services provided:

(a) In connection with a contested case; or

(b) To defend or retain guardianship upon challenge by another party once a guardianship is established.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0965

Application Requirements

(1) A *guardianship assistance* applicant must complete and sign an application, and return the application to the local Department office providing case management for review and eligibility determination.

(2) A guardian is not required to apply for *guardianship assistance* and applying is voluntary. An applicant may withdraw an application at any time before the *court* establishes the guardianship.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

413-070-0970

Guardianship Social and Support Services

(1) The Department does not reestablish the dependency of a *child* placed into a guardianship unless the Department:

(a) Determines there is cause for removal from the guardian's home due to abuse or neglect; or

(b) Would otherwise reestablish dependency for reason such as a change in the guardian's circumstances making the guardian unable to care for the *child* or the death of the guardian.

(2) The guardian and *child* in a guardianship may request family support services such as crisis intervention, independent living services, determination of other service needs, and treatment from the local Department office as needed.

(3) A guardian has access to the Oregon Post Adoption Resource Center or other contracted resource center if available.

(4) Upon the establishment of a guardianship, the caseworker must conduct an exit conference with the guardian, guardian's family, and the *child* and ensure the guardian and guardian's family have contact information for social and support services. The caseworker must advise the guardian family to call Intake Screening to request services in the county in which the family resides. The caseworker must explain that requesting services does not place the guardianship in jeopardy. In the closing casework narrative, the caseworker must document that the guardian and his or her family have been informed of their rights, including the right to access post-guardianship services.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 13-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-2-09

Notice Publication Date: 9-1-2009

Rules Amended: 413-015-0409

Subject: OAR 413-015-0409 about when the Department makes an exception to the requirement to complete Child Protective Services (CPS) assessment activities after an assigned referral is being amended to restate the conditions under which new information received by the Department allows the Department to make an exception to the requirement to complete a CPS assessment.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0409

Exception to Completing CPS Assessment Activities

(1) The only exception to completing the CPS assessment activities required by these rules (OAR 413-015-0400 to 413-015-0485) on an assigned referral is when a CPS worker, in consultation with a CPS supervisor or designee, determines prior to the initial contact (see OAR 413-015-0420) that the referral does not require a CPS assessment because:

(a) The referral was opened in error;

(b) The referral content will be addressed in an open CPS assessment; or

(c) There is no longer an allegation of abuse or neglect. The CPS worker received information after being assigned the referral that in combination with the corresponding screening report no longer constitutes a report of child abuse or neglect as defined in ORS 419B.005. This exception may be used only when the CPS worker and the CPS supervisor or designee determine the information:

(A) Is not from the alleged perpetrator;

(B) Relates directly to and specifically negates all allegations in the screening report; and

(C) Is considered on the basis of the objectivity of the individual providing the information and the quality of the information.

(2) The exception in section (1) of this rule is not permitted and a CPS assessment must be completed when the CPS worker has already made contact with the parent, caregiver, or alleged victim, unless the parent, caregiver, or alleged victim is the original reporter.

(3) The CPS worker must document the determination in the Department's information system and explain the basis for the determination that a CPS assessment is not necessary.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 13-2009, f. 10-1-09, cert. ef. 10-2-09

ADMINISTRATIVE RULES

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 27-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09

Notice Publication Date: 8-1-2009

Rules Amended: 461-115-0705, 461-135-0010, 461-135-0400, 461-155-0150, 461-160-0040

Subject: OAR 461-115-0705 about the information that must be verified for eligibility in the Breast and Cervical Cancer Medical (BCCM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs is being amended to state that an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met. This rule also is being amended to state that a current recipient of BCCM, MAA, MAF, OHP, or SAC program medical assistance who has not already provided acceptable documentation must provide acceptable documentation when requested by the Department. This amendment also makes permanent temporary rule changes effective May 6, 2009.

OAR 461-135-0010 about when a client is assumed eligible for benefits under certain medical programs is being amended to clarify Department policy around Temporary Assistance for Needy Families (TANF) and medical program eligibility determinations and separate the assumed eligibility for certain clients for Medical Assistance Assumed (MAA) program benefits from eligibility for other programs, requiring these clients to meet other MAA program eligibility requirements to receive MAA program benefits. The amended rule allows the Department to properly make eligibility determinations and extend MAA program benefits to some clients otherwise ineligible due to unemployment or underemployment of the primary wage earner. This amendment also makes permanent temporary rule changes effective May 6, 2009.

OAR 461-135-0400 about the specific eligibility requirements of the Employment Related Day Care (ERDC) program is being amended to state that self-employment does not meet the ERDC specific requirement for employment; and a self-employed adult in the filing group is considered available to provide child care, making the filing group ineligible for ERDC program benefits for the hours spent in self-employed work. This rule is also being amended to make permanent the temporary changes to this rule that were effective April 1, 2009.

OAR 461-155-0150 about child care eligibility standards, payment rates and client copayments in the Employment Related Day Care (ERDC) program is being amended to remove language stating benefit levels for child care for individuals whose only employment is self-employment, as these individuals are no longer eligible for ERDC benefits. This rule is also being amended to remove the first month's \$25 limitation on ERDC program client copayments and to make permanent the temporary changes to this rule that were effective April 1, 2009.

OAR 461-160-0040 about deductions for and coverage of dependent care costs in the Employment Related Day Care (ERDC), Refugee (REF), and Temporary Assistance for Needy Families (TANF) programs is being amended to state that ERDC program child care benefits are not available to self-employed caretakers and to make permanent the temporary changes to this rule that were effective April 1, 2009.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0705

Required Verification; BCCM, MAA, MAF, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide acceptable documentation as a condition of eligibility (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing acceptable documentation, an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met.

(b) A current recipient who has not already provided acceptable documentation must provide acceptable documentation as a condition of eligibility when requested by the Department.

(c) A client who already has provided acceptable documentation is not required to provide additional evidence during a subsequent application for benefits or redetermination of eligibility.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

(a) Assumed eligible under OAR 461-135-0010(5);

(b) Eligible for OHP-CHP;

(c) Eligible for or receiving Medicare;

(d) Presumptively eligible for the BCCM program;

(e) Receiving Social Security Disability Income (SSDI); or

(f) Receiving Title IV-E benefits.

(4) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(B) Alien status for an applicant who indicates he or she is not a U.S. citizen.

(C) The premium exemption allowed because a client is:

(i) A member of a federally recognized Indian tribe, band, or group;

(ii) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) An individual eligible for benefits through an Indian Health Program.

(D) Income from the past three months and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

(B) Earned income from the three months prior to the budget month.

(c) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461 135 1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.042

Stats. Implemented: ORS 411.060, 414.042 & 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09

461-135-0010

Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for EXT, MAA, MAF, OHP

ADMINISTRATIVE RULES

(except OHP-CHP), OSIPM, or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) A *pregnant woman* who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A *child* (see OAR 461-001-0000) born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.

(5) Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following children are assumed eligible for SAC:

(a) A *child* who is the subject of an adoption assistance agreement with another state.

(b) A *child* in a state subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(6) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB BAS program.

(8) A client is assumed eligible for REFM if:

(a) The client is receiving cash assistance through the REF program;

(b) The client loses eligibility for cash assistance through the REF program only because of income or resources;

(c) The client loses eligibility for the EXT, MAA, MAF, or SAC programs, but still meets the requirements of the REFM program; or

(d) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.049 & 414.042
Stats. Implemented: ORS 411.060, 411.070, 412.049, 414.025 & 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09

461-135-0400

Specific Requirements; ERDC

(1) The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules.

(2) To be eligible for ERDC, a *filing group* (see OAR 461-110-0350) must meet the requirements of all of the following subsections:

(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment (other than self-employment, see OAR 461-145-0910), including employment through a work study program.

(b) The filing group must include a child who needs child care.

(c) The filing group must have an allowable child care need as described in OAR 461-160-0040. If there are two adults required to be in the filing group, and one of the adults is unemployed or self-employed, the unemployed or self-employed adult is considered available to provide child care, making the filing group ineligible, except in the following situations:

(A) The unemployed adult is physically or mentally unable to provide adequate child care.

(B) The unemployed adult is unavailable to provide child care while participating in the requirements of a case plan (see OAR 461-001-0025) other than requirements associated with post-secondary education.

(d) The filing group must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(e) The child needing child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(3) A filing group is not eligible for a child care payment for more than six calendar months if the filing group is unwilling to obtain a Certificate of Immunization Status for the child.

(4) The child care must be necessary to enable the caretaker to remain employed (other than self-employed).

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged newborn to 1 year.

(b) Toddler: A child aged 1 year to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Child Care Division.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in paragraph (2)(b) of this rule.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

ADMINISTRATIVE RULES

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (f), or (g) of this rule.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Child Care Division.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) In the ERDC and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-001-0025); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS program.

(b) In the ERDC program, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(c) In the TANF program, for a client who earns less than state minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, not more than 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is met for need groups (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level, as described in OAR 461-155-0180(5). The eligibility standard for a need group size of eight applies to any need group larger than eight.

(b) The minimum monthly ERDC copay is \$25.

(c) For filing groups (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 federal poverty level (FPL), the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(d) For filing groups whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Determine filing group's countable income as a percent of FPL (rounding to the nearest whole number percentage), subtract 50, and multiply this difference by 0.12.

(B) Add 1.5 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income to determine the copay amount.

(11) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

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

Stat. Auth.: ORS 411.060, 411.070, 418.100

Stats. Implemented: ORS 411.060, 411.070, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09

461-160-0040

Dependent Care Costs; Deduction and Coverage

(1) In the EXT and MAF programs, the cost of child care for a *dependent child* (see OAR 461-001-0000) may be deducted from the income of a client in accordance with the following:

(a) The *dependent child* must live with the *filing group*;

(b) The provider of child care may not be in the *filing group*;

(c) The provider of child care may not be the parent (see OAR 461-001-0000) of the dependent child; and

(d) The amount of the deduction is determined as follows:

(A) In the EXT program, the amount is limited to the cost necessary for the caretaker relative (see OAR 461-001-0000) to maintain employment, including time required to commute, work, and take a meal break.

(B) In the MAF program, as set out in OAR 461-160-0190.

(2) In the FS program, dependent care is deductible (see OAR 461-160-0430) when all of the following are true:

(a) The dependent is a member of the filing group and is in the care, control, and custody of an individual in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent of the dependent.

(c) The dependent care is necessary because the client is working, commuting, on a meal break, in training, participating in pre-employment

ADMINISTRATIVE RULES

education, or participating in an OFSET case plan (see OAR 461-001-0020).

(3) In the ERDC, REF, and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if dependent child care is necessary for the working client to maintain employment, including time required to work, commute, or take a meal break. For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(4) In the ERDC, JOBS, REF, and TANF programs, the cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children.

(5) Child care is not covered in the ERDC, REF, and TANF programs if the nature of the work of the caretaker does not make it necessary for a person other than the caretaker (see OAR 461-001-0000) to provide the care. Child care is not covered during a period of time when the caretaker:

(a) Works at home and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) Provides child care in a residence; or

(c) Works for a provider of child care in a residence that is not certified under OAR 414-350-0000 to 414-350-0400.

(6) In the ERDC program, child care is not covered during a period of time when the caretaker is self-employed (see OAR 461-145-0910).

(7) In the JOBS and REF programs, the cost of child care may be covered while the care is necessary to enable the client to participate in a case plan (see OAR 461-190-0211).

(8) In the ERDC, JOBS, JOBS Plus, REF, and TANF programs, the cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:

(a) The dependent child:

(A) In the ERDC program, is a member of the benefit group (see OAR 461-110-0750) and is in the care, control, and custody of an individual in the group.

(B) In the JOBS, JOBS Plus, REF, and TANF programs, lives with the filing group.

(b) The provider of child care is not in the filing group.

(c) The provider of child care is not the parent of the dependent.

(9) Coverage of the cost of dependent care is subject to the requirements in Chapter 461 of the Oregon Administrative Rules, including OAR 461-120-0510(4), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042
Stat. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09

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

Adm. Order No.: SSP 28-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 461-110-0330, 461-110-0370, 461-110-0530, 461-120-0125, 461-120-0310, 461-120-0340, 461-130-0310, 461-135-0075, 461-135-0082, 461-135-0405, 461-135-0900, 461-135-1175, 461-135-1195, 461-145-0080, 461-155-0030, 461-155-0190, 461-155-0700, 461-160-0420, 461-160-0430, 461-170-0010, 461-170-0150, 461-170-0160, 461-175-0010, 461-175-0200, 461-175-0270, 461-175-0280, 461-180-0005, 461-180-0020, 461-180-0030, 461-180-0120, 461-190-0199, 461-190-0360, 461-193-0031, 461-195-0521

Rules Repealed: 461-110-0330(T), 461-110-0530(T), 461-120-0125(T), 461-120-0310(T), 461-120-0340(T), 461-135-0075(T), 461-135-0082(T), 461-135-0405(T), 461-135-0900(T), 461-135-1175(T), 461-135-1195(T), 461-145-0080(T), 461-155-0030(T), 461-190-0360(T), 461-193-0031(T)

Subject: OAR 461-110-0330 about who is included in the filing group in the Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), and Temporary Assistance for Needy Fam-

ilies (TANF) programs is being amended to state that when a non-needy caretaker relative is applying for TANF program benefits for a relative child in his or her care, the spouse and each dependent child of the non-needy caretaker relative are included in the TANF filing group for the decision as to whether the filing group qualifies, under financial and nonfinancial requirements, to receive program benefits. These amendments also make permanent changes made by temporary rule on May 1, 2009.

OAR 461-110-0370 about filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) composition in the Food Stamp program is being amended to restate the monthly countable income standards.

OAR 461-110-0530 about the composition of a financial group (the individuals whose income and resources count in determining eligibility and benefits) is being amended in response to House Bill 2126 and Senate Bills 5529 and 5552 (2009 Regular Session) to state that in the Temporary Assistance for Needy Families (TANF) program a caretaker relative who chooses not to be included in the need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) and has an income less than the non-needy countable income limit, the spouse and dependent children of such a caretaker relative, and an individual who must apply for benefits only because of his or her relationship to an individual in the filing group are not included in the financial group. These amendments also make permanent changes made by temporary rule on July 1, 2009.

OAR 461-120-0125 about the conditions under which a client meets the alien status requirements for all Department administered programs except the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs, OAR 461-135-0082 about client eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) for the Refugee Case Services Project (RCSP) program, OAR 461-135-0900 about specific eligibility requirements in the REF and REFM programs, and OAR 461-193-0031 about specific eligibility requirements for the RCSP program are being amended to lengthen the time period for which Afghan special immigrants (SIV) are eligible for RCSP, REF, and REFM program benefits and to make the temporary changes to these rules effective May 1, 2009 permanent.

OAR 461-120-0310, 461-120-0340, 461-135-0075, and 461-145-0080 are being amended to reflect a change in the funding source for certain Temporary Assistance for Needy Families (TANF) program clients from state general funds to federal funds and the requirements that come with accepting federal funds. OAR 461-120-0310 about the assignment of the right to support is being amended to state that when the Department provides benefits or services funded in whole or in part with a federal grant under Title IV-A or IV-E of the Social Security Act for the support of a child in the filing group, the right of any individual to child support for that child is assigned to the state by operation of law and to make the temporary changes to this rule effective July 1, 2009 permanent. OAR 461-120-0340 about the requirements for a client in the TANF program to assist the Department in obtaining support from a noncustodial parent is being amended to require a caretaker relative in a filing group consisting of a two-parent family where deprivation is based on the unemployment or underemployment of the primary wage earner to make a good faith effort to assist the Department in establishing paternity of each needy child and obtaining support from a noncustodial parent, unless good cause exists and to make the temporary changes to this rule effective July 1, 2009 permanent. OAR 461-135-0075 about the limitation on the months of eligibility for TANF program benefits is being amended to indicate that effective July 1, 2009 months in which an individual in a filing group consisting of a two-parent family receiving cash assistance in Oregon for which deprivation is based on unemployment or underemployment of the primary wage earner will count toward the TANF time limitation on eligibility and to make the temporary changes to this rule effective July 1, 2009

ADMINISTRATIVE RULES

permanent. OAR 461-145-0080 about the treatment of child and cash medical support is being amended to indicate that when the Department makes eligibility and benefit determinations for clients in the TANF program for whom deprivation is based on the unemployment or underemployment of the primary wage earner, child support payments received by the Oregon Department of Justice, Division of Child Support are excluded when determining the benefit amount and that all other child support payments are considered countable unearned income and to make the temporary changes to this rule effective July 1, 2009 permanent.

OAR 461-130-0310 about how the Department assigns clients to one or more participation classifications, exempt, mandatory, or volunteer, in the Food Stamp (FS), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee Assistance (REF), and Temporary Assistance for Needy Families (TANF) programs is being amended to also state that one parent, who is a client of the Pre-TANF, REF, or TANF programs, during the first six months after the birth of the parent's child is exempt from participation and disqualification in the employment programs covered by Chapter 461.

OAR 461-135-0405 about the specific requirements for the Employment Related Day Care (ERDC) program that apply to children in a Head Start program is being amended to state that when the Department has begun paying a Head Start agency for a child's child care under a contract a child is no longer presumed eligible for ERDC program benefits if the child's caretaker is found ineligible for ERDC program benefits due to self-employment income and to make permanent the temporary changes to this rule that were effective May 1, 2009.

OAR 461-135-1175 about the eligibility requirements for the Senior Farm Direct Nutrition Program (SFDNP) is being amended to state that an applicant must have countable income below 115 percent of the Federal Poverty Level to be eligible for SFDNP program benefits and to make permanent the temporary rule changes filed effective June 1, 2009. The income limit had been 135 percent prior to this amendment.

OAR 461-135-1195 about the specific requirements to be eligible for the State Family Pre-SSI/SSDI (SFPSS) program is being amended to remove the requirement that a client sign an interim assistance agreement (that had allowed the Department to collect the amount of any interim SFPSS program benefits a client received once the client receives an initial Supplemental Security Income payment). This amendment makes permanent changes made by temporary rule on July 1, 2009.

OAR 461-155-0030 about the income and payment standards in the Temporary Assistance for Needy Families (TANF) program is being amended to state that a caretaker relative choosing not to be included in the need group (the group of individuals whose basic and special needs are used in determining eligibility and benefit level) when determining TANF program eligibility makes the need group subject to the no-adult countable income limit standard and the filing group (the individuals whose circumstances are considered in the eligibility determination process) subject to the non-needy countable income limit standard for the filing group. This rule is also being amended to state the non-needy countable income limit standard for the filing group and to make permanent the temporary changes to this rule effective May 1, 2009.

OAR 461-155-0190 about the countable and adjusted income and Thrifty Food Plan payment standards in the Food Stamp program is being amended to restate these income and payment standards.

OAR 461-155-0700 about special needs payments for personal incidentals and room and board allowances for clients in community-based care facilities in the Oregon Supplemental Income Program (OSIP) and OSIP-Medical (OSIPM) program is being amended to state that a qualified non-citizen, not eligible for federal Supplemental Security Income (SSI) benefits due to not meeting the SSI

time requirements to become a naturalized citizen, is eligible for the special needs payments.

OAR 461-160-0420 about how to calculate a client's shelter cost in the Food Stamp program is being amended to restate the amounts for the utility allowances, used to offset the utility costs clients incur.

OAR 461-160-0430 about deductions from countable income made to determine adjusted income for the Food Stamp program is being amended to restate the deduction amounts.

OAR 461-170-0010 about a client's reporting requirements for a change in the client's circumstances, OAR 461-170-0150 about benefit certification periods (the period for which a client is certified eligible for a program) in the Employment Related Day Care (ERDC) program, OAR 461-175-0270 about what type of notification clients must receive under the

Department's various reporting systems, OAR 461-175-0280 about what type of notice clients must receive when they fail to submit a report required for their program eligibility reapplication, OAR 461-180-0005 about the date reported changes become effective in the ERDC program, OAR 461-180-0020 about how the Department determines an effective date when a change in a client's income or income deductions causes an increase in benefits, OAR 461-180-0030 about how the Department determines an effective date when a change in a client's income or income deductions causes a decrease in benefits, and OAR 461-180-0120 about how the Department determines the effective date for removing an individual from a benefit group are being amended to remove references to "Anticipating with Periodic Review (APR)" and replace "APR period" with "certification period". These rule amendments are being made in the ongoing efforts to simplify reporting burdens for clients, align program requirements, and improve Department efficiency.

OAR 461-170-0160 about when a reapplication form is considered complete or not received in the Employment Related Day Care (ERDC) program is being amended to state that a reapplication form with complete and accurate answers, required verification, and an appropriate signature is considered complete when it is received by a Department branch office by the 10th day of the last month of the certification period (the period for which a client is certified eligible for a program). This rule also is being amended to remove references to "Anticipating with Periodic Review (APR)" in the ongoing efforts to simplify reporting burdens for clients, align program requirements, and improve Department efficiency.

OAR 461-175-0010 about what a decision notice (written notice of a decision by the Department regarding an individual's eligibility for benefits in a program) must include is being amended to state that the effective date for a basic decision notice (a decision notice mailed no later than the date of action given in the notice) is the date the Department mails the notice.

OAR 461-175-0200 is being amended to state the type of decision notices sent to clients in the TA-DVS (Temporary Assistance for Domestic Violence Survivors) program and the manner of sending these notices. A decision notice is a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

OAR 461-190-0199 about the TANF/JOBS Program component Parents as Scholars (PAS) is being amended to remove obsolete language on transition of Degree Completion Initiative (DCI) participants or those on the DCI wait list into either PAS or vocational training.

OAR 461-190-0360 about special payments in the Oregon Food Stamp Employment Transition (OFSET) program is being amended to reduce the maximum support service payment for participants from \$40 a month to \$60 for the 8-week program period. This amendment makes permanent a temporary rule change adopted May 1, 2009.

OAR 461-195-0521 about how overpayments in Department programs are calculated is being amended to indicate that no Food Stamp program benefit amounts paid after September 30, 2009 are

ADMINISTRATIVE RULES

used in adjusting the calculation of an overpayment in limited circumstances.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-110-0330

Filing Group; EXT, MAA, TANF

(1) In the EXT and MAA programs, a filing group must include a *dependent child* (see OAR 461-001-0000) or unborn child and the following household members (even if the member is not an applicant or does not meet nonfinancial *eligibility* (see OAR 461-001-0000) requirements):

(a) Each parent (see OAR 461-001-0000) of a dependent child in the filing group.

(b) Each parent of an unborn child in the filing group.

(c) Each sibling (see OAR 461-001-0000) of a *dependent child* in the filing group, except as specified in subsection (4)(a) of this rule. The sibling must be under the age of 18, or 18 years of age and attending school full time.

(d) For a needy caretaker relative (see OAR 461-001-0000) of a dependent child in the filing group, the spouse (see OAR 461-001-0000) and each dependent child of the needy caretaker relative.

(e) A caretaker relative.

(2) In the TANF program, a filing group must include a dependent child or unborn child and the following household members (even if the member is not an applicant or does not meet nonfinancial eligibility requirements):

(a) Each parent of a *dependent child in the filing group*.

(b) Each parent of an unborn child in the filing group.

(c) Each sibling of a dependent child in the filing group, except as specified in subsection (4)(a) of this rule. The sibling must be under the age of 18, or 18 years of age and attending school full time.

(d) A caretaker relative of the dependent child in the filing group, and the spouse and each dependent child of the caretaker relative.

(3) A *dependent child* is not included in the filing group if he or she has been or will be receiving foster care payments for more than 30 days, is receiving adoption assistance, or is receiving Title IV-E subsidized guardianship assistance payments.

(4) The parent of a minor parent (see OAR 461-001-0000) is not in the filing group of the minor parent if:

(a) The minor parent does not live with his or her parent; or

(b) The parent of the minor parent is in the household of the minor parent but is not applying for MAA or TANF for the minor parent or any sibling of the minor parent.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.049, 412.064, 412.124, 414.042, 418.005

Stats. Implemented: ORS 411.060, 411.070, 412.049, 414.042, 418.005, 2009 OL ch. 732, 2009 OL ch. 827

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-110-0370

Filing Group; FS

In the Food Stamp program:

(1) Except as provided in this rule, the filing group is composed of members of a household group (see OAR 461-110-0210) who customarily purchase and prepare meals together.

(2) Except as provided in sections (3) and (8) of this rule, the following individuals, if in the same household group, must be in the same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each spouse (see OAR 461-001-0000).

(b) A parent (see OAR 461-001-0000) and his or her child under age 22 living with the parent.

(c) A household group member and child under age 18 who lives with and is under parental control of that household group member. For the purposes of this subsection, parental control means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) Notwithstanding sections (1) and (2) of this rule:

(a) An individual is excluded from the filing group if, during the month the group applied for food stamps, the individual received food stamp benefits or SSI benefits through the state of California that included food stamp benefits. This exclusion applies only in the initial month and, if necessary to meet notice requirements, in the month following the initial month. This exclusion does not apply to an individual who was the head of household in the prior household.

(b) An elderly (see OAR 461-001-0015) individual and his or her spouse may be considered a separate filing group from others with whom the elderly individual purchases and prepares meals, if:

(A) The elderly individual is unable to purchase or prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE.]

(4) A paid live-in attendant and the attendant's minor child may choose not to be in the filing group with the recipient of the services provided, unless required by section (2) of this rule to be in the same filing group.

(5) An individual in foster care, the individual's spouse, and each child under age 22 living with the individual are not eligible to participate in the FS program independently of the care or service provider's filing group, but may be included in the provider's filing group if the provider applies for benefits.

(6) Notwithstanding section (2) of this rule, the following household group members may form a separate filing group from other members of the *household group*:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative (see OAR 461-135-0550). A resident's spouse in the same facility may be in a separate filing group, but a child of a resident must be in the same filing group as the resident.

(b) A resident in group living (see OAR 461-001-0015).

(c) A resident of a public or private non-profit homeless or domestic violence shelter (see OAR 461-135-0510).

(d) An individual who is a resident of federally subsidized housing for the elderly, an individual with a disability, or blind recipient of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.

(7) A member of the household group who pays the filing group for room and board (lodger) is treated as follows:

(a) A lodger cannot participate in the FS program independently of the *household group* when the lodger pays a reasonable amount for room and board. A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the individual and anyone in that individual's filing group (see OAR 461-155-0190(2)), if more than two meals per day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the individual and anyone in the individual's filing group, if two or fewer meals per day are provided.

(b) A lodger may participate in the FS program independently of the household group when the lodger pays less than a reasonable amount for room and board.

(8) The following household group members are excluded from the filing group:

(a) A resident of a commercial boarding house.

(b) An ineligible student, as defined in OAR 461-135-0570.

(9) A household member may be in two filing groups if the member:

(a) Is a resident of a *domestic violence shelter* (see OAR 461-001-0000) or safe home (see OAR 461-001-0000); and

(b) Recently left the household containing the individual abuser.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816, 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-110-0530

Financial Group

(1) Except as provided in section (5) of this rule, "financial group" means the *filing group* members whose income and resources count in determining eligibility (see OAR 461-001-0000) and benefits.

(2) In the EXT, MAA, MAF, REF, REFM, and SAC programs, the financial group consists of each individual in the filing group, except the following:

(a) A caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group (see OAR 461-110-0630); and

ADMINISTRATIVE RULES

(b) An individual who receives SSI benefits.

(3) In the OHP program, the financial group consists of each individual in the filing group (including those receiving SSI benefits), except a caretaker relative (other than a parent) who chooses not to be included in the need group.

(4) In the OSIP program:

(a) When an individual lives in a standard living arrangement (see OAR 461-001-0000), each member of the filing group (see OAR 461-110-0410) is in the financial group.

(b) When an individual lives in a nonstandard living arrangement (see OAR 461-001-0000), the financial group is determined under subsection (5)(c) of this rule.

(5) In the OSIPM program:

(a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.

(b) When an individual lives in a standard living arrangement:

(A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the financial group.

(B) When an individual is not assumed eligible (see OAR 461-135-0010) for OSIPM:

(i) The individual's spouse who is ineligible and in the filing group is not in the financial group if the individual's adjusted income (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(3) is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250. The financial group consists only of the individual.

(ii) If the *ineligible spouse's* remaining income after allocation (see OAR 461-160-0551) to each ineligible child is equal to or less than the difference between the couple and the individual SSI standards: the spouse who is ineligible is not considered to be in the financial group when determining income eligibility; however, the spouse is considered to be in the financial group when determining resource eligibility.

(c) When an individual lives in a nonstandard living arrangement, the financial group consists only of the individual applying for benefits, except that the community spouse (see OAR 461-001-0030) is included in the financial group to determine initial eligibility. At initial eligibility, the resources of the community spouse are considered and the provisions of OAR 461-160-0580 apply. The income of the community spouse is not considered in determining initial eligibility, and the community spouse is not included in any other eligibility group.

(6) In the TANF program, the financial group consists of each individual in the filing group except the following:

(a) A *caretaker relative*, other than a parent, who chooses not to be included in the need group and has income less than the non-needy countable income limit standard (see OAR 461-155-0030) for the filing group of the caretaker relative;

(b) The spouse (see OAR 461-001-0000) of a caretaker relative, when the caretaker relative meets the requirements under subsection (a) of this section;

(c) A *dependent child* of a caretaker relative when the caretaker relative meets the requirements under subsection (a) of this section;

(d) An individual in the filing group solely due to the requirements of OAR 461-110-0310(1)(b); and

(e) An individual who receives SSI benefits.

(7) For all programs other than EXT, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, SAC, and TANF, the financial group consists of each individual in the *filing group*.

Stat. Auth.: ORS 411.060, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 14-2009(Temp), f. & cert. ef. 7-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-120-0125

Alien Status; Not REF or REFM

In all programs except the REF and REFM programs:

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended

by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) An individual meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(e) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after entering the United States, then the month in which the special immigrant status was granted counts as the first month.

(4) In the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is an individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

ADMINISTRATIVE RULES

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified non-citizen who physically entered the United States on or after August 22, 1996, has had the qualified non-citizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(f) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(7) In all programs except ERDC and TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (3)(e), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the eight month limit has not been reached.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2009, even if the six month limit has not been reached.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of

ADMINISTRATIVE RULES

the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.816 & 412.049

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-120-0310

Assignment of Support Rights; Not BCCM, FS, OHP-CHP, OHP-OPP

In all programs except the BCCM, FS, OHP-CHP, and OHP-OPP programs:

(1) To be eligible for any program funded in whole or in part with federal grants under Titles IV-A (TANF) or IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(2) To be eligible for the EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM programs, a filing group must assign to the state the right of any Medicaid-eligible child in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(3) Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. Once yearly, the remainder of such amount retained will be paid to such individual.

(4) When the Department provides benefits or services for the support of a child who is in a filing group in any program funded in whole or in part with a federal grant under Title IV-A (TANF) or IV-E of the Social Security Act, the right to child support for that child that any individual may have is deemed to be assigned to the state by operation of law.

Stat. Auth.: ORS 411.060, 411.070, 414.024, 412.049 & 414.042

Stats. Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 12-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 3-29-07; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-120-0340

Client Required To Help Department Obtain Support From Noncustodial Parent; TANF

In the TANF program:

(1) To be eligible for *program benefits*, except as permitted in section (2) of this rule, a caretaker relative (see OAR 461-001-0000) must make a *good faith effort* to help the Department:

(a) Establish paternity of each needy child; and

(b) Locate and obtain support payments from the noncustodial parent of each needy child.

(2) A caretaker relative is excused from the requirements of section

(1) of this rule:

(a) For good cause under OAR 461-120-0350; or

(b) If the *caretaker relative* is a participant in the Post-TANF or SFPSS programs.

(3) A good faith effort includes taking such actions as:

(a) Supplying sufficient information for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. Sufficient information includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the caretaker relative, regarding any noncustodial parent of a needy child:

(A) Full legal name and nicknames.

(B) Social Security Number.

(C) Current or last known address.

(D) Current or last known employer, including name and address.

(E) If a student, current or last known school.

(F) Criminal record, including where and when incarcerated.

(G) Date of birth, or age.

(H) Race.

(I) Any known group or organizational affiliations.

(J) Names and addresses of close friends or relatives.

(K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(4) If a client who has not been excused under section (2) of this rule has the opportunity to make a good faith effort to help the Department establish paternity of a needy child or locate or obtain support payments from the noncustodial parent of a needy child (and is unable to show he or she has good cause under OAR 461-120-0350), the Department applies penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For a benefit group (see OAR 461-110-0750) not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the filing group (see OAR 461-110-0330) is ineligible.

(b) For a benefit group receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25 percent for the first month following the month in which failure to comply is determined.

(B) 50 percent for the second month following the month in which failure to comply is determined.

(C) 75 percent for the third month following the month in which failure to comply is determined.

(D) 100 percent (total ineligibility for the benefit group) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(5) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 418.024 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 418.024 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer

(1) To administer the employment programs of the Food Stamp, Pre-TANF, REF, and TANF programs, the Department assigns clients to one or more participation classifications — exempt, mandatory, and volunteer.

(2) In the Food Stamp program:

(a) The following clients are exempt:

(A) A client with weekly countable income (see OAR 461-001-0000) from employment or self-employment (see OAR 461-145-0930) at least equal to the federal minimum wage multiplied by 30 hours. This includes

ADMINISTRATIVE RULES

migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) A client with a physical or mental condition that prevents performance of any work.

(C) A client who is responsible for the care of a dependent child (see OAR 461-001-0000) in the household under 6 years of age or an individual in the household who has a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) A client who provides care for at least 30 hours a week for an individual in another household who has a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(E) A client enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not intend to register for the next normal school term (excluding summer term).

(F) A client receiving REF or TANF benefits, while a mandatory participant in the JOBS program.

(G) A client who is in receipt of unemployment insurance benefits or has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, if the client was required to register for work at an office of the Oregon Employment Department.

(H) A participant in a drug or alcohol treatment and rehabilitation program.

(I) A pregnant client.

(J) A client living in an area where the OFSET program is available to clients but who:

- (i) Lacks adequate dependent care;
- (ii) Does not have adequate transportation available; or
- (iii) Experiences a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older but not yet 60; and who is not exempt under subsection (a) of this section.

(c) A volunteer is a client who is not a mandatory client who chooses to participate in an employment program.

(3) In the Pre-TANF, REF, and TANF programs:

(a) Except as stated otherwise in the following paragraphs, the following clients are exempt from participation and disqualification in the employment programs covered by Chapter 461:

(A) A client who is in the ninth month of pregnancy or experiencing medical complications due to pregnancy that prevent participation in employment or self-sufficiency components (see OAR 461-001-0025) of an employment program.

(B) One parent during the first six months after the birth of the parent's child except to participate in parenting classes or family stability activities (see OAR 461-001-0000).

(C) A client under 20 years of age during the first 16 weeks after giving birth except that the client may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activities.

(D) A parent (see OAR 461-001-0000) providing care for a family member who lives in the home and has a disability (see OAR 461-001-0000).

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A non-citizen who is not authorized to work in the United States.

(H) A recipient of supplemental security income (SSI) from the Social Security Administration.

(I) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(J) If participation is likely to cause undue hardship or is contrary to the best interests of the child (see OAR 461-001-0000) or needy caretaker relative.

(K) A client who participates more than 10 hours per week during the seventh and eighth months of pregnancy.

(L) A VISTA volunteer.

(b) A parent of a child who receives TANF is mandatory if the parent is in the same filing group (see OAR 461-110-0330) with the child (even if the parent is not in the TANF benefit group under OAR 461-110-0750), unless the parent is otherwise exempt from participation under subsection (a) of this section.

(c) A volunteer is a client who is exempt from participation (see subsection (a) of this section) who chooses to participate in an employment program.

(4) In the FS, REF, and TANF programs, a client may not be disqualified for conduct that occurred while a volunteer.

(5) In the Post-TANF program, a client is classified as a volunteer and may not be disqualified.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.049
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09

461-135-0075

Limitation on Eligibility Period; TANF

(1) A minor parent head of household or an adult may not receive a TANF grant in Oregon if the minor parent head of household or adult has received a TANF grant in excess of 60 months except as allowed in this rule.

(2) The following months do not count toward the time limit in section (1) of this rule:

(a) Months prior to July 1, 2003 in which a minor parent head of household or an adult received a TANF grant in Oregon or another state.

(b) Months between July 1, 2003 and September 30, 2007 in which a minor parent head of household or adult received TANF in Oregon; and

(A) Participated in required JOBS activities or other education, employment, or job training program including teen parent programs; or

(B) Was not required to participate in JOBS activities or other education, employment, or job training program including teen parent programs.

(c) Months beginning July 1, 2003 in which the family resided in Indian Country (as defined in 18 U.S.C. 1151) and 50 percent or more of the adult residents of that area were unemployed.

(d) Months beginning October 1, 2007 in which the minor parent head of household or adult is a participant in the Oregon JOBS Plus, Pre-TANF, Post-TANF, or SFPS programs.

(e) Months between October 1, 2007 and June 30, 2009 in which the filing group (see OAR 461-110-0330) is a two-parent family receiving cash assistance in Oregon for which deprivation is based on unemployment or underemployment of the primary wage earner.

(f) Months beginning October 1, 2007 in which the individual who is now a parent or pregnant was in that month a minor child and neither the head of a household nor married to the head of a household.

(g) Months beginning October 1, 2007 in which a minor parent head of household or adult received aid in Oregon and is a participant in the Degree Completion Initiative (DCI) activity (see OAR 461-001-0025) enrolled in an educational institution.

(h) Months beginning October 1, 2008 in which a minor parent head of household or adult received aid in Oregon and is a participant in the Parents as Scholars (PAS) activity (see OAR 461-001-0025) enrolled in an educational institution consistent with OAR 461-190-0199.

(i) Months beginning October 1, 2007 in which the individual is unable to obtain or maintain employment for a sufficient number of hours in a month to satisfy the federally required participation rates (see OAR 461-001-0025) because the individual:

(A) Is a victim of domestic violence (see OAR 461-001-0000);

(B) Has a certified learning disability;

(C) Has a verified alcohol and drug or mental health condition;

(D) Has a child with a disability (see OAR 461-001-0000), which prevents the parent from obtaining or keeping employment;

(E) Is an individual with a disability;

(F) Is providing care for a family member who lives in the home and is an individual with a disability;

(G) Is deprived of needed medical care; or

(H) Is subjected to battery or extreme cruelty. For purposes of this rule, an individual is subjected to battery or extreme cruelty if the individual has been subjected to one or more of the following:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(ii) Sexual abuse.

(iii) Sexual activity involving a dependent child.

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(v) Threats of, or attempts at, physical or sexual abuse.

(vi) Mental abuse.

(vii) Neglect or deprivation of medical care.

(j) Months beginning July 1, 2008 in which the individual does not qualify for any other TANF time-limit exemption under this rule, and is unable to obtain or maintain employment for a sufficient number of hours

ADMINISTRATIVE RULES

in a month to satisfy the federally required participation rates (see OAR 461-001-0025) when Oregon's statewide average unemployment rate as published by the Oregon Employment Department is equal to or greater than seven percent. For purposes of this rule, this determination is calculated based on a six-month period as follows:

(A) The time period during July 1, 2008 through June 30, 2009 is based on Oregon's statewide average unemployment rate as published by the Oregon Employment Department for the period July 1, 2008 through December 31, 2008.

(B) In each six-month period, starting July 1, 2009:

(i) The time period during January 1 through June 30 is based on Oregon's statewide average unemployment rate as published by the Oregon Employment Department for the period April 1 through September 30 of the preceding year.

(ii) The time period during July 1 through December 31 is based on Oregon's statewide average unemployment rate as published by the Oregon Employment Department for the period October 1 through December 31 of the preceding year and January 1 through March 31 of the current year.

(3) Months that do not count toward the time limit based on a condition described in paragraphs (2)(i)(B) to (2)(i)(F) of this rule require documentation from a licensed or certified professional qualified to make such a determination.

(4) A minor parent head of household or an adult may not be denied a TANF grant under section (1) of this rule during months that qualify as exempt from time limits under sections (2), and (3) of this rule.

(5) Each minor parent head of household and adult who qualifies for a TANF grant under this rule must also meet all other TANF eligibility requirements and cooperate with the requirements of his or her case plan, unless good cause (see OAR 461-130-0327) exists.

(6) Except as provided otherwise in section (4) of this rule, a minor parent head of household or an adult in the benefit group who exceeds the 60-month time limit is removed from the need group (see OAR 461-110-0630). When a minor head of household or adult is removed from the need group under this section, the remaining need group members may continue to receive TANF benefits.

(7) If a minor parent head of household or adult qualifies under sections (2), (3), or (4) of this rule, any disqualifications that have been accrued for the benefit group remain in place.

Stat. Auth.: ORS 411.060, 412.049 & 412.079

Stats. Implemented: ORS 411.060, 411.117, 412.049 & 412.079

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 15-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-135-0082

Eligibility for Refugees

A client is eligible for the Refugee Case Services Project program if he or she meets the requirements of all of the following sections:

- (1) Has an alien status listed in OAR 461-120-0120.
- (2) Entered the United States on or after October 1, 1997.
- (3) Lives in Clackamas, Multnomah, or Washington County.
- (4) Has resided in the United States less than eight months or has been granted asylum within the last eight months. The month in which the refugee was admitted to the United States as a refugee, or was granted asylum, counts as the first month. The month in which the special immigrant was admitted to the United States as a special immigrant counts as the first month. If a special immigrant was granted special immigrant status after having already entered the United States, then the month that the status was granted counts as the first month.

(5) Meets the eligibility requirements contained in OAR 461-193-0000 to 461-193-1380.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-135-0405

ERDC; Children in the Head Start Program

(1) The following provisions apply when an ERDC program client's child receives child care through a Head Start agency:

(a) The Head Start agency is considered the provider of child care.

(b) If the Head Start agency uses another provider for the child care, that provider must meet the requirements in OAR 461-165-0160 and following.

(c) The payment made by the Department on behalf of the child is made only to the Head Start agency. The child is ineligible for child care

payments for care not provided under the contract between the Head Start agency and the Department.

(2) The following provisions apply when an ERDC program client's child receives child care under a contract between a Head Start agency and the Department:

(a) Once the Department makes a child care payment for the child under the contract, the child is presumed to meet the ERDC program eligibility requirements until the next August 31, unless:

(A) The *child's caretaker* has been found ineligible for ERDC program benefits under OAR 461 135 0415 for failure to make a copayment;

(B) The client was found eligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined;

(C) The client fails to meet the requirements of the locally prepared agreement among the client, the Head Start program, and the Department; or

(D) The child's caretaker is found ineligible for ERDC program benefits under OAR 461-160-0040(6) or 461-135-0400.

(b) For any month in which the child is eligible to be served under a contract and the client complies with a plan developed jointly by the client, the Head Start agency, and the Department (plan), the Department waives the client's copayment for the child, in whole or in part, if the waiver is provided for in the contract.

(c) For any month in which the client's child is eligible to be served under a contract and the client complies with a plan, the Department waives the copayment with respect to the child's siblings, in whole or in part, if the waiver is provided for in the contract.

(3) The Department will not make a child care payment for a child in a Head Start program if the child's caretaker has been found ineligible for ERDC program under OAR 461 135 0415 for failure to make a copayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 33-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-135-0900

Specific Requirements; REF, REFM

(1) In addition to the eligibility requirements in other rules in Chapter 461 of the Oregon Administrative Rules, an individual must meet all of the requirements in this rule to be eligible for the REF and REFM programs.

(2) An individual must meet the alien status requirements of OAR 461-120-0120, except a *child* (see OAR 461-001-0000) born in the United States to an REF or REFM program client meets the alien status requirements for the REF and REFM programs as long as each *parent* (see OAR 461-001-0000) in the household group (see OAR 461-110-0210) meets the alien status requirements of OAR 461-120-0120.

(3) An individual is not eligible to receive REF and REFM program benefits if the individual is a full-time student of *higher education*, unless such education is part of a cash assistance case plan. Any education or training allowable under an approved case plan must be less than one year in length. For the purposes of this rule, "higher education" means education that meets the requirements of one of the following subsections:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL, and high school equivalency programs at these institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(4) Eligibility for REF and REFM program benefits is limited to the first eight months in the United States:

(a) For an individual who meets the alien status requirements of OAR 461-120-0120(1), (3), (4), or (5), the month that the individual enters the U.S. counts as the first month.

(b) For an individual who meets the alien status requirements of OAR 461-120-0120(2), (6), or (7), the month that the individual was granted the individual's status counts as the first month.

(c) For an individual who meets the alien status requirements of OAR 461-120-0120(8):

(i) If the individual enters the U.S. with the special immigrant status, the month that the individual enters the U.S. counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the U.S., then the month in which the special immigrant status was granted counts as the first month.

(d) Months in the United States are counted as whole months. There is no prorating of months.

ADMINISTRATIVE RULES

(5) For an individual who meets the requirements of section (4) of this rule:

(a) When the individual resides in Clackamas, Multnomah, or Washington counties:

(A) The individual is not eligible to receive REF, TANF, or TANF-related employment services through the Department. To receive benefits, the individual is required to participate in the Refugee Case Service Project (RCSP) program. This individual is referred to their local resettlement agency to be enrolled in the RCSP program and receives all other Department services through the individual's local Department office.

(B) An individual who no longer meets the requirements of section (4) of this rule is no longer eligible to receive cash or case management services through the RCSP program. If this individual has been in the United States for 12 months or less, with the exception of Iraqi and Afghan special immigrants, the individual is referred to the New Arrival Employment Services (NAES) program contractor for employment services. Iraqi and Afghan special immigrants are limited to no more than eight months.

(b) When the individual resides in counties other than Clackamas, Multnomah, and Washington:

(A) The RCSP program is not available. The individual is served at the individual's local Department office.

(B) For an individual who meets the eligibility requirements of the MAA, MAF, or TANF programs, the MAA, MAF, and TANF program benefits are prior resources.

(C) An individual is eligible for the REF and REFM programs if the individual:

(i) Does not meet the eligibility requirements of at least one of the MAA, MAF, and TANF programs; and

(ii) Meets the financial and non-financial eligibility requirements for the REF and REFM programs.

(D) An REF program client may not participate in the Pre-TANF program.

Stat. Auth.: ORS 411.060 & 412.049

Stats. Implemented: ORS 411.060 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 33-1996(Temp), f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-135-1175

Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides farm direct checks to low income individuals.

(2) An individual is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has countable income (see OAR 461-001-0000) less than 115 percent of the Federal Poverty Level as listed in OAR 461-155-0295.

(b) Receives Medicaid or Food Stamp benefits.

(c) Is homeless or resides in their own home or rental property.

(d) Is age 60 or older.

(3) This program is funded by a grant from the United States Department of Agriculture. The Department determines the allotment amount on an annual basis, based on the grant allocation received from the United States Department of Agriculture and the number of eligible individuals.

(4) The Department may not issue more than one SFDNP allotment per participant, per year.

(5) SFDNP begins June 1 each year and ends on October 31 each year. In order to qualify for the program, the Department must receive the applicant's letter of interest by September 15 of the year in question.

(6) See OAR 461-145-0190 to determine the treatment of this benefit in the eligibility process for other programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 411.070

Stats. Implemented: ORS 410.070, 411.060 & 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 11-2009(Temp), f. & cert. ef. 6-1-09 thru 11-27-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-135-1195

Specific Requirements; SFPSS Eligibility

In the SFPSS program:

(1) To be eligible, a client must meet the following requirements:

(a) Be an adult;

(b) Meet all TANF program eligibility requirements (except as provided otherwise in this rule);

(c) Be receiving TANF benefits;

(d) Have an impairment that meets the requirements in OAR 461-125-0260; and

(e) File an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act.

(2) Counting earned and unearned income.

(a) The TANF standards in OAR 461-155-0030 are used to determine eligibility for the SFPSS program.

(b) The SFPSS payment standard (see OAR 461-155-0320) is used to determine the benefit amount for the SFPSS program.

(3) When the only adult in the *filing group* (see OAR 461-110-0330) is applying for SSI, and the child or all children in the filing group are receiving an SSI grant, the family does not receive an SFPSS grant. The family remains on TANF (if eligible) and receives a TANF grant.

(4) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(5) An SFPSS client found by the Social Security Administration (SSA) not to meet disability criteria may continue receiving SFPSS benefits until all SSA administrative appeals are exhausted.

(6) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049, 412.084

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-145-0080

Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child or minor parent in the *financial group* (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) For the purposes of this rule:

(a) "Disregard" means child support, up to \$50 per dependent child or minor parent per financial group per month and not to exceed \$200 per financial group per month, that is not counted as income of the client. Disregard includes current child support only.

(b) "Pass-through" means child support, up to \$50 per dependent child or minor parent per financial group per month and not to exceed \$200 per financial group per month, that is sent to the client before any remaining amount of current child support is withheld by the State. Pass-through includes current child support only.

(3) In the ERDC program, child support is considered countable unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(4) In the FS program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:

(A) It is considered countable unearned income in the calculation of the wage supplement; and

(B) Any pass-through pursuant to section (2) of this rule is considered countable unearned income.

(c) All other child support, including any pass-through pursuant to section (2) of this rule, is considered countable unearned income.

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(5) In the MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) In determining initial eligibility, except for disregard pursuant to section (2) of this rule, child support received by the Oregon Department of Justice, Division of Child Support (DCS) is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) In determining on-going eligibility, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support received by the DCS is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(c) For clients working under a TANF JOBS Plus agreement:

ADMINISTRATIVE RULES

- (A) Child support is excluded in determining countable income.
- (B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.
- (C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.
- (d) All other child support payments:
 - (A) Paid directly to the financial group that are not turned over to the Department or to the DCS or that are paid to a third party on behalf of a member of the financial group are considered countable unearned income.
 - (B) Paid directly to the *financial group* that are turned over to the Department or to the DCS are considered countable unearned income except for any amount of pass-through and disregard pursuant to section (2) of this rule.

(e) Cash medical support is excluded in determining countable income.

(6) In the OHP program:

(a) Child support paid directly to the financial group or paid to a third party for the benefit of the financial group is considered countable unearned income.

(b) Cash medical support is excluded.

(7) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the financial group are considered countable unearned income. Child support and cash medical support paid by the financial group are not deductible from income.

(8) In the SFPSS program, notwithstanding section (5) of this rule, for on-going eligibility and benefit determination:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are treated in accordance with OAR 461-145-0280.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.009, 412.014, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.009, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2008(Temp), f. & cert. ef. 3-21-08 thru 9-17-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-155-0030

Income and Payment Standards; MAA, MAF, REF, SAC, TANF

In the MAA, MAF, REF, SAC, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each need group (see OAR 461-110-0630) in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF, and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) In the TANF program, a *caretaker relative* (see OAR 461-001-0000) who chooses not to be included in the *need group* is subject to the "no-adult countable income limit standard" for the *need group* under subsection (c) of this section. The "non-needy countable income limit standard" for the filing group is as follows: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the *need group* contains no adults, the "no adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the *household group* (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the *household group*. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the *need group*. The result is the standard.

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) For the REF and TANF programs, when the *need group* contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the *household group*.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the *household group*. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: 411.060, 411.070, 412.006, 412.049, 412.124, 414.042
Stats. Implemented: 411.060, 411.070, 412.006, 412.124, 412.049, 414.042, 2009 OL ch. 827
Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-155-0190

Income and Payment Standards; FS

(1) The FS Countable and Adjusted Income Limits are as follows: [Table not included. See ED. NOTE.]

(2) The FS Payment Standard (Thrifty Food Plan) is: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816, 411.825
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-155-0700

Special Need; Personal Incidentals and Room and Board Allowances; OSIP, OSIPM

In the OSIP and OSIPM programs:

(1) In the following circumstances, personal incidentals and room and board allowances may be paid for a client to reside in a *community based care facility* (see OAR 461-155-0630) to avoid placement in a nursing facility or leave a nursing facility or an acute care hospital, when an individual:

(a) Is determined to be eligible based on a disability determination made by the Department (see OAR 461-125-0370).

(A) To receive this payment, a client must pursue SSI by making application with the Social Security Administration (SSA) and appealing denials until SSA makes a final administrative decision. If SSI is denied at the final SSA administrative level, the client is no longer eligible for this payment.

(B) The payment is the difference between the countable income of the client and the OSIPM adjusted income standard (see OAR 461-155-0250).

(b) Is leaving a nursing facility and limited to a maximum SSI payment of \$30 or to a maximum Veterans benefit payment of \$90. The payment is the *difference between* the countable income of the client and the OSIPM adjusted income standard (see OAR 461-155-0250).

(c) Is a qualified non-citizen under OAR 461-120-0125 who is not eligible for SSI due to not meeting the requirements to become a naturalized citizen within the SSI time limit.

(A) The individual must pursue naturalization.

(B) The payment is the difference between the countable income of the client and the OSIPM adjusted income standard (see OAR 461-155-0250).

(d) Does not have sufficient income to cover the needs of the community spouse income allowance of the individual as outlined in OAR 461-160-0620(3)(d). The allowance is the lesser of the following:

(A) The OSIPM adjusted income standard (see OAR 461-155-0250); or

(B) The difference between the calculated community spouse income allowance (see OAR 461-160-0620(3)(d)) and the amount of income that the client has available to divert to the community spouse.

(2) The payment amount is prorated in the first month for a client who moves to a *community based care facility* on any day other than the first day of the month.

Stat. Auth.: ORS 411.060 & 411.070
Stats. Implemented: ORS 411.060 & 411.070

ADMINISTRATIVE RULES

Hist.: SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-160-0420 Shelter Cost; FS

(1) This rule explains how to calculate the client's shelter cost. The shelter cost is used to determine the shelter deduction (see OAR 461-160-0430). The shelter cost is the sum of the client's cost of housing plus an allowance for utilities, if the client incurs a utility cost. The shelter deduction is based on the shelter cost but is subject to a limitation described in OAR 461-160-0430.

(2) Cost of housing.

(a) The following comprise the cost of housing if they are incurred with respect to the client's current residence or the home described in section (5) of this rule:

(A) Regular, periodic charges for the shelter of the *financial group* (see OAR 461-110-0530), such as rent, mortgage payments, and condominium or association fees. Late fees charged because a mortgage or rent payment was made late are not deductible.

(B) Property taxes, state and local assessments, and property insurance on the structure.

(C) Costs for repairing a home damaged or destroyed by a natural disaster (such as a fire or flood), if such costs are not reimbursed.

(D) If the *need group* (see OAR 461-110-0630) is homeless and living in a vehicle — vehicle payments and collision and comprehensive insurance premiums for the vehicle.

(b) If housing costs are billed on a weekly or biweekly basis, the monthly cost is the weekly cost multiplied by 4.3 or the biweekly cost multiplied by 2.15.

(c) The *financial group* has the following choices about housing costs:

(A) The group may choose to apply the cost in the month it is billed or becomes due.

(B) The group may choose to have periodic costs averaged.

(C) For expenses that are billed less often than monthly, the group may choose to have them averaged over the period they are intended to cover.

(3) Shared housing. If the *filing group* (see OAR 461-110-0370) shares housing costs with an individual in the dwelling who is not in the filing group, only the housing costs incurred by the filing group are included in the calculation. If the portion paid by a person outside the filing group cannot be ascertained, the cost is apportioned among the people contributing to the cost. The pro rata share of those not in the filing group is deducted from the total, and the balance is considered a housing cost of the filing group.

(4) Cost for utilities.

(a) A filing group has a cost for utilities if it incurs a cost for heating or cooling; cooking fuel; electricity; water and sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; service for a telephone, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes; or initial installation fees charged by a utility provider.

(b) If the group incurs no cost for utilities in either its current home or in the home described in section (5) of this rule, then the shelter cost is calculated without an allowance for utilities.

(c) If a homeless need group uses a vehicle for shelter, the cost of fuel for the vehicle is considered a utility cost.

(d) If a *filing group* incurs a cost for utilities, then the utility allowance is one of the following:

(A) Allowance with heating or cooling. A full standard utility allowance of \$385 is used if the household group (see OAR 461-110-0210) is billed for heating or cooling costs for its dwelling. Charges for any fuel and for electricity are considered heating costs if they are used for heating. A financial group who receives an energy assistance payment for the dwelling provided through the Low Income Energy Assistance Act of 1981 is eligible for the utility allowance established by this paragraph (A).

(B) Allowance without heating or cooling.

(i) A *limited standard utility* allowance of \$272 is used if the household group is not billed for heating or cooling costs but is billed for at least two other costs enumerated in subsection (4)(a) of this rule.

(ii) An individual standard utility allowance of \$45 is used if the household is not billed for heating or cooling costs but is billed for only one of the costs enumerated in subsection (4)(a) of this rule other than the service cost for a telephone, including the related taxes or fees.

(iii) A telephone standard utility allowance of \$46 is used if the household is not billed for heating or cooling costs but is billed for telephone service, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes.

(5) Housing costs for a home not occupied by the household. Housing and utility costs with respect to a home not currently occupied by the household may be considered in calculating the shelter cost if:

(a) The home is temporarily unoccupied because of employment or training away from home, illness, or abandonment caused by casualty or natural disaster;

(b) The financial group intends to return to the home;

(c) No other, current occupant is claiming a deduction for shelter costs in the FS program; and

(d) The home is not leased during the household's absence.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816, 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 21-1998(Temp), f. 10-15-98 & cert. ef. 11-1-98 thru 12-31-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09

461-160-0430 Income Deductions; FS

(1) Deductions from income are subtracted from *countable income* (see OAR 461-140-0010) in the following order to determine *adjusted income* (see OAR 461-001-0000) for the Food Stamp program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$141 per month for a benefit group (see OAR 461-110-0750) of one, two, or three persons. A standard deduction of \$153 for a benefit group of four persons. A standard deduction of \$179 for a benefit group of five persons. A standard deduction of \$205 for a benefit group of six or more persons.

(c) A *dependent care* deduction for dependent care costs billed to a member of the *financial group* (see OAR 461-110-0530) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group (see OAR 461-110-0630) to:

(A) Accept or continue employment;

(B) Meet the requirements of a case plan (see OAR 461-001-0020); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for *elderly clients and clients* who have a disability (see OAR 461-001-0015) in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments (including cash medical support) a member of the household makes under a legal obligation to a child not a member of the household group (see OAR 461-110-0210), including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For FS clients required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a *disability or is elderly* (see OAR 461-001-0015). The limit is \$459.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef.

ADMINISTRATIVE RULES

4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-0, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09

461-170-0010 Reporting Changes — Overview

A client is required to report a change in circumstances in accordance with the reporting system in which the client participates, OAR 461-170-0011; and

(1) For each program in which a client participates, the Department determines the appropriate reporting system. The Department's reporting systems are Change Reporting System (CRS), Monthly Reporting System (MRS), Simplified Reporting System (SRS), and Transitional Benefit Alternative (TBA). In addition to any required report form, when a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) A client using CRS must report a change according to OAR 461-170-0011.

(b) A client using MRS must report a change in income on the Monthly Change Report form designated by the Department. A Report form is processed according to OAR 461-170-0100, 461-170-0110, and 461-170-0120. Any other changes must be reported according to OAR 461-170-0011.

(c) A client using SRS must report a change according to OAR 461-170-0011 and 461-170-0102. An Interim Change Report form is processed according to OAR 461-170-0011 and 461-170-0101 to 461-170-0104.

(d) A client using TBA is not required to report any change.

(2) A change is considered reported effective the date a branch office (see OAR 461-001-0000) receives the information.

(3) A change reported for one program is considered reported for all programs in which the client participates.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-170-0150 Certification Period; ERDC

In the ERDC program:

(1) The length of the certification period (see OAR 461-001-0000) is as follows:

(a) If the child care need occurs within one calendar month, the certification period consists of that month only.

(b) If the child care need occurs within two consecutive calendar months, the certification period consists of those two months only.

(c) When income can be reasonably anticipated for three months or more, the certification period may be up to six months.

(d) A case with companion FS program benefits and participating in SRS may have a certification period of up to 12 months.

(2) The Department recalculates the anticipated income over the remaining months when a client reports income changes during eligibility periods that, under OAR 461-150-0060, would cause a substantial change in the copayment.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-170-0160

When a Re-application Form is Considered Complete or Not Received; ERDC

In the ERDC program:

(1) At the end of the *certification period* (see OAR 461-001-0000), a client must complete and return to a Department branch office (see OAR 461-001-0000) a reapplication form before a new certification period may be established under OAR 461-170-0150.

(2) A reapplication form is considered complete when it is received by a Department branch office by the 10th day of the last month of the *certification period* and:

(a) The client answers, completely and accurately, all questions necessary to determine a copay amount for the following certification period;

(b) The client provides all required verification; and

(c) The form contains the signature of the *primary person* (see OAR 461-001-0000) or the authorized representative (see OAR 461-115-0090).

(3) When a Department *branch office* receives a completed reapplication form by the deadline in section (2) of this rule, the form is used to:

(a) Determine eligibility for ERDC benefits;

(b) Establish the ERDC benefit copayment amount for the next certification period; and

(c) Establish the next certification period as beginning on the first day of the month following the last month of the previous certification period.

(4) When a Department branch office does not receive a completed reapplication form on or before the deadline in section (2) of this rule, the case is closed effective the last day of the last month of the certification period.

(5) If the reapplication form is received after the deadline in section (2) of this rule, it is treated as a new application in accordance with OAR 461-115-0050.

Stat. Auth.: ORS 411.060,
Stats. Implemented: ORS 411.060, 411.105, 411.111
Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-175-0010

What a Decision Notice Must Include

(1) A *decision notice* (see OAR 461-001-0000):

(a) Specifies the date the notice is mailed, which is the effective date for a basic decision notice (see OAR 461-001-0000).

(b) Except as provided in section (2) of this rule, specifies the action the Department intends to take and the effective date of the action.

(c) Specifies the reasons for the action.

(d) In the Food Stamp program, except as provided in paragraph (2)(c)(B) of this rule, provides the name and phone number of the Department staff person or identifies the office to contact for additional information.

(e) Informs the client of the extent to which the client has a right to a hearing before an impartial person.

(f) Specifies the method and deadline for requesting a hearing.

(g) Informs the client of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.

(h) Provides information about the availability of free legal help.

(i) Cites the rules that support the action.

(2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or any other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department:

(a) The requirements in subsection (1)(b) of this rule are optional. Instead of specifying the action the Department intends to take and the effective date of the action, the decision notice may state all of the following:

(A) The general nature of the change.

(B) Examples of how the change affects a client's benefits.

(C) The month in which the change will take place.

(b) The decision notice must also state the client's right to continue receiving benefits.

(c) In the Food Stamp program:

(A) The decision notice must also state under what circumstances benefits will be continued pending a hearing.

(B) The requirements in subsection (1)(d) of this rule are optional. A decision notice may indicate instead that a client may contact a local office or worker for additional information.

(3) In the Food Stamp program, a continuing benefit decision notice (see OAR 461-001-0000) and a decision notice under section (2) of this rule also must state that the client's household will incur a liability for any overissued benefits if:

(a) Benefits are continued pending the hearing; and

(b) The hearing decision is adverse to the client.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.816, 414.042, 412.049

ADMINISTRATIVE RULES

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 28-2009, f. & cert. ef. 10-1-09

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the FS program:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is sent to cases that are recertified early to align the FS certification end date with the end date of TANF or medical benefits.

(b) A basic decision notice is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the MAA, MAF, REF, REFM, and TANF programs, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In the TA-DVS program, a basic decision notice (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(8) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A combination approval and reduction notice was sent to a woman in the prenatal expansion pilot described in OAR 410-120-0030, the woman received a combination approval and reduction notice when her pilot benefits were approved, the woman's pregnancy has since ended, and the woman remains eligible for CAWEM benefits.

(E) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended

notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 183.417, 411.060, 411.117, 411.816, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09

461-175-0270

Notice Situation; APR, MRS, SRS or TBA

(1) When a *benefit group* (see OAR 461-110-0750) is entered into the MRS (see OAR 461-170-0100), the Department sends a basic decision notice (see OAR 461-001-0000) for the GA, GAM, OSIP, OSIPM, and QMB programs and a continuing benefit decision notice (see OAR 461-001-0000) for all other programs.

(2) When the Department takes action on information reported on the Monthly Change Report or Interim Change Report form, the Department sends a continuing benefit decision notice for clients in the ERDC, FS, MAA, MAF, OSIP, OSIPM, QMB, REF, REFM, and TANF programs. Except in the FS program, the notice includes:

(a) The amount of income used to determine the benefits or ineligibility; and

(b) The amount of each deduction.

(3) For all changes not reported on the Monthly Change Report or Interim Change Report form, which result in a closure or reduction in benefits, the Department sends a timely continuing benefit decision notice.

(4) For a benefit group in the MRS, when ending TANF benefits because of information acquired through the information match with the Child Support program, the Department sends a continuing benefit decision notice.

(5) When the Department changes the reporting system from one reporting system to another reporting system, the Department provides a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.111, 411.816, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-175-0280

Notice Situation; Failure to Submit Report for MRS, SRS, or ERDC Reapplication

(1) In the MAA, MAF, REF, and TANF programs, the Department sends a continuing benefit decision notice (see OAR 461-001-0000) when the benefit group (see OAR 461-110-0750) fails to return the Monthly Change Report by the tenth day of the payment month (see OAR 461-001-0000). The notice informs the benefit group that:

(a) The report was not received by the Department by the tenth day of the payment month.

(b) The benefit group must provide the report by the end of the payment month to receive benefits for the payment month.

(c) The benefit group will not receive the earned income deductions.

(d) If the report is not received by the Department by the last day of the payment month, benefits will be closed effective the last day of the budget month (see OAR 461-001-0000).

(2) In the ERDC program, the Department sends a continuing benefit decision notice:

(a) To close benefits when the benefit group fails to return the reapplication form. The case is closed on the last day of the last month of the certification period (see OAR 461-001-0000); and

(b) When the Interim Change Report is not returned in a timely manner (see section (4) of this rule).

(3) For an FS program client in the Monthly Reporting System (MRS), the Department sends a continuing benefit decision notice when the

ADMINISTRATIVE RULES

benefit group fails to return the Monthly Change Report by the 10th day of the payment month. The notice informs the benefit group that:

(a) The report was not received by the Department by the 10th day of the payment month.

(b) The benefit group has until the end of the payment month, to provide the report to receive benefits for the payment month.

(c) If the report is not received by the Department by the last day of the payment month, benefits will be suspended effective the last day of the budget month.

(d) The case will remain in suspended status for a month and then be closed.

(4) In the ERDC and FS programs, the Department sends a continuing benefit decision notice when a benefit group in Simplified Reporting System (SRS) fails to return the Interim Change Report by the 10th day of the sixth month of the certification period. The notice informs the benefit group that:

(a) The report was not received by the Department by the 10th day of the sixth month in the certification period.

(b) The benefit group has until the end of the sixth month of the certification period to provide the report to receive benefits for the seventh month of the certification period.

(c) If the report is not received by the Department by the last day of the sixth month of the certification period, FS program benefits will be suspended and ERDC program benefits will be closed effective the last day of the sixth month.

(d) The FS program case will remain in suspended status for a month and then be closed.

(5) In the GA, GAM, OSIP, and OSIPM programs, the Department does not send a notice if a client fails to provide a Monthly Change Report.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-180-0005

Effective Dates; Acting on Changes; ERDC

In the ERDC program:

(1) For changes reported on the reapplication form, the effective date is:

(a) The first day of the next certification period (see OAR 461-001-0000); or

(b) If changes will end benefits, the last day of the current certification period.

(2) For changes not reported on the reapplication form:

(a) For changes that require the certification period to be shortened, the effective date for the end of the certification period becomes the last day of the month in which the notice period ends. If the notice period ends the month after the change is reported, and the information results in an increase in benefits, adjust benefits for the last month of the shortened certification period.

(b) For all other changes that will cause:

(A) An increase in benefits, the effective date is the first of the month after the filing group (see OAR 461-110-0350) reports the change.

(B) A decrease in benefits, the effective date is the first of the month after the notice period ends.

(c) For changes that will end benefits, the effective date is the last day of the month in which the notice period ends.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-180-0020

Effective Dates; Changes in Income or Deductions that Cause Increases

For all programs in Chapter 461, except the ERDC program, this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits.

(1) For a change reported through the MRS (see OAR 461-170-0100), the effective date is the first of the payment month.

(2) For a change not reported through the MRS, the effective date is one of the following:

(a) In the EXT, GA, MAA, MAF, SAC, SFPSS, and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

(b) In the FS program:

(A) The effective date when verification is not requested is the first of the month following the date the change was reported.

(B) The effective date if verification is requested is:

(i) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(c) In the OSIP program, the effective date for an anticipated change is:

(A) The first of the month in which the change occurs if the change is reported by the 10th day of the month following the month the change occurred; or

(B) 10 days before the change is reported, if it is reported after the 10th day of the month following the month the change occurred.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 28-2009, f. & cert. ef. 10-1-09

461-180-0030

Effective Dates; Changes in Income or Income Deductions that Cause Reductions

For all cases except those assigned to the SRS or TBA reporting systems, this rule is used to determine the effective date when changes in income or income deductions cause a decrease in benefits.

(1) When retrospective budgeting is being used, the effective date for the reduction is the first day of the payment month.

(2) When prospective budgeting is being used, the effective date for reducing benefits is the first day of the month following the month in which the decision notice period ends.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 28-2009, f. & cert. ef. 10-1-09

461-180-0120

Effective Dates; Removing an Individual

The effective date for removing an *individual from the benefit group* (see OAR 461-110-0750) is one of the following:

(1) If the individual has left the *benefit group* in the current budget month because he or she is ineligible, is disqualified, or has left the household, the effective date is:

(a) For changes reported through the MRS:

(A) The first of the payment month, if the change will reduce benefits.

(B) The last day of the budget month, if the change will end benefits.

(b) For changes reported outside the MRS and for all disqualifications:

(A) The first of the month after the notice period ends, if the change will reduce benefits.

(B) The last day of the month in which the notice period ends, if the change will end benefits.

(2) If the individual is reasonably expected to leave the household next month, the effective date is the later of the following:

(a) The first of the month following the month in which the person leaves the household group, if the change will reduce benefits.

(b) The end of the month in which the person is expected to leave the household group, if the change will end benefits.

(3) In the OHP program, if the individual is receiving benefits from a program that is ending, the effective date is the day on which the program ends.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 28-2009, f. & cert. ef. 10-1-09

461-190-0199

Parents as Scholars

(1) Parents as Scholars (PAS) is a JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution.

(2) The following definitions apply to PAS:

(a) "Educational institution" means any post-secondary educational institution approved or accredited by the Northwest Commission on

ADMINISTRATIVE RULES

Colleges and Universities, by its regional equivalent, or by the appropriate official, department, or agency of the state or nation in which the institution is located and that is:

- (A) A four-year college or university;
- (B) A junior college or community college; or
- (C) A technical, professional or career school.

(b) "Participant" refers to a participant in the PAS component of the JOBS program.

(c) "PAS" means the Parents as Scholars component of the JOBS program.

(3) The number of participants in PAS in a calendar year is limited as follows:

(a) The number of participants in PAS in a calendar year may not exceed one percent of the number of households receiving TANF on January 1 of that calendar year.

(b) If one percent of the number of households receiving TANF on January 1 of the current calendar year is less than one percent of the number of households receiving TANF on January 1 of the previous calendar year, the Department will not fill PAS slots vacated on or after January 1 of the current calendar year until the total number of slots is equal to one percent of the households receiving TANF for the current calendar year.

(4) A PAS participant receives TANF cash assistance as well as necessary support services provided through the JOBS program. JOBS support services:

(a) May not be used to pay for the cost of tuition and fees associated with enrollment by a participant at an educational institution.

(b) Notwithstanding OAR 461-190-0211, may be used to pay for books and supplies associated with enrollment by a participant at an educational institution subject to the following provisions:

(A) The books and supplies are required for completion of the participant's coursework at an educational institution;

(B) There is no other funding available to the PAS participant for books and supplies; and

(C) No more than \$100 per academic term or semester may be paid per PAS participant for books and supplies.

(5) Applying for PAS. A parent who is applying for or receiving TANF may apply for PAS by completing and signing the PAS application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (PAS), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301.

(6) PAS Selection Process; Wait List.

(a) PAS applications received from PAS applicants will be processed in the order in which the Department receives the applications.

(b) If the maximum number of PAS slots for a calendar year has not been filled, the Department will notify an applicant when he or she has been approved.

(c) When the maximum number of PAS slots for a calendar year has been filled and there is a wait list, the Department will notify an applicant when he or she has been added to the wait list.

(d) Once each year, the Department will contact PAS applicants on the wait list to determine if the PAS applicant's name should be removed from the wait list.

(e) When the maximum number of PAS slots for a calendar year has been filled and there is a wait list and a PAS slot becomes available, the Department will notify the next applicant on the wait list that an opening has become available.

(f) The Department will inform an applicant for PAS who does not qualify or no longer qualifies for placement on the wait list because the applicant becomes ineligible for TANF or no longer meets the requirements of this rule.

(7) Selection Requirements.

(a) A PAS applicant must meet the financial and nonfinancial eligibility requirements for TANF.

(b) A PAS applicant who is not applying for or receiving TANF at the time of selection may not participate in PAS or remain on the wait list.

(c) A PAS applicant must include documentation that the PAS applicant is an undergraduate who has been accepted for full-time attendance into or is enrolled full-time at an educational institution.

(d) A PAS applicant must demonstrate as part of the PAS application that completion of the educational program is likely to result in employment that provides the wages and benefits necessary for the applicant to support the applicant's family without TANF.

(8) Requirements of Participants; Limitations.

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the educational institution, that the participant is making satisfactory academic progress, as defined by the educational institution, toward a degree.

(b) A participant must attend classes full-time as defined by the educational institution, unless there is good cause (see OAR 461-130-0327) to limit attendance to less than full-time.

(c) Unless there is good cause for not attending year round, a participant must either:

(A) Attend classes year round, including during the summer if classes are offered by the educational institution; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes. If a work experience related to the participant's field of study is not available, participate in another appropriate work experience.

(d) During the first twelve months of participation in PAS, a participant must record attendance and homework time weekly and must provide this information to the Department no less frequently than monthly.

(e) Except as provided in subsection (f) of this section, a participant must remain eligible for TANF.

(f) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their PAS slot when school resumes if:

(A) The participant regains TANF eligibility; and

(B) PAS is still an appropriate activity for the participant.

(9) Ending PAS. PAS shall be ended for a PAS participant when:

(a) The PAS participant completes his or her degree program;

(b) Except as provided in subsection (8)(f) of this rule, the PAS participant becomes ineligible for TANF; or

(c) All of the following are true:

(A) The PAS participant fails to meet one or more of the requirements of subsections (8)(a) through (8)(d) of this rule;

(B) Attempts to re-engage the PAS participant pursuant to OAR 461-190-0231 are unsuccessful; and

(C) There is a determination that the PAS participant does not have good cause (see OAR 461-130-0327) for failure to meet one or more requirements of subsections (8)(a) through (8)(d) of this rule.

Stat. Auth.: ORS 411.060, 412.016, 412.049 & 412.124

Stats. Implemented: ORS 411.060, 412.016, 412.017, 412.049 & 412.124

Hist.: SSP 20-2008(Temp), f. & cert. ef. 9-5-08 thru 3-4-09; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09

461-190-0360

Special Payments; OFSET

In the OFSET program, the Department may authorize payment of not more than \$80 over the eight week participation period for transportation and other costs identified in the client's case plan (see OAR 461-001-0020). If public transportation is available, the Department may issue to the client bus passes or tickets sufficient to enable the client to participate in the OFSET program activities identified in the case plan. If necessary, a client's case plan is adjusted to ensure that OFSET program participation requirements may be fulfilled at no cost to the client.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-193-0031

Eligibility Requirements; Refugee Case Services Project (RCSP)

In the RCSP program, to be *eligible an applicant* must meet the requirements of sections (1) to (6) of this rule, and section (7) if section (7) applies:

(1) Meet all TANF program eligibility (see OAR 461-001-0000) requirements.

(2) Meet the alien status requirements under OAR 461-120-0120.

(3) Reside in Clackamas, Multnomah, or Washington County.

(4) Have resided in the U.S. for eight months or less. The first month is, for an individual meeting the alien status requirements of OAR 461-120-0120:

(a) Section (1), (3), (4), or (5), the month the individual entered the United States.

(b) Section (2), (6), or (7), the month the individual was granted the individual's immigration status.

(c) Section (8):

(A) If the individual entered the U.S. with special immigrant status, the month the individual entered the United States.

(B) If the individual is granted special immigrant status after entering the U.S., the month in which the special immigrant status was granted.

(d) Each month in the U.S. is counted as a whole month, there is no prorating of any month.

(5) Be 64 years old or younger.

(6) Not be enrolled as a full-time student or intending to enroll as a full-time student within six months of RCSP program intake.

ADMINISTRATIVE RULES

(7) For a newborn, a parent must provide verification of the child's birth, including the date of birth. The newborn child's U.S. arrival date and *eligibility period* are the same as those for the child's mother.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 9-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 13-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 7-2009, f. & cert. ef. 4-1-09; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09

461-195-0521

Calculation of Overpayments

This rule outlines procedures for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reduce benefits, there is an overpayment for the amount of support the client received directly that should have been used to reduce benefits. This section does not apply if the support received makes the client ineligible for benefits.

(2) When an overpayment occurs due to the failure of a person to reimburse the Department, when required by law, for assistance (including cash medical support) furnished for a need for which that person is compensated by another source, the liability of such person is limited to the lesser of the following:

(a) The amount of the payment from the Department; or

(b) The amount by which the aggregate sum of all payments exceeds the maximum amount payable for such need under Department rules.

(3) If a client fails to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client fails to meet a requirement of OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(4) If the benefit group (see OAR 461-110-0750) was categorically eligible for food benefits, there is no food benefits overpayment based on resources, Social Security number, or residency. A food benefits overpayment may exist based on incorrect income.

(a) For a group found eligible for food benefits under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food stamps. A benefit group of one or two individuals would be entitled to at least the minimum food benefits allotment under OAR 461-165-0060.

(b) For a group found eligible for food benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the group is no longer categorically eligible. The overpayment is the amount of food benefits incorrectly received.

(5) When a client receives benefits in the OSIPM program and does not pay his or her share of the cost of service (client liability), the overpayment consists of all payments made by the Department on behalf of the client, including but not limited to capitation payments, Medicare Part D payments, all medical expenses for that period, waived service payments (including home-delivered meals and non-medical transportation), Medicare Buy-In (if not concurrently eligible for a Medicare Savings Program such as QMB), and mileage reimbursement.

(6) Credit against an overpayment is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the FS program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(d) In the TANF program, if the overpayment is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets eligibility under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF benefits.

(7) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(8) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department

were received by the client in equal amounts during the months identified in the report.

(9) Earned income deductions are applied in calculating an overpayment except as follows:

(a) In the MAA, MAF, REF, and TANF programs, no earned income deduction (see OAR 461-160-0160 and 461-160-0190) is allowed for a client who, without good cause (see section (10) of this rule), did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) In the FS program, no deduction is applied to earned income not timely reported.

(10) For the purposes of section (9) of this rule, good cause means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(11) When support has been retained by the Department.

(a) In the TANF program, the amount of support (other than cash medical support) retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(b) In the medical programs, the amount of the cash medical support retained by the Department each month is excluded income and not used to determine eligibility for medical benefits. When a client has incurred a medical overpayment, it is offset by the amount of the cash medical support retained by the Department during each month of the overpayment.

(12) When a client has incurred an overpayment due to both an administrative error (see OAR 461-195-0501) and a client error (see OAR 461-195-0501) in the same month, the client error overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error.

(13) When prospective budgeting (see OAR 461-001-0000) is used and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a client error overpayment only if the financial group (see OAR 461-110-0530) withheld information, failed to make a required change report, or provided inaccurate information. In such a case, the Department uses the actual income to determine whether there is, and the amount of, an overpayment.

(14) In the medical programs:

(a) There is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment of benefits from the GA, OSIP, REF, SFSS, or TANF programs is caused by administrative error (see OAR 461-195-0501):

(A) The overpaid benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM, REFM, and SAC; and

(B) There is no corresponding medical program overpayment if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM, REFM, or SAC.

(15) In the Food Stamp program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the overpayment amount.

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

Stat. Auth.: ORS 411.060, 411.660, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 412.049

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09

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

Adm. Order No.: SSP 29-2009(Temp)

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09 thru 3-30-10

Notice Publication Date:

Rules Adopted: 461-135-1149

Rules Amended: 461-001-0000, 461-101-0010, 461-110-0210, 461-115-0705, 461-120-0125, 461-120-0210, 461-120-0310, 461-120-0315, 461-120-0345, 461-120-0510, 461-135-0990, 461-135-1100,

ADMINISTRATIVE RULES

461-150-0055, 461-155-0180, 461-155-0225, 461-155-0360, 461-160-0015, 461-160-0700, 461-180-0085, 461-180-0090

Subject: The Department is making these rule changes to implement the recent Healthy Kids legislation (2009 Oregon Laws Chapter 867, House Bill 2116). The legislation requires the Department to put new programs into place effective October 1, 2009 to ensure children in Oregon have health insurance coverage available. Effective October 1, 2009 the Department is implementing the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs to expand health insurance coverage for children.

OAR 461-001-0000 about the definitions the Department uses in Chapter 461 rules is being amended to state the definition for “continuous eligibility for non-CAWEM children”.

OAR 461-101-0010 about the program acronyms the Department uses in the chapter 461 rules is being amended to include the acronyms for the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs.

OAR 461-110-0210 about how the Department determines the composition of a household group (the individuals who live together with or without benefit of a dwelling) is being amended to state when a child in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs still is considered to be in the household group.

OAR 461-115-0705 about the required verification is being amended to state that the Department verifies income in the Oregon Health Plan program for the month prior to the budget month, the income already received in the budget month, and the income reasonably anticipated to be received in the budget month.

OAR 461-120-0125 about the alien status requirements is being amended to state that in the Department’s medical assistance programs a qualified non-citizen meets the alien status requirements if he or she is under 19 years of age, and to add the alien status requirements for the Continuous Eligibility for OHP-CHP (CEC), Continuous Eligibility for Medicaid (CEM), and Extended Medical Assistance (EXT) programs.

OAR 461-120-0210 about when a client in the Department’s programs must provide or apply for a social security number (SSN) is being amended to state when a client in the Continuous Eligibility for OHP-CHP (CEC) or Continuous Eligibility for Medicaid (CEM) program may not be required to provide the SSN due to religious objections or may delay supplying the SSN due to being a newborn child.

OAR 461-120-0310 about assignment of child support rights by clients in the Department’s programs is being amended to state that its provisions do not apply to clients in the Continuous Eligibility for OHP-CHP (CEC) program. This rule also is being amended to state when clients in the Continuous Eligibility for Medicaid (CEM) program must assign the right to child support to the state.

OAR 461-120-0315 about the assignment of the right to reimbursement for health care costs for clients in the Department medical programs is being amended to state that clients in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs must agree to turn over their right to reimbursement for health care costs to the Department.

OAR 461-120-0345 about the obligation of clients in the Department’s medical assistance programs, except the Continuous Eligibility for OHP-CHP (CEC) and Refugee Medical (REFM) programs, to obtain health care coverage and cash medical support for members of the benefit group is being amended to state that its provisions apply to clients in the Continuous Eligibility for Medicaid (CEM) program.

OAR 461-120-0510 about the age requirements for clients to receive benefits is being amended to state the age requirement to receive benefits for clients in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs.

OAR 461-135-0990 about when the Department reimburses a client for cost-effective employer-sponsored health insurance pre-

miums is being amended to state that its provisions apply to clients in the Continuous Eligibility for Medicaid (CEM) program.

OAR 461-135-1100 about the specific eligibility requirements for the Oregon Health Plan (OHP) program is being amended to state that its definition of private major medical health insurance also applies to OAR 461-135-1149 (a new rule about the specific eligibility requirements in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs for ensuring continuous eligibility for non-Citizen/Alien-Waived Emergent Medical program children). OAR 461-135-1100 also is being amended to state that to be eligible for the Oregon Health Plan - Persons Under 19 (OHP-CHP) program a client cannot have had private major medical health insurance during the preceding two months and must have lost the health insurance coverage due to a loss of employment, and to remove language stating a client had to meet a resource limit.

OAR 465-135-1149 is being adopted to state specific eligibility requirements in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs, and how continuous eligibility applies to non-Citizen/Alien-Waived Emergent Medical program children.

OAR 461-150-0055 about eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended to revise how the Department averages income when determining eligibility for the OHP program.

OAR 461-155-0180 about the poverty related income standards used in some of the Department’s programs is being amended to state the monthly income standard when set at 201 percent of the 2009 federal poverty level.

OAR 461-155-0225 about the income standards is being amended to state the income standard for the Oregon Health Plan - Persons Under 19 (OHP-CHP) program.

OAR 461-155-0360 about the Department determines whether an employer-sponsored health insurance plan is cost effective is being amended to state that its provisions apply to the Continuous Eligibility for Medicaid (CEM) program.

OAR 461-160-0015 about the resource limits on eligibility for the Department’s programs is being amended to state that there is no resource limit for a client applying for Oregon Health Plan - Persons Under 19 (OHP-CHP) program benefits.

OAR 461-160-0700 about how the Department uses income when determining eligibility for Oregon Health Plan (OHP) program benefits is being amended to state when an Oregon Health Plan - Persons Under 19 (OHP-CHP) program need group member is eligible for OHP despite not meeting the OHP income standard.

OAR 461-180-0085 about the effective date of redetermination for eligibility for benefits in certain Department medical assistance programs is being amended to state that its provisions apply for the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs.

OAR 461-180-0090 about the effective date for starting medical benefits for an eligible client is being amended to state the effective date for the initial month of benefits in the Continuous Eligibility for OHP-CHP (CEC) and Continuous Eligibility for Medicaid (CEM) programs.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000 **Definitions for Chapter 461**

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

ADMINISTRATIVE RULES

(2) A reference to an Administrator of an agency mentioned in section (1) means the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.

(9) "Budgeting" means the process of calculating the benefit level.

(10) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine *eligibility* and benefit level for the payment month.

(11) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(12) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(13) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(14) "Caretaker relative" means a *caretaker* who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the *dependent child*:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of *caretaker relative* under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(15) "Certification period" means the period for which a client is certified eligible for a program.

(16) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(17) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

(18) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(19) "Continuous eligibility for non-CAWEM children" means a non-CAWEM child under 19 years of age the Department determines is eligible for Medicaid or OHP-CHP is deemed to be eligible for a total of 12 months regardless of any change in circumstances, other than:

(a) Moving out of state;

(b) Turning 19 years of age, however a pregnant individual who turns 19 years of age remains eligible for OHP-CHP through the last day of the month during which the pregnancy ends; or

(c) In the OHP-CHP program, receipt of private major medical health insurance.

(20) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(21) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(22) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(23) "Department" means the Department of Human Services (DHS).

(24) "Dependent child", in the EXT, MAA, MAF, REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(25) "Disability" means:

(a) In the FS program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(26) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(27) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

ADMINISTRATIVE RULES

(28) "Electronic application" is an application electronically signed and submitted through the internet.

(29) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(30) "Equity value" means fair market value minus encumbrances.

(31) "Fair market value" means the amount an item is worth on the open market.

(32) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(33) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(34) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(35) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(36) "Income producing property" means any real or personal property that generates income for the financial group. Examples of income producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(37) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(e) For a new applicant to the GA, GAM, OSIP, or OSIPM program living in a nonstandard living arrangement, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(38) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(39) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(40) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(41) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(42) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time.

This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(43) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings, and personal injury claims.

(44) "Marriage" means the union of a man and a woman who are legally married.

(45) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(46) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(47) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community based care (see section (17) of this rule) setting.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care facility.

(C) Drug or alcohol residential treatment facility.

(D) Homeless or domestic violence shelter.

(E) Lodging house if paying for room and board.

(F) Correctional facility.

(G) Medical institution.

(48) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(49) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control, and supervision of the child.

(50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(51) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(52) "Periodic income" means income received on a regular basis less often than monthly.

(53) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.

(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or client's spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative, or parent.

(54) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

ADMINISTRATIVE RULES

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(57) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(58) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(59) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(60) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(61) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(62) "Spouse" means an individual who is legally married to another individual. In the ERDC and FS programs, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors, or tradespeople; and

(b) Sharing living expenses or household duties.

(63) "Stable income" means income that is the same amount each time it is received.

(64) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(65) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(66) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(67) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(68) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(69) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.014, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.014, 412.049, 414.042
Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-101-0010

Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program (for instance, OSIP) and acronyms for each subprogram (for instance, OSIP-AB, OSIP-AD, and OSIP-OAA).

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC

refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program (see the Pre-TANF program in this rule).

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) CEC; Continuous Eligibility for OHP-CHP. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who loses her eligibility for a reason other than moving out of state or becoming a recipient of private major medical health insurance. The pregnant individual is deemed eligible for OHP-CHP through the last day of the month in which the pregnancy ends.

(10) CEM; Continuous Eligibility for Medicaid. Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state. The child is deemed eligible for Medicaid for the remainder of the 12 month eligibility period.

(11) DFSP; Disaster Food Stamp Program. Following a presidential declaration of a major disaster in Oregon, DFSP provides emergency food stamps to victims. OAR 461-135-0491 to 461-135-0497 cover DFSP eligibility and benefits.

(12) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(13) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(14) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food. Any reference to Food Stamps or FS also includes the Supplemental Nutrition Assistance Program or SNAP.

(15) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(16) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(17) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(18) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(19) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the

ADMINISTRATIVE RULES

Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

- (a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.
- (b) FS-PLS; Clients eligible for JOBS Plus based on FS.
- (c) NCP-PLS; Noncustodial parents of children receiving TANF.

(20) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(21) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(22) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(23) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(24) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(25) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(26) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(27) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(28) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(29) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is

considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(30) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(31) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(32) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(33) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(34) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(35) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(36) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(37) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(38) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042, 414.342

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-110-0210 Household Group

(1) The household group consists of the individuals who live together with or without benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate household group is established for all the individuals who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has separate from other dwellings an access to the outside that does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) For all programs except the FS program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following are true:

(a) There is a landlord-tenant relationship between the two groups in which the tenant is billed by the landlord at *fair market value* (see OAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

ADMINISTRATIVE RULES

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.

(4) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a *child* (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the FS program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no breakfast or lunch at that home.

(B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the shelter, the resident may be included both in the household he or she left and in a household group in the shelter.

(c) In the MAA, MAF, and TANF programs:

(A) If a parent (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see OAR 461-001-0000), the parent is in the same household group as the dependent child.

(B) A *dependent child* is included in the group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

(ii) The usual *caretaker relative* is gone from the household for part of the month because of illness.

(iii) A family emergency.

(5) In the OSIPM program, individuals receiving waived care or nursing facility care are each an individual household group.

(6) In the QMB program, the household group consists of the client and the client's spouse (see OAR 461-001-0000), even if the spouse does not meet all nonfinancial eligibility requirements.

(7) The individuals in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) Individuals absent from the household for 30 days or more are no longer part of the household, except for the following:

(a) In all programs except the FS program, individuals in a general hospital for 30 days or more remain in the household group unless they go into long-term care. In the FS program, these individuals are no longer in the household group.

(b) In the CEC, CEM, ERDC, EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs:

(A) A caretaker relative who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A child who is absent for 30 days or more is in the household group if the child is:

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For OHP only, in a residential alcohol or drug treatment facility. If the household of the child is ineligible because of income, the child is a separate household.

(c) In the ERDC and OHP programs, an individual who is absent because of education, training, or employment, including long-haul truck driving, fishing, and active duty in the U.S. armed forces.

(d) In the MAA, MAF, REF, REFM, and TANF programs, a parent who is absent for 30 days or more is in the household group if:

(A) The parent is absent because of education, training or employment — including absence while working or looking for work outside the area of their residence, such as long-haul truck driving, fishing and active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(9) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042.

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru

7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-115-0705

Required Verification; BCCM, MAA, MAF, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide acceptable documentation as a condition of eligibility (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing acceptable documentation, an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met.

(b) A current recipient who has not already provided acceptable documentation must provide acceptable documentation as a condition of eligibility when requested by the Department.

(c) A client who already has provided acceptable documentation is not required to provide additional evidence during a subsequent application for benefits or redetermination of eligibility.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

(a) Assumed eligible under OAR 461-135-0010(5);

(b) Eligible for OHP-CHP;

(c) Eligible for or receiving Medicare;

(d) Presumptively eligible for the BCCM program;

(e) Receiving Social Security Disability Income (SSDI); or

(f) Receiving Title IV-E benefits.

(4) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(B) Alien status for an applicant who indicates he or she is not a U.S. citizen.

(C) The premium exemption allowed because a client is:

(i) A member of a federally recognized Indian tribe, band, or group;

(ii) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) An individual eligible for benefits through an Indian Health Program.

(D) Income from the month prior to the budget month and income already received in the budget month plus income reasonably anticipated to be received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

(B) Earned income from the three months prior to the budget month.

(c) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461 135 1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.042

Stats. Implemented: ORS 411.060, 414.042 & 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

ADMINISTRATIVE RULES

461-120-0125

Alien Status; Not REF or REFM

In all programs except the REF and REFM programs:

(1) For purposes of this chapter of rules, an individual is a “qualified non-citizen” if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a “Cuban and Haitian entrant” (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent’s family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) An individual meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(e) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after entering the United States, then the month in which the special immigrant status was granted counts as the first month.

(4) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Effective October 1, 2009, is a child under the age of 19.

(b) Was a qualified non-citizen before August 22, 1996.

(c) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996, and the date qualified non-citizen status was obtained.

(d) Is an individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(e) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(f) In the OSIPM program, is receiving SSI benefits.

(g) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified non-citizen who physically entered the United States on or after August 22, 1996, has had the qualified non-citizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

ADMINISTRATIVE RULES

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(f) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA. Such an individual meets the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(7) In all programs except ERDC and TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (3)(e), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the eight month limit has not been reached.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2009, even if the six month limit has not been reached.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.816 & 412.049

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 10-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-120-0210

Requirement to Provide or Apply for SSN

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a need group (see OAR 461-110-0630) or a *benefit group* (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIP, OSIPM, and QMB programs, to be included in the benefit group, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in all programs not covered by sections (1) to (3) of this rule, to be included in the *need group*, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the BCCM, CEC, CEM, EXT, FS, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, and SAC programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

ADMINISTRATIVE RULES

(a) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the Food Stamp program:

(A) Applicants eligible for expedited services may receive their first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be added to an existing benefit group (see OAR 461-110-0750) for six months following the date the baby is born or until the group's next recertification, whichever is later.

(7) In the Food Stamp program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in FS for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a *disability* (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-120-0310

Assignment of Support Rights; Not BCCM, FS, OHP-CHP, OHP-OPP

In all programs except the BCCM, CEC, FS, OHP-CHP, and OHP-OPP programs:

(1) To be eligible for any program funded in whole or in part with federal grants under Titles IV-A (TANF) or IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(2) To be eligible for the CEM, EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM programs, a filing group must assign to the state the right of any Medicaid-eligible child in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(3) Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for CEM, 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.

(4) When the Department provides benefits or services for the support of a child who is in a filing group in any program funded in whole or in part with a federal grant under Title IV-A (TANF) or IV-E of the Social Security Act, the right to child support for that child that any individual may have is deemed to be assigned to the state by operation of law.

Stat. Auth.: ORS 411.060, 411.070, 414.024, 412.049 & 414.042

Stats. Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 12-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 3-29-07; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 12-

2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-120-0315

Medical Assignment

(1) In the CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, by signing the application for assistance, clients agree to turn over their rights to reimbursement for health care costs to the Department. The Department may refuse to pay medical expenses for anyone in the benefit group when another party or resource should pay first.

(2) The amount the Department may collect in reimbursement is limited to the amount of medical services paid by the Department on the client's behalf.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-120-0345

Clients Required to Obtain Health Care Coverage and Cash Medical Support; CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP), OSIPM, SAC

This rule explains the obligation of clients to obtain health care coverage and cash medical support for members of the *benefit group* (see OAR 461-110-0750) in the CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP), OSIPM, and SAC programs.

(1) Unless excused from the requirements of this section for good cause defined in OAR 461-120-0350, each adult client must assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000) in the benefit group to provide:

(a) Cash medical support for that child; and

(b) Health care coverage for that child.

(2) Each adult client must make a good faith effort to obtain available coverage under Medicare.

(3) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP OPU), OSIPM, and SAC programs, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). In the GAM and OSIPM programs, the client is not required to incur a cost for the health insurance.

(4) In the OHP-OPU program:

(a) An individual who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the individual must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

(A) Members of a federally recognized Indian tribe, band or group;

(B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Individuals eligible for benefits through an Indian Health Program; and

(D) Individuals eligible under the CAWEM program.

(5) An individual who fails to meet an applicable requirement in sections (1), (2), (3), or (4) of this rule is removed from the need group (see OAR 461-110-0630) except that in the OHP program the individual is removed from the benefit group (see OAR 461-110-0750).

(6) In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(7) The penalty provided by this rule ends when the client meets the requirements of this rule.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 411.070, 414.025, 414.042, 418.035, 418.100, 2007 OL 861

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

ADMINISTRATIVE RULES

461-120-0510

Age Requirements for Clients to Receive Benefits

(1) If the year of a person's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the BCCM program, a woman must be under 65 years of age.

(3) To be eligible for the CEC program, an individual must be under 20 years of age.

(4) To be eligible for the CEM program, a child (see OAR 461-001-0000) must be under 19 years of age.

(5) To be eligible for the EXT, MAA, MAF, or TANF programs:

(A) A child must be;

(A) Under 18 years of age; or

(B) Under 19 years of age and regularly attending school full time, as determined by the school.

(b) A caretaker relative may be any age.

(6) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be;

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age; and

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(7) To be eligible for the FS, OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, or REFM programs, a client may be any age.

(8) To be eligible for the GA and GAM programs, a client must be:

(a) Eighteen years of age or older and less than 65 years of age; or

(b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

(9) To be eligible for the OHP program, a client must meet the age requirements in OAR 461-135-1100.

(10) To be eligible for the OSIP-AD (except OSIP-EPD) program, a client must be 18 years of age or older and under 65 years of age.

(11) To be eligible for the OSIP-EPD and OSIPM-EPD programs, the client must be 18 years of age or older or be legally emancipated.

(12) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(13) To be eligible for the OSIPM-AD (except OSIPM-EPD) or QMB-DW programs, a client must be under 65 years of age.

(14) To be eligible for the REF program, a client must be:

(a) 18 years of age or older;

(b) A legally emancipated minor; or

(c) Part of a TANF filing group that is ineligible for TANF.

(15) To be eligible for the SAC program, the child must be under 21 years of age.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-135-0990

Specific Requirements; Reimbursement of Cost-Effective, Employer-Sponsored Health Insurance Premiums

Clients in the CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC programs are reimbursed for their share of the premiums for employer-sponsored health insurance if:

(1) The insurance is provided through a member of the household group (see OAR 461-110-0210);

(2) The insurance covers a member of the benefit group (see OAR 461-110-0750);

(3) The insurance coverage is a comprehensive plan (that is, includes basic or major medical services) or is a fully capitated health plan (FCHP) or physicians care organization (PCO); and

(4) The premium is cost-effective (see OAR 461-155-0360).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-135-1100

Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule and OAR 461-135-1149, the term private major medical health insurance refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by private major medical health insurance and must not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461 160 0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding two months. The two-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of employment;

(C) The person's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The person's private health insurance premium was subsidized by FHIAP; or

(E) A member of the person's filing group was a victim of domestic violence.

ADMINISTRATIVE RULES

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-135-1149

Specific Requirements; Continuous Eligibility for Non-CAWEM Children; CEC, CEM

(1) When a pregnant non-CAWEM child is eligible for and receiving OHP-CHP program benefits loses this eligibility, her medical assistance continues through the CEC program through the last day of the month in which the pregnancy ends as long as she is not a recipient of private major medical health insurance (see OAR 461-135-1100).

(2) To be eligible for the CEC program, a client must meet all of the following requirements:

(a) Be a U.S citizen or qualified non-citizen (see OAR 461-120-0125);

(b) Be under 20 years of age;

(c) Lose eligibility for OHP-CHP program medical benefits while pregnant; and

(d) Not be a recipient of private major medical health insurance.

(3) CEC program eligibility ends:

(a) The last day of the month in which the pregnancy ends;

(b) When the client moves out of state;

(c) When the client voluntarily ends OHP-CHP program benefits;

(d) When the client becomes a recipient of private major medical health insurance; or

(e) If the client becomes eligible for Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

(4) When a non-CAWEM child who is eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits loses this eligibility with time remaining in the 12-month continuous eligibility period, the child's medical assistance continues for the remainder of the 12-month eligibility period through the CEM program.

(5) The CEM program eligibility period is based on the most recent CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program approval date. A child losing eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits less than 12 months after having been approved for benefits qualifies for CEM program benefits for the balance of the 12 month period following that approval.

(6) To be eligible for the CEM program, a client must meet all of the following requirements:

(a) Be a U.S citizen or a qualified non-citizen;

(b) Be eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program medical benefits;

(c) Be under 19 years of age; and

(d) Lose eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC program medical benefits less than 12 months after having been approved for benefits, including approvals resulting from redeterminations.

(7) CEM program eligibility ends when the client:

(a) Becomes 19 years of age;

(b) Moves out of state;

(c) Voluntarily ends benefits; or

(d) Becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 414.042

Stats. Implemented: ORS 409.050, 411.060, 411.070, 414.042, HB 2116 (2009 Session)

Hist.: SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-150-0055

Eligibility and Budgeting; OHP

In the OHP program:

(1) The budget month (see OAR 461-001-0000) is:

(a) For a new applicant, the month of application.

(b) For a client reapplying in the last month of an OHP certification period (see OAR 461-001-0000), no longer eligible for his or her current OHP program, or moving from the BCCM, EXT, GAM, MAA, MAF, OSIPM, REF, or SAC programs to the OHP program, the last month of the current eligibility (see OAR 461-001-0000) period.

(c) For an individual joining a filing group (see OAR 461-110-0400), the month in which the individual requests medical benefits.

(d) For a late reapplication, the month the Department receives the new application.

(e) For a new applicant or current recipient who is not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable (see OAR 461-001-0000) income is determined as follows:

(a) Income is considered available during a month under OAR 461 140 0040.

(b) Income is not annualized, converted, or prorated.

(c) For a self employed client, countable self-employment income is determined under OAR 461-145-0920 and 461-145-0930.

(3) The average countable income of the financial group (see OAR 461-110-0530) is calculated as follows:

(a) The income of the financial group from the month prior to the budget month and the actual income already received in the budget month plus income that reasonably may be expected to be received in the budget month is added.

(b) The total is divided by two, and the result is the average countable income assigned to the budget month of the financial group.

(c) The average countable income of the financial group is used to determine eligibility for OHP under OAR 461 160 0700.

(4) A change in income or resources during a certification period (see OAR 461-001-0000) does not affect the eligibility of the benefit group (see OAR 461-110-0750) for that certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 185 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 200 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 201 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-155-0225

Income Standard; OHP, REF, M

(1) In the OHP program:

(a) If a financial group (see OAR 461-110-0530) contains a person with significant authority in a business entity — a “principal” as defined in OAR 461-145-0088 — the group is ineligible if the gross income assigned to the budget month (see OAR 461-001-0000) of the business entity exceeds \$10,000. If the need group (see OAR 461-110-0630) is not ineligible under this section, its eligibility is evaluated under subsection (b) of this section.

(b) The *countable income* standards are as follows:

(A) The *countable income* standard for OHP-OPC and OHP-OPU is 100 percent of the federal poverty level, as listed in OAR 461-155-0180(2), based on the size of the need group.

(B) The countable income standard for OHP-OP6 is 133 percent of the federal poverty level, as listed in OAR 461-155-0180(3), based on the size of the need group.

ADMINISTRATIVE RULES

(C) The countable income standard for OHP-OPP is 185 percent of the federal poverty level, as listed in OAR 461-155-0180(5), based on the size of the need group.

(D) The countable income standard for OHP-CHP is below 201 percent of the federal poverty level, as listed in OAR 461-155-0180(7), based on the size of the need group.

(2) In the REFM program, the income standard is 200 percent of the federal poverty level, as listed in OAR 461-155-0180(6), based on the size of the need group.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-155-0360

Cost-Effective Health Insurance

(1) This rule applies to the following medical assistance programs: CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC. This rule explains how to determine whether an employer-sponsored health insurance plan is cost effective for the purpose of applying OAR 461-120-0345.

(2) The first step in making the determination of cost effectiveness is to determine the number of people in the household group who are in a benefit group of any of the programs listed in section (1) of this rule.

(3) Based on the number determined in section (2) of this rule, the maximum cost-effective premium is determined from the following tables: [Table not included. See ED. NOTE.]

(4) The insurance is cost effective if the employee's share of the premium is equal to or less than the amount determined in section (3) of this rule.

(5) If the health-insurance plan is cost effective, the Department will reimburse the actual amount of the premium, not to exceed the amount determined in section (3) of this rule.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-160-0015

Resource Limits

(1) In the EA program, *all countable* (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, and REFM programs, there is no resource limit.

(3) In the FS program, the resource limit is:

(a) \$3,000 for a *financial group* (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

(4) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(5) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for a *need group* (see OAR 461-110-0630) with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for a need group with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(6) In the OHP program:

(a) There is no resource limit for an individual whose eligibility is determined under the OHP-CHP, OHP-OPC, OHP-OP6, or OHP-OPP programs.

(b) The resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(7) In the QMB program, the resource limit is \$4,000 for a one-person need group and \$6,000 for a need group containing two or more individuals.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-160-0700

Use of Income; OHP

Income is used to determine eligibility for OHP as follows:

(1) The *average countable income* of the financial group assigned to the budget month is determined in accordance with OAR 461-150-0055.

(2) For each member of the need group, the average countable income of the financial group assigned to the budget month is compared to the applicable OHP income standard. If the average countable income of the financial group is below the applicable income standard for the need group size and all other financial and non-financial eligibility requirements are met, the need group member is eligible for OHP. If the average countable income of the financial group equals or exceeds the applicable OHP income standard, the need group member is ineligible for OHP except as provided by section (3) of this rule.

(3) The following members of the need group who are not eligible under section (2) of this rule are eligible for OHP if all other financial and non-financial eligibility requirements are met and the financial group's countable income, received or anticipated to be received in the budget month, is below the applicable OHP income standard:

(a) Victims of domestic violence.

(b) OHP-CHP clients.

(c) OHP-OPC clients.

(d) OHP-OP6 clients.

(e) OHP-OPP clients.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.700 & 411.816
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-180-0085

Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OHP, OSIPM, SAC

In the CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for eligibility for the other medical programs listed in this rule prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group (see OAR 461-110-0750) remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050, 411.060, 414.042
Stats. Implemented: ORS 409.050, 411.060, 414.042
Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-180-0090

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the CEC or CEM program, it is the first of the month following the month eligibility for Child Welfare medical, EXT, MAA, MAF, OHP, OHP-CHP, OSIPM, or SAC program benefits ends.

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program eligibility ends.

(3) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the date of request. An OSIPM client

ADMINISTRATIVE RULES

who is assumed eligible under OAR 461-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following the date of request that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(4) In the QMB-BAS program, it is the first of the month after the benefit group (see OAR 461-110-0750) has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(5) In the QMB-SMB and QMB-SMF programs, it is the first of the month in which the benefit group meets all program eligibility criteria and the Department receives the required verification.

(6) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (2)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

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

Adm. Order No.: SSP 30-2009(Temp)

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09 thru 3-30-10

Notice Publication Date:

Rules Adopted: 461-105-0006

Subject: OAR 461-105-0006 about the actions the Department may take during a business continuity disruption is being adopted to set out the exceptions to rules in Chapter 461 that may apply during a business continuity disruption, what a business continuity disruption is, and how the exception process is authorized.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-105-0006

Business Continuity Provisions

(1) The use of this rule by any CAF branch office (see OAR 461-001-0000) requires the approval for that site by:

(a) The Deputy Assistant Director for CAF Field Services or the designee of this official; and

(b) The Administrator of the Office of Self Sufficiency Programs or the designee of this official.

(2) The Department will only approve the use of this rule after considering the feasibility of avoiding the use of the rule by moving enough employees who are able to perform the needed tasks to the sites that have too few employees.

(3) For purposes of this rule:

(a) "Business continuity disruption" refers to an emergency event or a work stoppage that causes the absence of most of the employees in at least one branch office for an expected time period of sufficient duration that compliance with applicable administrative rules in Chapter 461 is not feasible. A "business continuity disruption" continues until a sufficient number of employees return to work to permit compliance at the branch office with the administrative rules in Chapter 461.

(b) "Emergent need".

(A) In the ERDC program, the term "emergent need" refers to an individual who requires child care in order to work and who will lose this child care unless the application is processed promptly.

(B) In the FS program, the term "emergent need" refers to an individual who qualifies for expedited services under OAR 461-135-0575.

(C) In the medical assistance programs:

(i) The term "emergent need" refers to an individual reporting either of the following:

(I) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention or medication may reasonably be expected to result in

placing the health of the patient in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(II) A need for prompt processing of an application to secure provider services for mental health, substance abuse, or long-term care.

(ii) An individual does not need to document the "emergent need".

(D) In the REF and TANF programs, the term "emergent need" refers to a household that meets the requirements of one of the following subparagraphs:

(i) Countable income less than \$150 a month, and liquid resources that do not exceed \$100.

(ii) Gross income and resources that combined are less than the total of the household's monthly rent or mortgage, plus its utilities.

(iii) Liquid resources (see subsection (c) of this section) that do not exceed \$100 as well as being a destitute household of migrant and seasonal farmworkers (see OAR 461-001-0015) with little or no income at the time of application.

(E) In the TA-DVS program, the term "emergent need" refers to an individual with an immediate safety need.

(c) "Liquid resources" refers to cash on hand, a checking or savings account, a savings certificate, and a lump sum payment.

(4) During a business continuity disruption, a branch office issues DFSP benefits as provided in OAR 461-135-0491 to 461-135-0497 if the branch office is in a location authorized by the Food and Nutrition Services during a disaster benefit period. This rule does not otherwise apply to the DFSP program.

(5) Notwithstanding any other administrative rule in Chapter 461, during a business continuity disruption under the authorization required in section (1) of this rule, a CAF branch office may use any or all of the following special provisions:

(a) Application process.

(A) Individuals qualifying as emergent need.

(i) In the ERDC, medical assistance, REF, and TANF programs, acceptance or processing by the Department of applications may be limited to individuals in emergent need.

(ii) In the FS program, processing of applications for new clients may be limited to individuals in emergent need.

(iii) In the TA-DVS program, the requirement to jointly staff, and approve or deny, an application for TA-DVS benefits under OAR 461-135-1230(3).

(B) Application process for individuals without an emergent need.

(i) In the ERDC, REF, and TANF programs, each branch office using this provision may document a request for benefits by maintaining a dated list of the names of these new clients as well as social security numbers (if available). The Department will use these lists to establish the date of request for those clients who request assistance during the business continuity disruption and complete the application within 30 days after the conclusion of the business continuity disruption or by the deadline that applies under another program rule, whichever occurs later.

(ii) In the FS program, for a new client, each branch office using this provision may document a filing date by maintaining a file of completed filing pages (DHS 415Y or DHS 539F). The Department will schedule and conduct interviews with each client after the conclusion of the business continuity disruption.

(iii) In the medical assistance programs, each branch office should establish a date of request using OAR 461-115-0030.

(b) Benefit levels. In the ERDC, REF, SFPSS, and TANF programs:

(A) Except as provided for REF in OAR 461-135-0900(4), a client, including a client in the monthly reporting system (MRS) or in the Simplified Reporting System (SRS), may continue to receive benefits at the level in effect the day before the special provisions of this rule applied to the branch office.

(B) In the ERDC, SFPSS, and TANF programs, the Department may authorize a branch office to automatically extend certification periods for the duration of the business continuity disruption.

(C) Payments for support services (see OAR 461-001-0025) listed in a case plan (see OAR 461-001-0025) may be made on a case-by-case basis.

(D) In the REF and TANF programs, for an emergent need household, the Department may issue a temporary benefit in the following amounts:

(i) \$200 for a single individual.

(ii) \$100 for each additional individual to a maximum payment of \$900.

(E) In the TA-DVS program, payments will be made to address immediate safety needs.

(c) Processing changes for current recipients. Except in the FS program, a branch office may suspend the processing of changes during the business continuity disruption.

(d) Redetermination of benefits issued in accordance with this rule; establishment of overpayments. For each client who receives a benefit under the provisions of this rule, after the business continuity disruption ends:

ADMINISTRATIVE RULES

(A) The Department will determine the correct benefit amount and either provide a supplemental payment or assess an overpayment as appropriate.

(B) In the FS program, the Department will make the determination about supplemental payments under paragraph (A) of this subsection within 10 days of the end of the business continuity disruption.

(6) Notwithstanding any other administrative rule in Chapter 461, during a business continuity disruption with the approval of the Manager of Field Services for the Seniors and People with Disabilities Division (SPD) or the designee of this official:

(a) A branch office may limit acceptance or processing of applications for long-term services to individuals in emergent need who do not yet have a placement or are at risk of losing their current one.

(b) An SPD or AAA office may apply any exception in this rule for FS and Medicaid programs to the extent authorized.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049, 414.042
Hist.: SSP 30-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

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

Adm. Order No.: SSP 31-2009(Temp)

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09 thru 3-30-10

Notice Publication Date:

Rules Amended: 461-135-0095, 461-135-0096, 461-145-0130

Rules Suspended: 461-155-0175

Subject: OAR 461-135-0095 about the specific eligibility requirements for the Extended Medical Assistance (EXT) program is being amended to allow the Department to provide EXT program benefits to an eligible filing group for a longer initial period and remove the requirement that a filing group have been eligible for and received Medial Assistance Assumed (MAA) or Medical Assistance to Families (MAF) program benefits for at least three of the six months prior to the beginning of the EXT program benefit eligibility period.

OAR 461-135-0096 about Extended Medical Assistance (EXT) program eligibility periods is being amended to remove the prohibition against extending medical eligibility beyond four months for clients eligible for EXT due to increased child support and to state that the initial EXT eligibility period is twelve months for clients eligible for EXT due to an increase in the earnings of the caretaker relative.

OAR 461-145-0130 about how the Department treats earned income in the Medial Assistance Assumed (MAA) and Medical Assistance to Families (MAF) programs is being amended to remove language excluding income that would result in MAA or MAF ineligibility prior to meeting the have been eligible for and received MAA or MAF for three of the prior six months requirement.

OAR 461-155-0175 about the income standards in the Extended Medical Assistance (EXT) program is being suspended because the rule is unnecessary in the context of changes to medical eligibility requirements and the new EXT eligibility period.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0095

Specific Requirements; EXT

(1) To be eligible for EXT benefits, at least one member of the filing group must have been eligible for and received MAA or MAF, and then become ineligible because of:

- An increase in the earnings of the caretaker relative;
- An increase in child support received; or
- A combination of an increase in both the earnings of the caretaker relative and child support received.

(2) If the filing group becomes ineligible for MAA or MAF when another change occurs in conjunction with the increase in earned income or child support, the filing group is not eligible for EXT if the other change, by itself, makes the group ineligible for MAA or MAF.

(3) Eligibility for EXT is limited to the members of the MAA or MAF benefit group at the time that those benefits end.

(4) Subject to the time periods established in OAR 461-135-0096(1):

(a) Once eligibility for EXT is established, members of the benefit group are ineligible if the filing group contains no dependent child.

(b) A benefit group may regain EXT eligibility after becoming ineligible, even if eligibility was lost due to moving out of state, whenever the group again meets EXT eligibility requirements.

(c) Persons who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility when they return to the household.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-135-0096

Eligibility Period; EXT

(1) For a client who meets the eligibility requirements for EXT, the period of eligibility is one of the following:

(a) If eligibility for EXT results from increased child support, the period of eligibility is four months.

(b) If eligibility for EXT results from an increase in the caretaker relative's earnings the period of eligibility is twelve months.

(2) The period of eligibility for EXT is based on the increase in the caretaker relative's earnings and is described in subsection (1)(b) of this rule in each of the following situations:

(a) A client meets the eligibility requirements for EXT based on an increase in the caretaker relative's earnings and also meets the eligibility requirements based on an increase in child support in the same month.

(b) A client meets the eligibility requirements for EXT based on a combination of increased income from the caretaker relative's earnings and child support, although either increase by itself does not make the filing group ineligible for MAA or MAF.

(3) The EXT eligibility period begins the first of the month following the month eligibility for MAA or MAF ends. If a benefit group received MAA or MAF benefits when they were eligible for EXT, the MAA or MAF benefits are not an overpayment. However, any month in which the client receives MAA or MAF benefits when eligible for EXT is counted as a month of EXT eligibility.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-145-0130

Earned Income; Treatment

(1) Earned income (see OAR 461-145-0120) is countable in determining eligibility for programs, subject to sections (2) to (9) of this rule.

(2) JOBS Plus income is earned income and is treated as follows:

(a) In the FS program:

(A) JOBS Plus income earned by a TANF-PLS client:

(i) Is counted in determining initial FS eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(b) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(c) In all programs other than the FS and TANF programs, TANF-PLS income is counted.

(d) In all programs other than the TANF program, NCP-PLS income is counted as earned income.

(e) In all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(3) Welfare-to-Work work experience income is treated as follows:

(a) In the EXT, MAA, MAF, REF, REFM, and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the FS and OHP programs, the income is earned income.

(4) In the ERDC and OHP programs, earned income of a child is excluded.

(5) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) Earned income of the following children is excluded:

ADMINISTRATIVE RULES

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461-145-0280 and 461-145-0470).

(6) In the FS program:

(a) If a cafeteria plan (see OAR 461-001-0000) benefit that the employee cannot elect to receive as a cash payment is designated and used to pay for child care, medical care, or health insurance, the benefit is excluded unless it is reimbursed by the Department or allowed as an earned income deduction.

(b) The following types of income are excluded:

(A) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(i) Attending elementary or high school;

(ii) Attending GED classes recognized by the local school district;

(iii) Completing home-school elementary or high school classes recognized by the local school district; or

(iv) Too young to attend elementary school.

(B) In-kind earned income, except as provided in section (7) of this rule.

(C) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(D) Income remaining after the month of receipt is a resource.

(7) In the FS and OHP programs, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a principal (see OAR 461-145-0088).

(8) In all programs except the EXT and FS programs, and for an OSIPM client in nonstandard living arrangement (see OAR 461-001-0000), the income of a temporary employee of the U.S. Census Bureau employed to assist in taking the census is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

461-155-0175

Income Standard; EXT

(1) For the first seven months of EXT eligibility, there is no income limit.

(2) To continue EXT eligibility after the first seven months, the average adjusted earned income of the financial group must be below 185 percent of the federal poverty level as described in OAR 461-155-0180, using income from:

(a) The second three months of the EXT period to continue eligibility for the eighth through tenth months.

(b) The third three months of the EXT period to continue eligibility for the eleventh and twelfth months.

Stat. Auth.: ORS 411.060, 411.070
Stats. Implemented: ORS 411.060, 411.070
Hist.: SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; Suspended by SSP 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10

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

Rule Caption: To reflect rate changes in outpatient and inpatient hospital services for Diagnosis Related Grouper (DRG) hospitals and update the unit value calculation component for inpatient services.

Adm. Order No.: DMAP 31-2009

Filed with Sec. of State: 9-22-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 410-125-0141, 410-125-0195

Subject: The Hospital Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. Having temporarily amended these rules, DMAP permanently amended rules 410-125-0141 and 410-125-0195 to reflect an increase in the Unit Value component of the formula that reimburses hospitals for inpatient services paid on a Diagnosis Related group (DRG) basis. It will also increase the reimbursement percentage paid for outpatient services.

DMAP also amended rule 410-125-0141, effective October 1, 2009, to reflect the updated unit value calculation component that reimburses DRG hospitals for inpatient services. This is the Notice to make these rules permanent on or before October 1, 2009. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0141

DRG Rate Methodology

(1) Diagnosis Related Groups:

(a) Diagnosis Related Groups (DRG) is a system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM);

(b) The DRG classification methodology assigns a DRG category to each inpatient service, based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status.

(2) Medicare Grouper: The Medicare Grouper is the software used to assign an individual claim to a DRG category. Medicare revises the Grouper program each year in October. The Division of Medical Assistance Programs (DMAP) uses the Medicare Grouper program in the assignment of inpatient hospital claims. The most recent version of the Medicare grouper will be installed each year within 90 days of the date it is implemented by Medicare. Where better assignment of claims is achieved through changes to the grouper logic, DMAP may modify the logic of the grouper program. DMAP will work with representatives of hospitals that may be affected by grouper logic changes in reaching a cooperative decision regarding changes. DMAP DRG weight tables can be found on the DHS web site.

(3) DRG Relative Weights:

(a) Relative weights are a measure of the relative resources required in the treatment of the average case falling within a specific DRG category;

(b) For most DRGs, DMAP establishes a relative weight based on federal Medicare DRG weights. For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs, Oregon Title XIX fee-for-service claims history is used. To determine whether enough claims exist to establish a reasonable weight for each state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRG, DMAP uses the following methodology: Using the formula $N = \frac{Z \cdot S}{R}$ where $Z = 1.15$ (a 75% confidence level), S is the standard deviation, and $R = 10\%$ of the mean. DMAP determines the minimum number of claims required to set a stable weight for each DRG (N must be at least 5). For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs lacking sufficient volume, DMAP sets a relative weight using:

(A) DMAP non-Title XIX claims data; or

(B) Data from other sources expected to reflect a population similar to the DMAP Title XIX caseload;

(c) When a test shows at the 90% confidence level that an externally derived weight is not representative of the average cost of services provided to the DMAP Title XIX population in that DRG, the weight derived from DMAP Title XIX claims history is used instead of the externally derived weight for that DRG;

(d) Those relative weights based on Federal Medicare DRG weights, will be established when changes are made to the DRG Grouper logic. State specific relative weights shall be adjusted, as needed, as determined by DMAP. When relative weights are recalculated, the overall Case Mix Index (CMI) will be kept constant. Reweighting of DRGs or the addition or modification of the grouper logic will not result in a reduction of overall payments or total relative weights.

(4) Case Mix Index: The hospital-specific case mix index is the total of all relative weights for all services provided by a hospital during a period, divided by the number of discharges.

(5) Unit Value: Hospitals larger than fifty (50) beds are reimbursed using the Diagnosis Related Grouper (DRG) as described in (2). Effective for services on or after:

ADMINISTRATIVE RULES

(a) August 15, 2005, the operating unit payment is 100% of 2004 Medicare and related data published in Federal Register/Vol. 68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit per discharge.

(b) May 1, 2009, the operating unit payment is 108.5% of the 2004 Medicare and related data published in Federal Register/Vol. 68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit per discharge.

(c) Effective October 1, 2009 the operating unit payment is 100% of the most recent version of the Medicare base payment rates. DMAP will revise the base payment rates each year in October when Medicare posts the rates.

(6) DRG Payment: The DRG payment to each Oregon DRG hospital is calculated by adding the unit value to the capital amount, then multiplied by the claim assigned DRG relative weight (out of state hospitals do not receive the capital amount).

(7) Cost Outlier Payments:

(a) Cost outlier payments are an additional payment made to in-state and contiguous hospitals for exceptionally costly services or exceptionally long lengths of stay provided to Title XIX and SF (State Facility) clients;

(b) For dates of service on and after March 1, 2004 the calculation to determine the cost outlier payment for Oregon DRG hospitals is as follows:

(A) Non-covered services (such as ambulance charges) are deducted from billed charges;

(B) The remaining billed charges are converted to hospital-specific costs using the hospital's cost-to-charge ratio derived from the most recent audited Medicare cost report and adjusted to the Medicaid caseload;

(C) If the hospital's net costs as determined above are greater than 270 percent of the DRG payment for the admission and are greater than \$25,000, an additional cost outlier payment is made;

(D) Costs which exceed the threshold (\$25,000 or 270% of the DRG payment, whichever is greater) are reimbursed using the following formula:

- (i) Billed charges less non-covered charges, multiplied by;
- (ii) Hospital-specific cost-to-charge ratio equals;
- (iii) Net Costs, minus;
- (iv) 270% of the DRG or \$25,000 (whichever is greater), equals;
- (v) Outlier Costs, multiplied by;
- (vi) Cost Outlier Percentage, (cost outlier percentage is 50%), equals;
- (vii) Cost Outlier Payment;

(E) Third party reimbursements are deducted from the DMAP calculation of the payable amount;

(F) When hospital cost reports are audited during the cost settlement process, an adjustment will be made to cost outlier payments to reflect the actual Medicaid hospital-specific cost-to-charge ratio during the time cost outlier claims were incurred. The cost-to-charge ratio in effect for that period of time will be determined from the audited Medicare Cost Report and DMAP 42, adjusted to reflect the Medicaid mix of services.

(8) Capital:

(a) The capital payment is a reimbursement to in-state hospitals for capital costs associated with the delivery of services to Title XIX, non-Medicare persons. DMAP uses the Medicare definition and calculation of capital costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) For the dates of service on and after March 1, 2004 the Capital cost per discharge is one hundred (100) percent of the published Medicare capital rate for fiscal year 2004, see (5). The capital cost is added to the Unit Value and paid per discharge.

(c) Effective October 1, 2009 the Capital cost per discharge is one hundred (100) percent of the current year Medicare capital rate and updated every October thereafter, see (5). The capital cost is added to the Unit Value and paid per discharge.

(9) Direct Medical Education:

(a) The direct medical education payment is a reimbursement to in-state hospitals for direct medical education costs associated with the delivery of services to Title XIX eligible persons. DMAP uses the Medicare definition and calculation of direct medical education costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) Direct Medical Education cost per discharge is calculated as follows:

(A) The direct medical education cost proportional to the number of Title XIX non-Medicare discharges during the period from July 1, 1986 through June 30, 1987 are divided by the number of Title XIX non-Medicare discharges. This is the Title XIX Direct Medical Education Cost per discharge;

(B) The Title XIX Direct Medical Education cost per discharge for this period is inflated forward to January 1, 1992, using the compounded HCFA-DRI market basket adjustment;

(c) Direct Medical Education Payment Per Discharge:

(A) The number of Title XIX non-Medicare discharges from each hospital for the quarterly period is multiplied by the inflated Title XIX cost per discharge. This determines the current quarter's Direct Medical Education costs. This amount is then multiplied by 85%. Payment is made within thirty days of the end of the quarter;

(B) The Direct Medical Education Payment per Discharge will be adjusted at an inflation factor determined by the Department in consideration of inflationary trends, hospital productivity and other relevant factors.(C) Notwithstanding subsection (9) of this rule, this subsection becomes effective for dates of service:

(i) On July 1, 2006 and thereafter Direct Medical Education payments will not be made to hospitals; and

(ii) On July 1, 2008 and thereafter Direct Medical Education payments will be made to hospitals, but will not be operative as the basis for payments until DMAP determines all necessary federal approvals have been obtained.

(10) Indirect Medical Education:

(a) The indirect medical education payment is a reimbursement made to in-state hospitals for indirect medical education costs associated with the delivery of services to Title XIX non-Medicare clients;

(b) Indirect medical education costs are those indirect costs identified by Medicare as resulting from the effect of teaching activity on operating costs;

(c) Indirect medical education payments are made to in-state hospitals determined by Medicare to be eligible for such payments. The indirect medical education factor in use by Medicare for each of these eligible hospitals at the beginning of the State's fiscal year is the DMAP indirect medical education factor. This factor is used for the entire Oregon fiscal year;

(d) For dates of service on and after March 1, 2004 the calculation for the Indirect Medical Education quarterly payment is as follows: Total paid discharges during the quarter multiplied by the Case Mix Index, multiplied by the hospital specific February 29, 2004 Unit Value, multiplied by the Indirect Factor equals the Indirect Medical Education Payment;

(e) Effective October 1, 2009, the calculation of the Indirect Medical Education quarterly payment is as follows: Total paid discharges during the quarter multiplied by the Case Mix Index, multiplied by the hospital unit value, see (5)(c), multiplied by the indirect factor equals the Indirect Medical Education Payment.

(f) This determines the current quarter's Indirect Medical Education Payment. Indirect medical education payments are made quarterly to each eligible hospital. Payment for indirect medical education costs will be made within thirty days of the end of the quarter.

(g) Notwithstanding subsection (10) of this rule, this subsection becomes effective for dates of service:

(i) On July 1, 2006 and thereafter Indirect Medical Education payment will not be made to hospitals; and

(ii) On July 1, 2008 and thereafter Indirect Medical Education payments will be made to hospitals, but will not be operative as the basis for payments until DMAP determines all necessary federal approvals have been obtained.

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

Stat. Auth.: ORS 414.019, 414.025 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0006, 461-015-0020 & 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0570, 461-015-0590, 461-015-0600 & 461-015-0610; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 36-1990(Temp), f. 10-29-90, cert. ef. 11-1-90; HR 42-1990, f. & cert. ef. 11-30-90; HR 3-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0840, 410-125-0880, 410-125-0900, 410-125-0920, 410-125-0960 & 410-125-0980; HR 35-1993(Temp), f. & cert. ef. 12-1-93; HR 23-1994, f. 5-31-94, cert. ef. 6-1-94; HR 11-1996(Temp), f. & cert. ef. 7-1-96; HR 22-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 45-1998, f. & cert. ef. 12-1-98; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 37-2005(Temp), f. & cert. ef. 8-15-05 thru 1-15-06; OMAP 70-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 10-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-28-09; DMAP 31-2009, f. 9-22-09, cert. ef. 10-1-09

410-125-0195 Outpatient Services In-State DRG Hospitals

In-State Diagnostic Related Grouper (DRG) hospital outpatient and emergency services are reimbursed under a cost-based methodology.

ADMINISTRATIVE RULES

(1) The National Drug Code (NDC) must be included on the electronic (837I) and paper (UB 04) claims for physician administered drug codes required by the Deficit Reduction Act of 2005.

(2) Interim reimbursement:

(a) The interim reimbursement percentage is developed using the cost-to-charge ratio methodology, derived from the Medicare cost report, and applied to billed charges;

(b) The interim payment is the estimated percentage needed to achieve 100% of hospital cost in aggregate.

(c) This interim percentage is applied to all outpatient charges except for clinical laboratory services. The Division of Medical Assistance Programs (DMAP) fee schedule is used as interim reimbursement for clinical laboratory.

(3) Settlement reimbursement:

(a) For Title XIX/Title XXI clients; an adjustment to 100 percent of outpatient costs is made during the cost settlement process;

(b) For GA clients, outpatient hospital services are reimbursed at 50 percent of billed charges or 59 percent of costs, whichever is less.

Stat. Auth.: ORS 409.025, 409.040, 409.050, 414.025 & 414.743

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 43-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 10-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-28-09; DMAP 31-2009, f. 9-22-09, cert. ef. 10-1-09

Rule Caption: Transportation assistance for court-ordered OHP Plus clients vs. incarcerated persons not eligible for services.

Adm. Order No.: DMAP 32-2009

Filed with Sec. of State: 9-22-2009

Certified to be Effective: 9-25-09

Notice Publication Date: 9-1-2009

Rules Amended: 410-136-0240, 410-136-0300

Subject: The Medical Transportation program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. Having temporarily amended 410-136-0240 and 410-136-0300 effective April 1, 2009, DMAP permanently amended these rules to clarify that reimbursements may be authorized for non-emergent medical transportation that is court-ordered when other general conditions for eligibility are met. Before the Temporary action, these rules had improperly prevented otherwise eligible clients from obtaining necessary transportation to covered mental health and addictions services when these services were court-ordered. This is the Notice to make these rules permanent on September 25, 2009. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-136-0240

Secured Transports

(1) The Division of Medical Assistance Programs (DMAP) will reimburse for secured transports when the following conditions are met:

(a) The provider must be able to transport children and adults who are in crisis or at immediate risk of harming themselves or others due to mental or emotional problems or substance abuse;

(b) DMAP must recognize the provider as a provider of secured transports. This requires written advance notice to DMAP (prior to or at the time of enrollment) that the provider has met the requirements of the secure transport provider protocol as established in OARs 309-033-0200 through 309-033-0970;

(c) When medically appropriate (to administer medications, etc. in-route) or in those cases where legal requirements must be satisfied (i.e., a

parent, legal guardian or escort is required during transport), one additional person will be allowed to escort at no additional charge to DMAP. The DMAP reimbursement is considered to be payment in full for the transport.

(2) The provider must submit a copy of all rates charged to the general public to DMAP, Provider Enrollment, at the time of enrollment. The provider must submit any changes to those rates to DMAP in writing within 30 days of the change. The notification must indicate the rate changes and effective date. If subsequent review by DMAP discloses that the written notice is not accurate, DMAP may recoup payments.

(3) DMAP will authorize reimbursement on an individual client basis in keeping with the DMAP rules regarding level of transport needed, eligibility, cost effectiveness and medical appropriateness. In the event the provider gave transport on an emergent basis, DMAP will authorize when appropriate after provision of service.

(4) In keeping with the guidelines set forth in 410-136-0300 Section (12)(c), DMAP will reimburse for court ordered medical transportation for an OHP Plus client who is otherwise eligible for OHP medical transportation services.

(5) The DMAP Medical Care identification (ID) does not guarantee eligibility. The Provider is responsible for verifying client eligibility prior to providing services. This includes determining if DMAP or a managed care plan is responsible for reimbursement. The Provider assumes full financial risk in serving a person who is not confirmed eligible by DMAP as eligible for the service provided on the date(s) of service.

(6) Refer to OAR 410-120-1140 Verification of Eligibility (also see the DMAP General Rules Supplemental Information guide for instructions).

(7) The DMAP Medical Care ID is printed on paper and is the size of a business card. The ID lists the client's name, prime number and the date the ID was issued.

(8) The provider must transport the client to a Title XIX eligible or enrolled facility recognized by DMAP as having the ability to treat the immediate medical, mental and/or emotional needs of a client in crisis.

(9) DMAP must assume that a client being returned to place of residence is no longer in crisis or at immediate risk of harming him/herself or others, and is, therefore, able to utilize non-secured transport. In the event a secured transport is medically appropriate to return a client to place of residence, the branch must obtain written documentation stating the circumstances and the treating physician must sign the documentation. The branch must retain the documentation in the branch record (along with a copy of the order) for DMAP review.

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

Stats. Implemented: ORS 414.065

Hist.: HR 28-1994, f. & cert. ef. 9-1-94; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 60-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 7-2009(Temp), f. 3-30-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 32-2009, f. 9-22-09, cert. ef. 9-25-09

410-136-0300

Authorization

(1) For the purposes of the Administrative Rules governing provision of Medical Transportation Services, authorization is defined to be authorization in advance of the service being accessed or provided.

(2) Retroactive authorization for medical transportation will be made only under the following circumstances:

(a) "After hours" transports to obtain urgent medical care. Medical appropriateness will be determined by branch or the Division of Medical Assistance Programs (DMAP) review;

(b) Secured transports provided to clients in crisis on weekends, holidays or after normal branch office hours. Medical appropriateness for secured transports will be determined by branch/DMAP review to ensure authorization is given and/or reimbursement made only for those transports that meet criteria set forth in 410-136-0240.

(3) Authorization of payment is required for the following:

(a) Non-emergency ambulance;

(b) Non-emergency air ambulance;

(c) Stretcher car (including stretcher car services provided by an ambulance);

(d) Wheelchair car/van;

(e) Taxi;

(f) Secured transport (including those arranged for and/or provided outside of normal branch office hours);

(g) Client reimbursed transportation (including medically appropriate meals, lodging, attendant);

(h) Fixed route public bus systems;

(i) All special/bid transports.

(4) Authorization will be made for the services identified above when:

(a) The transport is medically appropriate considering the medical condition of the client;

(b) The destination is to a medical service covered under the Medical Assistance program;

ADMINISTRATIVE RULES

(c) The client medical transportation eligibility screening indicates the client has no resources or that no alternative resource is available to provide appropriate transportation without cost or at a lesser cost to DMAP;

(d) The transport is the least expensive medically appropriate mode of conveyance available considering the medical condition of the client.

(5) The DMAP Medical Care identification (ID) does not guarantee eligibility. The Provider is responsible for verifying client eligibility prior to providing services. This includes determining if DMAP or a managed care plan is responsible for reimbursement. The Provider assumes full financial risk in serving a person who is not confirmed eligible by DMAP as eligible for the service provided on the date(s) of service.

(6) Refer to OAR 410-120-1140 Verification of Eligibility (also see the DMAP General Rules Supplemental Information guide for instructions).

(7) The DMAP Medical Care ID is printed on paper and is the size of a business card. The ID lists the client's name, prime number and the date the ID was issued.

(8) Authorization must be obtained in advance of service provision. Branch telephone numbers can be found in the DMAP General Rules. A provider authorized to provide transportation will receive a completed Medical Transportation Order (DMAP 405T or DMAP 406). All transportation orders, including any equivalent, must contain the following:

- (a) Provider name or number;
- (b) Client name and ID number;
- (c) Pickup address;
- (d) Destination name and address;
- (e) Second (or more) destination name and address;
- (f) Appointment date and time;
- (g) Trip information, e.g., special client requirements;
- (h) Mode of transportation, e.g., taxi;
- (i) 1 way, round trip, 3-way;
- (j) Current date;
- (k) Branch number;
- (l) Worker/clerk ID;
- (m) Dollar amount authorized (if special/secured transport).

(8) If the Medical Transportation Order indicates 'on-going' transports have been authorized, the following information is also required:

- (a) Begin and end dates;
- (b) Appointment time(s);
- (c) Days of week.

(9) Additional information identifying any special needs of the individual client should also be indicated on the order in the "Comments" section. If the order is for a secured transport the name and telephone number of the medical professional requesting the transport, as well as information regarding the nature of the crisis is required.

(10) Authorization for non-emergency services after service provided:

(a) Occasionally a client may contact the provider directly "after hours" (i.e., when the branch office is closed) and order an urgent care medical transport. Only in this case, is it appropriate for the provider to initiate the Medical Transportation Order. All required information (except the branch number, worker/clerk ID and dollars authorized) must be completed by the provider before submitting the order to the branch for authorization. The provider must also indicate on the order the time and day of week the client called. The partially completed authorization order must be received at the appropriate branch office within 30 calendar days following provision of the service;

(b) After branch review (and if approved) the branch will complete the branch number, dollars authorized (if special or secured transport) worker/clerk ID and current date, and return the order to the provider within 30 calendar days. The provider may not bill DMAP until the final approved order is received;

(c) A provider requesting branch authorization for "after hours" rides may be at risk of non-payment if the branch determines the ride was not for the purpose of obtaining urgent medical services covered under the Medical Assistance Programs.

(11) For client reimbursed transportation and fixed route public bus systems, the client must contact the branch office in advance of the travel. Once the transportation has been authorized, money for bus tickets/passes or the actual bus tickets/passes will be disbursed at the branch level. If a client is requesting mileage reimbursement, the branch is to provide assistance using the current guidelines and methodologies as indicated in the DHS Worker Guide.

(12) Authorization will not be made nor reimbursement provided:

(a) To return a client from any foreign country to any location within the United States even though the medical care needed by the client is not available in the foreign country;

(b) To return a client to Oregon from another state or provide mileage, meals or lodging to the client, unless the client was in the other state for the purpose of obtaining services or treatment approved by DMAP or approved

by the client's Prepaid Health Plan with subsequent DMAP approval for the travel;

(c) For any secured medical transport provided to a person:

(A) In the custody of or under the legal jurisdiction of any law enforcement agency;

(B) Going to or from a court hearing, or to or from a commitment hearing;

(C) Who the Department has determined is an inmate of a public institution as defined in OAR 461-135-0950; and

(D) Whose OHP eligibility has been suspended by the Department pursuant to ORS 414.420 or 414.424.

(13) Authorization does not guarantee reimbursement:

(a) Check eligibility on the date of service by calling Automated Information System (AIS) or requesting a copy of the client's Medical Care Identification;

(b) Ensure the service to be provided is currently a medical service covered under the Medical Assistance program;

(c) Ensure the claim is for the actual services and/or number of services provided.

(d) Per OAR 410-136-0280, for all claims submitted to DMAP, the provider record must contain completed documentation pertinent to the service provided.

(14) DMAP may not be billed for services and/or dollars in excess of the number of services and/or dollars authorized.

Stat. Auth.: ORS 409.010, 409.050, 409.065 & 409.110
Stats. Implemented: ORS 414.065

Hist.: AFS 7-1982, f. 1-22-82, ef. 2-1-82; AFS 21-1982(Temp), f. & ef. 3-23-82; AFS 92-1982, f. & ef. 10-8-82; AFS 64-1986, f. 9-8-86, ef. 10-1-86; HR 12-1993, f. 4-30-93, cert. ef. 5-1-93. Renumbered from 461-020-0021; HR 30-1993, f. & cert. ef. 10-1-93; HR 28-1994, f. & cert. ef. 9-1-94; HR 9-1995, f. 3-31-95, cert. ef. 4-1-95; HR 25-1995, f. 12-29-95, cert. ef. 1-1-96; HR 10-1997, f. 3-28-97, cert. ef. 4-1-97; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 55-2002, f. & cert. ef. 10-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 7-2009(Temp), f. 3-30-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 32-2009, f. 9-22-09, cert. ef. 9-25-09

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Rule Caption: Amendments to Medicaid Managed Care and Hospital Tax Rules.

Adm. Order No.: DMAP 33-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 410-050-0100, 410-050-0130, 410-050-0180, 410-050-0240, 410-050-0250, 410-050-0700, 410-050-0800, 410-050-0861, 410-050-0870

Subject: These amendments change the definition of what types of Medicaid managed care organizations are subject to the tax, the tax rate, and penalties for late filings; and establish a new sunset date for the Medicaid managed care provider tax rules. These amendments also change the tax rate and penalties for late filings; and establish a new sunset date for the hospital provider tax rules.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

410-050-0100

Definitions

The following definitions apply to OAR 410-050-0100 to 410-050-0250:

(1) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported by the Prepaid Health Plans (PHP's). If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(2) "Delinquency" means the PHP failed to file a report when due as required under these rules or to pay the tax as correctly computed when the tax was due.

(3) "Department" means the Department of Human Services.

(4) "Director" means the Director of the Department of Human Services.

(5) "Premium Payments" means all capitation payments received by the PHP's on a per enrollee per month basis for the provision of health services specified by contract. Premiums do not include any form of payment by Oregon Health Plan (OHP) enrollees to the Department.

(6) "Managed Care Premiums" means all premium payments paid to a PHP including the capitation payments as defined in OAR 410-141-0000. Managed care premiums do not include Medicare premiums.

(7) "Medicaid Managed Care Organization" (MMCO) means a fully capitated health plan, a physician care organization, or a mental health organization.

Stat. Auth.: ORS 409.050, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736; 37, 2009 HB 2116

ADMINISTRATIVE RULES

Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0130

The Medicaid Managed Care Tax: Calculation; Report; Due Date; Verification of Report

(1) The tax assessed on the managed care premiums paid to a PHP on or after January 1, 2004, is based on calendar quarters. The first calendar quarter begins on January 1; the second calendar quarter begins on April 1; the third calendar quarter begins on July 1; and the fourth quarter begins on October 1. For purposes of this rule, managed care premiums shall be taxed as of the calendar quarter in which the managed care premium payment is received by the PHP.

(2) Adjustments to the managed care premium subject to tax shall be determined as follows:

(a) Managed care premiums attributable to periods prior to January 1, 2004 are not subject to the tax and shall be deducted from the taxable managed care premiums when calculating the tax due. Managed care premiums attributable to the period between January 1, 2004 and April 31, 2004 are taxed at the rate of 0%. This deduction includes maternity payments, adjustments due to changes in client status, and other managed care premium adjustments resulting in additional payments received by the PHP on or after May 1, 2004;

(b) If managed care premiums received after May 1, 2004 are reduced by a recoupment by the Department for an overpayment paid prior to May 1, 2004, then the taxable managed care premiums shall be deemed to include the recouped amount;

(c) If both the overpayment and recoupment occur after May 1, 2004, the PHP shall be subject to the tax on the managed care premiums received in the calendar quarter in which the managed care premium payment is received by the PHP; and

(d) Sub-capitation payments made to a PHP by another PHP are not included in the total managed care premiums subject to tax if the payor PHP certifies to the payee PHP in writing that the payor PHP is already responsible for the managed care tax on the originating managed care premiums.

(3) The rate of the assessment on and after May 1, 2004 shall be determined in accordance with OAR 410-050-0240.

(4) The tax becomes operative on May 1, 2004. The first calendar quarter for which a tax is due is a partial quarter. First quarter taxes shall be due on managed care premiums received between May 1, 2004 and June 30, 2004.

(5) The PHP must pay the tax and file the report on a form approved by the Department on or before the 45th day following the end of the calendar quarter for which a tax is due unless the Department permits a later payment date. If a PHP requests an extension, the Department, in its sole discretion, shall determine whether to grant an extension. The PHP must provide all required information on the report.

(6) Any report, statement, or other document required to be filed under any provision of these rules shall be certified by the chief financial officer of the PHP or an individual with delegated authority to sign for the PHP's chief financial officer. The certification must attest, based on best knowledge, information, and belief to the accuracy, completeness, and truthfulness of the document.

(7) Payments may be made electronically or by paper check. If the PHP pays electronically, the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form. If the PHP pays by paper check, the accompanying report must be mailed with the check to the address provided on the report form.

(8) The Department may charge the PHP a fee of \$100 if for any reason the check, draft, order, or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 : 38, 39, 45, 2009 HB 2116
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0180

Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A PHP that fails to file a report or pay a tax when due under OAR 410-050-0130 is subject to a penalty of up to \$500 per day of delinquency. The Department, in its sole discretion, shall determine the penalty for failure to pay the tax or file a report. In making this determination, the Department shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which the penalty is being imposed.

(3) The Department shall collect any penalties imposed under this section and deposit the funds in the Department account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Medicaid managed care tax.

(5) If the Department determines that a PHP is subject to a penalty under this section, the Department shall issue a notice of proposed action as described in OAR 410-050-0190.

(6) If a PHP requests a contested case hearing pursuant to OAR 410-050-0210, the Director, at the Director's sole discretion, may waive or reduce the amount of penalty assessed.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003, Ch. 736, 40, 2009 HB 2116
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0240

Director Determines the Tax Rate

(1) The Director determines the tax rate.

(a) The tax rate for the period beginning January 1, 2004 through April 30, 2004 is 0 percent.

(b) The tax rate for the period beginning May 1, 2004 and ending December 31, 2007 is 5.8 percent.

(c) The tax rate beginning January 1, 2008 and ending September 30, 2009 is 5.5 percent.

(d) The tax rate beginning October 1, 2009 is 1.0 percent.

(3) The rate may not exceed 5.5 percent of managed care premiums paid to a PHP.

(4) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director shall notify the PHP's of the effective date of the rate reduction.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 : 38 & 39, 2009 HB 2116
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0250

Sunset Provisions

The Medicaid managed care tax applies to managed care premiums received by PHP's on or after May 1, 2004 and before October 1, 2013.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 : 50, 2009 HB 2116
Hist.: OMAP 30-2004(Temp), f. 4-28-04 cert. ef. 5-1-04 thru 10-27-04; OMAP 80-2004, f. & cert. ef. 10-28-04; DMAP 1-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0700

Definitions

The following definitions apply to OAR 410-050-0700 to 410-050-0870:

(1) "Bad Debt" means the current period charge for actual or expected uncollectible accounts resulting from the extension of credit on inpatient and outpatient hospital services. Bad debt charges would be offset by any recoveries received on accounts receivable during that current period, subject to final tax reporting and reconciliation processes required in these rules.

(2) "Charges for Inpatient Care" means gross inpatient charges generated from room, board, general nursing, and ancillary services provided to patients, who are expected to remain in the hospital at least overnight, and occupy a bed (as distinguished from categories of health care items or services identified in 42 CFR 433.56(a)(2)-(19) that are not charges for inpatient hospital services). Charges for inpatient care include all payors, and are not limited to Medicaid patients.

(3) "Charges for Outpatient Care" means gross outpatient charges, generated from services provided by the hospital to a patient who is not confined overnight. These services include all ancillary and clinic facility charges (as distinguished from categories of health care items or services identified in 42 CFR 433.56(a)(1) and (3)-(19) that are not charges for outpatient hospital services). Charges of outpatient care include all payors and are not limited to Medicaid charges.

(4) "Charity Care" means costs for providing inpatient or outpatient care services free of charge or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the care services. Charity care results from a hospital's policy as reflected in its official financial statements to provide inpatient or outpatient hospital care services free of charge or at a reduced charge to individuals who meet financial criteria. Charity care does not include any amounts above the payments by the Department that constitute payment in full under ORS 414.065(3), or above

ADMINISTRATIVE RULES

the payment rate established by contract with a prepaid managed care health services organization or health insurance entity for inpatient or outpatient care provided pursuant to such contract, or above the payment rate established under ORS 414.743 for inpatient or outpatient care reimbursed under that statute.

(5) "Contractual Adjustments" means the difference between the amounts charged based on the hospital's full, established charges and the amount received or due from the payor.

(6) "Declared Fiscal Year" means the fiscal year declared to the Internal Revenue Service (IRS).

(7) "Deficiency" means the amount by which the tax, as correctly computed, exceeds the tax, if any, reported and paid by the hospital. If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(8) "Delinquency" means the hospital failed to file a report when due as required under these rules or failed to pay the tax as correctly computed when the tax was due.

(9) "Department" means the Department of Human Services.

(10) "Director" means the Director of the Department of Human Services.

(11) "Hospital" means a hospital with an organized medical staff, with permanent facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to, acutely ill patients and accident victims, or to provide treatment for the mentally ill. Hospital, as used in this section, does not include special inpatient care facilities as that term is defined in ORS 442.015(32). For purposes of these rules, the hospital will be identified by using the federal taxpayer identification number for the hospital.

(12) "Net Revenue" means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts, and contractual adjustments. Net revenue does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to, interest and guest meals and any revenue that is taken into account in computing a long term care assessment under the long term facility tax.

(13) "Waivered Hospital" means a Type A or Type B hospital as described in ORS 442.470, or a hospital that provides only psychiatric care.

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

Stat. Auth.: ORS 409.050, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0800

Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A hospital that fails to file a quarterly report or pay a quarterly tax when due shall be subject to a penalty of up to \$500 per day of delinquency. The Department, in its sole discretion, shall determine the penalty for failure to pay the tax or file a report. In making this determination, the Department shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(2) A hospital that fails to file a fiscal year reconciliation report when due under OAR 410-050-0740 or 410-050-0750 is subject to a penalty of up to \$500 per day of delinquency. The Department, in its sole discretion, shall determine the penalty for failure to pay the tax or file a report. In making this determination, the Department shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(3) A hospital that files a fiscal year reconciliation report, but fails to pay a fiscal year reconciliation tax payment when due under OAR 410-050-0740 is subject to a penalty of up to \$500 per day of delinquency up to a maximum of five percent of the amount due. The Department, in its sole discretion, shall determine the penalty for failure to pay the reconciliation tax payment or file a fiscal year reconciliation report. In making this determination, the Department shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(4) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalty is being imposed.

(5) The Department shall collect any penalties imposed under this section and deposit the funds in the Department's account established under ORS 409.060.

(6) Penalties paid under this section are in addition to the hospital's tax liability.

(7) If the Department determines that a hospital is subject to a penalty under this section, the Department shall issue a notice of proposed action as described in OAR 410-050-0810.

(8) If a hospital requests a contested case hearing pursuant to OAR 410-050-0830, the Director, at the Director's sole discretion, may waive or reduce the amount of penalty assessed.

Stat. Auth.: ORS 409.050, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0861

Tax Rate

(1) The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent.

(2) The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent.

(3) The tax rate for the period beginning January 1, 2008 and ending June 30, 2009 is .63 percent.

(4) The tax rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009.

(5) The tax rate for the period beginning July 1, 2009 and ending September 30, 2009 is .15 percent.

(6) The tax rate beginning October 1, 2009 is 2.8 percent.

Stat. Auth.: ORS 409.050, 410.070 & 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736

Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05; OMAP 14-2006, f. 6-1-06, cert. ef. 7-1-06; DMAP 29-2007, f. 12-31-07, cert. ef. 1-1-08; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 24-2009, f. & cert. ef. 7-1-09; DMAP 25-2009(Temp), f. & cert. ef. 7-15-09 thru 1-10-10; DMAP 27-2009, f. & cert. ef. 9-1-09; DMAP 33-2009, f. & cert. ef. 10-1-09

410-050-0870

Sunset Provisions

The hospital tax applies to net revenue received by hospitals on or after January 1, 2004 and before October 1, 2013.

Stat. Auth.: ORS 409.050, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 33-2009, f. & cert. ef. 10-1-09

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Tuberculosis risk assessment and screening requirements for employees, inmates and residents of residential settings.

Adm. Order No.: PH 9-2009

Filed with Sec. of State: 9-22-2009

Certified to be Effective: 9-22-09

Notice Publication Date: 8-1-2009

Rules Amended: 333-019-0041

Rules Repealed: 333-026-0005, 333-026-0010, 333-026-0015, 333-026-0020, 333-026-0025

Subject: The Department of Human Services, Public Health Division is permanently amending OAR 333-019-0041 so that the referenced documents in the text reflect the most current Centers for Disease Control guidelines for tuberculosis. In addition, the Division is permanently repealing OARs in chapter 333, division 26 related to tuberculosis examination for care facilities' personnel and admittees because the rules are out of date with current Centers for Disease Control guidelines for tuberculosis. The subject matter addressed in chapter 333, division 26 is also duplicative as it is already covered in OAR 333-019-0041.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-019-0041

Tuberculosis

(1) Each Health Care Facility shall formally assess the risk of tuberculosis transmission among staff (professional and volunteer), residents, and patients at least annually and shall follow tuberculosis screening recommendations outlined in "Guidelines for preventing the transmission of Mycobacterium tuberculosis in Health-Care Settings," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 54, Number RR-17: 1-141; December 30, 2005) or otherwise approved by DHS.

(2) Each facility specified below shall formally assess the risk of tuberculosis transmission among staff (professional and volunteer), resi-

ADMINISTRATIVE RULES

dents, inmates, and patients at least annually and shall follow appropriate tuberculosis screening recommendations as outlined in the relevant publication or as otherwise approved by DHS:

(a) Correctional Facilities: "Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC" published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 55, Number RR09: 1-44; July 7, 2006).

(b) Long Term Care Facilities for the Elderly: "Prevention and control of tuberculosis in facilities providing long-term care to the elderly. Recommendations of the Advisory Committee for Elimination of Tuberculosis," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 39, RR-10, pp. 7-20; July 13, 1990) and "Guidelines for preventing the transmission of Mycobacterium tuberculosis in Health-Care Settings," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 54, Number RR-17: 1-141; December 30, 2005).

(c) Homeless Shelters: "Prevention and control of tuberculosis among homeless persons," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 41, RR-5, pp. 13-23; April 17, 1992)

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 431.110, 432.060, 433.001-433.035, 433.110-433.220 & 437.030
Stats. Implemented: ORS 431.150, 431.155, 431.170, 433.001-433.035, 433.110 -433.220 & 437.030
Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 10-2005, f. 6-15-05, cert. ef. 6-21-05; PH 9-2009, f. & cert. ef. 9-22-09

Rule Caption: Updated Construction Requirements Necessary for Licensing Hospitals.

Adm. Order No.: PH 10-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 6-1-2009

Rules Adopted: 333-535-0001

Rules Amended: 333-535-0000, 333-535-0010, 333-535-0025, 333-535-0035, 333-535-0041, 333-535-0050, 333-535-0061, 333-535-0065, 333-535-0070, 333-535-0080, 333-535-0085, 333-535-0086, 333-535-0090, 333-535-0100, 333-535-0105, 333-535-0110, 333-535-0115, 333-535-0120, 333-535-0130, 333-535-0140, 333-535-0150, 333-535-0160, 333-535-0170, 333-535-0180, 333-535-0190, 333-535-0200, 333-535-0205, 333-535-0210, 333-535-0220, 333-535-0230, 333-535-0250, 333-535-0260, 333-535-0270, 333-535-0280, 333-535-0290, 333-535-0300, 333-535-0310

Rules Repealed: 333-535-0240

Subject: The Department of Human Services, Public Health Division is permanently amending OAR 333-535-0000 through 333-535-0310 and Tables 1 through 5 to increase patient safety for health care projects reviewed by the Facilities Planning & Safety Program. Also proposed is an addition of Table 6 referenced by changes to OAR 333-535-0310 regarding electrical requirements in patient care areas.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-535-0000

Applicability

OAR 333-535-0000 through 333-535-0310 shall apply to all hospitals not licensed or for which plans have not been approved on the effective date of these rules for major alterations and new construction. Major alteration has the meaning given that term in OAR 333-500-0010.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-017-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0200; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0001

Referenced Codes and Standards

(1) The codes and standards referenced in these rules shall be considered part of the requirements of these rules to the prescribed extent of each such reference. Where differences occur between provisions of these rules and referenced codes and standards, the provisions of the most restrictive code shall apply.

- 2007 Oregon Structural Specialty Code.
- 2007 Oregon Mechanical Specialty Code.
- 2008 Oregon Electrical Specialty Code.
- 2008 Oregon Plumbing Specialty Code.
- 2007 Oregon Fire Code.
- National Fire Protection Association, NFPA 101 Life Safety Code, 2000 Edition.

(g) National Fire Protection Association, NFPA 99 Standard for Healthcare Facilities, 1999 Edition.

(h) National Fire Protection Association, NFPA 110 Standard for Emergency and Standby Power Systems, 2002 Edition.

(i) National Fire Protection Association, NFPA 90A Standard for Installation of Air-Conditioning and Ventilating Systems, 1996 Edition.

(j) National Fire Protection Association, NFPA 96 Standard for Ventilation Control and Fire Protection of Commercial Cooking, 2008 Edition.

(k) National Fire Protection Association, NFPA 255 Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 Edition.

(l) National Fire Protection Association, NFPA 801 Standard for Fire Protection for Facilities Handling Radioactive Materials, 1998 Edition OSHA and radiology.

(m) Illuminating Engineering Society, IES RP 28, 2007 Edition.

(n) Illuminating Engineering Society, IES RP 29, 2006 Edition with Errata.

(o) American National Standards Institute/ American Society of Sanitary Engineering, ANSI/ASSE 6000, 2004 edition.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: PH 10-2009, f. & cert. ef. 10-1-09

333-535-0010

General Rules

(1) When conditions make certain changes to existing institutions impractical to accomplish, minor variations from these requirements (other than fire and life safety requirements) may be permitted if the intent of the requirement is met, the care and safety of patients will not be jeopardized, and with written approval of the Department of Human Services, Public Health Division (Division). (Refer to OAR 333-500-0065.)

(2) Sizes: The sizes of various departments will depend upon program requirements and organization of services within the hospital. Some functions requiring separate spaces or rooms in these minimum requirements may be combined, provided that the resulting plans will not compromise the best standards of safety and of medical and nursing practices, and with written approval of the Division.

(3) Conflicts of requirements: Certain projects may be subject to the regulations of several different federal, state and local agencies. Should a difference in requirements occur, the more stringent requirement shall be applied. In cases of conflicting or opposing regulations, the problem shall be directed to the responsible programs for resolution.

(4) All departmental requirements included in these rules are not necessarily applicable to all institutions. Each service element provided in the hospital must, however, comply with requirements found herein.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(1); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0205; HD 2-2000, f. & cert. ef. 2-15-00; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0025

Medical/Surgical Patient Care Unit

Except as permitted under OAR 333-535-0010(1) or 333-500-0065, each patient care unit shall include the following:

(1) Patient rooms. Each patient room shall meet the following requirements:

(a) For new construction projects, maximum room capacity shall be two patients. For major alteration projects, the maximum room capacity shall be the present capacity or four patients, whichever is less.

(b) For new construction, patient rooms shall be constructed to meet the needs of the Functional Program and shall have a minimum of 100 square feet of clear floor area per bed in multiple bedrooms and 120 square feet of clear floor area in single patient rooms, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules. The dimensions and arrangements of rooms shall be such that there is a minimum clearance of 3 feet around the perimeter of the bed and any wall or any other fixed obstruction. In multiple bedrooms, a clearance of 4 feet shall be available at the foot of each bed to permit the passage of equipment and beds, and 4 feet shall be provided between beds. Minor encroachments, including columns and hand washing stations, that do not interfere with function may be ignored when calculating required space. For renovation projects, every effort shall be made to meet the requirement set out in this subsection for new construction. However, if full compliance is not practical for a renovation project, the Division may permit deviations from these requirements as long as patient rooms include at least 80 net square feet of clear floor area per bed in a multiple bedroom and 100 net square feet of clear floor area in a single patient room.

(c) Patient room windows:

ADMINISTRATIVE RULES

(A) Operable windows are not required in patient rooms. If operable windows are provided, operable sections shall be designed to inhibit possible escape or suicide attempt.

(B) A minimum window area of 16 square feet shall be provided for each patient room. The maximum sill height shall be 3 feet above the finished floor. A minimum of 8 square feet of window shall be viewable by the patient from the bed. Walls and other non-moveable items shall not block the view of the window.

(C) Windows located in outside walls shall be 20 feet or more from another building or opposite wall and 10 feet or more from the property line except when the window faces on a street or public right of way of greater than 20 feet in width.

(D) For renovation projects where the exterior wall is being retained, windows shall be permitted to vary from the requirements of this subsection if approved by the Division.

(d) Hand-washing stations: A hand-washing station shall be provided serving each patient room. A hand-washing station shall also be located in each patient toilet room. For new construction, the patient room hand-washing station shall be located within the room and shall be situated for convenient access by staff and to prevent splash on patients. For renovation projects involving single patient rooms that have a private toilet room, a hand-washing station shall be located in either the toilet room or the patient room. Hand-washing stations shall comply with the requirements of OAR 333-535-0260.

(e) Patient toilet rooms: Each patient shall have access to a toilet room without having to enter the corridor. One toilet room shall serve no more than four beds and no more than two patient rooms. The toilet room shall contain a toilet, hand-washing station, and bathing facilities. Patient toilet rooms and central bathing facilities shall comply with the requirements of OAR 333-535-0260.

(f) Each patient shall have a separate wardrobe, locker, or closet suitable for hanging full-length garments and for storing personal effects within the room.

(g) Visual privacy from casual observation by other patients and visitors shall be provided for each patient. The design for privacy shall not restrict patient access to the entrance, hand-washing station, toilet, or nurse call system.

(2) Service areas. Provision for the services listed below shall be in or readily available to each patient care unit. The size and location of each service area will depend upon the numbers and types of beds served. Identifiable spaces are required for each of the indicated functions. Each service area may be arranged and located to serve more than one patient care unit but, unless noted otherwise, at least one such service area shall be provided on each nursing floor. Where the words "room" or "office" are used, a separate, enclosed space for the one named function is intended; otherwise, the described area may be a specific space in another room or common area.

(a) Administrative center(s) or nurses' station(s): This area shall include a desk, storage and work counters and shall have convenient access to a hand-washing station within 20 feet and not through a door, to meet infection control standards. It may be combined with or include facilities for reception and communication systems;

(b) Private consultation/administrative office;

(c) Charting facilities: Charting facilities shall have sufficient surface space to provide for charting by staff and physicians to meet the functional needs of the unit;

(d) Toilet room(s) conveniently located for staff use (may be unisex);

(e) Staff facilities: In addition to lounge facilities, securable closets or cabinet compartments shall be provided for the personal articles of nursing personnel. At a minimum, these shall be large enough for purses and bill-folds. Coats may be stored in closets or cabinets on each floor or in a central staff locker area;

(f) Multi-purpose room(s) for staff, patients, patients' families for patient conferences, reports, education, training sessions, and consultation. These rooms shall be accessible to each patient care unit but may be located on other floors if convenient for regular use;

(g) Clean and soiled utility rooms shall be provided in accordance with OAR 333-535-0260(5);

(h) Medication station: Provision shall be made for convenient and prompt 24-hour distribution of medicine to patients. This shall be from a medicine preparation room, a self-contained medicine dispensing unit, or by another system approved by the Division. A medicine preparation room or unit shall be under the visual control of the nursing or pharmacy staff. It shall contain a work counter, hand-washing station, and an electrical receptacle for a lockable refrigerator and locked storage for biologicals and drugs. A secured medicine dispensing unit may be located at the nurses' station, in the clean utility room or area, or in an alcove or other space under the direct control of the nursing or pharmacy staff. This area shall have adequate lighting to easily identify drugs;

(i) Clean linen storage: Each patient care unit shall contain a designated area for clean linen storage. This may be within the clean utility room or area, a separate closet, or a distribution system approved by the Division on each floor. If a closed cart system is used, storage may be in an alcove;

(j) Nourishment area: There shall be a nourishment area with sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishments between scheduled meals. The nourishment area shall include space for trays and dishes used for non-scheduled meal service. Provisions and space shall be included for separate temporary storage of unused and soiled dietary trays not picked up at mealtime. A hand-washing station shall be in or immediately accessible from the nourishment area;

(k) Ice machine: Each nursing unit shall have direct access to equipment to provide ice for treatments and nourishment. Ice-making equipment may be in the clean utility room or area or at the nourishment station. Ice intended for human consumption shall be from self-dispensing icemakers;

(l) Equipment storage room(s) or alcove(s): Appropriate room(s) or alcove(s) shall be provided for storage of equipment necessary for patient care as required by the Functional Program, the location of which shall not interfere with the flow of traffic. Each patient care unit shall provide sufficient storage area(s) located on the patient floor to keep the required corridor width free of all equipment and supplies, but at least 10 square feet per patient bed shall be provided. If stretchers and wheelchairs are stored on the patient care unit, additional storage space shall be provided;

(m) In remodel projects that do not include bathing facilities in all existing patient rooms, common use showers and bathtubs shall be provided in accordance with OAR 333-535-0260(6);

(n) Emergency equipment storage: Space for emergency equipment such as cardiopulmonary resuscitation (CPR) carts shall be provided. This space shall be out of traffic, under the direct control of the nursing staff and proximate to the nurses' station;

(o) Housekeeping room: One housekeeping room shall be provided for each patient care unit or nursing floor. It shall be directly accessible from the patient care unit or floor and may serve more than one patient care unit on a floor. At least one housekeeping room per floor shall contain a service sink or floor receptor and space for the storage of supplies and housekeeping equipment and cart. A minimum of 35 square feet shall be provided for each housekeeping room. This housekeeping room shall not be used for other departments and patient care units that are specifically required by rule to have separate housekeeping rooms; and

(p) Low voltage room/closet(s), electrical room/closet(s) and other technical support spaces shall be provided as required to meet the service needs of the patient care unit.

(3) Patient care units shall comply with the requirements of OAR 333-535-0260, 333-535-0270, 333-535-0280, 333-535-0300 and 333-535-0310. Additional rule requirements may apply to specialty patient care units.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0035

Infection Control Physical Requirements

(1) An Infection Control Risk Assessment (ICRA) shall be provided for all projects that include Airborne Infection Isolation Rooms, Protective Environment Rooms, surgical facilities, emergency departments, hospital immediate care and minor emergency facilities, and any other identified areas of special risk related to infection. As used in division 535, an Infection Control Risk Assessment is documentation focusing on reduction of risk from infection. The assessment shall have input from the hospital's infection control personnel, and be based on current Centers for Disease Control guidelines or other applicable rules and guidelines. Each subject health care facility shall also comply with the requirements of OAR 333-505-0070. The Infection Control Risk Assessment shall include at least the following elements:

(a) A statement explaining the needs and risks of the patient population to be served that includes:

(A) The number, location, and type of airborne infection isolation and protective environment rooms;

(B) Location(s) of special ventilation and filtration such as emergency department waiting and intake areas; and

(C) Air-handling and ventilation needs in surgical services, airborne infection isolation and protective environment rooms, laboratories, local exhaust systems for hazardous agents, and other special areas.

(b) Statements regarding infection control risk mitigation recommendations including:

(A) Patient placement and relocation;

(B) Standards for barriers and other protective measures required to protect adjacent areas and susceptible patients from air-borne contaminants;

(C) Temporary provisions or phasing for construction or modification of heating, ventilating, air conditioning, and water supply systems; and

ADMINISTRATIVE RULES

(D) Measures to be taken to train hospital staff, visitors, and construction personnel.

(c) Management of potentially infectious patients that includes:

(A) Location of patients by susceptibility to infection and definition of risks to each; and

(B) Infection control risk mitigation recommendations that describe the specific methods by which transmission of air and waterborne biological contaminants will be avoided during the course of the construction project.

(d) Infection control risks during construction and plan for containment that includes:

(A) The impact of disrupting essential services to patients and employees;

(B) Location of known hazards;

(C) Determination of the specific hazards and protection levels for each;

(D) Assessment of external as well as internal construction activities; and

(E) Impact of potential outages or emergencies and protection of patients during planned or unplanned outages, movement of debris, traffic flow, cleanup, and testing and certification.

(2) Airborne Infection Isolation Room(s): Airborne Infection Isolation Rooms are single occupancy patient care rooms where environmental factors are controlled in an effort to minimize the transmission of those infectious agents usually spread from person to person by droplet nuclei associated with coughing and inhalation. Airborne Infection Isolation Room requirements shall be predicated on the Infection Control Risk Assessment (ICRA) and the needs of specific community and patient populations served, and shall include the following:

(a) Each facility shall have at least one Airborne Infection Isolation Room. These rooms may be located within individual patient care units and used for normal acute care when not required for isolation cases, or they may be grouped as a separate isolation unit. The number of airborne infection isolation rooms for individual patient units shall be increased based upon an ICRA or by a multidisciplinary group designated for that purpose. Each room shall contain only one bed and shall comply with the requirements of OAR 333-535-0025, and ventilation requirements of OAR 333-535-0300.

(b) Each Airborne Infection Isolation Room shall have an area for hand-washing, gowning, and storage of clean and soiled materials located directly outside or immediately inside the entry door to the room.

(c) Airborne infection isolation room perimeter walls, ceilings, and floors, including penetrations, shall be sealed tightly so that air does not infiltrate the environment from the outside or from other spaces.

(d) Each Airborne Infection Isolation Room shall have a self-closing device on all room exit doors, or doors shall be signed "Door shall be closed at all times."

(e) A separate toilet, bathtub (or shower), and hand-washing station shall be required for each Airborne Infection Isolation Room and shall be accessible without having to enter the corridor.

(f) Each Airborne Infection Isolation Room shall have a permanently installed visual mechanism to constantly monitor the pressure status of the room when occupied by a patient with airborne infectious disease. The mechanism shall continuously monitor the direction of the airflow.

(3) Protective Environment Room(s): Protective Environment Rooms are patient care rooms where severely immuno-suppressed patients are cared for (e.g. bone marrow transplant units). Protective Environment Rooms shall meet all rules for Airborne Infection Isolation Rooms as required by subsection (2)(a) through (f) of this rule but shall provide positive air pressure relative to adjoining spaces, with all supply air passing through filters in compliance with OAR 333-535-0300. When determined necessary by an ICRA, special design considerations and air ventilation to ensure the protection of patients shall be required. The appropriate number and location of Protective Environment Rooms shall be determined by the ICRA. Each Protective Environment Room shall contain only one bed.

(4) Surgical facilities, emergency departments, immediate care and minor emergency facilities and other identified areas of special risk related to infection: Requirements shall be predicated on the ICRA in addition to the rules applicable to each type of area.

(5) Infectious waste:

(a) Soiled utility or soiled holding room(s) shall include segregated infectious waste storage and recycle storage if part of hospital operations unless a separate designated room for waste storage is provided.

(b) The infectious waste storage spaces shall have a floor drain, cleanable floor and wall surfaces, lighting and exhaust ventilation, and safe from weather, animals and unauthorized entry.

(c) Infectious waste management shall be in accordance with the requirements of OAR 333-056-0010 through 333-056-0050.

(d) Refrigeration requirements for such storage facilities shall also comply with OAR 333-535-0300 and the Oregon Mechanical Specialty Code.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 1-2002, f. & cert. ef. 2-28-02; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0041

Critical Care Units

(1) Critical Care Units: Generally, Critical Care Units require special space and equipment considerations for effective staff functions. In addition, space must be arranged to include provisions for immediate access for emergency medical equipment from other departments. Critical Care Units shall comply in size, number and type with the requirements of this rule and with the hospital's Functional Program. This rule is intended for the more common types of critical care services. Where specialized services are required, the Division may allow such additions and modifications as are necessary for efficient, safe and effective patient care. (See also OAR 333-535-0300 for mechanical requirements and 333-535-0310 for electrical requirements.)

(2) Adult Critical Care Units: Each Adult Critical Care Unit shall comply with the following requirements:

(a) The location shall be convenient for access from emergency, respiratory, laboratory, radiology, surgery, and other essential departments and services, and be located so that medical emergency resuscitation teams may respond promptly to emergency calls;

(b) The location shall be arranged to eliminate the need for through traffic;

(c) For new construction, a private room shall be provided for each patient. A minimum of 200 square feet of clear floor area shall be provided exclusive of anterooms, vestibules, toilet rooms, closets, lockers, wardrobes, and alcoves. A combined total of at least 7 feet of clear space shall be available at the head and foot of the bed. Minimum head wall width shall be 13 feet;

(d) Renovation projects shall comply with subsection (2)(c) of this rule except when existing structural conditions make full compliance impractical. In such cases, the Division may allow the following deviations: Private patient room size may be reduced to 160 square feet with a minimum headwall width of 11 feet 6 inches. The combined total of clear space available at the head and foot of the bed may be reduced to a minimum of 6 feet. Multiple bed rooms may be provided with cubicle curtains for patient privacy. The minimum patient cubicle size shall be 130 square feet with a minimum headwall width of 11 feet for each bed. Three of the 7 feet of combined total clear space required at the head and foot of the bed may be outside the curtained cubicle area;

(e) In private rooms or curtained cubicles, visual access to the corridor shall be provided. In multiple bed rooms, cubicle curtains or other alternative methods approved by the Division shall be provided for visual privacy from casual observation by other patients and visitors;

(f) Where only one door is provided to a bed space, it shall be at least 3 feet 8 inches in clear width and arranged to minimize interference with the movement of beds and large equipment. Sliding doors shall not have floor tracks and shall have hardware that minimizes jamming. When a secondary door is desired for staff use, it may be of a smaller width;

(g) For the purpose of allowing day from night orientation, newly constructed patient rooms shall include at least one window meeting the requirements of OAR 333-535-0025(1)(c), arranged to allow direct visual access by the patient to the outside. Patient rooms and cubicles in renovation projects shall also meet this requirement except when the Division determines that existing structural conditions make it impractical to do so. In these instances, patients must have direct visual access to an outside window, but it may be a clerestory type and the distance from the patient bed to the outside window may be up to 50 feet;

(h) A nurse call device shall be provided at each bed for patient use. A staff use emergency call station shall also be provided in each patient room to summon assistance. In multiple bed rooms, at least one such emergency call station shall be provided for each eight patient beds;

(i) Hand-washing stations shall be convenient to nurses' stations and patient bed areas. One hand-washing station shall be provided in each patient room. The hand-washing station shall be located near the entrance of the patient room, designed to minimize splashing water onto the floor, and shall be equipped with hands-free operable controls. In multiple bed rooms allowed under paragraph (2)(b)(D) of this rule, if the Division determines that existing structural conditions make it impractical to comply with this requirement, there shall be at least one hand-washing station provided for every two beds in multiple bed rooms. The hand-washing station shall be located near the entrances to patient cubicles;

(j) A toilet shall be provided within each patient room or in a separate private toilet room entered directly from the patient room. Space shall be provided adjacent to toilets to allow for staff assistance. An exception to this requirement may be granted by the Division when the project is with-

ADMINISTRATIVE RULES

in a Department of Human Services designated Level 1 Trauma Center Hospital and patients typically are unable to utilize toilets. In renovation projects if the Division determines that existing structural conditions make it impractical to comply with this paragraph, a minimum of one enclosed toilet room and hand-washing station shall be provided for each eight patient beds. In these instances, portable toilets are permitted in place of fixed toilets within each patient room or cubicle. If portable toilets are used, facilities for cleaning and storing them shall be conveniently located within or adjacent to the Critical Care Unit;

(k) The nurses' station or a substation with space for charting, monitoring and a hand-washing station within 20 feet not through a door, shall be located so that nurses will have direct visual observation of each patient. In larger Critical Care Units, more than one nurses' station may be needed to provide for observation of all patients;

(l) Individual patient closets or lockers shall be provided for the secure storage of clothing and personal effects. This storage may be within patient rooms or in a central location convenient to the Critical Care Unit; and

(m) Each Critical Care Unit shall provide space for equipment used for continuous physiological monitoring, including a bedside and remote visual display for each patient.

(3) Airborne Infection Isolation Room: At least one Airborne Infection Isolation Room shall be provided for use by Critical Care Unit patients. The number and location of Airborne Infection Isolation Rooms shall be determined based upon an Infection Control Risk Assessment conducted in accordance with OAR 333-535-0035(1). Each Airborne Infection Isolation Room shall comply with the requirements of OAR 333-535-0035(2) with the following exceptions:

(a) The requirement for the bathtub or shower may be eliminated;

(b) Compact, modular toilet/sink combination units may replace the requirement for a toilet room if discussed and allowed through the ICRA; and

(c) Toilets may be eliminated entirely from patient rooms of Department of Human Services designated Level 1 Trauma Center Hospitals when patients typically are unable to utilize a toilet.

(4) Service areas: One service area may serve two or more adjacent Critical Care Units. The size and location of each service area will depend upon the number of beds to be served. The following service areas shall be located in, or readily available to, each Critical Care Unit:

(a) Charting facilities. Documentation and information review spaces shall be provided within the unit to accommodate the recording of patient information. The documentation space shall be located within or adjacent to the patient bed space. It shall include a countertop that will provide for a large flow sheet typical of critical care units and a computer monitor and keyboard. There shall be one documentation space with seating for each patient bed. There shall be a specifically designated area within the unit for information review located to facilitate concentration;

(b) Staff lounges and toilet(s). The following may be located outside the unit if conveniently accessible:

(A) Staff lounge(s) and toilet(s) shall be located so that staff may be recalled quickly to the patient area in emergencies;

(B) The lounge shall have telephone or intercom and emergency code alarm connections to the critical care unit it serves;

(C) Lounge facilities shall be sized in accordance with the Functional Program but shall not be less than 100 square feet; and

(D) Staff personal effects storage. Space located at or near the nurses' work area for the secure storage of the personal effects of nursing personnel. If not provided elsewhere, provisions for the storage of coats, etc., shall be made in this area.

(c) Sleeping and personal care accommodations shall be provided for staff on 24-hour call work schedules;

(d) Clean utility or clean storage room. This room shall be provided in accordance with OAR 333-535-0260(4), for the storage and distribution of all clean medical and surgical supplies kept in the Critical Care Unit;

(A) This room shall be immediately available in each critical care suite.

(B) More than one critical care unit shall be permitted to share a clean utility or clean storage room provided direct access is available from each.

(C) Such rooms shall be separate from and have no direct connection with soiled utility or soiled holding rooms.

(D) If the clean utility room is used to prepare patient care items, it shall contain a work counter, a hand-washing station, and storage facilities for clean and sterile supplies.

(E) If the room is used only for storage and holding as part of a system for distribution of clean and sterile materials, omission of the work counter and hand-washing station shall be permitted.

(e) Clean linen storage. Location of the designated area within the clean utility room, a separate closet, or an approved distribution system on each floor shall be permitted. If a closed cart system is used, storage of

clean linen carts in an alcove shall be permitted. The cart storage must be out of the path of normal traffic and under staff control;

(f) Appropriate room(s) or alcove(s) shall be provided for storage of equipment necessary for patient care and as required by the Functional Program. Each unit shall provide sufficient storage area(s) located on the patient floor to keep its required corridor width free of all equipment and supplies, but not less than 10 square feet per patient bed shall be provided;

(A) Equipment storage room or alcove. Appropriate room(s) or alcove(s) shall be provided for storage of large items of equipment necessary for patient care and as required by the Functional Program. Each Critical Care Unit shall provide sufficient storage area(s) in addition to subsection (4)(f) of this rule, located on the patient floor to keep its required corridor width free of all equipment and supplies, but not less than 20 square feet per patient bed shall be provided. Additional space shall be provided for stretcher or bed storage if stored on the floor.

(B) Emergency equipment storage. Space shall be provided for emergency equipment that is under direct control of the nursing staff, such as a cardiopulmonary resuscitation (CPR) cart. This space shall be located in an area appropriate to the Functional Program but out of normal traffic.

(g) Soiled utility room. Each patient Critical Care Unit shall include at least one soiled utility room that meets the requirements of OAR 333-535-0260(5);

(h) Medication station. Medication stations shall be in accordance with the requirements of OAR 333-535-0025(2)(h). The medication station shall be designed to allow for secure, convenient, and prompt 24-hour distribution of medicine to patients;

(i) Nourishment station. A nourishment station with sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishments between scheduled meals shall be provided. The nourishment station shall include space for trays and dishes used for non-scheduled meal service. Provision and space shall be included for separate temporary storage of unused and soiled dietary trays not picked up at meal time. Nourishment stations shall not share storage, counters, sinks or refrigerator space with medical supplies or pharmaceuticals;

(j) Ice machine. Equipment to provide ice for treatments and nourishment shall be provided. Ice-making equipment may be in the clean work room or at the nourishment station. Ice intended for human consumption shall be from self-dispensing icemakers;

(k) Visitors' waiting room. A visitors' waiting room shall be provided that is designed to accommodate the long stays and stressful conditions common to such spaces, including provisions for privacy, means to facilitate communications, and access to toilets. The waiting room may be located outside the unit if conveniently accessible. The locations and size shall be appropriate for the number of patients and units served, with a seating capacity of not less than one family member per patient bed;

(l) Multipurpose room(s). Multipurpose room(s) shall be provided for staff, patients, and patient's families for patient conferences, reports, education, training sessions, and consultation. These rooms shall be accessible to each nursing unit; and

(m) Housekeeping room. A housekeeping room shall be provided within or immediately adjacent to the critical care unit. This room shall not be shared with other nursing units or departments. It shall contain a service sink or floor receptor and provisions for storage of supplies and housekeeping equipment.

(5) Pediatric Critical Care Unit:

(a) If a facility has a distinct Pediatric Critical Care Unit, the Functional Program must include consideration for staffing, control, and the safe transportation of critically ill pediatric patients with life support and environmental systems from other areas of the facility. The Pediatric Critical Care Unit may be an open ward plan or may have private or semi-private patient rooms. Private rooms at the rate of at least one per 10 beds shall be provided. In addition, at least one private room for each Pediatric Critical Care Unit shall be provided for seclusion and airborne infection isolation. The room(s) provided for seclusion and airborne infection isolation shall comply with the requirements for Airborne Infection Isolation Rooms set forth in OAR 333-535-0035(2). (See also OAR 333-535-0300 for mechanical requirements and 333-535-0310 for electrical requirements.)

(b) In addition to complying with the requirements of sections (1), (2), (3) and (4) of this rule, each Pediatric Critical Care Unit shall also include the following features:

(A) Space in the patient room for family and visitors. Sleeping space for parents who may be required to spend long hours with the patient. This sleeping space may be provided at the patients' bedside. If the sleeping area is separate from the patient area, a system for communication with Pediatric Critical Care Staff must be provided. Storage for associated bedding shall be provided;

(B) If an examination and treatment room is required by the Functional Program, it shall be located in or directly accessible from the Pediatric Critical Care Unit. Examination and treatment rooms shall have a

ADMINISTRATIVE RULES

floor area of at least 80 square feet and shall include a hand-washing station, storage facilities and a surface for charting;

(C) Provisions shall be made for the storage of formula or breast milk. Formula/breast milk storage may be outside the unit but should be available for use at all times. The Functional Program should determine the location and size of formula/breast milk storage;

(D) Consultation/demonstration room within, or convenient to, the Pediatric Critical Care Unit for private discussions; and

(E) Separate storage cabinets or closets for toys and games.

(6) Newborn Intensive Care Units (NICU): Each Newborn Intensive Care Unit shall include or comply with the following requirements:

(a) The NICU shall have a clearly identified entrance and reception area with a counter for charting and enclosed storage for supplies. The area shall permit visual observation of, and contact with, all traffic entering the NICU. A hand-washing station shall be provided for visitors entering the NICU.

(b) The NICU shall be designed as part of an overall safety program to protect the physical security of infants, parents, and staff and to minimize the risk of infant abduction. There shall be controlled physical access and controlled egress to and from the NICU.

(c) In a multiple-bed room, every bed position shall be within 20 feet of a hands-free hand-washing station. Where an individual room concept is used, a hands-free hand-washing station shall be provided within each infant care room. All hand-washing stations shall be large enough to contain splashing.

(d) At least one door to each patient room in the NICU must be large enough in both width and height to accommodate portable X-ray and ultrasound equipment.

(e) The NICU shall be located proximate to Labor and Delivery Departments when that service is also provided at the facility.

(f) When viewing windows are provided, provisions shall be made to control casual viewing of infants. Each patient care space shall be designed to allow privacy for the infant and family.

(g) Noise control:

(A) Infant bed areas and the spaces opening onto them shall be designed to produce minimal background noise and to contain and absorb much of the transient noise that arises within the NICU;

(B) The combination of continuous background sound and transient sound in any patient care area shall not exceed an hourly Leq of 50dB and an hourly L10 of 55dB, both A-weighted slow response. The Lmax (transient sounds) shall not exceed 70dB, A-weighted slow response;

(C) Ceilings shall have a noise reduction coefficient (NRC) of at least 0.90; and

(D) The ceiling construction shall limit passage of particles from above the ceiling plane into the clinical environment. If a t-bar acoustic tile ceiling system is used, the tiles shall be clipped down, weighted or gasketed to limit passage of particles and be easily cleanable and non-friable.

(h) Lighting:

(A) Provisions shall be made for indirect lighting and high-intensity lighting in the NICU;

(B) Controls shall be provided to enable lighting to be adjusted over individual patient care spaces from one to 60 foot-candles at 3 feet above the floor level;

(C) Darkening sufficient for trans-illumination shall be available when necessary;

(D) No direct ambient lighting shall be permitted in the infant care space, and any direct ambient lighting used outside the infant care area shall be located or framed to avoid a direct line of sight from any infant to the fixture. This does not exclude the use of direct procedure lighting; and

(E) Lighting fixtures shall be easy to clean.

(i) Space requirements: Each infant care space shall contain a minimum of 150 square feet per bassinet, excluding sinks and aisles. Each bassinet shall have a minimum clearance of 4 feet to walls or any permanent obstruction. When single infant rooms or fixed cubicle partitions are used, there shall be an adjacent aisle of not less than 8 feet in clear unobstructed width to permit passage of equipment and personnel. In multiple bed rooms, there shall be a minimum of 8 feet between infant care beds. Each infant care space shall be designed to allow privacy for the baby and family.

(j) A medication station meeting subsection (4)(h) of this rule.

(k) At least one Airborne Infection Isolation Room is required within the NICU. The room shall be enclosed and separated from other areas of the nursery with provisions for visual observation of the infant from adjacent nurseries or control area(s). All Airborne Infection Isolation Rooms shall comply with the requirements of OAR 333-535-0035(2), except that a separate toilet, bathtub, or shower are not required.

(l) Rooms at the rate of at least one per 15 infant isolettes shall be provided within the NICU to allow parents and infants to spend extended private time together.

(A) These room(s) shall have direct, private access to a hand-washing station and toilet facilities;

(B) Communication linkage with the NICU staff;

(C) Electrical and medical gas outlets as specified for other NICU beds;

(D) Sleeping facilities for at least one parent; and

(E) Sufficient space for the infant's bed and equipment.

(m) Lactation support space. Dedicated space shall be provided for lactation support and consultation in or immediately adjacent to the NICU. Provision shall be made, either within the room or conveniently located nearby, for a hand-washing station, counter, refrigerator and freezer, storage for pump and attachments, and educational materials.

(n) Charting facilities shall have adequate linear surface space to ensure that staff and physicians may chart and have simultaneous access to information and communication systems.

(o) A clean utility room or clean supply room shall be provided in accordance with the requirements of subsection (4)(d) of this rule.

(p) A soiled utility room or soiled holding room shall be provided in accordance with the requirements of subsection (4)(g) of this rule.

(q) A lounge, locker room, and staff toilet shall be provided within or adjacent to the NICU for staff use in accordance with the requirements of subsection (4)(b) of this rule.

(r) Space for storage of emergency equipment shall be provided in accordance with the requirements of paragraph (4)(f)(B) of this rule.

(s) A housekeeping closet directly accessible from the unit and dedicated for the exclusive use of the NICU shall be provided in accordance with the requirements of subsection (4)(m) of this rule.

(t) A visitors' waiting room shall be provided in accordance with the requirements of subsection (4)(k) of this rule.

(u) A nurses'/supervisors' office or station shall be provided in accordance with the requirements of subsection (2)(k) of this rule.

(v) Multipurpose room(s) for staff, patients, and patients' families for patient conferences, reports, education, training sessions, and consultation. These rooms must be accessible to each NICU. They may be located on other floors if convenient for regular use. One such room may serve several nursing units or departments.

(w) Equipment storage or alcove shall be provided in accordance with paragraph (4)(f)(a) of this rule.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: PH 1-2003, f. & cert. ef. 2-20-03; PH 8-2004(Temp), f. & cert. ef. 3-17-04 thru 7-30-04; PH 19-2004, f. & cert. ef. 5-26-04; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0050

Pediatric Patient Care Unit

Young children and adolescents shall be housed in a patient care unit separate from adults or in a separate pediatrics room of a general nursing unit. This unit shall meet the following requirements:

(1) Patient rooms. The requirements noted in OAR 333-535-0025 shall be applied to a pediatric and adolescent care unit containing hospital beds or cribs, except that patient rooms used for cribs shall contain at least 60 square feet of clearance for each crib with no more than six cribs in a room.

(2) Nursery. Each nursery serving pediatric patients shall contain no more than eight bassinets. The minimum clear floor area per bassinet shall be 40 square feet. Each room shall contain a lavatory equipped for hand-washing, nurses' emergency calling system, and glazed viewing windows for observing infants from public areas and workroom.

(3) Nursery workrooms. Each nursery shall be served by a connecting workroom that shall contain:

(a) Gowning facilities at the entrance for staff;

(b) Work counter;

(c) Refrigerator;

(d) Storage facilities; and

(e) A hand-washing station.

(f) One workroom may serve more than one nursery provided that required services are convenient to each.

(g) The workroom serving the full-term and continuing care nurseries may be omitted if equivalent work and storage areas and facilities, including those for scrubbing and gowning, are provided within that nursery. Space required for work areas located within the nursery is in addition to the area required for infant care.

(h) Provision shall be made for storage of emergency cart(s) and equipment out of traffic.

(i) Provision shall be made for the sanitary storage and disposal of soiled waste.

(j) Visual control shall be provided via borrowed lights or view panels between the staff work area and each nursery.

(4) Examination/Treatment Rooms. An examination/ treatment room shall be provided for pediatric and adolescent patients. A separate area for infant examination and treatment shall be permitted within the pediatric

ADMINISTRATIVE RULES

nursery workroom. It shall contain a work counter, storage facilities, and a hand-washing station. Examination/treatment rooms shall have a minimum floor area of 120 square feet.

(5) Service areas. The service areas in the pediatric and adolescent nursing unit shall conform to the conditions listed in OAR 333-535-0025 and shall meet the following additional conditions:

(a) Multipurpose or individual room(s) shall be provided within or adjacent to areas serving pediatric and adolescent patrons for dining, educational and developmentally appropriate play and recreation, with access and equipment for patients with physical restrictions. Insulation, isolation, and structural provisions shall be made to minimize the transmission of impact noise through the floor, walls, or ceiling of the multipurpose room(s).

(b) Space for preparation and storage of infant formula or breast milk shall be provided in the unit or other convenient location. The Functional Program should determine the location and size of formula/breast milk storage. Provisions shall be made for continuation of special formula that may have been prescribed for the infant prior to admission or readmission.

(c) Patients' toilet room(s) with hand-washing stations in each room, in addition to those serving bed areas, shall be convenient to multipurpose room(s) and to each central bathing facility.

(d) Storage closets or cabinets shall be provided for toys, and educational and recreational equipment.

(e) Storage space shall be provided to permit exchange of cribs and adult beds.

(f) Storage space shall be provided for equipment and supplies (including cots, recliners, extra linen, etc.) for parents who stay with the patient overnight.

(g) Separate clean and soiled utility or holding rooms shall be provided in accordance with OAR 333-535-0260(4) and (5).

(h) Housekeeping closet shall be provided for each nursery per OAR 333-535-0260(8).

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(5); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0225; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0061

Psychiatric Patient Care Units and Rooms

(1) The design of inpatient psychiatric patient care units shall be supportive of the types of psychiatric therapies provided for patients and their psychiatric care needs. Interior finishes, lighting and furnishings shall, to the extent practicable, reflect a residential rather than an institutional setting with an emphasis on natural light and exterior views while not compromising patient privacy and safety design. Inpatient psychiatric patient care units shall include patient rooms meeting the requirements of section (4) of this rule and service areas meeting the requirements of section (5) of this rule.

(2) Patient and Staff Safety Assessment. The hospital psychiatric care staff and the hospital administration, in consultation with the project architects, shall develop a Patient and Staff Safety Assessment that addresses security and safety design features and devices. A copy of this Assessment shall accompany construction documents submitted to the Licensing Plans Review Program. The Patient and Staff Safety Assessment shall include at least the following elements:

(a) A statement explaining the psychiatric population groups served;

(b) A discussion of the capability for staff visual supervision of patient ancillary areas and corridors;

(c) A discussion of the risks to patients, including self-injury, and the project solutions employed to minimize such risks;

(d) A discussion of building features and equipment, including items which may be used as weapons, that is intended to minimize risks to patients, staff and visitors;

(e) A statement explaining how potentially infectious patients will be managed; and

(f) A discussion of outdoor areas used by patients. Discussion must include, but is not limited to, the number of patients each outdoor area will serve at one time, staffing, security and shifts.

(3) Except as permitted under OAR 333-500-0065, every hospital classified as mental or psychiatric and other hospitals, regardless of classification, that provide psychiatric services, shall have at least one psychiatric holding room which meets the requirements of section (7) of this rule and OAR 309-033-0720(3)(e).

(4) Psychiatric patient care rooms shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A nurse call system is not required. If included, provisions shall be made for easy removal or covering of call buttons;

(b) Patient toilets shall not have bed pan flushing devices;

(c) Hand-washing stations are not required in patient rooms;

(d) Visual privacy in multi-bed rooms (e.g., cubicle curtains) is not required;

(e) Each patient room shall be provided a private toilet room and hand-washing station. Grab bars are only required in rooms required to be accessible to the disabled;

(f) All hardware shall have tamper-resistant fasteners; and

(g) Patient rooms shall comply with the requirements of section (6) of this rule.

(5) Psychiatric patient care unit service areas shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A secured storage area shall be provided for patients' belongings that are determined to be potentially harmful;

(b) A secured storage station will be provided for storing law enforcement weapons prior to officers entering the patient care unit;

(c) The medication station shall include provision against unauthorized access;

(d) Between meal nourishment(s) facilities within the unit shall be one, or a combination of the following:

(A) A nourishment station;

(B) A kitchenette, designed for patient use, with a sink and a keyed switch or other acceptable method for staff control of any heating and cooking devices; or

(C) A kitchen service within the unit that includes a hand washing station, storage space, refrigerator and facilities for full meal preparation. A keyed switch or other acceptable method for staff control of any heating and cooking devices is required.

(e) All storage spaces within the psychiatric patient care unit shall be secured from patient access;

(f) A bathtub or shower shall be provided for every six beds not otherwise served by bathing facilities within the patient rooms. Bathing facilities shall be designed and located for patient safety, convenience, privacy and shall comply with section (6) of this rule;

(g) A separate charting area shall be provided with provisions for visual and acoustical privacy. Viewing windows to permit observation of patient areas by the charting nurse or physician may be used if the arrangement is such that patient files cannot be read from outside the charting area. Viewing windows shall meet the requirements of subsection (6)(g) of this rule;

(h) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities shall be provided. The combined area shall be at least 40 square feet per patient with each space being at least 120 square feet in size. These spaces may be shared by dining activities;

(i) Space for group therapy shall be provided. This space may be combined with the quiet space required by subsection (5)(h) of this rule when the unit accommodates 12 or fewer patients and when at least 225 square feet of closed private space is available for group therapy activities;

(j) Securable patient laundry facilities with an automatic washer and dryer and secured space for chemicals shall be provided;

(k) Each psychiatric patient care unit shall include, or have close access to, a soiled utility room that meets the requirements of OAR 333-535-0260(5) or a soiled holding room. A soiled holding room shall meet all the requirements of a soiled utility room except that a clinical sink may be omitted;

(l) The following elements shall also be provided, but shall be permitted to serve several nursing units and may be on a different floor if conveniently located to the unit for routine use:

(A) Space requirements. Examination rooms shall have a minimum floor area of 120 square feet, excluding space for vestibule, toilets, and closets. The room shall contain a hand-washing station, storage facilities and a surface for charting. In existing psychiatric facilities exam rooms may continue to be 80 square feet excluding space for vestibules, toilets and closets;

(B) Separate consultation room(s), lockable from the outside. Each consultation room shall have a minimum floor space of 100 square feet and shall be provided at a room-to-bed ratio of one consultation room for every 12 psychiatric beds. The room(s) shall be designed for acoustical and visual privacy and be constructed to achieve a level of voice privacy of 50 STC;

(C) Separate space for patient therapy/multipurpose use. The greater of at least 300 square feet or at least 15 square feet per patient shall be provided. The space shall include a hand-washing station, work counter(s), storage and space for displays and may serve more than one psychiatric patient care unit. However, when a psychiatric patient care unit contains less than 12 beds, the therapy and other functions may be performed within the noisy activities area required by subsection (5)(h) of this rule if at least an additional 10 square feet per patient is provided; and

(D) A conference and treatment planning room, for use by psychiatric patient care unit staff, constructed to achieve a level of voice privacy of 50 STC.

ADMINISTRATIVE RULES

(m) Outside area shall be provided for all patients. The area shall be discussed as part of the Functional Program per subsection (2)(f) of this rule.

(6) Patient and staff safety features, security and safety devices shall not, to the extent practicable, be presented in a manner to attract or invite tampering by patients. Design, finishes and furnishings shall be designed and installed to minimize the opportunity for patients to cause injury to themselves or others. Special design considerations for prevention of self injury and injury to staff and others shall include:

(a) Visual control of nursing unit corridors, passive activity areas and outdoor areas shall be provided;

(b) Hidden alcoves are prohibited;

(c) Non-patient areas, including staff support rooms, mechanical and electrical spaces shall be secured from patients;

(d) Door closers and door and cabinet hardware, including hinges in patient areas, shall be designed to prevent attachment of other articles and to limit possible patient or staff injury;

(e) Doors to patient toilet and shower rooms shall not swing into the room. These doors shall either not be lockable from within the room or shall be provided with privacy locks that can be opened by staff with a key or tool. Hardware shall be designed to preclude patients from tying the door closed;

(f) Furnishings, movable equipment and accessories shall be addressed by the Patient and Staff Safety Assessment required by section (2) of this rule;

(g) Windows, including interior and exterior glazing, shall be non-operable and shall be of break-resistant material (i.e., will not shatter). Window sills, curtains and blinds shall be constructed to prevent attachment of other articles;

(h) Curtains and blinds shall be constructed to break-away with a vertical load of greater than 40 pounds;

(i) Ceilings in patient bedrooms, toilet and shower rooms shall be of continuous bonded construction. T-bar ceilings with lay-in tiles are not allowed;

(j) The ceiling and air distribution devices, lighting fixtures, sprinkler heads, smoke detectors, and other appurtenances shall be designed and installed to be tamper resistant, non-breakable, prevent the attachment of other articles and to limit possible patient or staff injury in patient rooms, toilet and shower rooms;

(k) Flooring base in patient rooms, toilet and shower rooms shall be installed to preclude removal by patients;

(l) Shower, bath, toilet and sink plumbing fixture hardware and accessories, including grab bars and toilet paper holders, shall prevent attachment of other articles and removal by patients. Shut-offs under patient sinks shall be covered and secured to prevent patient access;

(m) Grab bars, if provided, shall be contiguous to the wall so that nothing can pass between the edge of the rail and the wall;

(n) Toilet flush valves shall be recessed or of the push button type;

(o) Hand-washing station faucet hardware shall be recessed or of the push button type to preclude patient or staff injury;

(p) Shower curtains, if provided, shall have a breakaway maximum of 40 pounds and be supported on curtain tracks attached or flush to the ceiling. Shower curtains shall not be permitted where facilities accommodate children whose weight is close to, or within the breakaway weight limits;

(q) Shower heads shall be sloped or otherwise designed to prevent attachment of other articles;

(r) Fire extinguisher cabinets and fire alarm pull stations shall be located or installed to prevent inappropriate use;

(s) Electrical outlets in patient areas shall be of a ground fault interrupter type ("GFI") or shall be protected by GFI breakers at electrical panels;

(t) Patient mirrors shall be non-breakable and shatterproof;

(u) Medical gas outlets, if provided, shall be located or installed to prevent patient access;

(v) All devices attached to walls, ceilings and floors and all door and window hardware shall be tamper resistant and be securely fastened with tamper proof screws;

(w) All exit door hardware shall have concealed rods, if any are used, and they shall not be removable by patients. Door closure and panic bars, if provided, shall not allow attachment of other articles;

(x) Time delay closers shall not be used on locked doors; and

(y) Outdoor areas shall be secured in accordance with the Patient and Staff Safety Assessment required by section (2) of this rule.

(7) Psychiatric Holding Rooms. Psychiatric holding rooms shall comply with the following requirements:

(a) As required by section (3) of this rule, and except as permitted by OAR 333-500-0065, each hospital classified as general or psychiatric shall have at least one psychiatric holding room. A minimum of one psychiatric holding room is required for every 24 psychiatric beds or fraction thereof. The rooms shall be proximate to a nurses' station. Each room shall be for

only one patient and shall be at least 80 square feet in size. The design of the room shall prevent patient hiding and minimize the potential for escape and self injury;

(b) Psychiatric holding rooms shall meet the requirements of section (6) of this rule;

(c) Outside room corners, door hardware protrusions and other projections shall be avoided to minimize points for possible patient injury;

(d) No items shall be attached to the walls and there shall be no exposed curtains, drapes, rods or furniture, except a portable bed which can be removed if necessary. Beds that are securely fastened to the floor are allowable but must have no sharp protrusions, such as bed posts or corners;

(e) Wall and other room finish materials shall be securely constructed to resist attempts at intentional damage;

(f) Exposed pipes or electrical wiring is prohibited. Electrical outlets, if provided, shall be permanently capped or covered with a metal shield that opens with a key and shall be circuited and controllable from outside the room. Ceiling lights shall be unbreakable and shall be either recessed or surface mounted;

(g) Room construction shall contain no readily combustible materials (i.e., wood or vinyl wall covering surfaces). If the room interior is padded with combustible materials, such materials shall meet the requirements of the National Fire Protection Association (NFPA) 101 Code as enforced by the State Fire Marshal;

(h) Sprinkler heads shall be of a recessed pop-down type and shall have a breakaway strength of under 80 pounds;

(i) A toilet and hand-washing station that meets the requirements of section (6) of this rule shall be available for patient use but shall not be located within the room;

(j) The door to the room shall open outward and shall include a viewing window of shatterproof glass or plastic through which the entire room may be viewed from the outside before entering; and

(k) The door to the room shall be lockable from the outside and shall include tamper-proof hardware. The lock must release with initiation of the fire alarm, sprinkler flow or power failure as required for controlled egress in accordance with the Oregon Structural Speciality Code and NFPA 101 Code as enforced by the appropriate building codes agency and fire marshal.

(8) Child and Adolescent Psychiatric Units. The requirements of sections (1) through (6) of this rule, and of section (7) of this rule if a psychiatric holding room is provided, shall apply to child and adolescent psychiatric units, except as follows:

(a) The environment of the unit shall reflect the age, social and developmental needs of children and adolescents, including space to accommodate family and other caregivers;

(b) At least one single occupancy timeout room shall be provided;

(c) An outdoor activity area shall be provided with a minimum of 50 square feet per patient but not less than 400 total square feet;

(d) Child and adolescent care units shall be physically and visually separate from one another and from adult care units; and

(e) Showers. Shower curtains shall not be permitted in child adolescent care units.

(9) Geriatric, Alzheimer and Other Dementia Units. The requirements of sections (1) through (6) of this rule, and of section (7) of this rule if a psychiatric holding room is provided, shall apply to geriatric, Alzheimer and other dementia units, except as follows:

(a) Single patient rooms shall be at least 120 square feet in size. Multiple patient rooms shall provide at least 80 square feet per patient exclusive of closets, vestibules and bathroom facilities and allow for a minimum of 3 feet between beds;

(b) A nurse call system meeting the requirements of section (6) of this rule shall be provided. Provisions shall be made for the removal or covering of call button outlets as required by the Patient Safety Assessment. Call cords or strings in excess of six inches shall not be permitted;

(c) Handrails shall be provided on both sides of corridors used by patients. These handrails shall be contiguous with the wall so that nothing may pass between the rail and wall;

(d) Doors to patient rooms and patient ancillary use areas shall be a minimum of 3 feet 8 inches in clear width;

(e) Slip resistant flooring surfaces shall be provided in all bathing rooms; and

(f) Secure storage for wheelchairs shall be provided in a location readily accessible to the unit.

(10) Forensic Psychiatric Units. The requirements of sections (1) through (6) of this rule shall apply to forensic psychiatric units, except as follows:

(a) Security vestibules or sally ports are required at the unit entrance;

(b) Additional treatment areas, police and courtroom space, and special security considerations shall be provided in accordance with the Patient and Staff Safety Assessment; and

ADMINISTRATIVE RULES

(c) Children and adolescents shall be separated from one another as defined by the Functional Program. Children and adolescents shall also be physically and visually separate from adult care units.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OH 13-2002, f. & cert. ef. 9-27-02; PH 18-2003(Temp), f. & cert. ef. 10-31-03 thru 4-26-04; PH 7-2004, f. & cert. ef. 3-17-04; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0065

Detoxification Rooms

(1) In hospitals that provide drug or alcohol detoxification services, a minimum of one patient room for detoxification, located to allow direct observation by nursing staff, shall be provided.

(a) Windows in detoxification rooms shall be of a security type that can only be opened by keys or tools that are under the control of the staff.

(b) An adjoining or closely available toilet room and a hand-washing station serving detoxification patients only is also required.

(2) All secured portions of the detoxification facility must comply with the Group I, Division 2 occupancy classification requirements in accordance with the Oregon Structural Specialty Code.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0070

Newborn Nursery Units

(1) General. Newborn infants not cared for in a "rooming in" program in post-partum or LDR rooms, shall be housed in nurseries that comply with the standards below. Location shall allow for transfer of infants to post partum and birthing and LDR rooms without going through unrelated departmental or public corridors and spaces. The nursery shall be located and arranged to preclude the need for non-related pedestrian traffic. No nursery shall open directly into another nursery. See OAR 333-535-0050(2) for pediatric nurseries. See OAR 333-535-0041(4) for neonatal intensive care nurseries. Refer to mechanical and electrical sections for ventilation, oxygen, suction, medical air and electrical standards. All nurseries shall contain the following:

(a) At least one hand-washing station for each eight infant beds equipped with controls that can be operated without use of hands.

(b) Nurses' emergency calling system to summon assistance without leaving the patient area. Alternate technologies shall be permitted for emergency or nurse call systems. If radio frequency systems are utilized, consideration shall be given to electromagnetic compatibility between internal and external sources. Refer to OAR 333-535-0310, Electrical Requirements.

(c) Glazed observation windows to permit viewing infants from public areas, from workrooms, and from adjacent nurseries.

(d) Provisions shall be included for storage and convenient access at each nursery room for linens and infant supplies.

(2) Full-Term Nursery. Each full-term nursery shall contain no more than 16 standard infant stations. The minimum floor area shall be 24 square feet for each infant station exclusive of auxiliary work areas. When a "rooming-in" program is used, the total number of bassinets provided in these units may be appropriately reduced, but the full-term nursery may not be omitted in its entirety from any facility that includes obstetrical services. (When facilities use a "rooming-in" program in which all infants are returned to the nursery at night, a reduction in nursery size may not be practical.)

(3) Continuing Care Nursery. Hospitals having 25 or more maternity beds shall have a separate nursery that provides continuing care for infants who need close observation. The minimum floor area per infant shall be 50 square feet, exclusive of auxiliary work areas, with provisions for at least 4 feet between and at all sides of bassinets. The Division, however, may waive this requirement for low-risk obstetrical services in service areas where a second, full service nursery exists, and a safe method for transfer is in place and discussed in the Functional Program.

(4) Charting Facilities. Charting facilities shall have linear surface space to ensure that staff and physicians may chart and have simultaneous access to information and communication systems.

(5) Nursery workrooms. Each nursery shall be served by a connecting workroom that shall contain:

(a) Gowning facilities at the entrance for staff;

(b) Work counter;

(c) Refrigerator;

(d) Storage facilities; and

(e) A hand-washing station.

(f) One workroom may serve more than one nursery provided that required services are convenient to each.

(g) The workroom serving the full-term and continuing care nurseries may be omitted if equivalent work and storage areas and facilities, includ-

ing those for scrubbing and gowning, are provided within that nursery. Space required for work areas located within the nursery is in addition to the area required for infant care.

(h) Provision shall be made for storage of emergency cart(s) and equipment out of traffic.

(i) Provision shall be made for the sanitary storage and disposal of soiled waste.

(j) Visual control shall be provided via borrowed lights or view panels between the staff work area and each nursery.

(6) Examination and Treatment Room or Space for Infants. Such areas, when required by the Functional Program shall contain a work counter, storage, and a hands-free hand-washing station. Exam and Treatment space may be located within the nursery workroom.

(7) Isolation Nursery. A separate isolation nursery is required unless other provision for the isolation of infants who are suspected of being infectious is made and included in the hospital's infection control policy.

(8) Infant Formula Facilities. Where infant formula is prepared on site, direct access from formula preparation room to any nursery room is prohibited. The room must include clean-up washing and sterilization facilities, separate facilities for formula preparation, and refrigerated storage and warming facilities. If commercial infant formula is used, storage and handling may be done in the nursery workroom or other appropriate room in the hospital that is accessible at all hours. The preparation area shall have a work counter, a hand-washing station, and storage facilities.

(9) Housekeeping Closet. In hospitals with continuing care nurseries, a housekeeping closet directly accessible from the unit and dedicated for the exclusive use of the Newborn Nursery, containing a floor receptor or sink and storage space for housekeeping equipment and supplies, shall be provided.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(7); HD 21-1987, f. & ef. 11-13-87; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0235; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0080

Emergency Department

(1) General. Hospitals offering emergency patient care services shall include facilities required under section (2) of this rule. If outpatient clinical services are to be included as a part of the Emergency Department, elements under OAR 333-535-0085 shall also be provided.

(a) Except as permitted under OAR 333-500-0065, every hospital classified as mental or psychiatric and any other hospital, regardless of classification, that provides psychiatric services shall have at least one psychiatric holding room that meets the requirements of section (7) of OAR 333-535-0061 and 309-033-0720(3)(e).

(2) Hospitals providing emergency services shall include the following:

(a) Entrance located on the same level and proximate to the emergency department, sheltered from the weather, and with provision for ambulance and disabled pedestrian access. Emergency entrance location shall be marked by a lighted sign. The emergency access shall be paved to permit discharge of patients from automobiles and ambulances. Temporary parking convenient to the entrance shall be provided;

(b) A reception, triage and control area conveniently located near the entrance, waiting area(s), and treatment room(s). The control station(s) shall be located to permit staff observation and control of access to treatment areas, pedestrian and ambulance entrances and public waiting area;

(c) Public waiting space with toilet facilities, public telephone, and drinking fountain;

(d) Examination and Treatment room(s):

(A) Space requirements. Each examination room shall have a minimum clear floor area of 120 square feet exclusive of toilets, waiting area and casework.

(B) Each examination room shall contain an examination light, medication storage, work counter, a hand-washing station, medical gas outlets per **Table 5** (OAR 333-535-0300), electrical outlets above floor level to accommodate required equipment, suction, and space for storage of emergency equipment such as emergency treatment trays, defibrillator, cardiac monitor, and resuscitator.

(C) Treatment cubicles:

(i) Where treatment cubicles are in open multiple-bed areas, each cubicle shall have a minimum of 80 square feet of clear floor space with a minimum of 5 feet between beds and shall be separated from adjoining cubicles by curtains.

(ii) Hand-washing stations shall be provided at a rate of one per four treatment cubicles.

(e) Trauma/cardiac rooms for emergency procedures, including emergency surgery shall have:

(A) At least 250 square feet of clear floor space.

ADMINISTRATIVE RULES

(B) Additional square footage and cubicle curtains for privacy shall be provided to accommodate more than one patient at a time in the trauma room.

(C) Cabinets and emergency supply shelves, image readers, examination lights, and counter space for writing in each room.

(D) Provisions in each room for monitoring equipment.

(E) Storage provided for immediate access to protective attire for infection control.

(F) Doorways leading from the ambulance entrance to the cardiac trauma room shall be a minimum of 5 feet wide to simultaneously accommodate stretchers, equipment, and personnel.

(G) Medical gas outlets shall equal that required of an operating room in **Table 5**, OAR 333-535-0300;

(f) Provisions for orthopedic and cast work. There shall be storage for orthopedic supplies including but not limited to: splints, traction hooks, portable image readers, exam lights, etc. These provisions may be in a separate room(s) or in a treatment room. If a sink is used for the disposal of plaster of paris, a plaster trap shall be provided. The amount of clear floor space for this area shall be dependent on the Functional Program, procedures planned and the equipment needed;

(g) Scrub stations or hand-washing stations located in or adjacent to each trauma or orthopedic room;

(h) Provisions for infection control and for the handling of a patient requiring isolation in accordance with the hospital's ICRA. If so determined by the hospital's ICRA, the emergency department waiting area and triage areas shall require special measures to reduce the risk of airborne infection transmission. These measures may include enhanced general ventilation and air disinfection similar to inpatient requirements for airborne infection isolation rooms;

(i) Communication center with related equipment shall be convenient to the control station(s), nursing station and have radio, telephone, and intercommunication systems;

(j) Access to radiology and laboratory services;

(k) Storage area out of line of traffic for stretchers and wheelchairs with access from emergency entrances;

(l) Staff work and charting area(s). This may be combined with reception and control area or located within the treatment room;

(m) Storage out of traffic and under staff control for general medical/surgical emergency supplies, medications and equipment such as a ventilator, defibrillator, pumps, patient monitoring, portable image readers and splints;

(n) Soiled utility room or area per OAR 333-535-0260(5) containing clinical sink, work counter, a hand-washing station, waste receptacle, and linen receptacle;

(o) Patients' toilet room convenient to treatment room(s) that shall include a nurse call device or other approved alternative to summon staff; and

(p) Security station. Where dictated by the Functional Program, a security station system shall be located near the emergency entrances and triage/reception area.

(A) Accommodation for hospital security staff, police officers and monitoring equipment eg. Silent alarms, panic buttons, intercom systems, visual monitoring devices, etc.

(B) Located near emergency entrance and triage/reception area.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 213, f. 3-25-69 ; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(8); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0240; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0085

Hospital Licensed Urgent Care Facilities

This section applies to immediate care and minor emergency facilities that are physically separate from the Emergency Department and do not possess a trauma level designation as defined by OAR 333-200-0080. Such services may be located within an inpatient facility or in a satellite location as defined by 333-500-0025(1)(a), that is under direct control of a general hospital and is licensed as a part of the general hospital. The following elements shall be provided:

(1) Administration and public areas:

(a) Entrance. Located at grade level or accessible by ramp, sheltered from weather, and disabled accessible.

(b) Lobby and waiting areas. These shall include access to:

(A) Wheelchair storage space(s);

(B) Reception and information counter or desk;

(C) Waiting space(s);

(D) Public toilet facilities;

(E) Public telephone(s). Access to a telephone shall be provided to public, patients and patient's family regardless of the installation of a public pay telephone installed by the telephone company; and

(F) Provisions for drinking water. Conveniently accessible provisions for drinking water shall be provided. This may be outside the patient area, in shared facilities.

(c) Interview space(s) for private interviews relating to social service, credit, and admissions. Multipurpose rooms for conferences, meetings, and health education shall be provided. In small facilities, the room may also serve for consultation and other purposes.

(d) An office area for business transactions, records, and other administrative functions, separate from public and patient areas for confidentiality, shall be provided.

(e) Secure storage for employees' personal property. Locked storage (cabinets or secure drawers) convenient to workstations shall be provided for staff valuables.

(f) General storage facilities for office supplies, equipment, sterile supplies, and pharmaceutical supplies shall be provided within or convenient to administrative areas.

(g) Housekeeping requirements. At least one housekeeping room per floor shall be provided. Each housekeeping room shall contain a floor sink or service sink and storage for housekeeping supplies and equipment.

(2) Clinical Areas:

(a) Examination room(s) for medical, obstetrical, and similar examinations shall have a net minimum floor area of 80 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). Arrangement shall permit at least 2 feet 8 inches clearance at each side and at the foot of the examination table. A hand-washing station and a counter or shelf space for writing shall be provided.

(b) Treatment room(s) for minor surgical procedures and cast procedures shall have a minimum floor area of 120 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). The minimum room dimension shall be 10 feet. A minimum clearance of 3 feet around the perimeter of the treatment table shall be provided. Work counters, storage cabinets, and a hand-washing station shall be provided.

(c) Documentation space for charting and writing clinical records shall be provided. Work counter, communication system, and space for supplies shall be provided. A separate space may be omitted if these functions are accommodated in each examination room and each treatment room.

(d) A Cardiac Pulmonary Resuscitation emergency cart shall have a dedicated storage space away from traffic but immediately available to all areas including entrance and receiving areas. (See OAR 333-535-0310, Electrical Requirements)

(e) Medication storage meeting Board of Pharmacy administrative rules OAR 855, division 41.

(f) Clean storage. A separate room or enclosed closet(s) for storing clean and sterile supplies shall be provided. This storage shall be in addition to cabinets and shelves in treatment rooms. Sterile items shall be protected from dust.

(g) Soiled holding area. Provisions shall be made for separate collection and disposal of soiled materials. A hand-washing station shall be provided.

(h) Sterilizing facilities. A system for sterilizing equipment and supplies shall be provided. Sterilizing procedures may be done on or off-site. Disposable items may also be used to satisfy functional needs.

(i) Laboratory facilities, meeting laboratory licensing rules under OAR 333-024 and 333-535-0090 shall be readily available either within the department or through an effective contract with nearby hospitals or laboratory services.

(j) Staff lounge and toilet facilities shall be readily available to the unit.

(k) Patient toilets. Provide patient toilet(s) readily available or within the clinic space.

(l) If radiographic equipment is provided, the installation shall meet rules of the DHS, Public Health Division, Radiation Protection Services under OAR 333-100 through 120.

(m) Medical records storage requirements. Filing cabinets and storage shall be provided for the safe and secure storage of patient records with provisions for ready retrieval.

(n) A toilet room containing a hand-washing station shall be accessible from all examination and treatment rooms. Where a facility contains no more than three examination or treatment rooms, the patient toilet shall be permitted to serve waiting areas.

(o) Basic diagnostic procedures (these may be part of the outpatient service, off-site, shared, by contract, or by referral) shall be provided and shall include the following for imaging facilities:

(A) Support areas for imaging facilities:

(i) Viewing and administrative areas;

ADMINISTRATIVE RULES

(ii) Film and media processing facilities in accordance with the Functional Program; and

(iii) Storage facilities for exposed film as required by the Functional Program.

(B) Support areas for patients that include dressing rooms or booths with convenient toilet access. Toilet rooms with hand-washing stations shall be accessible to procedure room(s) where the procedure may result in the immediate need for toilet facilities.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0086

Hospital Licensed Physician's Offices and Outpatient Clinics

This rule applies to Physician Outpatient Clinics that are under the license of a general hospital and either physically connected or in free-standing, satellite locations, as defined by OAR 333-500-0025(1)(a).

(1) OAR 333-535-0085 shall apply except as follows:

(a) Subsection (1)(a) shall not apply except the entry shall be disabled accessible;

(b) Subsection (2)(d) shall not apply;

(c) Subsection (2)(j) shall not apply; and

(d) Subsection (2)(n) shall apply except in existing conditions where public toilet rooms do not exist, then patient toilets may be used for public when addressed by the hospital's Functional Program.

(2) The ventilation requirements of OAR 333-535-0300 and electrical requirements of 333-535-0310 shall not apply, but spaces shall conform to the requirements of the Oregon Mechanical Specialty Code, the Oregon Electrical Specialty Code, and the Oregon Structural Specialty Code as they are enforced by the Oregon Building Codes Division and Authorities having Jurisdiction.

(3) For Outpatient Clinics where only counseling or non-clinical services are provided, wheelchair storage space(s), examination room(s), treatment room(s), drug distribution station, clean workroom or clean holding room, and soiled workroom or soiled holding room may be omitted.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0090

Laboratory Suite

(1) Inpatient hospital laboratory facilities shall be provided for hematology, clinical chemistry and urinalysis, and may include cytology, pathology, immunohematology, microbiology, serology, and immunology to meet requirements for services as stated in General Rules (OAR 333-535-0010). These may be provided within the hospital or through an effective contract arrangement with a nearby laboratory service. Hospital laboratories located in freestanding clinics shall conform to rules under section (2) of this rule. The following shall be provided:

(a) Laboratory work counter(s) with space for microscopes, appropriate chemical analyzer(s), incubator(s), and centrifuge(s). Work areas shall include sinks with water and access to electrical services as needed;

(b) Refrigerated blood storage facilities for transfusions shall be provided. Blood storage refrigerator shall be equipped with temperature-monitoring and alarm signals located for 24-hour response. Blood banks must be provided emergency power for continued cooling during an interruption of the normal power supply;

(c) Dedicated hand-washing stations shall be located within 20 feet of each workstation and within each room with a workstation;

(d) Appropriate storage facilities, including refrigeration shall be provided for reagents, patient specimens, controls, and supplies;

(e) Urine and feces collection rooms shall be equipped with a toilet and hand-washing station. This may be outside the laboratory suite;

(f) Blood collection facilities shall include a work counter, conveniently located hand-washing station, space for patient seating and sharps container(s);

(g) Chemical safety provisions, which may include emergency shower, eye flushing devices, and appropriate storage for flammable liquids shall be provided in accordance with Oregon State Public Health Laboratory Licensing rules, OAR 333-024-0005 through 333-024-0055, and Oregon OSHA Administrative Rules;

(h) Facilities and equipment for sterilization of contaminated specimens before transport to incineration facilities in accordance with Oregon State Public Health Laboratory Licensure Rules and Oregon OSHA Administrative Rules;

(i) If radioactive materials are used or stored, facilities shall be available for their safe storage and disposal;

(j) Administrative areas including offices as well as space for clerical work, filing, and record maintenance shall be provided apart from testing or storage areas;

(k) Lounge, locker, and toilet facilities shall be conveniently located for laboratory staff. These may be outside the laboratory area and shared with other departments; and

(l) The Functional Program shall describe the type and location(s) for all special laboratory equipment that is to be wired, plumbed, or plugged in, and the building utility systems required to operate each.

(2) Laboratory services serving hospital outpatient clinics may be onsite or through an effective contractual arrangement with a laboratory service or through the primary hospital laboratory. Services may include hematology, clinical chemistry, urinalysis, cytology, pathology, microbiology, serology, immunology, and immunohematology. When these services are not effectively provided elsewhere, the following shall be available within the clinic:

(a) Laboratory work counter(s), with sink;

(b) Designated sink equipped for hand-washing station in addition to process sink(s);

(c) Storage cabinet(s) or closet(s);

(d) Specimen collection room with a toilet, hand-washing station, and an area for handling and storing specimens;

(e) Blood collection facilities including secure seating, a work counter, and access to a hand-washing station. Collection facilities may be within the laboratory or in satellite location(s); and

(f) Refrigeration for storage of reagents, controls and patient specimens as necessary. Separate refrigeration must be provided for injectibles and food or drink that is to be consumed by patients or staff.

(3) Laboratory units shall conform to OAR 333-024-0000 and the rules there under regarding laboratory requirements. Standards contained in NFPA 99 regarding laboratories and health related institutions are also required.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & cert. ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & cert. ef. 7-17-79; HD 11-1980, f. & cert. ef. 9-10-80; Renumbered from 333-023-0200(9); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0245; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0100

Imaging Facilities

(1) General: Imaging facilities are those which provide fluoroscopy, radiography, mammography, tomography, computerized tomography scanning, ultrasound, magnetic resonance, angiography, and other similar techniques. Room layouts, including clearances, must meet equipment manufacturers' minimum recommendations.

(2) Radiation Protection: All imaging facilities and radiation producing equipment installations must comply with DHS, Public Health Division, Regulations for Control of Radiation, OAR 333-100 through 123, and be licensed by Radiation Protection Services of the Division.

(a) Where protected alcoves with view windows are required, a minimum of 1 foot 6 inches between the view window and the outside partition edge shall be provided.

(3) Angiography. The following shall be provided:

(a) Procedure rooms shall be a minimum of 400 square feet in size exclusive of fixed cabinets and built-in shelves;

(b) A control room shall be provided to house associated staff and equipment. A view window shall be provided to permit full view of the patient;

(c) Area for image reading;

(d) A scrub sink, as referenced in OAR 333-535-0260, located outside the staff entry to the procedure room shall be provided for staff use;

(e) Facilities shall be available for patients waiting on stretchers that are out of the line of traffic;

(f) Storage for equipment; and

(g) Facilities shall be available within the facility for extended post-procedure observation of outpatients.

(4) Cardiac Catheterization Lab. Facilities for cardiac catheterization may be combined with the imaging department or be part of the surgery suite. If provided, cardiac catheterization lab facilities shall meet the rules for angiography rooms under section (3) above. The following additional requirements shall be provided:

(a) A separate scheduling and staff work space, cardiologist's office and staff toilet shall be provided when the facilities are located outside the imaging suite; and

(b) There shall be access to a clean assembly/workroom with Hi-vacuum or gravity steam sterilizers and sterilization equipment to accommodate heat sensitive equipment.

(c) Electrophysiology labs. If electrophysiology labs are also provided in accordance with the approved Functional Program, these labs may be

ADMINISTRATIVE RULES

located within the catheterization suite or located in a separate functional area proximate to the cardiac care unit.

(d) For Cardiac Catheterization Lab combined with Surgery refer to OAR 333-535-0110 to be used in conjunction with this section.

(5) Computerized Tomography (CT) Scanning. The following shall be provided:

(a) Procedure rooms shall be configured to accommodate equipment in accordance with the equipment manufacturers' recommendations;

(b) When required by the Functional Program, control room(s) shall be located to allow for film processing and designed to accommodate the computer and other controls for the equipment. When viewing of patients is required, a window shall be provided to permit full view of the patient; and

(c) A conveniently available patient toilet.

(6) Diagnostic X-ray (Radiography). The following shall be provided:

(a) Radiography room(s), sized to accommodate the Functional Program;

(b) Each X-ray room shall include a shielded control alcove designed to provide a full view of the patient when the table is in the tilt position or the chest X-ray is being utilized. For mammography machines with built-in shielding for the operator, the alcove may be omitted when approved by the Department of Human Services, Public Health Division, Radiation Protection Services; and

(c) Rooms primarily utilized for fluoroscopy shall have direct access to a toilet room.

(7) Magnetic Resonance Imaging (MRI). The following shall be provided:

(a) MRI procedure room(s) to accommodate the Functional Program and meet equipment manufacturers' recommendations;

(b) Secure storage for patient belongings;

(c) A control room with full view of the MRI;

(d) A computer room as needed to support the specific equipment installation;

(e) Cryogen storage when service to replenish supplies is not otherwise available;

(f) Power conditioning and voltage regulation equipment as well as direct current (DC) when required by the equipment manufacturer;

(g) Magnetic shielding and radio frequency shielding when required by the equipment manufacturer;

(h) Patient holding area convenient to the MRI unit and large enough to accommodate stretchers;

(i) Venting of cryogen exhaust to the outside; and

(j) Signage shall be provided for the purpose of limiting ferrous material.

(8) Ultrasound. The following shall be provided:

(a) Procedure room(s) meeting equipment manufacturers' minimum room size and configuration recommendations; and

(b) A patient toilet room shall be accessible to every three procedure rooms without traveling through public areas.

(9) Nuclear medicine. The nuclear medicine area shall include the following: (See also, OAR 333-535-0105(3))

(a) Space requirements. Space shall be adequate to permit entry of stretchers and beds and able to accommodate imaging equipment, electronic consoles, and if present, computer terminals;

(b) Hand-washing stations provided within each procedure room;

(c) Dose administration area(s) as specified by the Functional Program shall be provided near the preparation area. The area shall provide for visual privacy from other areas due to long periods for dose effects, as well as features for comfortable seating, varied lighting, and entertainment; and

(d) Positron Emission Tomography (PET). When provided, in addition to the nuclear medicine requirements, PET facilities shall be in accordance with the Functional Program, including the following:

(A) Laboratory and equipment space shall be provided as follows:

(i) Scanner room should be not less than 300 square feet and space for the cyclotron room should be not less than 225 square feet with 16 square feet of space safe for storage of parts that may require cool-down periods of one year or more;

(ii) Both hot (radioactive) labs and cold labs, each requiring a minimum of 250 square feet. Blood labs having a minimum of 80 square feet;

(iii) Patient holding areas capable of accommodating a minimum of two stretchers; and

(iv) Gas storage areas large enough to accommodate sufficient bottles of gas piped individually to the cyclotron or the lab.

(B) Construction requirements capable of providing protection from the high radiation generated from the cyclotron shall be provided.

(C) Ventilation adequate for the occupancy shall be provided as follows:

(i) Compressed air, or equivalent, shall be provided to pressurize a water circulation system;

(ii) Special ventilation systems together with monitors, sensors, and alarm systems shall be provided to vent gases and chemicals; and

(iii) Regarding heating, ventilating, and air-conditioning systems, the highest pressure shall be in the coldest (radiation) areas and the exhaust shall be in the hottest (radiation) areas. (Redundancy may be important.)

(D) A redundant plumbing system connected to a holding tank shall be required to prevent accidental leakage of contaminated water into the regular plumbing system.

(10) Support Spaces. The following spaces shall be common to the imaging department and shall be minimum requirements unless stated otherwise:

(a) Patient waiting areas shall provide seating capacity in accordance with the Functional Program;

(b) Control desk and reception area;

(c) Patient holding area under staff control, designed to accommodate inpatients on stretchers or beds and outpatients, that is not in the path of traffic. This area may be shared with the dose administration area and patient waiting areas provided there is visual privacy between the areas;

(d) Patient toilet room with hand-washing station shall be provided and reserved for nuclear medicine patients convenient to waiting and procedure rooms and directly accessible from each fluoroscopy room;

(e) Patient dressing rooms. Dressing rooms with convenient access to waiting areas and procedure rooms shall include a seat or bench, a mirror, and provisions for hanging patient's clothing and securing valuables;

(f) Access to staff toilet, lounge and locker facilities which shall be within or closely available to the department;

(g) Film storage facilities for active and inactive files under departmental administrative control shall be provided to properly secure and protect film against loss or damage. This storage is permitted to be off site;

(h) Storage for unexposed film;

(i) Contrast media preparation area with sink, counter and storage to allow mixing of contrast media. Where prepared media is used, this area may be omitted and storage shall be provided for the prepared media;

(j) A darkroom shall be provided for film processing unless the processing equipment does not require a darkroom for loading and transfer;

(k) If automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning processor racks shall be provided;

(l) Quality control room. An area or room for immediate viewing of film after processing shall be provided unless other viewing facilities are immediately available;

(m) Housekeeping facilities, including a service sink or floor receptacle and storage for cleaning equipment and supplies;

(n) A hand-washing station shall be provided in each procedure room unless it is used only for routine diagnostic screening such as for chest X-rays and where the patient is not physically handled by the staff. A hand-washing station shall be provided convenient to MRI, CT and ultrasound rooms, but it need not be within the room;

(o) Clean storage area. Provisions shall be made for storage of clean supplies and linens (See OAR 333-535-0260 for clean storage details and definitions);

(p) Soiled holding area. Provisions shall be made for a separated holding area for soiled materials, linens and trash. Hand-washing facilities shall be closely available. If cleaning and disinfecting of equipment occurs within the imaging department, a counter, sink, hand-wash station and exhaust ventilation shall be provided (See OAR 333-535-0260 for clean storage details and definitions);

(q) Provisions shall be made for locked storage of medications and drugs when the program includes their use; and

(r) When the Functional Program requires a centralized computer area, it shall be a separate room with access terminals available within the imaging rooms.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(10); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0250; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0105

Radiation Oncology Facility or Department

All radiation oncology installations must comply with provisions of the DHS, Public Health Division, Regulations for Control of Radiation, OAR 333-100 through 123 and be licensed by Radiation Protection Services of the Division.

(1) Treatment Rooms:

(a) Rooms and control areas shall be provided as necessary to accommodate the radiation oncology Functional Program. Equipment manufacturers' recommendations should be sought and followed. Any radiotherapeutic (i.e. cobalt, linear accelerators, high dose rate after loading, etc.) treatment room shall be sized in accordance with manufacturers' recommended standards and shall accommodate a stretcher;

ADMINISTRATIVE RULES

(b) Control areas shall have visual and audio contact with the patient in the treatment room as appropriate to the radiation protection needs of the equipment;

(c) If invasive procedures take place in the treatment room, the room must also meet the rules for surgery facilities, OAR 333-535-0110; and

(d) Hyperthermia room, when provided, shall be of adequate size to accommodate equipment, stretcher, and a hand-washing station. This may be combined with an examination room.

(2) Treatment Support Areas:

(a) Simulator room and control area shall be sized to accommodate equipment and stretcher per the manufacturers' recommendations. A hand-washing station shall be provided within the room.

(b) The control area shall have visual and audio contact with the simulator room.

(c) Darkroom or film processing area shall be convenient to the treatment room(s) and simulator area, and shall include a utility sink in or convenient to this area. Film storage for unprocessed film shall be provided.

(d) Block fabrication, when provided, shall have seamless flooring and integral coved base. Non-porous counter tops shall have backsplash, and a hand-washing station shall be provided. Exhaust hoods shall be provided.

(e) Treatment planning, if provided, shall be sized to accommodate manufacturers' dosimetry system requirements.

(3) Hot lab, if provided, shall include the following features:

(a) Seamless flooring and integral coved base.

(b) Non-porous counter tops with backsplash.

(c) Adequate storage and work area for multiple types of radioactive material, with adequate shielding and security including additional support areas for cobalt room for hot lab storage.

(d) A hand-washing station shall be accessible. If located in the hot lab, the sink must have a filtration trap. Refer to OAR 333-535-0300(5)(e)(G) for mechanical requirements.

(e) If radiopharmaceutical preparation is performed on site, an area adequate to house a radiopharmacy shall be provided with appropriate shielding.

(A) Space requirements shall include the following:

(i) Adequate space for storage of radionuclides, chemicals for preparation, dose calibrators, a film file area, and record-keeping;

(ii) If pre-prepared materials are used, storage and calculation area may be considerably smaller than that for on site preparation; and

(iii) Space shall be adequately provided for dose calibration, quality assurance, and record-keeping.

(B) Radiation protection requirements. The area may still require shielding from other portions of the facility.

(C) Construction requirements shall include the following:

(i) Floors and walls constructed of materials that are easy to decontaminate;

(ii) Vents and traps for radioactive gases shall be provided if such are used; and

(iii) Hoods for pharmaceutical preparation shall be in accordance with mechanical requirements of OAR 333-535-0300 and other applicable standards.

(f) Nuclear Waste Disposal. See Code of Federal Regulations (CFR), Title X, parts 20 and 35, concerning the handling and disposal of nuclear materials in health care facilities.

(4) Patient Support Areas: These areas shall include, but not be limited to:

(a) Examination rooms equipped with a hand-washing station. At least one examination room shall accommodate stretcher patients;

(b) Patient reception and waiting area. The waiting area shall be out of traffic, under staff control, and both shall have seating capacity in accordance with anticipated needs. If the suite is routinely used for outpatients and inpatients at the same time, separate waiting areas shall be provided with screening for visual privacy between the waiting areas;

(c) Patient toilet rooms. Toilet rooms shall be provided accessible to the waiting rooms and shall be equipped with an emergency call station; and

(d) Patient dressing rooms. Dressing rooms shall be provided in accordance with the anticipated needs, shall be accessible to the waiting areas with the provision for safe storage of valuables and clothing. At least one space shall be large enough for staff-assisted dressing.

(5) General Support Areas: These areas shall include, but not be limited to:

(a) Clean storage. Provisions shall be made for the storage of clean supplies and linens, in or closely available to the department;

(b) Soiled holding area. Provisions shall be made for handling and separately holding contaminated items. If toxic chemicals are used, exhaust shall be provided. Whenever soiled items are handled, a hand-washing station shall be provided;

(c) Housekeeping closet shall be equipped with service sink or floor receptor. The closet shall be large enough for equipment or supplies storage;

(d) Staff facilities. Toilets shall be convenient for staff use. Staff lounge with lockers is required if not available elsewhere; and

(e) Film and radiation oncology patient record file area.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0110

Surgical Facilities

A surgical unit shall consist of but not be limited to facilities as follows for exclusive use of the surgery department, unless otherwise noted:

(1) The number of operating rooms and recovery beds and the sizes of the service areas shall be based on the expected surgical workload. The surgical suite shall be located and arranged to prevent non-related traffic through the suite. Also see OAR 333-535-0300 for mechanical rules and 333-535-0310 for electrical rules which apply;

(2) Certain rules of this section differ dependent upon the type of surgical procedures performed. These are classified as one of the following three categories:

(a) Unrestricted areas for Minor Surgical and Diagnostic Procedures: Unrestricted areas include a central control point established to monitor the entrance of patients, personnel, and materials. Street clothes are permitted in this area and traffic is not limited. Minor procedures are those that conform to the criteria listed in paragraphs (2)(a)(A) through (D) of this rule based on an assessment of the patient. These procedures are non-invasive and require no general anesthetic.

(A) Anesthesia is limited to local anesthesia or conscious sedation;

(B) Procedure time (duration) is less than two hours;

(C) Procedure is non-invasive with low risk for infection; and

(D) Patient assessment indicates no special risks for cardiorespiratory complications.

(b) Semi-restricted areas include the following:

(A) The peripheral support areas of the surgical suite, and storage areas for clean and sterile supplies, work areas for storage and processing of instruments, and corridors leading to the restricted areas of the surgical suites; and

(B) Traffic in this area is limited to authorized personnel and patients. Personnel are required to wear surgical attire and cover all head and facial hair.

(c) Restricted areas for Major Surgical and Diagnostic Procedures are those which exceed the criteria described for Minor Surgical and Diagnostic Procedures in OAR 333-535-0110(2)(a). Restricted areas include the following:

(A) The operating and procedure rooms, the clean core, and scrub sink areas.

(B) Where surgical attire, hair coverings, and masks are required due to the presence of open sterile supplies, scrubbed people or similar circumstances.

(3) Operating Rooms:

(a) One or more operating rooms shall be provided. Each operating room shall provide a system for emergency communication with the surgical control station which can be operated without use of the hands, but which is not foot operated. No plumbing fixtures or open drains shall be provided in operating rooms except as stipulated in subsection (3)(d). Each operating room shall have a minimum clear area as follows:

(A) Existing operating rooms shall have not less than 360 square feet exclusive of fixed cabinets and built-in shelves. The minimum dimension shall be 18 feet between fixed cabinets and built-in shelves. Image readers for handling at least two films at the same time shall also be provided.

(B) In new construction, operating rooms shall have a minimum clear area of 400 square feet exclusive of fixed or wall-mounted cabinets and built-in shelves, with a minimum of 20 feet clear dimension between fixed cabinets and built-in shelves. Image readers for handling at least four films at the same time shall also be provided.

(b) Operating room(s) for orthopedic surgery, when provided, shall in addition to meeting subsection (a) of this section, have enclosed storage space for splints and traction equipment. Storage may be outside the operating room but must be located for convenient access. If plaster of paris is used for cast work, also provide a plaster sink outside the operating room, but within the operating suite.

(c) Operating rooms for cardiovascular surgery, when provided, shall provide appropriate plumbing connections in both the cardiovascular operating room and pump room and shall in addition to meeting subsection (a) of this section, provide a minimum clear area as follows:

(A) Existing facilities shall have not less than 400 square feet exclusive of fixed cabinets and built-in shelves with a minimum of 20 feet clear dimension between fixed cabinets and built-in shelves; and

ADMINISTRATIVE RULES

(B) In new construction, rooms for cardiovascular, orthopedic, neurological, and other special procedures or combination of procedures such as cardiac catheterization lab and surgery that require additional personnel and/or large equipment shall have, in addition to the above requirements for general operating rooms, a minimum clear area of 600 square feet with a minimum room dimension of 20 feet clear dimension exclusive of fixed or wall-mounted cabinets and built-in shelves.

(d) Operating rooms for surgical cystoscopic and surgical endoscopic procedures and operating rooms dedicated to eye surgery, when provided, shall meet requirements of subsection (a) of this section, but clear area of the room shall be as follows:

(A) Existing facilities shall have not less than a minimum of 250 square feet exclusive of fixed cabinets and built-in shelves.

(B) In new construction, rooms for surgical cystoscopic and other endourologic procedures shall have a minimum clear area of 350 square feet exclusive of fixed or wall-mounted cabinets and built-in shelves, with a minimum of 15 feet clear dimension between fixed cabinets and built-in shelves. If cystoscopy rooms are used for procedures other than cystoscopy, provisions must be made to allow cleaning and sealing of any floor drains, and such procedures must be included in the hospital's written infection control policy.

(e) Operating rooms for minor surgical procedures, as defined in section (2) of this rule, shall meet requirements of subsection (a) of this section, except that clear area of the room shall be a minimum of 200 square feet exclusive of fixed cabinets and built-in shelves and minimum dimensions do not apply. Film illuminators are required only if procedures involve the use of X-rays.

(f) Despite requirements under subsections (a) through (e) of this section, needs for some procedures may require additional clear operating room space, and special plumbing and mechanical features. Such specialized operating rooms are not addressed by subsections (a) through (e) of this section, and are the responsibility of the hospital and their design consultants.

(4) Service areas: Services, except the enclosed soiled utility room mentioned in subsection (f) of this section and the housekeeping closet in subsection (g) of this section, may be shared with obstetrical facilities if the Functional Program and project design reflect this concept. Service areas, when shared with delivery rooms, shall be arranged to avoid the need for patients or staff to pass between the operating room and the delivery room areas. (See also obstetrical rules under OAR 333-535-0120.) The following services shall be provided:

(a) Control station located to permit visual observation of all traffic into and within the suite;

(b) Administrative and administrative support space in accord with the hospital's program needs;

(c) Sterilizing facility(ies) with high speed autoclave(s) for emergency use. Other facilities for processing and sterilizing reusable instruments, etc., may be located in another hospital department such as Central Services. Immediate access to sterilizing facilities is not required where only disposable supplies, instruments and equipment are used. Sterilization equipment shall conform to the Oregon Boiler and Pressure Vessel Specialty Code, ORS 480.525(1)(e);

(d) Medication storage and distribution facilities. Provisions shall be made for storage and preparation of medications administered to patients. A refrigerator and storage system meeting the requirements of Oregon Board of Pharmacy rules, OAR chapter 855, division 41 shall be provided. A hand-washing station shall be provided in or accessible to each area or room;

(e) Scrub facilities. For major surgical procedures, two scrub facilities shall be provided near the entrance to each operating room. Two scrub positions may serve two operating rooms if both are located adjacent to the entrance of each operating room. For minor surgical procedures, a scrub sink or a hand-washing station shall be provided in or accessible to each room. This sink shall be equipped with fittings usable without the use of hands;

(f) Soiled utility room. An enclosed soiled utility room for the exclusive use of the surgical suite staff or soiled holding room that is part of a system within the building for the collection and disposal of soiled material shall be provided. The soiled utility room shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand-washing, waste receptacle, and linen receptacle. When a soiled holding room is used, the clinical sink and work counter may be omitted from that room. (Also see subsection (g) of this section for fluid waste disposal facilities.) Soiled utility or holding areas shall not have direct connection with operating rooms or other sterile activities. The maximum travel distance to soiled utility or holding rooms shall be not more than six rooms or 180 feet;

(g) Fluid waste disposal facilities. These shall be located convenient to, but not connected with, the operating rooms. A clinical sink or equivalent equipment in a soiled utility room or in a soiled holding room would meet this standard if convenient for use. When the surgical program does

not include procedures with substantial liquid or solid wastes (e.g. minor eye surgery), a clinical sink is not required;

(h) Clean utility room or a clean supply room. A clean utility room is required when clean materials are assembled within the surgical suite prior to use. A clean utility room shall contain work counter, a hand-washing station, and space for clean and sterile supplies. If the Functional Program defines a system for the storage and distribution of clean and sterile supplies in a clean supply room, the counter and sink may be omitted. The clean workroom or supply room may be shared with the delivery suite when provisions for joint use are included in the hospital's infection control policy and arrangement allows for direct access from both surgery and delivery suites. (See also obstetrical rules under OAR 333-535-0120.);

(i) Medical gas storage facilities. Storage of bulk medical gases shall be provided outside or inside the facility. Provisions shall be made for additional separate storage of reserve gas cylinders to complete at least one day's procedures. Storage facilities shall be in compliance with National Fire Protection Association (NFPA) 99;

(j) Anesthesia workroom. Inhalation anesthesia workroom for cleaning, testing, and storing anesthesia equipment shall contain a work counter and sink. Provisions shall be made for separated storage of clean and holding of soiled items. When facilities for cleaning and testing are available elsewhere in the building or the surgical program does not involve substantial anesthesia, a separate utility room is not required;

(k) Anesthesia storage. Anesthesia storage facilities shall be provided for anesthesia-related materials stored within the surgery suite;

(l) Equipment storage room(s) for equipment and supplies used in surgical suite. Ten percent of the surgical suite shall be devoted to equipment storage space. See OAR 333-535-0270 for storage requirements;

(m) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel including orderlies, technicians, nurses and doctors working within the surgical suite. Each area shall contain lockers, showers, toilets, hand-washing stations, and space for donning scrub attire. In surgical suites providing general anesthesia and invasive surgical procedures, these areas shall be arranged to encourage a traffic pattern so that personnel entering from outside the surgical suite can change and move directly into the surgical suite. Showers are not required in suites limited to minor procedures;

(n) Pre-surgical waiting area. In facilities with two or more operating rooms, a room or separate area shall be provided to accommodate stretcher patients waiting for surgery. This may be adjoining the post anesthesia recovery area and be serviced by the same staff nurse when feasible. The area shall be located to allow for nursing supervision and emergency communications;

(o) Storage areas for portable equipment used in surgery, such as portable X-ray unit, stretchers, fracture tables, warming devices, auxiliary lamps, etc. These areas shall not infringe on the width of exit corridors;

(p) Lounge, toilet facilities, and dictation and report preparation space for surgical staff. These facilities shall be provided in hospitals having three or more operating rooms and shall be located to permit use without leaving the surgical suite. A toilet room shall be provided near the recovery room(s);

(q) Housekeeping closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite;

(r) For major procedures, an area for preparation and examination of frozen sections. This may be part of the general laboratory if the system and procedures provide immediate results that will not unnecessarily delay the completion of surgery;

(s) Ice machine to supply ice for patient use and treatments;

(t) Provisions for refrigerated blood bank storage when major procedures are included; and

(u) Post anesthesia care unit for major surgical procedures. Each recovery unit shall be designed to provide:

(A) A medication distribution station, hand-washing stations (at a rate of one sink per four beds), nurses' station with charting facilities and clinical sink. Provisions for bedpan cleaning, storage space for stretchers, supplies and equipment shall be closely available.

(B) Clearance space of at least 5 feet between patient beds and 4 feet between sides of beds and adjacent walls.

(C) Patient privacy such as cubicle curtains.

(D) Provisions shall be made for isolation of infectious patients, although a separate isolation room is not mandated. At least one door to a recovery unit shall access directly from the surgical suite without crossing uncontrolled common hospital corridors. Separate and additional recovery space may be necessary to accommodate surgical outpatients, where applicable but is not required.

(5) Separate Hospital Licensed Outpatient Surgical Facilities. The following additional features shall be provided when an outpatient surgical facility is outside the inpatient hospital building or remote from the inpatient suite:

ADMINISTRATIVE RULES

(a) Visual privacy shall be provided for registration, preparation, examination and recovery. Audible privacy shall be provided during registration;

(b) Provisions shall be made for patient examination, interview, testing and preparation prior to surgery;

(c) Outpatient surgical facilities not part of an inpatient hospital structure shall meet the requirements of the Oregon Structural Specialty Code and the NFPA 101 and 99; and

(d) Outpatient surgery change areas. If the Functional Program defines an outpatient surgery component as part of the inpatient surgical suite, facilities shall be provided where outpatients may change from street clothing into hospital gowns and be prepared for surgery. This would include facilities for waiting, storage of clothing, toilets, and space for gowning. Separate clothes changing areas are not required when sufficient pre-operative holding cubicles are available;

(e) Phase 1 recovery. If the facility provides outpatient surgery, rooms or cubicles for postanesthesia care and recovery shall be provided. At least 3 feet shall be provided at each side of each bed or recovery lounge chair and at the foot of each bed as needed for circulation of staff and gurneys and wheelchairs. Recovery spaces shall be observable from a nursing station. Provide hand wash stations at a rate of one sink per six recovery beds; and

(f) Phase 2 recovery spaces. Dedicated recovery spaces or a dedicated recovery lounge shall be provided in facilities where the surgical program includes patients who do not require postanesthesia recovery or who have completed postanesthesia recovery, but need additional time for observation by staff prior to leaving the facility. Access to toilet facilities shall be provided.

(g) Administrative and public areas. The following shall be provided:

(A) A patient and visitor waiting room or area and information and reception desk or counter;

(B) Public telephone or other phone(s) usable by patients and visitors;

(C) Space(s) for private interviews relating to social services, credit and admission;

(D) Office space(s) for business transactions, records, and administrative and professional staff, and space and equipment for medical records dictating, recording and retrieving. These shall be separate from public and patient areas with provisions for confidentiality of records;

(E) Secure storage for staff clothing and personal effects; and

(F) General storage for administrative supplies.

(6) Dental operations: Dental surgery facilities not part of a multi-specialty surgical unit shall meet the requirements of sections (1) through (4) of this rule. Operating rooms dedicated to dental surgery shall also conform to the following:

(a) Operating rooms used for invasive maxillofacial and reconstructive dental procedures with general anesthesia shall meet the rules of an operating room for major surgical procedures, except that room size shall be a minimum of 250 square feet; and

(b) Operating rooms for extractions and minor operative procedures within limited anesthesia or conscious sedation shall provide a minimum of 132 square feet of clear space and include the following features:

(A) Four feet or more of clear space at one side of the dental chair and a clear access route for a stretcher or gurney; and

(B) Mechanical and electrical features of a minor surgical procedure room according to OAR 333-535-0300 and 333-535-0310.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(11); HD 21-1987, f. & ef. 11-13-87; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-074-0255; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0115

Endoscopy Facilities

If diagnostic endoscopy procedures are performed, the following shall apply:

(1) Diagnostic Procedure Room(s):

(a) Each diagnostic procedure room shall have a minimum clear area of 200 square feet exclusive of fixed cabinets and built-in shelves. If portable equipment is used for vacuum and oxygen, room size shall be increased to 225 square feet.

(b) A hand-washing station with hands-free controls shall be available in each procedure room.

(c) Station outlets for oxygen, vacuum (suction), and medical air shall be provided in accordance with **Table 5**, OAR 333-535-0300. Use of portable equipment is allowable when a piped-in central system is not available.

(d) Mechanical ventilation shall comply with OAR 333-535-0300, including **Tables 2** and **3** of the same rule. If endoscopy rooms also serve

for bronchoscopy services, these systems must meet ventilation requirements for this service in **Table 2**, OAR 333-535-0300.

(2) Instrument Processing Facilities. There shall be dedicated processing room(s) for cleaning and disinfecting instrumentation. Cleaning spaces shall allow for flow of instrumentation from the contaminated area to the clean area and, then to clean storage cabinets which may be in enclosed cabinets in the procedure rooms. Clean equipment spaces, including storage, must protect equipment from contamination. The following space and equipment shall also be included:

(a) If scopes are cleaned by hand, two separate utility sinks, arranged to prevent splash from one to the other, one for clean and one for soiled equipment processing;

(b) A separate hand washing sink;

(c) Space and facilities for the disposal of waste materials;

(d) When automatic endoscope cleaners and sonic processors are used, space and plumbing fixtures for this equipment shall be provided;

(e) Ventilation system: Negative air pressure and exhaust air from the room per **Table 2**, OAR 333-535-0300, shall be maintained. A hood is recommended for off-gassing and sterilants that cause respiratory irritation; and

(f) Outlets for vacuum and/or compressed air shall be provided in accordance with the Functional Program.

(3) Patient Holding and Recovery Area (if not shared with surgical recovery). The following shall be provided:

(a) Each patient cubicle shall allow a minimum 3 feet between stretchers or recovery chairs;

(b) Each patient cubicle shall be equipped with oxygen and vacuum outlets in accordance with **Table 5**, OAR 333-535-0300;

(c) Provisions for respiratory isolation shall be provided if bronchoscopy patients are also served in patient cubicles. When procedures are to be performed on persons who are known to have or suspected of having airborne infectious diseases, these procedures shall be performed only in a room meeting airborne infection isolation ventilation requirements or in a space using local exhaust ventilation. See also the CDC "Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities";

(d) Medication preparation and storage with a hand-washing station;

(e) Toilet facilities;

(f) Change areas and secure storage for patients' personal property. Patient recovery cubicles may be used when scheduling and capacity allows;

(g) Nurses' reception and charting area that allows for visual observation of patients;

(h) Storage provisions for clean supplies;

(i) A dedicated housekeeping closet;

(j) A nurse call system or other workable system that allows for summoning staff assistance; and

(k) A soiled utility or soiled holding room as referenced in OAR 333-535-0260(5) shall be located to serve the endoscopy facility.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0120

Obstetrical Facilities

The maternity unit shall consist of, but not be limited to, facilities as follows for exclusive use of the maternity department, unless otherwise noted:

(1) General:

(a) The maternity unit shall be located in one area of the hospital and include delivery rooms, labor rooms, recovery rooms, postpartum rooms, labor, delivery, recovery (LDR) and/or labor, delivery, recovery, postpartum (LDRP) rooms, and the support features described in this section to support the estimated obstetrical workload;

(b) The obstetrical care unit shall be located and arranged to prohibit non-related traffic through the unit;

(c) When delivery and non-obstetrical operating rooms are part of the same suite, access and service arrangements shall be such that neither staff nor patients need to travel through one area to reach the other;

(d) At least one delivery room shall be provided within the obstetrical unit for performing Caesarean sections (C-sections) and complex deliveries except for hospital-based obstetrical centers limited to less than 300 low-risk deliveries per year. In such centers, mothers requiring emergency C-sections and complex deliveries may be transferred to surgery, provided a clean operating room can normally be made available, and infants can be transported back to the obstetrical unit in a controlled transport environment such as an isolette;

(e) When the program indicates wide usage of LDR and/or LDRP rooms in place of separate labor, delivery, recovery and postpartum rooms,

ADMINISTRATIVE RULES

the number of labor and postpartum rooms may be reduced or eliminated in accord with the hospital's obstetrical program and workload. Delivery rooms shall be provided per subsection (d) of this section; and

(f) Service areas may be arranged to serve LDR rooms, LDRP rooms and delivery rooms. However, gowning facilities, clean supply, soiled utility rooms, and anesthesia facilities must be arranged to conveniently serve delivery rooms used for C-sections and allow for a sterile operating suite environment. When such support areas are not immediately adjacent, the program and infection control policy must be submitted for Department of Human Services, Public Health Division approval and shall account for such arrangement.

(2) The following patient care facilities shall be provided in accord with section (1) of this rule for exclusive use of the maternity department, unless otherwise noted:

(a) Postpartum patient rooms must meet the same rules as medical and surgical patient rooms under OAR 333-535-0025(1);

(b) Each delivery room shall have a minimum clear area of 300 square feet exclusive of fixed cabinets and built-in shelves and shall be not less than 16 feet wide. Delivery rooms that are routinely used for C-sections shall have not less than 360 square feet of clear area. An emergency communications system that can be activated without use of hands shall be connected with the obstetrical suite control station. Resuscitation facilities (electrical outlets, oxygen, suction, and compressed air) shall be provided for newborn infants within each delivery room in addition to the facilities required for the mother;

(c) LDR and LDRP rooms, when provided, shall be entered from a corridor within the maternity department where public access is under direct control of maternity staff and include the following features:

(A) Each room shall be for single occupancy and provide for a minimum of 5 feet of clear space at the sides and foot of the bed during delivery procedures. Additional space shall be provided for relatives and significant others, a chair for mothers who are breastfeeding, and an infant crib-bette;

(B) Mechanical and electrical services for LDR and LDRP rooms shall meet applicable requirements stated in OAR 333-535-0300 and 333-535-0310; and

(C) Each room shall contain or be closely served by each of the following:

(i) Enclosed storage cabinets or space for a covered cart for supplies used in normal spontaneous vaginal delivery and the immediate care of a normal newborn, unless the program indicates centralized storage and distribution from a nearby clean supply room;

(ii) Storage space for equipment utilized in medical emergencies for mother and infant;

(iii) A hand-washing station or scrub sink equipped with a wrist blade fitting or equivalent fitting allowing operation without use of the hands;

(iv) Toilet facility and shower;

(v) A window is required in each patient room as noted in OAR 333-535-0025;

(vi) Storage space for clothing, toilet articles, and other personal belongings of the patient;

(vii) An electrically operated nurses' calling system as specified under electrical requirements of this division; and

(viii) Examination lighting shall be provided but may be built-in or portable.

(d) Labor rooms. When provided, these rooms shall be single bed or two-bed rooms with a minimum clear area of 100 square feet per bed. In facilities having only one delivery room, two or more labor rooms or LDRP rooms shall also be provided. When two labor rooms only are utilized in connection with a single delivery room, one labor room shall be large enough to function as an emergency delivery room with a minimum of 160 square feet and have at least two oxygen and two suction outlets. Each labor room shall contain a hand-washing station and shall have direct access to a toilet room. One toilet room may serve two labor rooms. Labor rooms shall be closely served by facilities for medication, charting, and storage for supplies and equipment. At least one shower for use of labor room patients shall be provided. A water closet shall be accessible to shower facility. Windows, if provided, shall be located, draped or otherwise arranged, to preserve patient privacy from observation from outside.

(e) Recovery room. It shall contain not less than two beds, charting facilities located to permit staff to have visual control of all beds, facilities for medicine dispensing, hand-washing stations at a rate of one per four beds or a minimum of one, clinical sink with bedpan flushing device, and storage for supplies and equipment. The recovery room may be omitted in hospitals with fewer than 300 annual births.

(3) Service Areas. Individual rooms shall be provided as indicated in the following standards. Otherwise, alcoves or other open spaces that do not interfere with traffic may be used. Services, except the father's waiting room mentioned in subsection (c) of this section, soiled workroom in subsection (g) of this section, and the housekeeping closet in subsection (p) of

this section, may be shared with the surgical facilities if the Functional Program reflects this concept. Where shared, areas shall be arranged to avoid direct traffic between the delivery and operating rooms. The following services shall be provided:

(a) Control station located to permit visual surveillance of all traffic that enters the obstetrical suite.

(b) Supervisor's office or station.

(c) Fathers' waiting room located convenient to the labor room area with provisions for personal communication between fathers and staff. Toilets, telephones, and drinking fountains shall be convenient to the waiting room. In hospitals with less than 300 deliveries per year, a separate fathers' waiting room is not required when a general purpose waiting area can be made available.

(d) Sterilizing facility(ies) with high speed autoclave(s) conveniently located to serve all delivery rooms. When a written program indicates that adequate provisions have been made for replacement of sterile instruments during a delivery, sterilizing facilities in the obstetrical suite will not be required.

(e) Drug distribution station. Provision shall be made for storage, preparation, and dispensing of medication.

(f) Scrub facilities. Two scrub stations shall be provided near the entrance to each delivery room; however, two scrub stations may serve two delivery rooms if the scrub stations are located adjacent to the entrance of each delivery room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts.

(g) An enclosed soiled utility room for the exclusive use of the obstetrical suite staff or a soiled holding room that is part of a system for the collection and disposal of soiled materials. The soiled utility room shall contain a clinical sink or equivalent flushing type fixture, work counter, a hand-washing station, waste receptacle, and linen receptacle. If a soiled holding room is used, the hand-washing station and work counter may be omitted. Soiled utility and/or holding areas shall not have a direct connection with delivery rooms or other sterile activities.

(h) Fluid waste disposal facilities shall be provided in a location convenient to but not connected with the delivery rooms. (The clinical sink or equivalent equipment in a soiled utility room or soiled holding room would meet this standard.) See OAR 333-535-0260(5) for sanitary references.

(i) Clean utility room(s) or clean supply room(s). A clean utility room is required when clean materials are assembled within the obstetrical suite prior to use. A clean utility room shall contain a work counter, a hand-washing station, and space for clean and sterile supplies. A clean supply room shall be provided when the program defines a system for the storage and distribution of clean and sterile supplies that would not require the use of a clean utility room. When clean supplies and equipment used in LDR and LDRP rooms are kept in a central location, the room shall be sized to reflect this concept. (A clean utility room or supply room may be shared with surgery department when provisions for joint use are included in the hospital's infection control policy and arrangement allows direct access to both delivery and surgery suites.)

(j) Anesthesia storage facilities. Unless the narrative program and official hospital board action in writing prohibit use of flammable anesthetics, a separate room shall be provided for storage of flammable gases in accordance with the requirements detailed under the mechanical section of these rules (OAR 333-535-0300). (Anesthesia storage facilities may also serve the surgery suite when provision is made for direct access from both surgery and delivery suites.)

(k) Anesthesia utility room or space for cleaning, testing, and storing anesthesia equipment. It shall contain a work counter, sink, and provisions for separation of clean and soiled items. This may occur at a location outside the suite, provided that sufficient clean equipment and supplies are available at all times. The anesthesia utility room may be omitted when a narrative statement and hospital board policy are submitted stating that no anesthetics are utilized.

(l) Equipment storage room(s) for equipment and supplies used in obstetrical suite.

(m) Staff's clothing change areas. Appropriate areas shall be provided for male and female personnel (technicians, nurses, aides, and doctors) working within the obstetrical suite. The areas shall contain lockers, showers, toilets, hand-washing stations, and space for donning scrub apparel. A receptacle for discarding soiled surgical gowns and boots shall be located to minimize contact with clean personnel. (The same clothes change areas may serve the surgery suite when provision for joint use is included in the hospital's infection control policy and arrangement allows for direct access from both surgery and delivery suites.)

(n) Lounge and toilet facilities for obstetrical staff convenient to delivery, labor, recovery, LDR and LDRP rooms. A separate lounge may be omitted, however, in hospitals with less than 300 deliveries per year.

(o) Facilities for physician waiting, charting, and sleeping are recommended where the obstetrical staffing program and workload indicate need for such, but are not required.

ADMINISTRATIVE RULES

(p) Housekeeping closet. A dedicated closet containing a floor receptor or service sink, in accordance with OAR 333-535-0260(7), and storage space for housekeeping supplies and equipment shall be provided exclusively for the obstetrical suite.

(q) Stretcher storage area. This area shall be out of direct line of traffic.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(12); HD 21-1987, f. & ef. 11-13-87; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0260; HD 21-1993, f. & cert. ef. 10-28-93; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0130

Rehabilitation Therapy Department

(1) If a formal rehabilitation therapy service is provided, facilities and equipment shall be required for the effective function of the program. Where two or more rehabilitative services are included, items may be shared between service elements, in accordance with the Functional Program.

(2) The rehabilitative therapy department shall include the following, which may be shared or provided as separate units for each service, in accordance with the Functional Program:

(a) Office space with provision for filing and retrieval of patient records;

(b) Patient waiting space with provisions for wheelchairs out of traffic;

(c) Treatment area(s) as programmed for thermo-therapy, diathermy, ultrasonic and hydrotherapy. Cubicle curtains shall be provided around each individual treatment area. Hand-washing stations shall be provided at a rate of one per four treatment spaces. Facilities for collection of wet and soiled linen and other materials shall be provided;

(d) Exercise area;

(e) Storage for clean linen, supplies, and equipment;

(f) Patient dressing areas and toilet rooms with hand-washing stations accessible to wheelchair patients;

(g) A conveniently accessible housekeeping closet and service sink;

(h) Wheelchair and stretcher storage shall be provided out of traffic and treatment space areas, but shall be conveniently located;

(i) Secure storage shall be available to the department for staff personal property;

(j) Convenient access to toilets shall be provided.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(13); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0265; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0140

Occupational Therapy Suite

The occupational therapy suite shall include the following elements:

(1) Office space.

(2) Activities area. A hand-washing station shall be provided.

Facilities for collection of waste products prior to disposal shall be provided, in accordance with the Functional Program.

(3) Storage for supplies and equipment.

(4) Ready access to patient toilet facilities.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(14); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0270; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0150

Respiratory Therapy Unit

The respiratory therapy unit shall include space to accommodate program needs and shall contain the following additional elements:

(1) Office space including records file.

(2) Storage for supplies and equipment.

(3) Equipment servicing area.

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(15); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0275; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0160

Morgue and Autopsy

(1) These facilities shall be directly accessible to an outside entrance and shall be located to avoid transfer of cadavers through public areas.

(2) The following elements shall be provided when autopsies are performed within the hospital:

(a) Refrigerated facilities for body-holding equipped with temperature monitoring and alarms.

(b) Autopsy room. This room shall contain:

(A) Work counter with a hand-washing station;

(B) Storage space for supplies, equipment, and specimens;

(C) Autopsy table;

(D) Clothing change area with shower, toilet, and lockers, within the area; and

(E) Housekeeping service sink or receptacle.

(3) If autopsies are performed outside the facility, only a well-ventilated body-holding room need be provided within the hospital.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(16); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0280; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0170

Pharmacy Suite

(1) The size and type of services to be provided in the pharmacy will depend upon the type of drug distribution system to be used in the hospital and whether the hospital proposes to provide, purchase, or share pharmacy services with other hospitals or other medical facilities.

(2) Provision shall be made for the following functional areas:

(a) Hand-washing stations shall be provided within each separate room where open medication is prepared for administration;

(b) Dispensing area;

(c) Editing or order review area;

(d) Sterile products area. (For the compounding of IV admixtures and other sterile products. May also be used for extemporaneous compounding). If intravenous (IV) solutions are prepared in the pharmacy, a sterile work area with a laminar-flow workstation designed for product protection shall be provided. See OAR 333-535-0300;

(e) Administrative areas. (Office area for the chief pharmacist and any other offices required for the proper maintenance of records and reports and also for purchasing, accounting, and personnel activities.);

(f) Storage areas (bulk, active, refrigeration, vault, volatile liquids);

(g) Drug information area;

(h) Packaging area. (Provide only if required by program.);

(i) Bulk compounding area. (Provide only if required by program.); and

(j) Quality control area. (Required only if either packaging or bulk compounding areas are provided)

(3) The pharmacy suite shall be in conformance with statutes and administrative rules pertaining to the State Board of Pharmacy.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(17); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0285; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0180

Dietary Facilities

(1) Food service facilities may consist of an on-site conventional food preparing system, a convenience food service system, or an appropriate combination of the two, and shall meet the requirements of the Oregon Food Sanitation Rules OAR 333-150-0000.

(2) Functional elements. The following facilities shall be provided in the size required to implement the type of food service selected:

(a) Control station for receiving food supplies.

(b) Storage space for four days' supply including food requiring cold storage.

(c) Food preparation facilities. Conventional food preparation systems require space and equipment for preparing, cooking, and baking. Convenience food service systems such as frozen prepared meals, bulk packaged entrees, and individual packaged portions, or systems using contractual commissary services require space and equipment for thawing, portioning, cooking, and/or baking.

(d) Hand-washing stations located in the food preparation area.

(e) Patients' meal service facilities. Examples are those required for tray assembly and distribution.

(f) Dining space for ambulatory patients, staff, and visitors.

(g) Ware-washing space located in a room or an alcove separate from food preparation and serving area. Commercial-type dishwashing equipment shall be provided. Space shall also be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using areas. A hand-washing station shall be conveniently available.

(h) Pot-washing facilities.

(i) Storage areas and sanitizing facilities for cans, carts, and mobile tray conveyors.

ADMINISTRATIVE RULES

(j) Waste storage facilities located in a separate room easily accessible to the outside for direct pickup and disposal.

(k) Office(s) or desk spaces for dietitian(s) or the dietary service manager.

(l) Toilets for dietary staff. A hand-washing station shall be immediately available.

(m) Housekeeping closet. Located within the dietary department and shall contain a floor receptor or service sink and storage space for housekeeping, equipment and supplies.

(n) Self-dispensing ice-making facilities. May be in area or room separate from food preparation area but must be easily cleanable and convenient to dietary facilities.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(18); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0290; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0190

Administration and Public Areas

The following areas shall be provided:

(1) Entrance at grade level, sheltered from the weather, and able to accommodate wheelchairs.

(2) Lobby. It shall include:

(a) Storage space for wheelchairs;

(b) Reception and information counter or desk;

(c) Waiting space(s);

(d) Public toilet facilities;

(e) Public telephones; and

(f) Drinking fountain(s).

(3) Interview space(s) for private interviews relating to social service, credit, and admissions.

(4) General or individual office(s) for business transactions, medical and financial records, and administrative and professional staffs.

(5) Multipurpose room(s) for conferences, meetings, and health education purposes including provisions for showing visual aids.

(6) Library facilities.

(7) Storage for office equipment and supplies.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(19); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0295; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0200

Medical Records Unit

The following rooms and areas shall be provided:

(1) Medical records administrator/technician office or space.

(2) Review and dictating room(s) or spaces.

(3) Work area for sorting, recording, or archiving records.

(4) Storage area for records.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(20); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0300; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0205

Central Services Supply

The following shall be provided:

(1) Soiled utility room. This room shall be physically separated from all other areas of the department. The work space shall be provided to handle the cleaning and initial sterilization/disinfection of all medical/surgical instruments and equipment. Work tables, sinks, flush-type devices, and washer/sterilizer decontaminators shall be provided. Hand-washing stations shall be provided. Lockers, showers, and toilets shall be provided for staff employed in this area if these facilities are not available in adjacent employee facilities servicing other soiled areas.

(2) Clean assembly/utility room. The utility room shall contain work space and equipment for terminal sterilizing medical and surgical equipment and supplies and hand-washing stations.

(a) A sterilization room shall be provided that is used exclusively for the inspection, assembly, and packaging of medical/surgical supplies and equipment for sterilization.

(A) Access to the sterilization room shall be restricted.

(B) This room shall contain Hi-Vacuum or gravity steam sterilizers and sterilization equipment to accommodate heat-sensitive equipment (ETO sterilizers) and ETO aerators.

(C) This room shall contain work tables, counters, a hand-washing station, ultrasonic storage facilities for backup supplies and instrumentation, and a drying cabinet or equipment.

(D) The area shall be designed to accommodate sterilizer carts for loading of prepared supplies for sterilization.

(3) Storage areas for clean supplies and for sterile supplies. A room for breakdown shall be provided for manufacturers' clean/sterile supplies. The clean processing area shall not be in this area but in an adjacent space.

(4) Equipment storage room. Storage for packs, etc., shall include provisions for ventilation, humidity, and temperature control.

(5) Cart storage. This area shall be adjacent and easily available to clean and sterile storage and close to the main distribution point to keep traffic to a minimum and ease workflow.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(21); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0305; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0210

General Stores

The following shall be provided:

(1) Off street unloading facilities.

(2) Receiving area. Adequate receiving areas shall be provided to accommodate delivery trucks and other vehicles.

(a) The location of the receiving area shall be located to promote safe, secure, and efficient movement of arriving materials without compromising patient areas.

(A) Dock areas shall be segregated from other occupied building areas and located so that noise and odors from operation will not adversely affect building occupants.

(B) The receiving area shall be convenient to service elevators and other internal corridor systems.

(C) Receiving areas shall be segregated from waste staging and other outgoing materials-handling functions.

(b) Space requirements shall be adequate to enable breakdown, sorting, and staging of incoming materials and supplies.

(A) Balers and other devices shall be located to capture packaging for recycling or return to manufacturer or deliverer.

(B) In facilities with centralized warehousing, adequate space shall be provided at receiving points to permit the staging of reusable transport containers for supplies moving from central warehouses to individual receiving sites.

(3) General storage rooms or storage system shall be provided to meet hospital needs. They shall generally be concentrated in one area, but, in a multiple building complex, they may be in separate concentrated areas in one or more individual buildings on site. Off-site locations for a portion of this storage shall be permitted. The following shall be provided:

(a) Provisions for protection against inclement weather during transfer of supplies.

(b) General storage room(s) with a total area of not less than 20 square feet per inpatient bed shall be provided.

(c) Additional storage areas for outpatient facilities in combination with and in addition to the general stores, or in a central area within the outpatient department shall be permitted. Off-site location(s) for a portion of this storage shall also be permitted.

(d) Additional storage areas for outpatient facilities shall be provided in an amount not less than five percent of the total area of those facilities.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(22); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0310; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0220

Linen Services

(1) On-site processing. If linen is to be processed on the hospital site, the following shall be provided:

(a) Laundry processing room with commercial-type equipment that can process seven days' needs within a regularly scheduled workweek. A hand-washing station shall be provided;

(b) Soiled linen utility, room with a hand-washing station and holding rooms. Lockers, showers, and toilets shall be provided for staff employed in this area if these facilities are not available in adjacent employee facilities servicing other soiled areas;

(c) Storage for laundry supplies;

(d) Clean linen inspection and mending room or area;

(e) Clean linen storage, issuing, and holding room or area;

(f) Housekeeping closet containing a floor receptor or service sink and storage space for housekeeping equipment and supplies;

(g) Cart storage area(s). These shall be provided for separate parking of clean- and soiled-linen carts out of traffic;

(h) Arrangement of equipment and procedures shall be in a manner to permit orderly work flow with a minimum of cross-traffic that might mix clean and soiled operations.

ADMINISTRATIVE RULES

(2) Off-site processing. If linen is processed off the hospital site, the following shall be provided:

(a) Soiled linen holding room. A separate room shall be provided for holding soiled linen until ready for pickup or processing;

(b) Clean linen receiving, holding, inspection, and storage room(s). A central clean linen storage and issuing room(s) shall be provided in addition to the linen storage required at individual patient units;

(c) Cart storage area(s). These shall be provided for separate parking of clean- and soiled-linen carts out of traffic.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(23); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0315; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0230

Employees' Facilities

In addition to the employees' facilities such as locker rooms, lounges, toilets, or shower facilities called for in certain departments, a sufficient number of such facilities, as required to accommodate the needs of all personnel and volunteers, shall be provided in accordance with the Functional Program.

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(24); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0320; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0250

Waste Processing Services

(1) Storage and disposal. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques.

(2) Incinerator:

(a) Design and construction of incinerators and trash chutes shall be in accordance with NFPA 82 and State Structural and Mechanical Codes.

(b) Incinerators shall be designed and equipped to conform to requirements prescribed by the Oregon Department of Environmental Quality for emission levels and equipment.

(c) Other technologies for non-incineration. Waste treatment technologies shall be determined by the facility in conjunction with environmental, economic, and regulatory considerations. The Functional Program shall describe waste treatment technology components that include the following:

(A) Safe locations, transfer routes, distances from waste sources, temporary storage and spacing requirements shall be provided that will not cause traffic problems, and limits odor, noise, and visual impact to patients, visitors and the public;

(B) Space shall be determined by the equipment requirements, including associated area for opening waste entry doors, access to control panels, space for hydraulic lifts, conveyors, and operational clearances. The method of waste treatment or disposal is subject to the local regulatory approvals;

(C) Ventilation. Exhaust vents, if any, from the treatment technology shall be located a minimum of 25 feet from inlets to HVAC systems. If technology involves heat dissipation, sufficient cooling and ventilation shall be provided; and

(D) Nuclear Waste Disposal. See Code of Federal Regulations (CFR), Title X, parts 20 and 35, concerning the handling and disposal of nuclear materials in health care facilities.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(26); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0330; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0260

Sanitary Environment

(1) A hand-washing station is an area providing a sink for hand-washing with hot and cold water supply and a faucet that facilitates easy on and off mixing capabilities without use of the hands. The station shall include provision of cleansing agents and drying capability. In addition to hand-washing stations required for individual departments, adequate hand-washing stations shall be provided for the total hospital population. Hand-washing stations shall be available in all toilet rooms. For the purpose of providing accuracy and consistency within these rules, these terms are defined as follows:

(a) Hand-washing sink. Hand-washing sinks are a general component of hand-washing stations that are available in all toilet rooms and provided for the total hospital population.

(b) Scrub sink. Scrub sinks are provided for the exclusive use of staff in restricted and semi-restricted locations within operating and surgical suites and rooms.

(2) Toilet and hand-washing stations shall be available to patient care units as follows, with the exception of intensive patient care units and special locked psychiatric units where provision of these fixtures within the room may pose undue risks or problems:

(a) In newly constructed single patient rooms having a private toilet room, a hand-washing station in both the toilet room and the patient room shall be provided. For renovation projects involving single patient rooms that have a private toilet room, a hand-washing station shall be located in either the toilet room or the patient room;

(b) In single patient rooms having a toilet room connecting two rooms, a hand-washing station shall be provided in the toilet room and in each of the two patient rooms;

(c) All wards of two or more beds, having a separate or connecting toilet rooms shall have a hand-washing station in the toilet room as well as in the ward;

(d) A toilet room shall be directly accessible from each patient room without going through the general corridor;

(e) One toilet room shall serve not more than four patients or two patient rooms; and

(f) In general psychiatric units, the hand-washing station may be omitted from the patient room when a hand-washing station is located in an adjoining toilet room. Toilet and hand-washing stations in special-care, locked psychiatric units may be provided based on patients' needs and the Patient and Staff Safety Assessment.

(3) Toilet rooms, conveniently located and separate from those used by patients, shall be provided for all hospital personnel. No toilet room shall open directly into any room in which food, drink, or utensils are handled or stored.

(4) Clean utility or clean storage: Each patient care unit shall include or have direct access to a clean utility room or area open to the corridor containing a work counter, hand-washing station and facilities for storage and distribution of clean and sterile supply materials. If the room is used for clean storage only, the hand-washing sink may be omitted. If the utility area is open to the corridor, all supply cabinets shall be fully enclosed.

(5) Soiled utility or soiled holding: Each patient care unit shall include or have direct access to a soiled utility room or a soiled holding room as required in other related sections.

(a) Soiled utility rooms shall contain a clinical sink or equivalent flushing rim sink. Where a bed pan flushing device is provided in patient toilet rooms, a utility sink may be provided in the soiled utility room instead of a clinical sink. The utility sink shall be at least 10 inches deep and measure at least 22 inches by 21 inches. Each soiled utility room shall also provide a hand-washing station, work counter, waste receptacle and linen receptacle for collection and disposal of soiled materials, including separate infectious waste storage if not provided elsewhere, and recycle storage if part of hospital operations.

(b) Soiled holding rooms. Soiled holding rooms are intended for temporary holding of soiled material. Clinical sinks and work counters are not required in rooms used only for temporary holding of soiled material. If the flushing-rim clinical sink is not provided, facilities for cleaning bedpans shall be provided elsewhere.

(6) Patients' bathing facilities for medical, surgical, obstetrical, and pediatric patient care units: at least one shower or tub for each 12 beds shall be provided, except that in postpartum units, a minimum of one shower per 12 beds shall be provided. Each tub or shower shall be in an individual room or enclosure that provides space for the private use of the bathing fixture and for drying and dressing. At least one bathing fixture on each patient floor shall have space for a wheelchair with an assisting attendant. In new construction, at least one toilet for each 12 beds shall be provided in the bathing room. Patient/public toilets shall be provided conveniently near multi-purpose rooms.

(7) Housekeeping closets. In addition to closets noted in other sections of these rules, sufficient housekeeping closets, with a floor sink or service sink and storage space for janitorial equipment, cart and supplies, located in each, shall be provided to serve all areas of the hospital and shall also include the following:

(a) A minimum of 35 square feet shall be provided for each housekeeping room;

(b) A minimum of one housekeeping closet shall be provided for each floor; and

(c) If practical, a hand-washing station shall be provided proximate to the housekeeping closet.

(8) Overhead drainage piping. Refer to OAR 333-535-0300(5)(e)(C).

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(27); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0335; HD 21-1993, f. & cert. ef. 10-28-93; OHD 1-

ADMINISTRATIVE RULES

2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0270

Details and Finishes

(1) The nonconforming portions of existing facilities that are not being totally modernized shall comply with the safety requirements dealing with interior finishes as listed in chapters 18, 19, 20 and 21 of the National Fire Protection Association (NFPA) 101, when the facility is also to be Medicare or Medicaid certified.

(2) Details and finishes in new construction projects, including additions and major alterations, shall comply with the following:

(a) Details:

(A) Compartmentation, exits, fire alarms, automatic extinguishing system, and other details relating to fire prevention and fire protection shall comply with requirements listed in chapters 18, 19, 20 and 21 of the NFPA101, when the facility is also to be Medicare or Medicaid certified.

(B) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

(C) Rooms containing any of the following: bathtubs, sitz baths, showers, or water closets, subject to occupancy by patients, shall be equipped with doors and hardware that will permit access from the outside in any emergency. When such rooms have only one opening, the door shall be capable of opening outward or be otherwise designed to be opened without need to push against a patient who may have collapsed within the room.

(D) If psychiatric care units are required by the program, suitable hardware shall be provided on doors to patient toilet rooms so that access to these rooms can be controlled by staff.

(E) If required by the program, doors to patient rooms in psychiatric care units shall not be lockable from inside the room.

(F) Windows and other doors that may be frequently left in an open position shall be provided with insect screens.

(G) Patient rooms intended for occupancy of 24 hours or more shall have windows with sills not more than 3 feet above the floor (windows in Intensive Care Unit and Critical Care Unit may be 5 feet above the floor).

(H) Linen and refuse chutes shall meet requirements of NFPA101, and have a minimum cross sectional dimension of not less than 2 feet.

(I) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts. Expansion joints shall be constructed to restrict passage of smoke and fire.

(J) Grab bars shall be provided at all patients' toilets, showers, tubs, and sitz baths, except in psychiatric patient care units. The bars shall have one and one-half inch clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds.

(K) Anchoring. Sinks in hand-washing stations shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

(L) Mirrors shall not be installed at hand-washing stations in food preparation areas or in sensitive areas such as nurseries, clean and sterile utility, storage rooms and scrub sinks.

(M) Hand drying devices. Provision for hand drying shall be included at all hand-washing stations except scrub sinks. Hospital policy shall determine hand drying procedures at scrub sink locations. These shall be single use separate individual paper or cloth units enclosed in such a way as to provide protection against dust or soil and insure single unit dispensing. Hot air dryers are permitted provided that installation is such to preclude possible contamination by recirculation of air.

(N) Radiation protection requirements for Radiographic Imaging and gamma ray installations shall be in accordance with National Council of Radiation Protection Reports Numbers 33 and 49. Provision shall be made for testing the completed installation before use and all defects must be corrected before acceptance. Prior to their use, all installations shall be approved and licensed by the Radiation Control Section of the DHS, Public Health Division.

(O) The minimum ceiling height shall be 7 feet 10 inches with the following exceptions:

(i) Boiler rooms shall have ceiling clearances not less than 2 feet 6 inches above the main boiler header and connecting piping.

(ii) Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling-mounted surgical light fixtures shall have height required to accommodate the equipment or fixtures.

(iii) Ceilings in corridors, storage, toilet rooms, and other minor rooms shall be not less than 7 feet 6 inches.

(iv) Soffits, signage, lights, mechanical items and other suspended items located in the path of normal traffic shall not be less than 7 feet above the floor. Cubicle curtain tracks and television suspensions in individual rooms shall not be less than 6 feet 8 inches above the floor.

(P) Recreation rooms, exercise rooms and similar space where impact noises may be generated shall not be located directly over patient bed area,

delivery or operating suites, unless special provisions are made to minimize such noise.

(Q) Rooms containing heat-producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 10°F above the ambient room temperature of the room producing the heat generation.

(R) Sound transmission criteria shown in **Table 1** (OAR 333-535-0270) shall apply to partition, floor and ceiling construction in patient areas.

(S) Mechanical equipment located on the same floor or above patient rooms, offices, nurse stations, and similar occupied spaces shall be effectively sound isolated from the floor and structure.

(T) Equipment and supply storage shall be provided for each hospital department in accordance with the Functional Program; however, a minimum of 10 square feet per bed shall be provided in patient care areas. In all other departments, the amount required shall be based on either a study of supply and equipment needs which shall be submitted with construction plans for review or a minimum of 10 percent of gross departmental area. All rooms and corridors within a department shall be included when calculating gross departmental area.

(b) Finishes:

(A) Cubicle curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large and small scale tests of NFPA Standard 701.

(B) Flame spread and smoke developed ratings of finishes are covered under the State of Oregon Building Code. Whenever possible, the use of materials known to produce large amounts of noxious gases shall be avoided.

(C) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, operating and C-section rooms, clean core areas, recovery areas except step-down recovery and similar work areas) shall have a non-slip surface as recommended by Americans with Disabilities Act, Architectural and Transportation Barriers Compliance Board (Access Board).

(D) Wall bases in kitchens, operating and C-section rooms, clean core areas, surgical scrub corridors, soiled workrooms, endoscopy rooms, housekeeping closets and other areas that are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects.

(E) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant (orange peel not allowed). Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(F) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(G) Ceilings in restricted areas such as: surgery rooms, delivery rooms, clean core areas and specialized radiographic rooms shall be constructed with material that are monolithic, scrubable, and capable of withstanding chemicals, such as gypsum board, and be without crevices that can contain dirt particles.

(H) Ceilings in semi-restricted areas such as: airborne infection isolation rooms, protective environment rooms and central sterile supply spaces shall be smooth, scrubable, nonabsorptive, nonperforated, capable of withstanding cleaning with chemicals, and without crevices that can harbor mold and bacterial growth.

(I) If lay-in ceiling is provided in semi-restricted areas, it shall be gasketed or clipped down to prevent the passage of particles from the cavity above the ceiling plane into the semi-restricted environment. Perforated, tegular, serrated cut, or highly textured tiles are not acceptable.

(J) Dietary and food preparation areas shall have a finished ceiling covering all overhead duct work and piping.

(K) Finished ceilings may be omitted in general storage areas, and similar spaces, unless required for fire-resistive purposes.

(L) Acoustical ceilings shall be provided for corridors in patient areas, nurses' stations, labor rooms, day rooms, recreation rooms, dining areas, and waiting areas.

(M) In dietary areas and in other areas where dust fallout may present a problem, suspended ceilings shall be provided.

(N) Ceilings of patient rooms in psychiatric care units shall be of monolithic or bonded construction.

(O) Top-set rubber or vinyl wall base, where used, shall be sealed tightly to the floor as well as to the wall.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

ADMINISTRATIVE RULES

Stat. Auth.: ORS 441.060
Stats. Implemented: ORS 441.060
Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(28); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0340; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0280

Construction, Including Fire-Resistive Requirements

Construction shall be in accordance with the requirements of *NFPA 99* and *NFPA 101*, the *Oregon Structural Specialty Code*, and *Oregon Fire Code*, and the minimum requirements contained herein.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(29) HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0345; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0290

Elevators

(1) General. All hospitals having patients' facilities (such as bedrooms, dining rooms, or recreation areas) or critical services (such as operating, delivery, diagnostic, or therapy) located on floors other than the main entrance floor shall have electric or electro-hydraulic elevators. Installation and testing of elevators shall comply with the Oregon Elevator Code.

(2) Number of Elevators:

(a) At least one hospital-type elevator shall be installed where 1 to 59 patient beds are located on any floor other than the main entrance floor.

(b) At least two hospital-type elevators shall be installed where 60 to 200 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds. (Elevator service may be reduced for those floors that provide only partial inpatient services.)

(c) At least three hospital-type elevators shall be installed where 201 to 350 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds. (Elevator service may be reduced for those floors that provide only partial inpatient services.)

(d) For hospitals with more than 350 beds, the number of elevators shall be determined from a study of the hospital plan and the estimated vertical transportation requirements.

(3) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate all patient beds to be utilized and attendants. The car door shall have a clear opening of not less than 4 feet.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(5) Elevator controls, alarm buttons, and telephone shall be accessible to wheelchair occupants.

(6) Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(30) HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0350; HD 21-1993, f. & cert. ef. 10-28-93; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0300

Mechanical Requirements

(1) General standards:

(a) In addition to requirements of this rule, the mechanical system serving hospitals and hospital outpatient facilities may be subject to general review for overall efficiency and life cycle cost, although no requirements will be enforced beyond those included in this rule. Recognized engineering procedures are recommended to achieve specific requirements and performance for the most economical and effective results. Different geographic areas may have climate variations and use conditions that would favor one system over another in terms of overall cost and efficiency. In no case shall patient care or safety be sacrificed for conservation. Construction shall comply with the Oregon Structural Specialty Code (OSSC), the Oregon Mechanical Specialty Code (OMSC), the Oregon Plumbing Specialty Code (OPSC), Oregon Fire Code (OFC), NFPA 90A, and NFPA 99 Health Care Facilities as enforced by the State Building Codes Division and Authorities having Jurisdiction. Responsibility for enforcement remains with these authorities.

(b) The facility shall include provisions for recovery of waste cooling and heating energy (ventilation, exhaust, water and steam discharge, cooling towers, incinerators, etc.) in compliance with local codes.

(c) Recirculating room units (such as induction units and unit ventilators) may be used in individual rooms for heating and cooling purposes. Outdoor air requirements shall be met by separate air handling systems with proper filtration, as noted in **Table 3**.

(d) To reduce utility costs, facility design shall include consideration of recognized procedures such as variable air volume systems, energy recovery devices, load shedding, programmed controls for unoccupied periods including nights and weekends, and use of natural ventilation where site and climatic conditions permit. Systems with excessive operational or maintenance costs that would negate long-range energy savings should be avoided.

(e) To the extent possible, this rule has been written to permit maximum use of simplified systems including that for variable air volume (VAV). However, care must be taken in design to avoid possibility of large temperature differentials, high velocity supply, excessive noise, and stagnation. Air supply, return, and exhaust in rooms may vary in response to room load provided the total and outside air change rates stay within the limits of **Table 2**, Note 4. Construction drawing submissions shall include information listing the actual supply air and outside air change rates provided to the areas listed in **Table 2** at maximum and minimum terminal unit settings.

(f) To maintain asepsis control, air supply, return, and exhaust quantities should generally be controlled to ensure movement from "clean" to "less clean" areas and maintain directional air movement within the limits of **Table 2**, Note 2. Special considerations shall be given to sterile areas such as Operating Rooms, Delivery Rooms, and Central Supply.

(g) Variable air volume systems serving inpatient facilities or surgical outpatient facilities shall include controls or equipment necessary to ensure that minimum outside air quantities in cubic feet per minute and the resulting space pressure relationships are maintained over the range of fan operation. Examples of methods to ensure the delivery of minimum quantities of outside air include the installation of airflow monitoring stations or dedicated supply fans.

(h) Prior to acceptance of the facility, all mechanical systems shall be tested, balanced and operated to demonstrate to the design engineer or his or her representative that the installation and performance of these systems conform to the design intent and requirements herein. Test results shall be documented for maintenance files and be available for inspection by Division's surveyors or Authorities having Jurisdiction.

(i) Functional performance tests shall be provided for projects that include the addition or modification of major equipment and systems. These tests shall ensure that mechanical systems operate in accordance with the design intent and in compliance with requirements herein. Description of procedures and test results for each functional performance test shall be documented to demonstrate to the design engineer, or his or her representative, that systems operate in accordance with the design intent. Documentation shall be included in the maintenance files and be available for inspection by the Division's surveyors or Authorities having Jurisdiction. Functional performance tests shall be developed and performed for the following systems and system functions in hospital inpatient facilities where applicable:

(A) Outdoor air ventilation system components and control modes.

(B) Humidity control components and control modes.

(C) Maintenance of space pressure relationships through all modes of air handling system operation.

(D) Airborne infectious isolation and protective environment room ventilation and pressurization monitoring systems.

(E) Smoke evacuation systems serving anesthetizing areas.

(F) Fire/smoke damper controls.

(G) Boiler and generator fuel oil supply transfer systems including alarms.

(H) Laboratory hood systems.

(j) Upon completion of the contract, the facility shall be furnished and retain on file a complete set of building drawings, manufacturers' operating, maintenance and preventive maintenance instructions, parts lists and procurement information with model numbers, and a description of the operation of each piece of equipment. Responsible operating staff persons shall also be provided with instructions in the proper operational use of systems, equipment, and controls. This information shall be available for inspection by the Division's surveyors or Authorities having Jurisdiction.

(k) If inpatient facility system modifications affect greater than 25 percent of the system capacity, designers shall obtain and utilize pre-renovation water/air flow rate measurements to verify that sufficient capacity is available and that renovations have not adversely affected flow rates in non-renovated areas.

(l) Psychiatric patient room fixtures and equipment shall be tamper resistant and shall be selected to meet the requirements of the Patient and Staff Safety Assessment. Equipment shall be selected to minimize the need for maintenance within the room. Refer to OAR 333-535-0061 for additional requirements.

(m) Identification. All piping, including heating ventilation, gas, vacuum and air conditioning (HVAC) except control line tubing, shall be color coded or otherwise marked for easy identification. Major equipment shall be labeled. All valves shall be tagged. Identification and valve schedules shall be provided to the facility for permanent record and reference.

ADMINISTRATIVE RULES

(2) Insulation:

(a) Insulation shall be provided within the building to conserve energy, protect personnel, prevent vapor condensation, and reduce noise.

(b) Insulation on cold surfaces shall include an exterior vapor barrier. (Materials which will not absorb or transmit moisture will not require a separate vapor barrier.)

(c) Insulation, including finishes and adhesives on the exterior surfaces of ducts, piping, and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating not to exceed 50 when tested in accordance with NFPA 255.

(d) If duct lining is used, it shall be coated and sealed and shall meet ASTM C1071. These linings, including coatings, adhesives, and insulation on pipes and ducts in building spaces, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less when tested in accordance with NFPA 255.

(e) No duct linings exposed to air movement shall be used in ducts, terminal boxes or other systems downstream of final filters supplying operating rooms, invasive special procedure rooms, C-section delivery rooms, post anesthesia recovery rooms, critical care, nurseries, protective environment rooms, intensive care, and central supply areas. Fully encapsulated lining may be used in terminal boxes serving these areas. Sound traps or duct silencers downstream of final filters shall be all metal with no fill or shall have special coatings over such linings per ASTM C1071.

(f) If existing lined ductwork is reworked in a renovation project, the liner seams and punctures shall be resealed, repaired or replaced.

(3) Steam and hot water systems:

(a) Boilers and domestic water heaters. Boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute, to supply the normal requirements of all systems and equipment. Their number and arrangement shall accommodate facility need during time of breakdown or routine maintenance of any one boiler. The capacity of the remaining boiler(s) shall be sufficient to provide domestic hot water service for clinical, dietary, and patient use; steam for sterilization and dietary purposes; and heating for operating, delivery, labor, recovery, intensive care, nursery, emergency departments, and general patient rooms. If the domestic water heating system is independent of the building heating boilers, the domestic water heating system shall be capable of providing a back-up source of domestic hot water for clinical, dietary, and sterilizer use when the primary domestic water heating system is not operable. These requirements do not apply to outpatient facilities except outpatient surgical facilities providing invasive or anesthetizing procedures shall provide backup equipment for hot water and sterilizer needs only.

(b) Boiler system accessories. Boiler feed pumps, heating circulating pumps, condensate return pumps, heat exchangers, and fuel oil pumps shall be connected and installed to provide normal and standby service where back-up or standby service is required.

(c) Valves. Supply and return mains and risers of cooling, heating and steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends.

(d) Fuel supplies. Fuel used for boiler systems serving hospital inpatient facilities that provide building heating to the areas listed in subsection (3)(a) shall include a backup on-site fuel system if the primary fuel system fuel is not stored on site. The on-site fuel storage system shall have sufficient fuel/power to operate the boiler systems for a minimum of 48 hours, or for a time period consistent with the facility emergency management plan. The on-site fuel system shall include a low level fuel sensor alarmed at a staffed location. On-site fuel systems may be combined with the emergency generator fuel systems per the requirements of NFPA 110.

(4) Air conditioning, heating, and ventilating systems:

(a) The ventilation system shall be designed and balanced to provide ventilation rates and directional flow as shown in Table 2. (See notes 2 and 4 for reduction and shutdown of ventilation systems when room is unoccupied.) The ventilation rates shown in Table 2 shall be used only as model standards; they do not preclude the use of higher rates that may be appropriate. All occupiable rooms and areas in the facility shall have provision for mechanical ventilation. Natural ventilation systems and operable windows shall be permitted to supplement mechanical ventilation where they will not adversely affect required pressure relationships, air change rates, and room temperatures. Freestanding immediate care clinics, physician's clinics, imaging facilities, outpatient physical therapy, dialysis facilities, and occupational therapy facilities that are not part of an inpatient facility are not required to meet the ventilation requirements of Table 2, except endoscopy, isolation, and bronchoscopy areas.

(b) Outside air ventilation intakes shall be located at least 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents, cooling towers, or from areas that may collect vehicular exhaust or other noxious fumes in all inpatient areas and in outpatient areas providing invasive or anesthetizing procedures. In non-anesthetizing hospital outpatient facilities, this distance may be reduced to 10 feet. Plumbing vents that terminate above the level of

the top of the air intake may be located as close as 10 feet. Outside air ventilation intakes shall be located a minimum of 25 feet from the combustion vents of rooftop air handling units, except that the clearance may be reduced to 10 feet when the vent is above the level of the intake. Outside air ventilation intakes shall be located a minimum of 6 feet from relief/economizer air outlets that do not include required building exhaust. The bottom of outside ventilation air intakes in inpatient facilities shall be located as high as practical but at least 15 feet above ground level or 3 feet above the roof level.

(c) Fans serving exhaust systems shall be located at the discharge end of the system to limit positively pressurized ductwork within the building and shall be conveniently accessible for service. Where existing conditions prohibit fans from being located at the discharge end of the system, alternate systems may be considered provided discharge ductwork is sealed and tested per medium pressure duct requirements. Hospital outpatient facilities are not required to have exhaust fans at the discharge end of the system except endoscopy, isolation, and bronchoscopy area. Exhaust systems may be combined as necessary for efficient use of recovery devices required for energy conservation.

(d) Exhaust systems from areas that may be contaminated shall not be combined with other exhaust systems, shall include fans located outside the building with outlets discharging vertically a minimum of 6 feet above the roof level, and shall be arranged to minimize recirculation of exhaust air into the building. Consideration shall be given to redundant fan systems. Contaminated exhaust ducts and discharge points shall be labeled. Contaminated areas include infectious isolation, decontamination, ETO sterilizer, non-refrigerated body holding, and bronchoscopy. Contaminated exhaust shall not be served by exhaust systems that may allow cross contamination, such as heat wheels. Where existing conditions prohibit fans from being located outside the building, alternate systems that are designed to limit cross contamination and exposure to workers and patients may be considered. (Refer to OMSC for additional requirements.)

(e) Operating and C-section delivery room air supply shall be from ceiling outlets near the center of the work area to effectively control air movement. Laminar flow design diffusers shall be used in operating rooms. Each operating and C-section delivery room shall have at least two return/exhaust air inlets located near the floor level in opposite corners of the room. (Design should consider turbulence and other factors of air movement to minimize fall of particles into wound site.) Where extraordinary procedures, such as organ transplants, may justify other special designs, the installation shall be as required to properly meet the performance needs. Special designs shall be reviewed on a case by case basis. Installation of equipment requiring service shall be kept to a minimum above operating rooms and sterile core areas. Temperature shall be individually controlled for each operating and C-section delivery room. The air handling systems for operating and C-section delivery rooms shall operate at all times.

(f) Humidity control and smoke vent systems in inpatient facility anesthetizing areas shall be provided as required by NFPA 99, Environmental Systems Chapter. Smoke vent systems shall prevent smoke within individual anesthetizing rooms from affecting adjacent anesthetizing rooms. Adjacent rooms shall remain at a positive pressure in relationship to the areas with detected smoke. Smoke dampers shall not affect the operation of the smoke vent system.

(g) Air supply for intensive care nurseries, airborne infectious isolation rooms, bronchoscopy treatment rooms, and rooms used for invasive procedures shall be at or near the ceiling. Return/exhaust air inlets shall be near the floor level. Special designs shall be reviewed on a case by case basis.

(h) Each airborne infectious isolation room and protective environment room shall have a permanently installed and labeled visual mechanism to constantly monitor the pressure status to the room when occupied by a patient requiring isolation or protection. The mechanism shall continuously monitor the direction of the air flow. Audible alarms, if provided, shall include a silencing switch. Rooms with reversible airflow provisions for the purpose of switching between airborne infectious and protective environment isolation rooms are not acceptable. Rooms used for sputum induction, aerosolized pentamidine treatments, or other cough inducing treatments shall meet the requirements of Table 2 for airborne infectious isolation rooms. Protective environment rooms shall be provided with HEPA filters at 99.97 percent efficiency (MERV 17) per Table 3. Recirculating HEPA filter units may be used in protective environment rooms, but shall not be used to meet the minimum filtering requirements of Table 3.

(i) The bottoms of ventilation (supply/return/exhaust) openings shall be at least 6 inches above the floor.

(j) Emergency waiting rooms and other waiting rooms where airborne infection is a concern, as defined by the Infection Control Risk Assessment, shall have low wall return/exhaust and shall conform to the requirements of Table 2. Special designs shall be reviewed on a case by case basis.

ADMINISTRATIVE RULES

(k) Air handling systems in inpatient facilities shall be fully ducted except when serving non-patient care areas.

(l) All ventilation or air conditioning systems, except individual room units serving non-critical care areas, shall be equipped with filters having efficiencies equal to, or greater than, those specified in Table 3. Where two filter beds are required, filter bed No. 1 shall be located upstream of the air conditioning equipment, and filter bed No. 2 shall be downstream of any cooling coils and blowers. Non-central air handling systems (individual room units) shall be equipped with filters with minimum 60 percent efficiency (MERV 11).

(A) Where only one filter bed is required, it shall be located upstream of the air conditioning coils unless an additional pre-filter is employed.

(B) Filter efficiencies shall be average ratings tested in accordance with American Society of Heating, Refrigeration, & Air Conditioning Engineering Standard 52-1 and MERV's rating shall be based on ASHRAE Standard 52-2, except as noted otherwise.

(C) Filter frames shall be manufactured housings designed for maximum 500 FPM velocity and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage. Filter housing blank off panels shall be permanently attached to the frame, constructed of rigid materials, and have sealing surfaces equal to or greater than the filter media installed in the filter frame.

(D) Magnahelics or manometers shall be installed across all filter beds having a required efficiency of 75 percent (MERV 12) or more. When these filters are located remote from the air handling unit, monitoring of filter condition shall be provided in a staffed area or through the building control system.

(m) Steam humidifiers shall be used for humidification. Central steam shall be used only if chemical treatment is food grade. Humidifiers shall be located to prevent moisture on filters or lined ductwork. Ductwork with duct mounted humidifiers shall be stainless steel or aluminum construction and shall have a means for water removal. An adjustable high limit humidistat shall be located downstream of the humidifier to reduce the potential for condensation inside the duct. Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present. All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(n) Ducts and piping which penetrate construction intended for X-ray, MRI, RF, or other radiation protection shall not impair the effectiveness of the protection.

(o) Fire and smoke dampers shall be constructed, located, activated, and installed in accordance with the requirements of NFPA 90A, NFPA 101, and OSSC. Fans, smoke dampers, and detectors shall be interconnected so that activation of dampers will not damage the ducts. Access for maintenance shall be provided at all dampers. All damper locations must be shown on drawings. When smoke partitions are required, zones for air handling systems shall be coordinated with compartmentation insofar as practical to minimize the need to penetrate fire and smoke partitions.

(p) Systems shall be provided to exhaust chemicals and fumes that cause respiratory irritation or other hazards to workers, including laboratory processes, instrument processing rooms, radioactive processes, chemo hoods, and pharmacies. If the minimum air change standards in Table 2 do not provide sufficient air for use by hoods and safety cabinets, makeup air shall be provided to maintain the required air flow direction and to avoid depending upon infiltration from outdoors or from contaminated areas.

(q) All laboratory and pharmacy hood systems shall meet OMSC and shall meet the following general standards. (Laminar flow hoods used in clean applications are exempt from these requirements.)

(A) Have an average face velocity of 75 to 125 feet per minute or as required by the hood manufacturer, whichever is greater;

(B) Be connected to an exhaust system to the outside that is separate from the building exhaust system;

(C) Have a labeled exhaust fan located at the discharge end of the system outside the building with the outlet discharging vertically a minimum of 6 feet above the roof;

(D) Have an exhaust duct system of noncombustible corrosion-resistant materials as needed to meet the planned usage of the hood; and

(E) Be equipped with devices and alarms to alert staff of fan shutdown or loss of airflow.

(F) If equipped with HEPA filters, have a means to alert staff when filter change is required.

(G) Each hood that processes highly infectious or radioactive materials shall have a minimum face velocity of 90 to 110 feet per minute or as required by the hood manufacturer; shall be connected to an independent exhaust system; shall have filters with a 99.97 percent efficiency (MERV 17); and shall be designed and equipped to permit the safe removal, disposal and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination.

(H) Hoods that process radioactive materials shall meet requirements of the Nuclear Regulatory Commission and NFPA 801 Facilities for Handling Radioactive Materials, and discharge vertically a minimum of 10 feet above the roof of the building. Radioactive isotopes used for injections, etc., without probability of airborne particulate or gases may be processed in a "clean work bench" type hood where acceptable to the Nuclear Regulatory Commission.

(I) Duct systems serving hoods in which strong oxidizing agents (e.g., perchloric acid) are used shall be equipped with washdown facilities. Provisions shall be made for safe removal of filters during washdown operations.

(r) Exhaust hoods in food preparation centers shall comply with NFPA 96. Dedicated kitchen hood make-up air system intakes may be a minimum of 10 feet from kitchen hood exhaust outlets. The food preparation area may have air movement "in" during cooking and hood operation for odor control. Makeup systems for hoods shall be arranged to minimize "short circuit" of air movement and to avoid reduction in air velocity at the point of contaminant capture.

(s) The ventilation system for medical gas storage rooms shall conform to the requirements of NFPA 99.

(t) The space that houses ethylene oxide (ETO) sterilizers and cylinder storage shall be provided with a dedicated local exhaust system with adequate capture velocity (i.e., with a minimum capture velocity of 200 fpm) to exhaust over sterilizer door, exhaust at sterilizer drain, and exhaust at the aerator and multiple load station. The exhaust shall discharge vertically a minimum of 10 feet above the roof and shall be labeled. An audible and visual alarm shall activate in the sterilizer work area and in a continuously staffed location upon loss of airflow in the exhaust system. Relief vents for safety valves shall be provided and shall terminate outside the building. Installation shall also conform to applicable standards of the sterilizer manufacturer. Testing of installations to standards of the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division shall be made before routine use occurs. Such standards are provided in OAR chapter 437, division 2.

(u) Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates and to limit workstation temperatures.

(v) Gravity exhaust may be used, where conditions permit, for non-patient areas such as boiler rooms, central storage, etc.

(5) Plumbing and other piping systems:

(a) Plumbing fixtures:

(A) All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be trimmed with valves that can be operated without the use of hands (single lever devices, wrist blades, sensor operated, foot pedal operated, or similar). Blade handles used for this purpose shall not exceed 4.5 inches in length. Standard fittings are allowable on lavatories in patient toilet rooms when a second lavatory is provided in the adjacent patient room(s). In patient care areas, faucet and water closet sensors requiring electrical energy to operate shall be connected to emergency power.

(B) Clinical sinks shall be trimmed with valves that can be operated without hands. Single lever or wrist blade devices shall be permitted. Handles on clinical sink faucets shall be a minimum of 6 inches long.

(b) Potable water supply systems:

(A) Bedpan flushing devices (may be cold water) shall be provided in each inpatient toilet room, except that installation is optional in psychiatric, alcohol abuse, and other units where patients are ambulatory.

(B) Water distribution systems in inpatient facilities and in outpatient surgical facilities shall be arranged to provide for continuous hot water at each hot water outlet. Piping branches from recirculating hot water system mains to individual outlets shall not exceed 30 feet for standard faucets and 10 feet for sensor operated and low flow faucets. Hot water for showers and bathing facilities shall be at appropriate temperatures for comfortable use but shall not exceed 49°C or 120°F (see Table 4).

(c) Hot water systems: The system for heating domestic water shall have sufficient capacity to supply water at the temperatures and amounts indicated in Table 4.

(d) Drainage systems:

(A) Drain lines from fixtures in which acid wastes may be poured shall be fabricated from acid-resistant material.

(B) Sanitary and storm drainage piping shall not be installed overhead whether within the ceiling or exposed, in operating and C-section rooms, pharmacy IV admixture clean rooms, intensive care nurseries, food storage areas, central sterile supply areas, and other sensitive areas. Where overhead drain piping is unavoidable in these areas as may occur in existing facilities special provisions, such as the use of drain pans or FM 1680 approved couplings, shall be made to protect the space below from possible leakage, condensation or dust particles. If drain pans are installed for protection, the pans shall be drained to an open site, air-gap drain and shall be labeled.

ADMINISTRATIVE RULES

(C) Floor drains and cleanouts shall not be installed in operating and C-section delivery rooms. Flushing rim type drains may be used in cystoscopic rooms, except as prohibited by rules for surgical facilities under OAR 333-535-0110(3)(d). Flushing rim valves shall not be located within the cystoscopic room, but the means of actuation may be in the cystoscopic room.

(D) Building sewers shall discharge into a community sewage system. Where such a system is not available, the facility must treat its sewage in accordance with standards of the Oregon Department of Environmental Quality and local governmental agencies having jurisdiction.

(E) Grease interceptors for kitchens shall comply with requirements of OPSC.

(F) Where plaster traps are used, they shall meet standards of OPSC.

(G) Provide traps at hot lab sinks where radioactive materials are processed.

(H) All domestic water service mains, risers, and branch mains shall have shut off valves.

(I) Drain systems for autopsy rooms shall be designed to prevent splatter or overflow onto floors, to prevent back siphonage, and for easy cleaning and trap flushing.

(J) Where decontamination shower areas are provided, waste containment tanks shall be provided and sized in accordance with the Hospital's Emergency Management Plan. Provisions shall be made to divert or pump the waste from the tank for appropriate disposal.

(K) Jetted tubs shall provide for removal of jets for cleaning and for the discharge of all water within piping between uses.

(e) Nonflammable medical gas and vacuum systems: The installation of non-flammable medical gas and vacuum systems shall comply with the requirements of NFPA 99. See Table 5 for rooms that require station outlets and inlets. Installers of medical gas systems shall meet the requirements of ANSI/ASSE Standard 6010 and verification testing agencies shall meet the requirements of ANSI/ASSE Standard 6030.

(A) Medical gas systems verification test results certifying the medical gas and vacuum system testing required in NFPA 99 shall be documented for maintenance files and be available for inspection by Division surveyors or Authorities having Jurisdiction.

(B) When any existing medical gas or vacuum system is altered or augmented, all the new and existing components in the immediate zone or area located upstream for vacuum systems and downstream for medical gas systems of the altered section shall be tested and certified per NFPA 99 requirements.

(C) Each space with piped anesthetic gas and any space routinely used for administering inhalation anesthesia shall be provided with a scavenging system to vent waste gases. Gases from the scavenging system shall be exhausted directly to the outside. If the medical vacuum system is used, the gas collecting system shall be arranged so that it does not interfere with the patient's respiratory system. The anesthesia evacuation system may be a dedicated exhaust fan system with monitoring and alarming through an air-flow switch or other means. Separate scavenging systems are not required for areas where gases are used only occasionally such as the emergency room, offices for routine dental work, labor, delivery and recovery rooms, etc. Cautionary comments of NFPA 99 may be especially applicable when vacuum system is being considered for scavenging of anesthetic gases.

(D) Medical vacuum system discharge shall be located a minimum of 25 feet from all doors, windows and other openings into the building, a minimum of 25 feet above grade, a minimum of 25 feet from medical air systems intakes, and a minimum of 10 feet from designated mechanical areas and walkways.

[ED. NOTE: Tables and Publications referenced are available from the agency.]

[Publications: referenced are available from the agency.]

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(31); HD 21-1987, f. & ef. 11-13-87 HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0355; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

333-535-0310

Electrical Requirements

(1) General:

(a) All material including equipment, conductors, controls, and signaling devices shall be installed in compliance with Oregon Structural Specialty Code (OSSC), the Oregon Electrical Specialty Code (OESC), and NFPA 99 Health Care Facilities. All materials shall be listed as complying with state approved standards;

(b) The electrical installations including, but not limited to, alarm, nurses' call, communication, and emergency generator systems shall be tested to demonstrate that equipment installation and operation is as intended and appropriate. A written record of performance tests of special electrical systems and equipment shall show compliance with applicable codes

and standards. Grounding continuity, receptacles and isolated power systems shall be tested as described in NFPA 99;

(c) Functional performance tests shall be provided for projects that include the addition or modification of major equipment and systems. These tests shall be performed to ensure electrical systems operate in accordance with the design intent and in compliance with requirements herein. Description of procedures and test results for each functional performance test shall be documented to demonstrate to the design engineer, or his or her representative, that systems operate in accordance with the design intent. Documentation shall be included in the maintenance files and be available for inspection by the Division's surveyors or Authorities having Jurisdiction. Functional performance tests shall be developed and performed for the following systems and system functions in inpatient facilities where applicable:

(A) Emergency power systems;

(B) Generator fuel oil supply transfer systems including alarms;

(C) Fire alarm systems;

(D) Nurse call systems;

(E) Communication systems;

(F) Grounding systems;

(G) Isolated power systems;

(H) Receptacle continuity and grounding system tests; and

(I) Emergency power system load shedding controls.

(d) When remodels occur in hospitals in which emergency electrical services branches are not divided in accordance with NFPA 99 and OESC, and less than 50 percent of an individual system is affected, the entire system is not required to be made to conform to these codes. Modifications, however, shall be done in a manner to minimize required work should the full system later be brought into conformance;

(e) Upon completion of the electrical contract, the owner shall be furnished, and shall retain on file, a complete set of building drawings, a complete set of operating, maintenance, and preventative maintenance instructions, parts lists, and procurement information for all major electrical equipment and systems, including electrical distribution equipment, generators, nurse call equipment, smoke detection equipment, alarm systems, and arc flash labeling. Responsible operating staff shall be provided with instructions in the proper operational use of system, equipment, and controls. This information shall be available for inspection by the Division's surveyors or Authorities having Jurisdiction.

(f) Psychiatric patient room fixtures and equipment shall be tamper resistant and shall be selected to meet the requirements of the Patient and Staff Safety Assessment. Refer to OAR 333-535-0061 for additional requirements. Equipment shall be selected to minimize the need for maintenance within the room.

(2) Switchboards, power panels, equipment and their installation shall comply with OESC. The normal power main switchboard shall be located in an area separate from the essential electrical system equipment; in an area separate from plumbing and mechanical equipment, except equipment required to support electrical equipment; and in an area accessible only to authorized persons.

(3) Panelboards. Panelboards serving normal lighting and appliance and all critical care circuits shall be located on the same floor as the circuits they serve. Panelboards for life safety circuits may serve no more than one floor above and/or below, and the floor on which they are located. Provide labeling at fixed, major electrical equipment served by the equipment branch indicating the panel designation. New panelboards, serving patient care areas, shall not be located in corridors accessible to the general public.

(4) Lighting:

(a) Lighting shall conform to the recommended lighting standards for public buildings contained in the OSSC (Means of Egress Illumination), Illuminating Engineering Society (IES) RP-28 and RP-29. Approaches to buildings and parking lots, and all occupied spaces within buildings shall have illuminated fixtures as necessary.

(b) Approaches to buildings and parking lots shall have lighting at a minimum of 1 foot-candle to allow for the safe passage of pedestrians.

(c) Inpatients' rooms shall have general illumination, night illumination, reading illumination and exam illumination.

(A) General illumination fixtures shall be provided in each inpatient room. At least one fixture shall be connected to the emergency power system, critical branch.

(B) Night illumination fixtures shall be provided in each inpatient room to light the pathway from the room entrance to the bed and from the bed to the toilet. The night illumination fixture(s) shall be permanently installed low-intensity luminaires mounted at or below the patient bed level. Night luminaires shall be controlled at the room entrance.

(C) Reading illumination fixtures shall be provided for each patient. The patient shall be able to control the reading light without getting out of bed. Flexible light arms, if provided, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.

ADMINISTRATIVE RULES

(D) Exam illumination fixtures and all lights positioned over the patient bed shall be designed or positioned to prevent damage from intravenous (IV) poles and traction devices when the head of the bed is raised.

(d) All light controls in patient areas shall be of the quiet operating type.

(e) Lighting for intensive care, critical care, and newborn nursery bed and crib areas shall be designed or arranged to permit staff observation of patients, but minimize glare, i.e., no downlights over patient bed areas. Provisions shall be made to allow staff to lower the light levels through switching of alternate lamps or by dimming the lighting. Refer to OAR 333-535-0041(6)(h) for lighting controls required at NICU beds.

(f) Operating and C-section delivery rooms shall have general lighting in addition to that provided by special luminaires at the surgical and obstetrical tables. Each fixed special luminaire at the table shall be connected to an independent circuit. Portable units may share circuits.

(g) Patient care unit corridors shall have general illumination with provisions for reduction of light level at night.

(h) Non-lensed fixtures shall not be allowed in patient care areas.

(i) Adaptable or universal rooms shall be in accordance with the most restrictive use.

(5) Receptacles (Convenience Outlets): See Table 6 for receptacle requirements in specific areas.

(a) In pediatric units, psychiatric units, emergency department waiting areas, and outpatient waiting areas receptacles shall be tamper resistant, hospital grade, safety grounding type;

(b) Anesthetizing locations. Each operating and C-section delivery room shall have a minimum of six independent circuits serving receptacles. Where mobile X-ray equipment requiring special electrical considerations is used, additional receptacles distinctively marked for X-ray use shall be provided. (See OESC for receptacle requirements when capacitive discharge or battery operated mobile X-ray units are used.);

(c) Patient areas. Each patient room shall have duplex grounding type receptacles located as follows: One on each side of the head of each bed, at least one of which shall be connected to the emergency electrical system critical branch; one for the motorized bed; and one on each other wall. A separate receptacle shall be provided for television, if used. Receptacles may be omitted from exterior walls where construction would make installation impractical. Adaptable or universal rooms shall be in accordance with the most restrictive use.

(d) All critical care areas, as defined in OESC and NFPA 99, including pediatric intensive care, trauma, and resuscitation, shall have at least four duplex outlets within 6 feet of the head of each bed, crib, or bassinets, all of which shall be connected to the emergency electrical system critical branch. Additional outlets (which may be shared) shall be available at the head of each bed;

(e) Resuscitation, LDRP, and LDR rooms shall have receptacles at the bed as required for patient rooms and shall have additional receptacles at the crib/bassinets as required for normal newborn nurseries.

(f) Patient areas with renal dialysis water and waste connections shall be provided with GFI protection.

(g) Corridors. Duplex grounded receptacles for general use shall be installed approximately 50 feet apart in all corridors and within 25 feet of the ends of corridors. Receptacles in pediatric unit corridors shall be hospital grade, tamper resistant, safety grounding type. At least one single polarized receptacle marked for use of X-ray only shall be installed in corridors of inpatient areas. Where capacitive discharge or battery-powered X-ray units are used in lieu of the portable electrically powered type, separate polarized receptacles are not required.

(h) Provide duplex outlets for emergency resuscitation carts, connected to the critical branch of the emergency system.

(6) Equipment Installation in Special Areas:

(a) Anesthetizing locations. All electrical equipment and devices, receptacles and wiring shall comply with applicable sections of NFPA 99 and OESC.

(b) X-ray installation. Fixed and mobile X-ray equipment installations shall conform to OESC.

(c) Ground fault protection for personnel shall be provided as follows:

(A) Individual 125 volt ground fault circuit interrupter receptacles shall be provided when located adjacent to any sink or within 6 feet of any shower or tub;

(B) Ground fault circuit interrupter protection shall be provided for all 15 or 20 amp, 125 volt receptacles located within 6 feet of kitchen or other food preparation area sinks; and

(C) When ground fault circuit interrupters are used in critical care areas, provisions shall be made to ensure that other essential equipment is not affected by activation of an interrupter.

(d) In inpatient care areas, electronic faucets and water closets requiring electricity to operate shall be connected to the critical or equipment branch of the emergency system.

(e) Domestic hot water systems in inpatient facilities shall be served by the equipment branch of the emergency system and a minimum of one kitchen refrigerator and one kitchen freezer shall be served by the equipment branch of the emergency system.

(f) All patient care-related telecommunications and information systems shall be powered from the essential electrical system. If installed, electronic surveillance systems including patient location, video/audio monitoring, and infant abduction prevention systems shall be served by the essential electrical system.

(7) Nurses' call system requirements for inpatient facilities and outpatient surgical facilities:

(a) General. Each patient room including diagnostic and treatment areas shall be served by at least one calling station for two-way voice communication, except as exempted elsewhere in this chapter. Each such bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall activate a visible signal in the corridor at the doors to patient's rooms and in all nurses' work stations including clean utility rooms, soiled utility rooms, medication rooms, and the nursing station of the nursing unit. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. All nurses' call stations shall be electronically supervised to indicate when connecting devices are inoperable. Nurses' calling systems that provide two-way voice communication shall be equipped with an indicating light at each calling station that lights and remains lighted as long as the voice circuit is operating.

(b) Emergency call system. A nurses' call emergency system shall be provided for each inpatient toilet, bath, sitz bath, shower room, imaging suite, and renal dialysis toilet room, except as exempted elsewhere in this chapter. This system shall be usable by a collapsed patient lying on the floor. Inclusion of a pull cord will satisfy this standard. The emergency call system shall be designed so that all signal lights will remain lighted until turned off at the patient's calling station. Provisions for emergency calls will also be needed in outpatient and treatment areas where patients may be subject to incapacitation, such as dressing areas and restrooms.

(c) Intensive care. In areas such as intensive care, recovery and pre-op where patients are under constant visual surveillance, the nurses' call system may be limited to a bedside button or station that activates a signal readily seen from the control station.

(d) Nurses' emergency. A calling station that may be used by nurses to summon assistance from other areas for non-life threatening situations shall be provided in each C-section, recovery, emergency examination or treatment area, and in intensive care units, nurseries, special procedure rooms, stress test areas, cardiac catheterization, out-patient surgeries, special procedure rooms, endoscopy, colonoscopy, bronchoscopy, emergency department triage/intake areas, and group areas for psychiatric patients. The call station may be located at the area nurse station in intensive care, nursery, recovery, and emergency department areas. This system shall activate a visual and audible signal at all nurse work areas in the unit and at an additional nurse station in a staffed area.

(e) In critical care, post anesthesia care unit recovery, and inpatient pre-op areas the nurse call system shall include provisions for an emergency code resuscitation alarm to summon assistance from outside the unit.

(f) Each operating room shall be provided with a system for emergency communication with the surgical control station that can be operated without the use of the hands, but which is not foot operated. (Refer to OAR 333-535-0110(3)(a))

(g) In non-invasive and non-critical care areas with CCTV and intercom to monitor the patient, such as radiation therapy and tomotherapy, a patient call station is not required.

(h) Nurse call stations are not required in psychiatric patient care rooms, but if provided, all hardware shall have tamper resistant fasteners and provisions shall be made for the easy removal or covering of call button outlets.

(8) Emergency Electric Service:

(a) General. An emergency source of electricity shall be provided and connected to certain circuits for lighting and power during an interruption of the normal electric supply in accordance with NFPA 99, NFPA 110, and OESC.

(b) Emergency electric services shall be provided to all services that must continue to function during any failure of the normal power source as required in NFPA 99 and OESC, including fire pump if installed. Sufficient fuel/power to operate the emergency electric services for a minimum of 96 hours shall be provided for inpatient facilities. The fuel system shall include a low level day tank alarm, transfer pump flow switch alarm, or other method to detect an interruption of flow between the main fuel tank and the day tank;

(c) Exhaust systems for internal combustion engines shall be of the critical silencer type and be installed to minimize objectionable noise to patient areas. Where a generator is routinely used for reduction of peak loads, protection of patient areas from excessive noise may become critical.

ADMINISTRATIVE RULES

(d) Electrical plans shall include information indicating size of essential electrical service and load served by automatic transfer switch(es). Plans or specifications for facilities utilizing only one transfer switch shall include load calculation summaries showing the volt amp loads on the transfer switch.

(9) Fire Alarm Systems: All health care facilities shall be provided with fire alarm systems in accordance with the Authorities having Jurisdiction. Special attention shall be given to the use of fire alarm apparatuses in anesthetizing locations and control of air handling systems serving anesthetizing and infectious isolation areas.

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

Stat. Auth.: ORS 441.060

Stats. Implemented: ORS 441.060

Hist.: HD 11-1980, f. & cf. 9-10-80; Renumbered from 333-023-0200(32) HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0360; HD 21-1993, f. & cert. ef. 10-28-93; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05; PH 10-2009, f. & cert. ef. 10-1-09

Rule Caption: Amends, adopts, and repeals the rules related to Hospitals.

Adm. Order No.: PH 11-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 6-1-2009

Rules Adopted: 333-500-0005, 333-500-0025, 333-500-0032, 333-500-0034, 333-500-0036, 333-500-0038, 333-500-0045, 333-500-0065, 333-501-0005, 333-501-0010, 333-501-0015, 333-501-0020, 333-501-0025, 333-501-0030, 333-501-0035, 333-501-0040, 333-501-0045, 333-501-0050, 333-501-0055, 333-505-0033, 333-505-0080, 333-505-0090, 333-505-0100, 333-505-0110, 333-505-0120, 333-520-0035, 333-520-0120

Rules Amended: 333-500-0010, 333-500-0020, 333-500-0030, 333-500-0040, 333-500-0055, 333-500-0060, 333-500-0090, 333-505-0001, 333-505-0005, 333-505-0007, 333-505-0010, 333-505-0020, 333-505-0030, 333-505-0040, 333-505-0050, 333-505-0060, 333-505-0070, 333-510-0001, 333-510-0002, 333-510-0010, 333-510-0020, 333-510-0030, 333-510-0040, 333-510-0045, 333-510-0050, 333-510-0060, 333-515-0001, 333-515-0005, 333-515-0020, 333-515-0030, 333-515-0040, 333-520-0000, 333-520-0020, 333-520-0030, 333-520-0040, 333-520-0050, 333-520-0060, 333-520-0070, 333-520-0075, 333-525-0000, 333-525-0010

Rules Repealed: 333-500-0050, 333-500-0056, 333-500-0057, 333-500-0070, 333-500-0080, 333-500-0100, 333-510-0005, 333-510-0046, 333-510-0047, 333-510-0070, 333-510-0080, 333-510-0090, 333-510-0100, 333-520-0010, 333-520-0055, 333-520-0073, 333-520-0080, 333-520-0090, 333-520-0100, 333-520-0110, 333-530-0000, 333-530-0010, 333-530-0020, 333-530-0030, 333-530-0040, 333-530-0050, 333-530-0060, 333-530-0070, 333-530-0080, 333-530-0090, 333-530-0100, 333-530-0110, 333-530-0120, 333-530-0130, 333-530-0140, 333-530-0150, 333-530-0160, 333-530-0170, 333-530-0180, 333-530-0190

Subject: The Department of Human Services, Public Health Division is permanently adopting, amending, and repealing the Oregon Administrative Rules relating to Hospitals, to update the rules to be consistent with Centers for Medicare and Medicaid regulations; provide better organization for the rules; provide clearer wording; provide clearer processes for licensing, handling complaints, investigations, surveys, and discipline; establish clear classifications for different types of hospitals; establish clearer rules for medical records and what is required to be documented in a medical record; make clear the types of patient services that are required for different categories of hospitals; and making housekeeping changes.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-500-0005

Applicability

Unless a specific rule provides otherwise, OAR 333-500 through 535 apply to a hospital classified as general, low occupancy acute care, orthopedic, or psychiatric or mental and do not apply to a hospital classified as a special inpatient care facility under ORS 442.015.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0010

Definitions

As used in OAR chapter 333, divisions 500 through 535, unless the context requires otherwise, the following definitions apply:

(1) "Assessment" means a complete nursing assessment, including:

(a) The systematic and ongoing collection of information to determine an individual's health status and need for intervention;

(b) A comparison with past information; and

(c) Judgment, evaluation, or a conclusion that occurs as a result of subsections (a) and (b) of this definition.

(2) "Authentication" means verification that an entry in the patient medical record is genuine.

(3) "Certified Nursing Assistant" (CNA) means a person who is certified by the Oregon State Board of Nursing (OSBN) to assist licensed nursing personnel in the provision of nursing care.

(4) "Chiropractor" means a person licensed under ORS chapter 684 to practice chiropractic.

(5) "Conditions of Participation" mean the applicable federal regulations that hospitals are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(6) "Discharge" means the release of a person who was an inpatient of a hospital and includes:

(a) The release and transfer of a newborn to another facility, but not a transfer between acute care departments of the same facility;

(b) The release of a person from an acute care section of a hospital for admission to a long-term care section of a facility;

(c) Release from a long-term care section of a facility for admission to an acute care section of a facility;

(d) A patient who has died; and

(e) An inpatient who leaves a hospital for purposes of utilizing non-hospital owned or operated diagnostic or treatment equipment, if the person does not return as an inpatient of the same health care facility within a 24-hour period.

(7) "Department" means the Department of Human Services.

(8) "Division" means the Public Health Division within the Department.

(9) "Emergency Medical Services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care to a woman in labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(10) "Governing body" means the body or person legally responsible for the direction and control of the operation of the hospital.

(11) "Governmental unit" has the meaning given that term in ORS 442.015.

(12) "Health care facility" (HCF) has the meaning given the term in ORS 442.015.

(13) "Health Care Facility Licensing Laws" means ORS 441.005 through 441.990 and its implementing rules.

(14) "Hospital" has the meaning given that term in ORS 442.015.

(15) "Licensed" means that the person to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a hospital means that the facility is currently licensed by the Department.

(16) "Licensed nurse" means a nurse licensed by the Oregon Board of Nursing.

(17) "Licensed Practical Nurse" means a person licensed under ORS chapter 678 to practice practical nursing.

(18) "Major alteration" means any structural change to the foundation, roof, floor, or exterior or load bearing walls of a building, or the extension of an existing building to increase its floor area. Major alteration also means the extensive alteration of an existing building such as to change its function and purpose, even if the alteration does not include any structural change to the building.

(19) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2).

(20) "Minor alteration" means cosmetic upgrades to the interior or exterior of an existing building, such as but not limited to wall finishes, floor coverings and casework.

ADMINISTRATIVE RULES

(21) "Mobile satellite" means a MRI, CAT Scan, Lithotripsy Unit, Cath Lab, or other such modular outpatient treatment or diagnostic unit that is capable of being moved, is housed in a vehicle with a vehicle identification number (VIN), and does not remain on a hospital campus for more than 180 days in any calendar year.

(22) "NFPA" means National Fire Protection Association.

(23) "Nurse Midwife/Nurse Practitioner" means a registered nurse certified by the OSBN as a nurse midwife/nurse practitioner.

(24) "Nurse Practitioner" has the meaning given that term in ORS 678.010.

(25) "Nursing staff" means a registered nurse, a licensed practical nurse, or other assistive nursing personnel.

(26) "OB Unit" means a dedicated obstetrical unit that meets the requirements of OAR 333-535-0120.

(27) "On-call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(28) "Oregon Sanitary Code" means the Food Sanitation Rules in OAR 333-150-0000.

(29) "Patient audit" means review of the medical record and/or physical inspection and/or interview of a patient.

(30) "Person" has the meaning given that term in ORS 442.015.

(31) "Physician" has the meaning given that term in ORS 677.010.

(32) "Physician Assistant" has the meaning given that term in ORS 677.495.

(33) "Plan of correction" means a document executed by a hospital in response to a statement of deficiency issued by the Division that describes with specificity how and when deficiencies of health care licensing laws or conditions of participation will be corrected.

(34) "Podiatrist" has the same meaning as "podiatric physician and surgeon" in ORS 677.010.

(35) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a licensed hospital or in a licensed ambulatory surgical center and is under the supervision of or in collaboration with a physician. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(36) "Public body" has the meaning given that term in ORS 30.260.

(37) "Registered Nurse" means a person licensed under ORS chapter 678 by the OSBN.

(38) "Respite care" means care provided in a temporary, supervised living arrangement for individuals who need a protected environment, but who do not require acute nursing care or acute medical supervision.

(39) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff person directly employed by the hospital, or other adverse action taken against a nursing staff person directly employed by the hospital in the terms or conditions of employment of the nursing staff person, as a result of filing a complaint.

(40) "Satellite" means a building or part of a building owned or leased by a hospital, and operated by a hospital, through which the hospital provides outpatient diagnostic, therapeutic, or rehabilitative services in a geographically separate location from the hospital, with a separate physical address from the hospital, but that is within 35 miles from the hospital.

(41) "Stable newborn" means a newborn who is four or more hours postdelivery and who is free from abnormal vital signs, color, activity, muscle tone, neurological status, weight, and maternal-child interaction.

(42) "Stable postpartum patient" means a postpartum mother who is four hours or more postpartum and who is free from any abnormal fluctuations in vital signs, has vaginal flow within normal limits, and who can ambulate, be independent in self care, and provide care to her newborn infant, if one is present.

(43) "Statement of deficiencies" means a document issued by the Division that describes a hospital's deficiencies in complying with health care facility licensing laws or conditions of participation.

(44) "Survey" means an inspection of a hospital to determine the extent to which a hospital is in compliance with health facility licensing laws and conditions of participation.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80, HD 8-1985, f. & ef. 5-17-85; Renumbered from 333-023-0114; HD 13-1987, f. 9-1-87, ef. 9-15-87; HD 23-1987(Temp), f. 11-27-87, ef. 10-15-87 through 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0000; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09

333-500-0020

Issuance of License

(1) An applicant wishing to apply for a license to operate a hospital shall submit an application on a form prescribed by the Division and pay the applicable fee as specified in OAR 333-500-0030.

(2) A single hospital license may cover more than one building if the applicant meets the requirements in OAR 333-500-0025.

(3) If the applicant is proposing a new hospital the applicant shall also submit evidence of plans review approval as required by OAR chapter 333, division 675.

(4) An applicant that has a certificate of accreditation and deemed status for Medicare certification from the Joint Commission or Committee on Hospitals of the American Osteopathic Association (CHAOA) shall provide the certificate to the Division with its license application, and shall include:

(a) All Joint Commission or CHAOA survey and inspection reports; and

(b) Written evidence of all corrective actions underway, or completed, in response to Joint Commission or CHAOA recommendations, including all progress reports.

(5) No license shall be issued for any hospital for which a certificate of need is required, unless a certificate of need has first been issued under ORS 442.315.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.020, 441.025

Hist.: HB 183, f. & ef. 5-26-66; HB 222, f. 8-26-69, ef. 8-26-69; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0116; HD 21-1985, f. & ef. 10-4-85; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0005; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-500-0025

Indorsement of Satellite Operations

(1) The Division may indorse, under a hospital's license, a satellite or mobile satellite of a hospital.

(2) In order for a satellite to be indorsed under a hospital's license, the applicant or licensee shall pay the appropriate fee and provide evidence to the Division that:

(a) The satellite meets the requirements in OAR 333-500 – 535;

(b) The services at the satellite are integrated with the hospital;

(c) The financial operations of the satellite are integrated with the hospital;

(d) The hospital and the satellite have the same governing body;

(e) The satellite is under the ownership and control of the hospital;

(f) Staff at the satellite have privileges at the hospital; and

(g) Medical records of the satellite are integrated with the hospital into a unified system.

(3) A satellite shall be subject to a plans review and must pass life safety code requirements.

(4) In order for a mobile satellite to be indorsed under a hospital's license, the applicant or licensee shall pay the appropriate fee and provide evidence to the Division that:

(a) The mobile satellite is operated in whole or in part by the hospital through lease, ownership or other arrangement;

(b) The services at the mobile satellite are integrated with the hospital;

(c) The financial operations of the mobile satellite are integrated with the hospital;

(d) The mobile satellite is physically separate from the hospital and other buildings on the hospital campus by at least 20 feet; and

(e) It meets the 2000 NFPA 101 Life Safety Code for mobile units.

(5) A mobile satellite shall keep and provide to the Division and the Fire Marshal upon request, a log that shows where the mobile satellite is located every day of the year, and its use. A copy of the log shall be kept in the mobile satellite at all times.

(6) A hospital that has a satellite that provides inpatient services that is indorsed under its license as of October 1, 2009, may continue to have that satellite indorsed under its license. After October 1, 2009, as is consistent with the definition of satellite and mobile satellite, only a satellite or mobile satellite that provides outpatient services will be eligible for indorsement.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.020

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0030

Annual License Fee

(1) The annual license fee for a hospital is as specified in ORS 441.020.

(2) If a hospital license covers a satellite or mobile satellite approved by the Division under OAR 333-500-0025, the applicable license fee shall be the sum of the license fees which would be applicable if each location or unit was separately licensed.

Stat. Auth.: ORS 441.055

ADMINISTRATIVE RULES

Stats. Implemented: ORS 441.020

Hist.: HD 11, f. 3-16-72, ef. 4-1-72; HD 143(Temp), f. & ef. 8-4-77; HD 147, f. & ef. 12-2-77; HD 15-1978(Temp), f. 11-17-78, ef. 1-1-79; HD 3-1979 f. & ef. 2-26-79; HD 11-1980, f. & ef. 9-1-80; HD 22-1982(Temp), f. & ef. 11-9-82; HD 4-1984, f. & ef. 2-16-84; Renumbered from 333-023-0117; HD 23-1987 (Temp), f. 11-27-87, ef. 10-15-87 thru 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0010; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 12-2001, f. & cert. ef. 6-12-01; PH 11-2009, f. & cert. ef. 10-1-09

333-500-0032

Classification

(1) A hospital shall be classified as one of the following:

- (a) General Hospital;
- (b) Low Occupancy Acute Care Hospital;
- (c) Mental or Psychiatric Hospital; or
- (d) Orthopedic Hospital.

(2) A hospital's classification shall be determined by the type of services it provides, as described in OAR 333-520 and 525, and the staffing requirements related to the provision of those services.

(a) A hospital classified as a general hospital shall:

- (A) Provide at least general medical, maternity and surgical services;
- (B) Have an emergency department;
- (C) Have available on-site or through contract, dietary, laboratory, and radiology services;

(D) Have an on-site pharmacy;

(E) Have a pharmacist on call 24 hours a day, 7 days a week (24/7) to staff the pharmacy; and

(F) Have on-site or in-house 24/7 staffing for its laboratory and radiology services.

(b) A low occupancy acute care hospital shall:

- (A) Have 25 or fewer inpatient beds;
- (B) Provide at least general medical services;
- (C) Have an emergency department;
- (D) Have available on-site or through contract, dietary, laboratory, and radiology services;

(E) Have an on-site pharmacy or a drug room; and

(F) Have appropriately trained laboratory, radiology, and pharmacy staff on-site or on-call 24/7.

(c) A mental or psychiatric hospital shall:

(A) Be devoted primarily to the care of people suffering from mental illness;

(B) Have available on-site or through contract, dietary, laboratory, and radiology services;

(C) Have an on-site pharmacy or a drug room;

(D) Have appropriately trained laboratory, radiology, and pharmacy staff on-site or on-call 24/7; and

(E) Comply with the requirements in OAR 333-525-0000.

(d) An orthopedic hospital shall:

(A) Be devoted exclusively to the care of orthopedic patients;

(B) Provide orthopedic surgical services and related general medical care;

(C) Have available on-site or through contract, dietary, laboratory, and radiology services;

(D) Have an on-site pharmacy or a drug room;

(E) Have appropriately trained laboratory, radiology, and pharmacy staff on-site or on-call 24/7; and

(F) Comply with the requirements in OAR 333-525-0010.

(3) The classification of each hospital shall be included on the license.

(4) A hospital licensed by the Division may not assume a descriptive title or hold itself out under a descriptive title other than the classification title established by the Division and under which the hospital is licensed. This rule applies to the name on the hospital and any stationery, advertising, media, or other representations made by the hospital. A general hospital and a low occupancy acute care hospital may be described as a "hospital" without any modifications. A mental or psychiatric hospital and an orthopedic hospital shall use a descriptive title that describes or is reflective of the specialty services it offers.

(5) A hospital may not change its license classification unless it applies for reclassification on a form prescribed by the Division and submits a fee as required by OAR 333-500-0020. The Division shall conduct an on-site survey prior to granting a hospital a new classification to determine compliance with this rule.

(6) A hospital that cannot meet the criteria for classification established by this rule shall have until October 1, 2010 to make the necessary changes to come into compliance and retain the classification it had on October 1, 2009. Alternatively a hospital may apply for reclassification under section (5) of this rule, or apply for a waiver under OAR 333-500-0065.

Stat. Auth.: ORS 441.015, 441.055

Stats. Implemented: ORS 441.055, 442.015

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0034

Application Review

(1) In reviewing an application for a new hospital the Division shall:

(a) Verify compliance with the applicable sections of ORS chapters 441 and 476, and OAR 333-500 through 535, 675, and OAR 837;

(b) Determine whether a certificate of need is required and was obtained;

(c) Conduct an on-site licensing survey in coordination with the State Fire Marshal's Office; and

(d) Verify compliance with conditions of participation if the applicant has requested Medicare or Medicaid certification.

(2) In determining whether to license a hospital the Division shall consider factors relating to the health and safety of individuals to be cared for at the hospital and not whether the hospital is or will be a governmental, charitable or other nonprofit institution or whether it is or will be an institution for profit.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.022, 441.025

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0036

Approval of License Application

(1) The Division shall notify an applicant in writing if a license application is approved, and shall include the license with the appropriate classification.

(2) A license shall be issued only for the premises and persons or governmental units named in the application and it is not transferable or assignable.

(3) The license shall be conspicuously posted in an area where patients are admitted.

(4) No hospital licensed pursuant to the provisions of ORS chapter 441 shall in any manner or by any means assert, represent, offer, provide or imply that such person or hospital is or may render care or services other than that which is permitted by or which is within the scope of the license issued to the hospital by the Division nor shall any service be offered or provided which is not authorized within the scope of the license issued to the hospital.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.015 - 441.096

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0038

Denial of License Application

If the Division intends to deny a license application, it shall issue a Notice of Proposed Denial of License Application in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.030, 441.037

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0040

Expiration and Renewal of License

(1) Each license to operate a hospital shall expire on December 31 following the date of issue, and if a renewal is desired, the licensee shall make application and pay the appropriate fee at least 30 days prior to the expiration date upon a form prescribed by the Division.

(2) For emergency preparedness planning and licensing purposes, a licensee shall provide, in its application for license renewal:

(a) The number of beds currently in use or capable of being used;

(b) The total number of beds that could be used with only minor alterations, taking into consideration existing equipment, the ancillary service capability of the facility, and the physical environment required by OAR 333-500 through 535, as applicable; and

(c) The number of beds to be licensed.

(3) A single hospital license may cover more than one location if the licensee meets the requirements in OAR 333-500-0025.

(4) An applicant that has a certificate of accreditation and deemed status for Medicare certification from the Joint Commission or Committee on Hospitals of the American Osteopathic Association (CHAOA) shall provide the certificate to the Division with its renewal application, and shall include:

(a) All Joint Commission or CHAOA survey and inspection reports; and

(b) Written evidence of all corrective actions underway, or completed, in response to Joint Commission or CHAOA recommendations, including all progress reports.

(5) If an applicant wishes to renew its license and increase the number of beds licensed from the previous licensing year, the applicant shall include:

(a) Evidence of plans review approval as required by OAR 333-535 and 675 as applicable; and

(b) Evidence that a certificate of need was obtained, or is not required.

ADMINISTRATIVE RULES

(6) The Division shall not renew a license for any hospital if a certificate of need is required and has not been obtained pursuant to ORS 442.315.

(7) If the Division intends to deny a license renewal application, it shall issue of Notice of Proposed Denial of License Renewal Application in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.025
Hist.: HB 183, f. & ef. 5-26-66; HD 11, f. 3-16-72, ef. 4-1-72; HD 150(Temp), f. & ef. 12-15-77; HD 4-1978, f. & ef. 3-31-78; HD 11-1980, f. & ef. 9-2-80; Renumbered from 333-023-0118; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0015; PH 11-2009, f. & cert. ef. 10-1-09

333-500-0045

Submission of Plans

(1) A hospital proposing to make alterations to an existing facility or to construct a new facility shall, before commencing such alteration, addition or new construction, submit plans and specifications to the Division for preliminary inspection and approval or recommendations with respect to compliance with Division rules and compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified.

(2) Submissions shall comply with OAR 333-675. Plans should also be approved in accordance with state building codes.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055, 441.060
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0055

Discontinuance and Recommencement of Operation of Hospitals

(1) If a hospital wishes to temporarily discontinue operation but retain its license to operate, the hospital shall notify the Division of the fact at least 14 days prior to the temporary discontinuance.

(2) A hospital shall issue a multimedia press release within 24 hours of the temporary discontinuance, notifying the public of hospital closure. Such notice shall include a procedure by which individuals may obtain their medical records.

(3) Before any patient is admitted to a hospital that has temporarily discontinued operation, the hospital shall request that the Division conduct an on-site survey to determine whether the hospital is in compliance with health facility licensing laws and conditions of participation, if applicable.

(4) A hospital may not renew operation until it receives approval, in writing, from the Division.

Stat. Auth.: ORS 441.055 & ORS 442.015
Stats. Implemented: ORS 441.055 & ORS 442.015
Hist.: HD 20-1988(Temp), f. & cert. ef. 7-29-88; HD 1-1989, f. & cert. ef. 1-10-89; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-500-0060

Return of Hospital License and Hospital Closure

(1) If a hospital's license is suspended, revoked, expires, or if a hospital decides to permanently close, the license certificate in the licensee's possession shall be returned to the Division immediately.

(2) If the hospital is voluntarily permanently closed, the hospital shall issue a multimedia press release within 24 hours, notifying the public of facility closure. Such notice shall include a procedure by which individuals may obtain their medical records.

(3) A hospital shall notify the Division of a hospital's closure under section (2) of this rule at least 14 days prior to the closure and submit a plan for the storage and disposal of medical records. Medical records not claimed that are more than seven years old from the last date of discharge may be destroyed. Medical records not claimed that are less than seven years old from the last date of discharge shall be stored until they are more than seven years old from the last date of discharge. Medical records may be thinned to include only the admission/discharge sheet (face sheet), discharge summary, history and physical, operative report(s), pathology report(s), and X-ray report(s).

Stat. Auth.: ORS 441.055 & ORS 442.015
Stats. Implemented: ORS 441.055 & ORS 442.015
Hist.: HB 183, f. & ef. 5-26-66; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0122; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0025; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-500-0065

Waivers

(1) While all hospitals are required to maintain continuous compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. A request for a waiver from a rule must be:

- (a) Submitted to the Division in writing;
- (b) Identify the specific rule for which a waiver is requested;
- (c) The special circumstances relied upon to justify the waiver;

(d) What alternatives were considered, if any and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed waiver is desirable to maintain or improve the health and safety of the patients, to meet the individual and aggregate needs of patients, and will not jeopardize patient health and safety; and

(f) The proposed duration of the waiver.

(2) Upon finding that the hospital has satisfied the conditions of this rule, the Division may grant a waiver.

(3) A hospital may not implement a waiver until it has received written approval from the Division.

(4) During an emergency the Division may waive a rule that a hospital is unable to meet, for reasons beyond the hospital's control. If the Division waives a rule under this section it shall issue an order, in writing, specifying which rules are waived, which hospitals are subject to the order, and how long the order will remain in effect.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & ORS 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-500-0090

Adoption by Reference

All rules, standards and publications referred to in OAR 333-500 through 535 are incorporated by reference. Copies are available for inspection in the Division during office hours. Where publications are in conflict with the rules, the rules shall govern.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & ORS 442.015
Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0119; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0040; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-501-0005

Complaints

(1) Any person may make a complaint verbally or in writing to the Division regarding an allegation against a hospital of a violation of any health care facility licensing law or condition of participation.

(2) The identity of a person making a complaint will be kept confidential.

(3) An investigation will be carried out as soon as practicable after the receipt of a complaint in accordance with OAR 333-501-0010.

(4) If the complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the Division will refer the matter to that agency.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.057
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0010

Investigations

(1) As soon as practicable after receiving a complaint, taking into consideration the nature of the complaint, Division staff will begin an investigation.

(2) A hospital shall permit Division staff access to the facility during an investigation.

(3) An investigation may include but is not limited to:

(a) Interviews of the complainant, patients of the hospital, patient family members, witnesses, hospital management and staff;

(b) On-site observations of patients, staff performance, and the physical environment of the hospital; and

(c) Review of documents and records.

(4) Except as otherwise specified in 42 CFR § 401, Subpart B, the Division shall draft an investigation report and may make publicly available a copy of that report that does not contain any information that could lead to the identification of the complainant, a patient, or any other information that is confidential under state law.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.057
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0015

Surveys

(1) The Division may, in addition to any investigations conducted under OAR 333-501-0010, conduct at least one general survey of each hospital to determine compliance with health care facility licensing laws during each calendar year and at such other times as the Division deems necessary.

(2) The Division, at its discretion, may accept a certificate of accreditation and deemed status for Medicare certification from the Joint Commission or the Committee on Hospitals of the American Osteopathic Association as evidence of compliance with health care facility licensing laws and conditions of participation in lieu of a survey.

ADMINISTRATIVE RULES

(3) A hospital shall permit Division staff access to the facility during a survey.

(4) A survey may include but is not limited to:

(a) Interviews of patients, patient family members, hospital management and staff;

(b) On-site observations of patients, staff performance, and the physical environment of the hospital facility;

(c) Review of documents and records; and

(d) Patient audits.

(5) A hospital shall make all requested documents and records available to the surveyor for review and copying.

(6) Following a survey Division staff may conduct an exit conference with the hospital administrator or his or her designee. During the exit conference Division staff shall:

(a) Inform the hospital representative of the preliminary findings of the inspection; and

(b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(7) Following the survey, Division staff shall prepare and provide the hospital administrator or his or her designee specific and timely written notice of the findings.

(8) If the findings result in a referral to another regulatory agency, Division staff shall submit the applicable information to that referral agency for its review and determination of appropriate action.

(9) If no deficiencies are found during a survey, the Division shall issue written findings to the hospital administrator indicating that fact.

(10) If the surveyor's written notice of findings indicates that the facility was in compliance with health facilities licensing laws and no deficiencies were cited, the facility administrator or administrator's designee shall sign the written notice and return it to the Department.

(11) If deficiencies are found, the Division shall take informal or formal enforcement action in compliance with OAR 333-501-0025 or 333-501-0030.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.060 & 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0020

Violations

In addition to non-compliance with any health care facility licensing law or condition of participation, it is a violation to:

(1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit Division staff access to the hospital, its documents or records;

(2) Fail to implement an approved plan of correction;

(3) Fail to comply with all applicable laws, lawful ordinances and rules relating to safety from fire;

(4) Refuse or fail to comply with an order issued by the Division;

(5) Refuse or fail to pay a civil penalty; or

(6) Fail to comply with rules governing the storage of medical records following the closure of a hospital.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0025

Informal Enforcement

(1) If, during an investigation or survey Division staff document violations of health care facility licensing laws or conditions of participation, the Division may issue a statement of deficiencies that cites the law alleged to have been violated and the facts supporting the allegation.

(2) A signed plan of correction must be received by the Division within 10 business days from the date the statement of deficiencies was mailed to the hospital. A signed plan of correction will not be used by the Division as an admission of the violations alleged in the statement of deficiencies.

(3) A hospital shall correct all deficiencies within 60 days from the date of the exit conference, unless an extension of time is requested from the Division. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(4) The Division shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Division, the Division shall notify the hospital administrator in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed to the administrator.

(5) If the hospital does not come into compliance by the date of correction reflected on the plan of correction or 60 days from date of the exit conference, whichever is sooner, the Division may propose to deny, suspend, or revoke the hospital license, or impose civil penalties.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0030

Formal Enforcement

(1) If, during an investigation or survey Division staff document substantial failure to comply with health care facility licensing laws, conditions of participation or if a hospital fails to pay a civil penalty imposed under ORS 441.170, the Division may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(2) The Division may issue a Notice of Imposition of Civil Penalty for violations of health care facility licensing laws.

(3) At any time the Division may issue a Notice of Emergency License Suspension under ORS 183.430(2).

(4) If the Division revokes a hospital license, the order shall specify when, if ever, the hospital may reapply for a license.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.030, 441.037
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0035

Nurse Staffing Audit Procedure

(1) The Department shall annually conduct random audits of not less than seven percent of all hospitals, to determine compliance with the requirements of ORS 441.162, 441.166 and 441.192.

(2) During an audit, the Department shall review:

(a) The hospital's written hospital-wide staffing plan for nursing services to ensure that the staffing plan addresses all the requirements in OAR 333-510-0045(3);

(b) The job descriptions and personnel files of the nursing staff, which includes the documentation of required licensure and indicates the specialized qualifications and competencies of the nursing staff;

(c) The list of qualified, on-call nursing staff and staffing agencies the hospital contacts for replacement staff;

(d) The hospital's process for obtaining replacement nursing staff, including efforts made to obtain replacement staff using all available resources;

(e) Documentation described in OAR 333-510-0045(2) and (4) through (7);

(f) The hospital's process for evaluating and initiating limitation on admission or diversion of patients to another acute care facility;

(g) The hospital's policy regarding mandatory overtime and the documentation of mandatory overtime pursuant to OAR 333-510-0045(9);

(h) The hospital's policy regarding education and training to ensure that hospital-mandated hours are included in time worked;

(i) The hospital's policy on maintenance, use and access to the on-call list for seeking replacement staff; and

(j) Documentation of the hospital's efforts to seek replacement staff when needed.

(3) In conducting an audit, the Department may interview:

(a) Appropriate hospital staff regarding:

(A) Implementation and effectiveness of the nurse staffing plan for nursing services;

(B) Input, if any that was provided to the nurse staffing plan committee;

(C) Whether the hospital has a formal procedure for admission and diversion of patients to another acute care facility when, in the judgment of the direct care registered nurses, there is an inability to meet patient care needs or a risk of harm to existing and new patients; or

(D) Any other subject or fact relating to hospital nursing services that is subject to the review of the Department under this rule.

(b) Hospital staff that does not voluntarily come forward for an interview during an audit; and

(c) Patients or family members regarding concerns or complaints with regard to nurse staffing in the hospital.

(4) Following an audit, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-501-0045.

(5) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied, in accordance with OAR 333-501-0035.

(6) The identity of witnesses providing evidence during an audit will be kept confidential to the extent permitted by state law. However, in the event witness testimony is needed in a hearing concerning a violation of a health care facility licensing law, the identity of a witness may be required to be disclosed.

Stat. Auth.: ORS 441.055, 441.170
Stats. Implemented: ORS 441.160 - 441.192
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

ADMINISTRATIVE RULES

333-501-0040

Investigation Procedures for Investigation of Nurse Staffing Complaints

(1) As soon as possible after receiving a nurse staffing complaint, the Department shall interview the complainant and gather as much information as possible about the allegations.

(2) Following the review of the complaint and interview of the complainant, the Department will determine whether the allegations, if true, would constitute a violation of ORS 441.162 through 441.168. If the allegations constitute a violation of ORS 441.162 through 441.168, the Department will proceed with an on site complaint investigation.

(3) During an onsite complaint investigation, the Department may, as appropriate:

(a) Review any documentation described in OAR 333-501-0035(2) or any other documentation that may be relevant to the complaint, including a review of patient files;

(b) Interview any person described in OAR 333-501-0035(3) or any other person who may have information relevant to the type of complaint received; and

(c) Review any current waivers of the nurse staffing rules that the hospital has been granted.

(4) In conducting interviews during a complaint investigation under section (3) of this rule, the Department shall interview both direct care nurses and nurse managers and hospital staff that did not come forward voluntarily for an interview during an investigation, but who may have information relevant to the complaint.

(5) The Department shall determine whether the notice required under ORS 441.180 is posted in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(6) In deciding whether there is a violation of ORS 441.162 through 441.168, the Department shall consider:

(a) Whether there is objective evidence discovered during the investigation to substantiate a complaint;

(b) The number of witnesses, and the credibility of the witnesses who will attest to an alleged violation of ORS 441.162 through 441.168; and

(c) Whether witness statements are corroborated or refuted by other evidence.

(7) Nothing in section (6) of this rule requires that witness statements be corroborated in order for the Department to find a violation of ORS 441.162 or 441.166.

(8) Following an investigation, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-501-0035.

(9) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.

(10) The identity of witnesses providing statements to the Department during an investigation will be kept confidential to the extent permitted by law. However, in the event witness testimony is needed in a hearing concerning a violation of ORS 441.162 through 441.168, the identity of a witness may be required to be disclosed.

(11) If during a complaint investigation, the Department has evidence that a hospital has engaged in a retaliatory act prohibited by ORS 441.174, the Department will advise the registered nurse, licensed practical nurse or certified nursing assistant to contact the Bureau of Labor and Industries regarding the concern.

Stat. Auth.: ORS 409.050, 441.055, 441.170
Stats. Implemented: ORS 441.160 - 441.192
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0045

Civil Penalties for Violations of Nurse Staffing Laws

(1) For the purposes of this rule, "safe patient care" has the meaning given the term in OAR 333-510-0002.

(2) The Department may impose civil penalties in the manner provided in ORS 441.170 for a violation of any provision of ORS 441.162 or 441.166 if there is reasonable belief that safe patient care has been or may be negatively impacted.

(3) Each violation of a nursing staff plan shall be considered a separate violation.

(4) Civil penalties may be imposed for violations of ORS 441.162 and 441.166 in accordance with **Table 1** in this rule.

(5) The Department shall consider all evidence in determining a violation of the hospital nurse staffing rule including but not limited to witness testimony, written documents and observations.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

(7) The Department shall maintain for public inspection records of any civil penalties imposed on hospitals penalized under this rule.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 441.170
Stats. Implemented: ORS 441.162, 441.166, 441.170
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0050

Civil Penalties for Violation of Smoking Prohibition

(1) If the Division determines that an administrator or person in charge of a hospital permits a person to smoke tobacco in a hospital or within 10 feet of a doorway, open window or ventilation intake of a hospital, the Division may assess a civil penalty of not more than \$500 per day against the administrator or the person in charge of a hospital.

(2) In determining whether an administrator or person in charge of a hospital has permitted a person to smoke tobacco in violation of ORS 441.815, the Division shall consider whether:

(a) A hospital administrator or person in charge of a hospital has taken steps to enforce the smoking prohibitions, including calling law enforcement to report a violation;

(b) The hospital administrator or person in charge of a hospital took affirmative action to address any complaints about smoking in a hospital or within 10 feet of a doorway, open window or ventilation intake of a hospital; and

(c) A hospital administrator or person in charge of a hospital has taken steps to educate the public and staff about the smoking ban.

(3) A civil penalty issued under this rule shall not exceed \$2,000 in any 30-day period.

(4) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 431.162; 441.055, 441.815
Stats. Implemented: ORS 431.162; 441.815
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-501-0055

Civil Penalties, Generally

(1) This rule does not apply to civil penalties for violations of ORS 441.162, 441.166, 441.815, or 435.254 or rules adopted to implement these statutes.

(2) A licensee that violates a health care facility licensing law, including OAR 333-501-0020 (violations), is subject to the imposition of a civil penalty not to exceed \$500 per day per violation.

(3) In determining the amount of a civil penalty the Division shall consider whether:

(a) The Division made repeated attempts to obtain compliance;

(b) The licensee has a history of noncompliance with health care facility licensing laws;

(c) The violation poses a serious risk to the public's health;

(d) The licensee gained financially from the noncompliance; and

(e) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(4) The Division shall document its consideration of the factors in section (3) of this rule.

(5) Each day a violation continues is an additional violation.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 431.162, 441.055
Stats. Implemented: ORS 431.162
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-505-0001

Applicability

These rules apply to all hospitals, regardless of classification.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0005

Governing Body Responsibility

(1) The governing body of a hospital shall be responsible for the operation of the hospital, the selection of the medical staff and the quality of care rendered in the hospital. The governing body shall ensure that:

(a) All health care personnel for whom a state license or registration is required are currently licensed or registered;

(b) Qualified individuals allowed to practice in the hospital are credentialed and granted privileges consistent with their individual training, experience and other qualifications;

(c) Procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(d) It has an organized medical staff responsible for reviewing the professional practices of the hospital for the purpose of reducing morbidity and mortality and for the improvement of patient care;

ADMINISTRATIVE RULES

(e) Licensed podiatric physicians and surgeons are permitted to use the hospital in accordance with ORS 441.063;

(f) All hospital employees and health care practitioners granted hospital privileges have been tested for tuberculosis in compliance with OAR 333-505-0080; and

(g) A notice, in a form specified by the division, summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, 441.192 is posted in a place where notices to employees and applicants are customarily displayed.

(2) A hospital may grant privileges to nurse practitioners in accordance with ORS 441.064 and subject to hospital rules governing admissions and staff privileges. The hospital may refuse to grant privileges to nurse practitioners only upon the same basis that privileges are refused to other licensed health care practitioners.

(3) A hospital shall require that every patient admitted shall be and remain under the care of a member of the medical staff as specified under the medical staff by-laws.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 11-1980, f. & cf. 9-10-80; Renumbered from 333-023-0125; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0050; HD 21-1993, f. & cert. ef. 10-28-93, Renumbered from 333-505-0000; HD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0007

Physician Credentialing, Hospitals, 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 22, 2008, are adopted with respect to hospitals and health care service contractors.

(2) Each hospital and 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 hospitals and health care service contractors to credential physicians seeking designation as a participating practitioner for a health plan, thereby implementing ORS 442.800– 442.807 with respect to hospitals and health care service contractors.

Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.800 - 442.807

Hist.: OHD 5-2002, f. & cert. ef. 3-4-02; PH 4-2004, f. & cert. ef. 2-6-04; PH 3-2005, f. & cert. ef. 2-4-05; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0010

Administrator

(1) Each hospital shall employ or contract with its own full time (40 hours per week) executive officer or administrator who is responsible for the operation of the hospital and hospital based services in a manner commensurate with the authority conferred by the governing body. For hospitals with attached long-term care facilities, the chief executive officer may function as administrator of both the hospital and the long-term care facility.

(2) The chief executive officer or administrator will develop mechanisms to implement the policies established by the governing body.

(3) The hospital shall notify the Division, in writing, of the voluntary or involuntary termination of the administrator as well as the appointment of a new administrator.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0020

Medical Staff

(1) The medical staff is responsible for reviewing the professional practices of the hospital for the purpose of reducing morbidity and mortality and for the improvement of patient care, and is accountable to the governing body.

(2) The hospital's medical staff organized pursuant to OAR 333-505-0005(1) shall include Medical Doctors and Doctors of Osteopathy, and may include other licensed health care practitioners as permitted by the governing body.

(3) The medical staff shall adopt and enforce by-laws, medical staff policies, and medical staff rules and regulations to carry out its responsibilities. The by-laws, medical staff policies, and medical staff rules and regulations must be approved by the governing body.

(4) By-laws, medical staff policies, and medical staff rules and regulations shall include but are not limited to:

(a) The organization of the medical staff, including qualifications for serving on the medical staff, nominations, election, appointment or removal of officers, and periodic review of its members;

(b) Criteria for credentialing health care practitioners and the process for applying for credentials;

(c) Criteria for restricting or terminating hospital privileges and the process for restricting or terminating hospital privileges;

(d) A process for periodically reviewing the procedures for granting, restricting, or terminating hospital privileges to ensure that procedures are being followed;

(e) Procedures for insuring that licensed health care practitioners with hospital privileges are acting within their scope of practice and acting consistent with the privileges granted;

(f) Procedures for the acceptance of verbal orders by those individuals authorized by law or their scope of practice to accept verbal orders;

(g) Criteria for tissue specimens and appliances that are subject to a macroscopic or microscopic pathology examination; and

(h) Procedures for responding to medical emergencies, including contacting at least one physician in the event of a medical emergency.

(5) Amendments to medical staff by-laws shall be accomplished through a cooperative process involving both the medical staff and the governing body. Medical staff by-laws shall be adopted, repealed or amended when approved by the medical staff and the governing body. Approval shall not be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold approval if such appeal, amendment or adoption is mandated by law, statute or regulation or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the failure to approve would subvert the stated moral or ethical purposes of this institution.

(6) Physicians and all other health care practitioners with individual admitting privileges are subject to applicable provisions of the medical staff by-laws and rules governing admission and staff privileges.

Stat. Auth.: ORS 441.055 & 441.064

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0030

Organization, Hospital Policies

(1) A hospital's internal organization shall be structured to include appropriate departments and services consistent with the needs of its defined community.

(2) A hospital shall adopt and maintain clearly written definitions of its organization, authority, responsibility and relationships.

(3) A hospital shall adopt, maintain and follow written patient care policies that include but are not limited to:

(a) Admission, transfer and discharge policies that address:

(A) Types of clinical conditions not acceptable for admission;

(B) Constraints imposed by limitations of services, physical facilities or staff coverage;

(C) Emergency admissions;

(D) Requirements for informed consent signed by the patient or legal representative of the patient for diagnostic and treatment procedures; such policies and procedures shall address informed consent of minors in accordance with provisions in ORS 109.610, 109.640, 109.670, and 109.675.

(E) A process for the internal transfer of patients from one level or type of care to another;

(F) Discharge and termination of services; and

(G) Planning for continuity of patient care following discharge.

(b) Patient rights;

(c) Housekeeping;

(d) All patient care services provided by the hospital; and

(e) Maintenance of the hospital's physical plant, equipment used in patient care and patient environment.

(4) In addition to the policies described in section (3) of this rule, a hospital shall, in accordance with the Patient Self-Determination Act, 42 CFR § 489.102, adopt policies and procedures that require (applicable to all capable individuals 18 years of age or older who are receiving health care in the hospital):

(a) Providing to each adult patient, including emancipated minors, not later than five days after an individual is admitted as an inpatient, but in any event before discharge, the following in written form, without recommendation:

(A) Information on the rights of the individual under Oregon law to make health care decisions, including the right to accept or refuse medical or surgical treatment and the right to execute directives and powers of attorney for health care;

(B) Information on the policies of the hospital with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;

(C) A copy of the directive form set forth in ORS 127.531, along with a disclaimer attached to each form in at least 16-point bold type stating "You do not have to fill out and sign this form."; and

ADMINISTRATIVE RULES

(D) The name of a person who can provide additional information concerning the forms for directives.

(b) Documenting in a prominent place in the individual's medical record whether the individual has executed a directive.

(c) Compliance with Oregon law relating to directives for health care.

(d) Educating the staff and the community on issues relating to directives.

(5) A hospital's transfer agreements or contracts shall clearly delineate the responsibilities of parties involved.

(6) Patient care policies shall be evaluated triennially and rewritten as needed, and presented to the governing body or a designated administrative body for approval triennially. Documentation of the evaluation is required.

(7) A hospital shall have a system, described in writing, for the periodic evaluation of programs and services, including contracted services.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0033

Patient Rights

A hospital shall comply with the requirements for patients rights set out in 42 CFR § 482.13 (71 FR 71426, December 8, 2006).

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-505-0040

Personnel

(1) A hospital shall:

(a) Maintain a sufficient number of qualified personnel to provide effective patient care and all other related services.

(b) Have written personnel policies and procedures that are available to personnel.

(c) Provide orientation for new employees.

(d) Have an annual continuing education plan.

(e) Have a job description for each position that delineates the qualifications, duties, authority and responsibilities inherent in each position.

(f) Provide an annual work performance evaluation for each employee with appropriate records maintained.

(g) Have an employee health screening program for the purpose of protecting patients and employees from communicable diseases, including but not limited to requiring tuberculosis testing for employees in accordance with OAR 333-505-0080.

(2) A hospital shall restrict the work of employees with restrictable diseases in accordance with OAR 333-019-0010.

(3) The actions taken by a hospital under this rule shall be fully documented for each employee and made available to Division representatives upon request.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0050

Medical Records

(1) A medical record shall be maintained for every patient admitted for care in a hospital.

(2) A legible reproducible medical record shall include, but is not limited to (as applicable):

(a) Admitting identification data including date of admission.

(b) Chief complaint.

(c) Pertinent family and personal history.

(d) Medical history, physical examination report and provisional diagnosis as required by OAR 333-510-0010.

(e) Admission notes outlining information crucial to patient care.

(f) All patient admission, treatment, and discharge orders.

(A) All patient orders shall be initiated, dated, timed and authenticated by a licensed health care practitioner in accordance with section (7) of this rule.

(B) Documentation of verbal orders shall include:

(i) The date and time the order was received;

(ii) The name and title of the health care practitioner who gave the order; and

(iii) Authentication by the authorized individual who accepted the order, including the individual's title.

(C) Verbal orders shall be dated, timed, and authenticated within 48 hours by the ordering health care practitioner or another health care practitioner who is responsible for the care of the patient.

(D) For purposes of this rule, a verbal order includes but is not limited to an order given over the telephone.

(g) Clinical laboratory reports as well as reports on any special examinations. (The original report shall be recorded in the patient's medical record.)

(h) X-ray reports bearing the identification of the originator of the interpretation.

(i) Consultation reports when such services have been obtained.

(j) Records of assessment and intervention, including graphic charts and medication records and appropriate personnel notes.

(k) Discharge summary including final diagnosis.

(l) Discharge order.

(m) Autopsy report if applicable.

(n) Such signed documents as may be required by law.

(o) Informed consent forms that document:

(A) The name of the hospital where the procedure or treatment was undertaken;

(B) The specific procedure or treatment for which consent was given;

(C) The name of the health care practitioner performing the procedure or administering the treatment;

(D) That the procedure or treatment, including the anticipated benefits, material risks, and alternatives was explained to the patient or the patient's representative or why it would have been materially detrimental to the patient to do so, giving due consideration to the appropriate standards of practice of reasonable health care practitioners in the same or a similar community under the same or similar circumstances;

(E) The signature of the patient or the patient's legal representative; and

(F) The date and time the informed consent was signed by the patient or the patient's legal representative.

(3) A medical record of a surgical patient shall include, in addition to other record requirements, but is not limited to:

(a) Preoperative history, physical examination and diagnosis documented prior to operation.

(b) Anesthesia record including preanesthesia assessment and plan for anesthesia, records of anesthesia, analgesia and medications given in the course of the operation and postanesthetic condition.

(c) A record of operation dictated or written immediately following surgery and including a complete description of the operation procedures and findings, postoperative diagnostic impression, and a description of the tissues and appliances, if any, removed. When the dictated operative report is not placed in the medical record immediately after surgery, an operative progress note shall be entered in the medical record after surgery to provide pertinent information for any individual required to provide care to the patient.

(d) Postanesthesia recovery progress notes.

(e) Pathology report on tissues and appliances, if any, removed at the operation.

(4) An obstetrical record for a patient, in addition to the requirements for medical records, shall include but is not limited to:

(a) The prenatal care record containing at least a serologic test result for syphilis, Rh factor determination, and past obstetrical history and physical examination.

(b) The labor and delivery record, including reasons for induction and operative procedures, if any.

(c) Records of anesthesia, analgesia, and medications given in the course of delivery.

(5) A medical record of a newborn or stillborn infant, in addition to the requirement for medical records, shall include but is not limited to:

(a) Date and hour of birth; birth weight and length; period of gestation; sex; and condition of infant on delivery (Apgar rating is recommended).

(b) Mother's name and hospital number.

(c) Record of ophthalmic prophylaxis or refusal of same.

(d) Physical examination at birth and at discharge.

(e) Progress and nurse's notes including temperature; weight and feeding data; number, consistency and color of stools; urinary output; condition of eyes and umbilical cord; condition and color of skin; and motor behavior.

(f) Type of identification placed on infant in delivery room;

(g) Newborn hearing screening tests in accordance with OAR 333-020-0130.

(6) A patient's emergency room, outpatient and clinic records, in addition to the requirements for medical records, shall be maintained and available to the other professional services of the hospital and shall include but are not limited to:

(a) Patient identification.

(b) Admitting diagnosis, chief complaint and brief history of the disease or injury.

(c) Physical findings.

ADMINISTRATIVE RULES

(d) Laboratory and X-ray reports (if performed), as well as reports on any special examinations. The original report shall be authenticated and recorded in the patient's medical record.

(e) Diagnosis.

(f) Record of treatment, including medications.

(g) Disposition of case with instructions to the patient.

(h) Signature or authentication of attending physician.

(i) A record of the pre-hospital report form (when patient is brought in by ambulance) shall be attached to the emergency room record.

(7) All entries in a patient's medical record shall be dated, timed and authenticated.

(a) Authentication of an entry requires the use of a unique identifier, including but not limited to a written signature or initials, code, password, or by other computer or electronic means that allows identification of the individual responsible for the entry.

(b) Systems for authentication of dictated, computer, or electronically generated documents must ensure that the author of the entry has verified the accuracy of the document after it has been transcribed or generated.

(8) The following records shall be maintained and kept permanently in written or computerized form:

(a) Patient's register, containing admissions and discharges;

(b) Patient's master index;

(c) Register of all deliveries, including live births and stillbirths;

(d) Register of all deaths;

(e) Register of operations;

(f) Register of outpatients (seven years);

(g) Emergency room register (seven years); and

(h) Blood banking register (20 years).

(9) The completion of the medical record shall be the responsibility of the attending qualified member of the medical staff. Any licensed health care practitioner responsible for providing or evaluating the service provided shall complete and authenticate those portions of the record that pertain to their portion of the patient's care. The appropriate individual shall authenticate the history and physical examination, operative report, progress notes, orders and the summary. In a hospital using interns, such orders must be according to policies and protocols established and approved by the medical staff. An authentication of a licensed health care practitioner on the face sheet of the medical record does not suffice to cover the entire content of the record:

(a) Medical records shall be completed by a licensed health care practitioner and closed within four weeks following the patient's discharge.

(b) If a patient is transferred to another health care facility, transfer information shall accompany the patient. Transfer information shall include but is not limited to:

(A) The name of the hospital from which they were transferred;

(B) The name of physician or other health care practitioner to assume care at the receiving facility;

(C) The date and time of discharge;

(D) The current medical findings;

(E) The current nursing assessment;

(F) Current medical history and physical information;

(G) Current diagnosis;

(H) Orders from a physician or other licensed health care practitioner for immediate care of the patient;

(I) Operative report, if applicable;

(J) TB test, if applicable; and

(K) Other information germane to patient's condition.

(c) If the discharge summary is not available at time of transfer, it shall be transmitted to the new facility as soon as it is available.

(10) Diagnoses and operations shall be expressed in standard terminology. Only abbreviations approved by the medical staff may be used in the medical records.

(11) Medical records shall be filed and indexed. Filing shall consist of an alphabetical master file with a number cross-file. Indexing is to be done according to diagnosis, operation, and qualified member of the medical staff, using a system such as the International or Standard nomenclature systems.

(12) Medical records are the property of the hospital. The medical record, either in original, electronic or microfilm form, shall not be removed from the hospital except where necessary for a judicial or administrative proceeding. Treating and attending physicians shall have access to medical records. When a hospital uses off-site storage for medical records, arrangements must be made for delivery of these records to the hospital when needed for patient care or other hospital activities. Precautions must be taken to protect patient confidentiality.

(13) Authorized personnel of the Division shall be permitted to review medical records and patient registers as necessary to determine compliance with health care facility licensing laws.

(14) Medical records shall be kept for a period of at least 10 years after the date of last discharge. Original medical records may be retained on paper, microfilm, electronic or other media.

(15) Medical records shall be protected against unauthorized access, fire, water and theft.

(16) If a hospital changes ownership, all medical records in original, electronic or microfilm form shall remain in the hospital and it shall be the responsibility of the new owner to protect and maintain these records.

(17) If a hospital closes, its medical records and the registers required under section (8) of this rule may be delivered and turned over to any other hospital in the vicinity willing to accept and retain the same as provided in section (12) of this rule. A hospital which closes permanently shall follow the procedure for Division and public notice regarding disposal of medical records under OAR 333-500-0060.

(18) All original clinical records or photographic or electronic facsimile thereof, not otherwise incorporated in the medical record, such as X-rays, electrocardiograms, electroencephalograms, and radiological isotope scans shall be retained for seven years after a patient's last discharge if professional interpretations of such graphics are included in the medical records.

(19) If a qualified medical record practitioner, RHIT (Registered Health Information Technician) or RHIA (Registered Health Information Administrator) is not the Director of the Medical Records Department, periodic and at least annual consultation must be provided by a qualified medical records consultant, RHIT/RHIA. The visits of the medical records consultant shall be of sufficient duration and frequency to review medical record systems and assure quality records of the patients. The contract for such services shall be made available to the Division.

(20) A current written policy on the release of medical record information including a patient's access to his or her medical record shall be maintained in the medical records department.

(21) A hospital is not required to keep a medical record in accordance with this rule for a person referred to a hospital ancillary department for a diagnostic procedure or health screening by a private physician, dentist, or other licensed health care practitioner acting within his or her scope of practice.

(22) Pursuant to ORS 441.059, the rules of a hospital that govern patient access to previously performed X-rays or diagnostic laboratory reports shall not discriminate between patients of chiropractic physicians and patients of other licensed health care practitioners permitted access to such X-rays and diagnostic laboratory reports.

(23) Nothing in this rule is meant to prohibit or discourage a hospital from maintaining its records in electronic form.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 235, f. 2-5-70, ef. 2-25-70; HB 253, f. 7-22-70, ef. 8-25-70; HB 255, f. 9-15-70, ef. 10-11-70; HD 11-1980, f. & ef. 9-10-80; HD 8-1984, f. & ef. 5-7-84; Renumbered from 333-023-0190; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0055; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0060

Quality Assurance

The governing body of a hospital must ensure that there is an effective, written, facility-wide quality assurance program to evaluate and monitor the quality and appropriateness of patient care.

(1) All organized services related to patient care, including services furnished by a contractor, must be evaluated.

(2) Written documentation of quality assurance activities shall be recorded at least quarterly.

(3) Nosocomial infections, medication therapy, and blood and blood product transfusions must be evaluated.

(4) All medical and surgical services performed in the hospital must be evaluated as they relate to appropriateness of diagnosis and treatment.

(5) The hospital must have an ongoing plan, consistent with available community and hospital resources, to provide and make available social work, psychological, and educational services to meet the medically-related needs of its patients.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0070

Infection Control and Prevention

(1) A hospital shall establish and maintain an active facility-wide program for the control and prevention of infection. This program shall, at a minimum, include the following:

(a) Identification of existing or potential infections in patients, employees, medical staff, and health care practitioners with hospital privileges;

(b) Control of factors affecting the transmission of infections and communicable diseases;

ADMINISTRATIVE RULES

(c) Provision for orienting and educating all medical staff, health care practitioners with hospital privileges and employees on the cause, transmission and prevention of infections; and

(d) Collection, analysis and use of data relating to infections in the hospital.

(2) A hospital shall be responsible for the development, implementation and periodic review of policies under section (1) of this rule.

(3) In the hospital, the infection control program shall be managed by a qualified individual and overseen by a multidisciplinary committee with responsibility for investigating, controlling and preventing infections in the facility. The composition of the committee may vary but shall include at least representation from major departments and services and shall provide for consultation both from other departments and services and to them.

(4) A hospital shall comply with all rules of the Division for the control of communicable diseases.

(5) A hospital shall have a system of isolation that prevents the transmission of infections in hospitals.

(a) A system of isolation shall:

(A) Follow the principles of epidemiology and disease transmission;

(B) Include precautions to interrupt the spread of infection by all routes that are likely to be encountered in the hospital; and

(C) Be reviewed and approved by a committee responsible for the oversight of the infection control program.

(b) Guidelines for isolation precautions are published periodically by the Hospital Infection Control Practices Advisory Committee (HICPAC) and may be used by a hospital as a reference in order to maintain up-to-date isolation practices.

(6) The hospital multidisciplinary committee shall oversee all aspects of the infection control program, and will ensure that the system of isolation implemented addresses the following fundamentals of infection control:

(a) Handwashing and gloving;

(b) Patient placement;

(c) Transport of infected patients;

(d) Protective apparel;

(e) Patient care equipment and articles;

(f) Linen and laundry;

(g) Dishes, glasses, cups, and eating utensils; and

(h) Routine and terminal cleaning.

(7) A hospital shall have policies and procedures related to cleaning, disinfection, sterilization, and disposal of patient care items.

(a) All instruments or equipment used in patient care should be disinfected or sterilized based on whether the item is critical, semi-critical, or non-critical.

(A) Critical items are those patient care items which enter the vascular system. These items must be sterile and should be sterilized by a Federal Drug Administration (FDA) approved method or purchased sterile for use.

(B) Semi-critical items are those patient care items which come into contact with mucous membranes or nonintact skin. These items must be free of all organisms except spores. Semi-critical items require high level disinfection using wet pasteurization or chemical sterilants which are FDA-approved.

(C) Non-critical items are those items that come into contact only with intact skin. Low level disinfectants may be used which have been approved by the Environmental Protection Agency (EPA) as hospital disinfectants.

(b) All patient care items shall be disposed of properly at discharge or processed according to the categorization of the items, i.e. critical, semi-critical, or non-critical. Single patient use equipment must be disposed of or sent home with the patient at discharge.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 212, f. 2-25-69; HB 235, f. 2-5-70, ef. 2-25-70; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0180; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0035; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00, Renumbered from 333-515-0010; PH 11-2009, f. & cert. ef. 10-1-09

333-505-0080

Tuberculosis Control

(1) As used in this rule, "person" means any:

(a) Hospital employee;

(b) Hospital contractor;

(c) Health care practitioner granted privileges by the hospital; or

(d) Hospital volunteer or student.

(2) A hospital shall comply with the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings, 2005, published in the Morbidity and Mortality Weekly Report by the Centers for Disease Control and Prevention (CDC), December 30, 2005, and incorporated by reference.

(3) A hospital shall obtain documentation that tuberculosis (TB) testing has been conducted in a manner consistent with the CDC guidelines for

any person who enters a hospital and who has contact with patients, enters rooms that patients may enter, or who handles clinical specimens or other material from patients or their rooms.

(a) A hospital shall require documentation of baseline TB screening conducted in accordance with the CDC Guidelines, within six weeks of the date of hire, date of executed contract or date of being granted hospital credentials.

(b) For persons hired, contracted with or granted hospital privileges prior to October 1, 2009, a hospital shall obtain documentation of compliance with CDC Guidelines by November 15, 2009.

(4) A hospital that is classified as "potential ongoing transmission" under CDC Guidelines shall consult with the Oregon TB control program within the Division, for guidance on the extent of TB testing required.

(5) If a hospital learns that a person or a patient at the hospital is diagnosed with communicable TB, the hospital shall notify the local public health authority and conduct an investigation to identify contacts. If the Division or local public health authority conducts its own investigation, a hospital shall cooperate with that investigation and provide the Division or local public health authority with any information necessary for it to conduct its investigation.

(6) A hospital shall notify the local public health administrator of its intent to discharge a patient known to have active TB disease.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-505-0090

Request for Tissues and Organs

(1) A hospital administrator or his or her designee shall contact the appropriate organ or tissue procurement organization when a patient dies at the hospital or when a patient's death is imminent.

(2) After consultation with an organ or tissue procurement organization, the hospital administrator or his or her designee shall communicate with the patient or legal next-of-kin and request that the patient's organs and tissue be donated as an anatomical gift, unless:

(a) The medical record shows that the patient has made an anatomical gift;

(b) The appropriate procurement organizations or the medical examiner has ruled out the potential donor based on accepted medical standards;

(c) The legal next-of-kin are not available because:

(A) They cannot be located in a timely manner after reasonable effort by the procurement organizations or the hospital; or

(B) They are mentally incompetent.

(d) In the opinion of the attending physician after consulting with the procurement organization, it is determined that the request would contribute toward the severe emotional distress of the patient or legal next-of-kin.

(3) For purposes of this rule, "legal next-of-kin" is the class of persons described in ORS 97.965 and in addition to spouse, includes Oregon registered domestic partner.

(4) The hospital shall document the request or the absence of a request, in the medical record of the decedent and provide information on the request and its disposition to the person filing the death certificate.

(5) An anatomical gift by a legal next-of-kin or authorized person may be made by a document of gift signed by the donor or made by his or her telegraphic, recorded telephonic or other recorded message.

(6) A hospital or training requestor who acts or omits to act with probable cause in accord with the terms of ORS 97.950 through 97.964 and these rules is not subject to criminal or civil liability.

Stat. Auth.: ORS 441.079 & 442.015

Stats. Implemented: ORS 441.079 - 441.082 & 442.015

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-505-0100

Training for Requestors

(1) All persons making requests for donations of organs, tissues, and eyes shall have received hospital-provided or procurement organization-provided training in accordance with this rule.

(2) Training for requestors shall include but is not limited to:

(a) The legal requirements of ORS 97.950 through 97.964 and these rules, and the necessity for completion of the portion of the death certificate regarding organ, tissue and eye retrieval.

(b) Specifics of organ tissue and eye donation, including: identification of potential donors; medical uses of donated organs, tissues, and eyes; the history and success of transplant programs; reimbursement mechanisms for expenses relating to organ, tissue, and eye retrieval;

(c) A review of the psychological, social, cultural, ethical and religious factors affecting willingness to donate organs, tissues, and eyes, and resistance to organ, tissue, and eye donation, and a review of materials developed to train individuals to request organ, tissue, and eye donation with reasonable discretion and sensitivity;

ADMINISTRATIVE RULES

- (d) The family's right to refuse and the need to respect this right;
 - (e) The effect on funeral arrangements and cost; and
 - (f) The importance of consulting with the attending physician.
- (3) Requestors shall be able to demonstrate knowledge of the training content as defined in this rule.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-505-0110

Hospital Compliance

(1) A hospital shall demonstrate compliance with OAR 333-505-0090 and 333-505-0100 by maintaining a file, available for Division review, including the following:

- (a) Training curriculum;
- (b) Hospital policy and procedure regarding request and training for tissues, eyes, and organs;
- (c) If not included in policy and procedure, criteria for selection of requestor;
- (d) Method by which 24-hour scheduling of requestor(s) is established; and
- (e) Policies and procedures for communicating with procurement organizations regarding the availability of donor organs, tissues, and eyes.

(2) Hospitals may provide appropriate procurement organization personnel access to medical records of decedents on a periodic basis. The timing of this review will be mutually agreed to by both the hospital and procurement organizations. Procurement organizations will provide appropriate staff to conduct the review in the hospital. The purpose of this review will be to provide information to the hospital to assist in compliance with state and federal regulations related to organ, tissue and eye donation. If the hospital agrees to the review, all findings will remain strictly confidential.

(3) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation network established under Section 372 of the Public Health Service Act and abide by its rules and requirements.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-505-0120

Emergency Contraception

(1) A hospital providing care to a female victim of sexual assault shall:

- (a) Promptly provide the victim with unbiased, medically and factually accurate written and oral information about emergency contraception;
 - (b) Promptly orally inform the victim of her option to be provided emergency contraception at the hospital; and
 - (c) If requested by the victim and not medically contraindicated, provide the victim of any child bearing age with emergency contraception immediately at the hospital, notwithstanding ORS 147.397 (defining the availability of the Sexual Assault Victims' Emergency Medical Response fund "SAVE Fund").
- (d) For purposes of this rule, "emergency contraception" means the use of a drug or device that is approved by the United States Food and Drug Administration to prevent pregnancy after sexual intercourse.

(2) A hospital shall post a written notice, approved by the Division, to inform victims of their right to be provided emergency contraception at the hospital.

(3) Pursuant to ORS 109.640, anyone under the age of 18 has the right to consent to birth control information and services, including emergency contraception.

(4) A hospital shall document in writing that the information required to be given to a female victim of sexual assault in section (1) of this rule, was provided. Failure to have such documentation may result in the issuance of a civil penalty.

(5) A hospital may only provide the victim informational materials about emergency contraception that has been approved by the Division.

(6) The Division shall investigate complaints of violations of sections (1) or (2) of this rule in accordance with ORS 441.057.

(7) In addition to investigating complaints, the Division shall monitor compliance with ORS 435.254 and this rule during scheduled visits to hospitals.

(8) The Division may impose a civil penalty, not to exceed \$1000, against a hospital for each violation of ORS 435.254 or these rules. In addition to the assessment of a civil penalty, the Department will require corrective actions from the hospital.

- (a) For the first violation the civil penalty shall be \$250;
- (b) For the second violation the civil penalty shall be \$500;
- (c) For the third and any subsequent violations, the civil penalty shall be \$1000.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 183.745, 441.055, 435.254, 750.055 & 750.333
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-510-0001

Applicability

These rules apply to all hospitals, regardless of classification.
Stat. Auth.: ORS 409.050, 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0002

Definitions

As used in OAR 333-510, the following definitions apply:

(1) "Direct Care Nurse" means a nurse who is routinely assigned to a patient care unit, who is replaced for scheduled and unscheduled absences and includes charge nurses if the charge nurse is not management services.

(2) "Evidence Based Standards" means standards that have been scientifically developed, are based on current literature, and are driven by consensus.

(3) "Hospital" has the same meaning given in ORS 442.015.

(4) "Mandatory Overtime" is any time that exceeds those time limits specified in ORS 441.166 unless the registered nurse, licensed practical nurse or certified nursing assistant voluntarily chooses to work overtime.

(5) "Nurse Manager" means a registered nurse who has administrative responsibility 24 hours a day, 7 days a week for a patient care unit, units or hospital and who is not replaced for short-term scheduled or unscheduled absences.

(6) "On Call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(7) "On Call Nursing Staff" means individual nurses or nursing service agencies maintained by a hospital that are available and willing to cover nursing staff shortages due to unexpected nursing staff absences or unanticipated increased nursing services needs.

(8) "Potential Harm" or "At Risk of Harm" means that an unstable patient will be left without adequate care for an unacceptable period of time if the registered nurse, licensed practical nurse, or certified nursing assistant leaves the assignment or transfers care to another.

(9) "Safe Patient Care" means nursing care that is provided appropriately, in a timely manner, and meets the patient's health care needs. The following factors may be, but are not in all circumstances, evidence of unsafe patient care:

- (a) A failure to implement the written nurse staffing plan;
- (b) A failure to comply with the patient care plan;
- (c) An error that has a negative impact on the patient;
- (d) A patient reports that his/her nursing care needs have not been met;

(e) A medication not given as scheduled;

(f) The nursing preparation for a procedure not accomplished on time;

(g) Registered nurses, licensed practical nurses or certified nursing assistants practicing outside their scope of practice;

(h) The daily unit-level staffing does not include coverage for all known patients, taking into account the turnover of patients;

(i) The skill mix of employees and the relationship of the skill mix to patient acuity and intensity of the workload is insufficient to meet patient needs; or

(j) An unreasonable delay in responding to a patient's (or a family member's request on behalf of a patient) request for nursing care.

(10) "Standby" means a scheduled state of being ready to be called to work within a hospital-designated timeframe.

Stat. Auth.: ORS 409.050, 441.055
Stats. Implemented: ORS 441.160 - 441.192
Hist.: PH 21-2006, f. & cert. ef. 10-6-06; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0010

Patient Admission and Treatment Orders

(1) No patient, including patients admitted for observation status, shall be admitted to a hospital except on the order of an individual who has admitting privileges. The admitting physician or nurse practitioner shall provide sufficient information at the time of admission to establish that care can be provided to meet the needs of the patient. Admission medical information shall include a statement concerning the admitting diagnosis and general condition of the patient. Other pertinent medical information, orders for medication, diet, and treatments shall also be provided, as well as a medical history and physical.

(2) Within 24 hours of a patient's admission, a hospital shall ensure that:

(a) The patient's medical history is taken and a physical examination performed, unless:

(A) A medical history and physical examination has been completed within 30 days prior to admission, as provided in the medical staff rules and regulations; or

(B) The patient is readmitted within a month's time for the same or related condition, as long as an interval note is completed.

(b) The patient is given a provisional diagnosis.

ADMINISTRATIVE RULES

(3) Even if a medical history or physical examination at the time of admission is not required under section (2) of this rule, a hospital shall ensure that any changes crucial to patient care are noted in an admission note.

(4) Visits from licensed health care providers shall be according to patient's needs. Initial and ongoing assessments shall be performed for each patient and the results and observations recorded in the medical record.

(5) A Doctor of Medicine (MD) or Doctor of Osteopathy (DO) or nurse practitioner with admitting privileges shall be responsible, as permitted by the individual's scope of practice for the care of any medical problem that may be present on admission or that may arise during an inpatient stay.

(6) No medication or treatment shall be given except on the order of a licensed healthcare professional authorized to give such orders within the State of Oregon.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0015(1); HD 2-1993, f. & cert. ef. 3-11-93; HD 21-1993, f. & cert. ef. 10-28-93, HD 30-1994, f. & cert. ef. 12-13-94; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0020

Nursing Care Management

(1) The nursing care of each patient, including patients admitted for observation status, in a hospital shall be the responsibility of a registered nurse (RN).

(2) The RN will only provide services to the patients for which she/he is educationally and experientially prepared and for which competency has been maintained.

(3) The RN shall be responsible and accountable for managing the nursing care of his/her assigned patients. She/he shall only assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available. The responsible RN shall ensure that the following activities are completed:

(a) Document the admission assessment of the patient within four hours following admission and initiate a written plan of care. This shall be reviewed and updated whenever the patient's status changes.

(b) Develop and document within eight hours following admission a plan of care for nursing services for the patient, based on the patient assessment and realistic, understandable, achievable patient goals consistent with the applicable rules in OAR 851-045.

(c) Observe and report to the nurse manager and the patient's physician or other responsible health care provider authorized by law, when appropriate, any significant changes in the patient's condition that warrant interventions that have not been previously prescribed or planned for:

(A) When the RN questions the efficacy, need or safety of continuation of medications being administered to a patient, the RN shall report that question to the physician or other responsible health care provider authorized by law authorizing the medication and shall seek further instructions concerning the continuation of the medication.

(4)(a) A hospital shall maintain documentation of certification of certified nursing assistants (CNAs), which shall be available on request to Division personnel.

(b) A nursing assistant who works in a hospital must be certified prior to assuming nursing assistant duties in accordance with OAR 851-062.

(c) A hospital shall maintain documentation that CNAs whose functions include administration of non-injectable medications, are qualified. This documentation shall be available on request to Division personnel.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0015(7); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0030

Nursing Services

(1) The hospital shall provide a nursing service department, which provides 24-hour onsite registered nursing care, 7 days per week.

(2) The nursing services department shall be under the direction of a nurse executive who is a registered nurse, licensed to practice in Oregon.

(3) All nursing personnel shall maintain current certification in cardiopulmonary resuscitation.

(4) For the purposes of these rules, "circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of the operating room team members during surgery.

(5) The duties of a circulating nurse performed in an operating room of a hospital shall be performed by a registered nurse licensed under ORS 678.010 through 678.410. In all cases requiring anesthesia or conscious

sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(6) Nothing in this section precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

Stat. Auth.: ORS 409.050, 441.055

Stats. Implemented: ORS 441.160 - 441.192

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0015(2); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 21-2006, f. & cert. ef. 10-6-06; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0040

Nurse Executive

(1) The nurse executive position shall be full-time (40 hours per week). Time spent in professional association workshops, seminars and continuing education may be counted as his/her duties in considering whether or not he/she is full-time. If the nurse executive has responsibility for direct patient care activities, sufficient time must be available to devote to administrative duties. For hospitals with attached long-term care facilities, the nurse executive may function as the nurse executive for both the hospital and the long-term care facility.

(2) The nurse executive shall have had progressive responsibility in managing in a health care setting.

(a) The nurse executive shall be a registered nurse licensed in Oregon. In addition, the nurse executive must have a baccalaureate degree, other advanced degree, or appropriate equivalent experience, with emphasis in management preferred.

(3) The nurse executive shall have written administrative authority, responsibility, and accountability for assuring functions and activities of the nursing services department and shall participate in the development of any policies that affect the nursing services department. This includes budget formation, implementation and evaluation. The nurse executive shall ensure the:

(a) Development and maintenance of a nursing service philosophy, objective, standards of practice, policy and procedure manuals, and job descriptions for each level of nursing service personnel;

(b) Development and maintenance of personnel policies of recruitment, orientation, in-service education, supervision, evaluation, and termination of nursing service staff or ensure it is done by another department;

(c) Development and maintenance of policies and procedures for determination of nursing staff's capacity for providing nursing care for any patient seeking admission to the facility;

(d) Development and maintenance of a quality assurance program for nursing service;

(e) Coordination of nursing service departmental function and activities with the function and activities of other departments; and

(f) Ensure participation with the administrator and other department directors in development and maintenance of practices and procedures that promote infection control, fire safety, and hazard reduction.

(4) Whenever the nurse executive is not available in person or by phone, she/he shall designate in writing a specific registered nurse or nurses, licensed to practice in Oregon, to be available in person or by phone to direct the functions and activities of the nursing services department.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0045

Nursing Services Staffing

(1) Each hospital must be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The nurse staffing plan must be developed, monitored, evaluated and modified by a hospital nurse staffing plan committee in accordance with these rules. To the extent possible, the committee must:

(a) Be comprised solely of equal numbers of hospital nurse managers and direct care registered nurses as its exclusive membership for decision making;

(b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to be selected by direct care registered nurses from the particular specialty or unit as the specialty or unit as defined by the hospital; and

(c) Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to ORS chapter 441.

(2) The hospital nurse staffing committee must document:

(a) How its members were chosen to reflect fair and knowledgeable representation;

(b) How the input of each member in decision making is assured;

ADMINISTRATIVE RULES

(c) The committee process and procedures, including how and when meetings are scheduled, how committee members are notified of meetings, how the meetings are conducted, how unit staff input is acquired, who may participate in the decision making and how decisions are made;

(d) Plans for how it will monitor, evaluate and modify the nurse staffing plan over time; and

(e) Meeting proceedings (meeting minutes).

(3) The written staffing plan must:

(a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care;

(b) Include at least an annual quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time;

(c) Be based on the specialized qualifications and competencies of the nursing staff;

(d) Ensure that the skill mix and the competency of the staff meet the nursing care needs of the patient;

(e) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations, such as, but not limited to, The American Association of Critical Care Nurses, American Operating Room Nurses (AORN), or American Society of Peri-Anesthesia Nurses (ASPAN);

(f) Recognize differences in patient acuteness;

(g) Include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients; and

(h) Establish minimum numbers of nursing staff personnel including licensed nurses and certified nursing assistants on specified shifts, with no fewer than one registered nurse and one other nursing care staff member on duty in a unit when a patient is present.

(4)(a) The hospital nurse staffing committee must monitor, evaluate, modify, and re-approve the nurse staffing plan according to the schedule described in the nurse staffing plan.

(b) If the hospital nurse staffing committee is unable to reach agreement on a re-approval of the nurse staffing plan, any nurse on the committee may request the Department to assist in resolving the impasse.

(c) The Department may require a hospital to:

(A) Provide written documentation describing those portions of the modified nurse staffing plan that have been developed and approved by the nurse staffing committee;

(B) Present a written plan for assisting the hospital nurse staffing committee in resolving outstanding differences including the scheduling of timely meetings, arranging for meeting facilitation and setting timelines; and

(C) Implement those modifications to the nurse staffing plan that have been approved by the nurse staffing committee.

(d) If a hospital is unable to resolve differences and adopt a modified plan within 60 days from the time the Department is notified of the impasse, it may request a 60 day Planning Process Extension.

(e) To be granted the extension, a hospital must:

(A) Employ a mediator within 30 days to assist in working out a compromise; and

(B) Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.

(5) The hospital must maintain and post a list of on-call nursing staff or staffing agencies that may be called to provide qualified replacement or additional staff in the event of emergencies, sickness, vacations, vacancies and other absences of the nursing staff and that provides a sufficient number of replacement staff for the hospital on a regular basis. The list must be available to the individual responsible for obtaining replacement staff.

(6) When developing the on-call list, the hospital must explore all reasonable options for identifying local replacement staff. These efforts must be documented.

(7) When a hospital learns about the need for replacement staff, the hospital must make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse, or certified nursing assistant to work overtime. Reasonable effort includes the hospital seeking replacement at the time the vacancy is known and contacting all available resources as described in section (5) of this rule. Such efforts must be documented.

(8) A hospital may not require a registered nurse, licensed practical nurse, or certified nursing assistant to work:

(a) Beyond the agreed-upon shift;

(b) More than 48 hours in any hospital-defined work week; or

(c) More than 12 consecutive hours in a 24-hour period, except that a hospital may require an additional hour of work beyond the 12 hours if:

(A) A staff vacancy for the next shift becomes known at the end of the current shift; or

(B) There is a risk of harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(9) Each hospital must have a system to document mandatory overtime. The procedure must be clearly written, provided to all new nursing staff, and be posted in a conspicuous place. The procedure must ensure that both the employee and management are involved.

(10)(a) Time spent attending hospital-mandated meetings, and hospital-mandated education or training must be included as hours worked for purposes of section (8) of this rule.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of section (8) of this rule.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer must be included as hours worked for purposes of section (8) of this rule.

(11) The provisions of sections (7) through (10) of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a hospital disaster plan;

(b) In emergency circumstances, such as but not limited to:

(A) Sudden unforeseen adverse weather conditions;

(B) An infectious disease epidemic of staff; or

(C) Any unforeseen event preventing replacement staff from approaching or entering the premises; or

(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in section (5) of this rule and is unable to obtain replacement staff in a timely manner.

(12) A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon scheduled shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing Oregon Administrative Rules, chapter 851.

(13) A hospital must post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, and 441.192, in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(14) Upon request of a hospital, the Department may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. Such request for a variance must be in writing and must state the reason for seeking a variance, verification that the nurse staffing plan committee has reviewed the request for variance, and how granting the variance will meet patient needs or the nursing practices of the hospital. A variance must be posted along with the notice required in ORS 441.180.

(15) Nothing in section (4) of this rule relieves a hospital from complying with ORS 441.162 or 441.166.

Stat. Auth.: ORS 409.050, 441.055

Stats. Implemented: ORS 441.160 - 441.192

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; OHD 20-2002, f. & cert. ef. 12-10-02; PH 22-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; PH 21-2006, f. & cert. ef. 10-6-06; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0050

Inservice Training Requirements for Nursing

(1) The nurse executive or her or his designee shall coordinate all inservice training for nursing. Each year the inservice training agenda shall include at least the following:

(a) Infection control measures;

(b) Emergency procedures including, but not limited to, procedures for fire and other disaster;

(c) Application of physical restraints (if the facility population includes any patient with orders for restraints); and

(d) Other special needs of the facility population.

(2) Training for procedures for life-threatening situations, including cardiopulmonary resuscitation shall be provided every two years.

(3) The facility, through the nurse executive, shall assure that each licensed or certified employee is knowledgeable of the laws and rules governing his or her performance and that employees function within those performance standards.

(4) Documentation of such training shall include the date, content and names of attendees.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-510-0060

Patient Environment

(1) A hospital shall provide for each patient:

ADMINISTRATIVE RULES

(a) A good bed, mattress, pillow with protective coverage, and necessary bed coverings;

(b) Items needed for personal care; and

(c) Separate storage space for clothing, toilet articles, and other personal belongings.

(2) In multiple-bed rooms, opportunity for patient privacy shall be provided by flame retardant curtains or screens. In hospitals caring for pediatric patients, cubicle curtains or screens are not required for beds assigned these patients.

(3) No patient shall be admitted to a bed in any room, other than one regularly designated as a bedroom or ward. The placing of a patient's bed in a diagnostic room, treatment room, operating room or delivery room is expressly prohibited, except under emergency circumstances.

(4) No towels, wash cloths, bath blankets, or other linen which comes directly in contact with the patient shall be interchangeable from one patient to another unless it is first laundered.

(5) Temperature-controlled pads shall be so covered that the patient cannot be harmed by excessive heat or cold and carefully checked as to temperature and leakage. Electrical heating pads, blankets, or sheets shall be used only on the written order of the physician or other health care practitioner authorized by law.

(6) The use of torn or unclean bed linen is prohibited.

(7) In facilities caring for pediatric patients, an emergency signaling system for use by attendants summoning assistance and a two-way voice intercommunication system between the nurses' station and rooms or wards housing pediatric patients shall be provided.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0170; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0010 & 333-072-0015(3) thru (6); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-515-0001

Applicability

These rules apply to all hospitals, regardless of classification.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-515-0005

Sterilization of Instruments, Equipment and Supplies

(1) After the discharge of any patient, the bed, bed furnishings, bedside furniture, bed pans, urinals, wash basins, denture cups, drinking glasses, or any similar utensil or piece of equipment used by a patient shall be thoroughly cleaned and disinfected prior to re-use, or disposed of properly. Mattresses shall be professionally renovated when necessary.

(2) Single patient use equipment must be labeled with patient name and room number when the equipment is used in a multi-bed room.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0174; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0020; HD 21-1993, f. & cert. ef. 10-28-93, Renumbered from 333-515-0000; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-515-0020

Sanitary Precautions

(1) Provision shall be made for the proper cleaning of linen and other washable goods and proper disposal of all refuse.

(2) All garbage and refuse shall be stored and disposed of in a manner that will not create a nuisance or a public health hazard. Infectious waste shall be stored and disposed of in accordance with OAR chapter 333, division 56.

(3) Measures shall be taken to prevent the entry of rodents, flies, mosquitoes, and other insects. Adequate measures shall include but are not limited to preventing their entry through doors, windows, or other outside openings.

(4) The walls and floors shall be of a durable and cleanable composition necessary to maintain a sanitary environment appropriate to the use of the area. The building shall be kept clean and in good repair.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0182; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0040; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-515-0030

Safety and Emergency Precautions

(1) A hospital shall:

(a) Have a physical plant and overall hospital environment that is developed and maintained in such a manner that the safety and well-being of patients are provided for.

(b) Have telephone or another communication method to summon help in case of fire or other emergency.

(c) Comply with ORS chapter 479, its implementing rules, and all other requirements of the State Fire Marshal.

(d) Have emergency power facilities that are tested monthly and are in readiness at all times for use in the delivery, operating and emergency rooms, nurseries and other areas as required in NFPA 99 and the National Electrical Code.

(2) A hospital shall develop, maintain, update, train, and exercise an emergency plan for the protection of all individuals in the event of an emergency, in accordance with OAR 837-040. A hospital shall have developed an emergency plan and shall have submitted a summary of the plan to the Department by February 1, 2010. A hospital that applies for licensure after October 1, 2009, is required to submit an emergency plan with its application.

(a) A hospital shall conduct at least two drills every year to demonstrate that employees have practiced their specific duties and assignments, as outlined in the emergency preparedness plan. A hospital shall document the drills.

(b) An emergency plan shall:

(A) Include the contact information for the hospital's local emergency management.

(B) Address all applicable hazards that may include, but are not limited to, the following:

(i) Chemical emergencies;

(ii) Dam failure;

(iii) Earthquakes;

(iv) Fire;

(v) Flood;

(vi) Hazardous material;

(vii) Heat;

(viii) Hurricane;

(ix) Landslide;

(x) Nuclear power plant emergency;

(xi) Pandemic;

(xii) Terrorism; or

(xiii) Thunderstorms.

(C) Address the provision of sufficient supplies for patients and staff to shelter in place for a minimum of four days under the following conditions:

(i) Extended power outage;

(ii) No running water;

(iii) Replacement of food or supplies is unavailable; and

(iv) Staff members do not report to work as scheduled.

(D) Address evacuation, including:

(i) Identification of individual positions' duties while vacating the building, transporting, and housing residents;

(ii) Method and source of transportation;

(iii) Planned relocation sites;

(iv) Method by which each patient will be identified by name and facility of origin by people unknown to them;

(v) Method for tracking and reporting the physical location of specific patients until a different entity resumes responsibility for the resident; and

(vi) Notification to the Division about the status of the evacuation.

(E) Address the clinical and medical needs of the patients, including provisions to provide:

(i) Storage of and continued access to medical records necessary to obtain care and treatment of patients, and the use of paper forms to be used for the transfer of care or to maintain care on-site when electronic systems are not available;

(ii) Continued access to pharmaceuticals, medical supplies and equipment, even during and after an evacuation; and

(iii) Alternative staffing plans to meet the needs of the patients when scheduled staff members are unavailable. Alternative staffing plans may include, but are not limited to, on-call staff, the use of travelers, the use of management staff, or the use of other emergency personnel.

(c) A hospital shall ensure that its emergency plan is available to Division staff during licensing and certification surveys.

(d) A hospital shall re-evaluate and revise its emergency plan as necessary or when there is a significant change in the facility or population of the hospital.

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

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0186; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0045; HD 21-1993, f. & cert. ef. 10-28-93; PH 13-2008, f. & cert. ef. 8-15-08; PH 11-2009, f. & cert. ef. 10-1-09

ADMINISTRATIVE RULES

333-515-0040

Smoking Prohibition

(1) The administrator or person in charge of the hospital may not permit a person to smoke tobacco:

- (a) In the hospital; or
- (b) Within 10 feet of a doorway, open window or ventilation intake of the hospital.

(2) A hospital shall comply with ORS 433.835 through 433.875 and its implementing rules, OAR 333-015.

Stat. Auth.: ORS 441.815
Stats. Implemented: ORS 441.815
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(5); PH 11-2009, f. & cert. ef. 10-1-09

333-520-0000

Applicability

Whether a hospital is required to provide a service listed in this division depends on a hospital's classification, as those classifications are described in OAR 333-500-0032. If a hospital chooses to provide a service that is not required it shall comply with the applicable rule in this division.

Stat. Auth.: ORS 441.055 & 442.015
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(1) & (2); HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0020

Dietary Services

(1) All hospitals, regardless of classification, shall comply with this rule.

(2) A hospital shall:

(a) Have an organized dietary department, directed by qualified personnel, that conforms to the requirements in OAR 333-150-0000, the Food Sanitation Rules.

(b) Employ supportive personnel competent to carry out the functions of the dietary service, including a full-time director with overall supervisory responsibility for the dietary service and who is:

(A) A qualified dietician who is registered by the Commission on Dietetic Registration of the American Dietetic Association;

(B) A person who has received a baccalaureate or higher degree with major studies in food, nutrition, diet therapy or food service management and has at least one year of supervisory experience in a health care dietetic service, and participates in continuing education related to the dietetic profession;

(C) A graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association;

(D) A graduate of a state approved course that provides 90 or more hours of classroom instruction in food service supervision and has one year's experience as a supervisor in a health care institution; or

(E) Has training and experience in food service supervision and management in a military service equivalent in content to one of the above criteria for qualifying.

(c) Contract with a dietician with the qualifications listed in paragraph (2)(b)(B) of this rule, if the Director is not a qualified dietician under paragraph (2)(b)(A) of this rule, and:

(A) Consult at least quarterly with the contractor;

(B) Have on file a contract signed by the consultant and the hospital administrator stating the relationship of the consultant to the hospital, services to be provided, length of contract, terms and hours; and

(C) Require the contractor to submit quarterly reports to the hospital administrator and the committee, council or other reviewing body designated by the hospital as having responsibility for dietary services that include:

- (i) The date(s) of visit(s) and length of time spent on premises;
- (ii) Staff members seen;
- (iii) Services performed;
- (iv) Action taken on previous reports;
- (v) Problems identified; and
- (vi) Recommended action and distribution of the report.

(d) Require the on-site visits of the Consulting Dietitian to be of sufficient duration and frequency to review dietetic systems and assure quality food to the patient.

(e) Provide dietetic services to patients in accordance with a written order by the responsible physician, or other health care practitioner authorized within the scope of his or her professional license, and record appropriate dietetic information in the patient's medical record including the following:

(A) Timely and periodic assessments of the patient's nutrient intake and tolerance to the prescribed diet modification, including the effect of the patient's appetite and food habits on food intake;

(B) A description of the diet instructions given to the patient or family and assessment of their diet knowledge;

(C) A description or copy of the diet information forwarded to another institution upon patient discharge; and

(D) Nutritional care follow-up with the patient's health care practitioner or a health care agency.

(f) Regularly review and evaluate the quality and appropriateness of nutritional care provided by the dietetic service including the nutritional adequacy of all menus.

(g) Ensure that the Dietetic Service is represented on hospital committees concerned with nutritional care.

(h) Serve food that has an appetizing appearance, is palatable, is served at proper temperature and is cooked and served in such a way as to retain the nutrient value of food.

(i) Restrict admittance to the kitchen area to those who must enter to perform assigned duties.

(j) Develop written procedures for cleaning equipment and work areas and enforce those procedures.

Stat. Auth.: ORS 441.055 & 442.015
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(7); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0030

Laboratory Services

(1) All hospitals, regardless of classification, are required to comply with this rule.

(2) A hospital shall:

(a) Have on-site or use a licensed clinical laboratory that meets the requirements of ORS 438.010 through 438.510 and OAR 333-024; or has been issued a valid certificate from the federal government under the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88), and that provides timely laboratory services to support a hospital's medical, surgical and other services.

(b) Have on staff or under contract a clinical pathologist to oversee clinical laboratory testing including pathology services.

(c) Have appropriately trained laboratory staff on-site or on-call 24 hours a day, 7 days a week (24/7).

(3) If a hospital performs clinical laboratory testing at point of care, the requirements of subsection (2)(a) of this rule shall be met and the hospital shall:

(a) Have a written policy for point of care testing that is reviewed by a committee, council or other reviewing body designated by the hospital as having responsibility for laboratory services;

(b) Designate a person responsible for the direction and supervision of this testing;

(c) Assure that in addition to manufacturers instructions there are procedures to cover specimen collection and preservation;

(d) Maintain documentation of staff specific orientation, training, and ongoing competency for two years; and

(e) Maintain documentation of instrument calibration, quality control records and preventative maintenance for two years.

(4) Blood banking transfusion records shall be maintained and kept for 20 years.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(8); HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0035

Pharmacy Services

(1) A general hospital is required to have an on site pharmacy and a pharmacist on call 24/7 to staff the pharmacy.

(2) Low occupancy acute care hospitals, mental or psychiatric hospitals, and orthopedic hospitals may have an on-site pharmacy or a drug room.

(3) Low occupancy acute care hospitals, mental or psychiatric hospitals, and orthopedic hospitals shall have appropriately trained pharmacy staff on-site or on-call 24/7.

(4) A pharmacy in a hospital shall comply with the applicable requirements in ORS Chapter 689 and OAR 855, including 855-041-0120 through 855-041-0132.

ADMINISTRATIVE RULES

(5) A drug room in a hospital shall comply with the applicable requirements in ORS Chapter 689 and OAR 855-041-0135 through 855-041-0140.

(6) All hospitals, regardless of classification shall dispose of old medications, including special prescriptions for patients who have left the hospital, by incineration or another equally effective method, except narcotics and other drugs under the drug abuse law, which shall be handled in the manner prescribed by the Drug Enforcement Administration of the U.S. Department of Justice.

Stat. Auth.: ORS 441.055
Stats Implemented: ORS 441.055 & 442.015
Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-520-0040

Radiology Services

(1) All hospitals, regardless of classification shall have on-site or contract radiology services that:

(a) Comply with ORS Chapter 453 and its applicable implementing rules;

(b) Support the hospital's medical, surgical and other services; and
(c) Are available on a timely basis.

(2) All hospitals, regardless of classification, shall:

(a) Employ or contract with a radiologist to certify the quality and adequacy of all radiology; and

(b) Have on-site or in-house radiology staff available 24/7.

Stat. Auth.: ORS 441.055 & 442.015
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(9); HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0050

Surgery Services

(1) General and orthopedic hospitals are required to comply with this rule. A low occupancy acute care or mental or psychiatric hospital shall comply with this section if it offers surgery services.

(2) A hospital that provides surgical services shall have operating rooms that conform to the applicable requirements in OAR 333-535.

(3) A hospital's operating rooms must be supervised by an experienced registered nurse or doctor of medicine or osteopathy.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441.055 & 442.015
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(10) & (11); HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0060

Maternity Services

(1) General and low occupancy acute care hospitals are required to comply with this rule.

(2) A hospital that provides maternity services shall have separate maternity facilities and a maternity care department that:

(a) Has labor, delivery, recovery, postpartum, and nursery rooms that conform to the applicable requirements of OAR 333-535;

(b) Requires every person in the delivery room during a delivery to be appropriately attired according to the hospital's Infection Control Policy;

(c) Has appropriate resuscitation equipment immediately available to rooms where deliveries are planned and where newborn infants are kept;

(d) Has a warmed blanket or incubator for newborns to prevent thermal loss;

(e) Has incubators for premature infants equipped with a governor to control the flow of oxygen at 40 percent or under, and an oxygen analyzer;

(f) Has an accurate scale for weighing of infants; and

(g) Includes a nursery and a separate bassinet for each infant with a clean mattress covered with suitable sheeting, washable pads, and bed linen that is kept clean at all times.

(3) A health care practitioner attending the birth of a newborn shall evaluate and treat a newborn at risk for chlamydial or gonococcal ophthalmia neonatorum in accordance with OAR 333-019-0036.

(4) A parent or legal representative that refuses to allow prophylaxis for an infant shall be informed by the attending health care practitioner of the risks of the refusal and must sign a witnessed affidavit that attests they have been so informed and nonetheless refuse to allow prophylaxis.

(5) A hospital shall ensure that all newborns are given Vitamin K at birth as required by ORS 433.303 through 433.314.

(a) A physician or midwife attending the mother at the birth of the child shall be responsible for ensuring that the newborn infant receives Vitamin K within 24 hours of birth to protect the infant against hemorrhagic disease of the newborn.

(b) The Vitamin K forms suitable for use are:

(A) Vitamin K 1 (Phytonadione) for oral or injectable use;

(B) Mephyton for oral use; or

(C) Aquamephyton or konakion for injectable use.

(c) A parent may, after being provided a full and clear explanation, decline to permit the administration of Vitamin K based on religious tenets and practices. If a parent or legal representative declines Vitamin K, the parent shall sign a form acknowledging his or her understanding of the reason for administration of Vitamin K and possible adverse consequences in the presence of a person who witnessed the instruction of the parent, who shall also sign the form. The form shall become a part of the medical record of the newborn infant.

(6) A hospital shall ensure that every newborn infant born in the hospital is tested for Metabolic Diseases as required by OAR 333-024-0210 through 333-024-0235 and instructions to the parents or legal representative regarding the testing that be documented in the medical record.

(7) A hospital shall ensure that every newborn infant born in the hospital receives a Newborn Hearing Screening Test as required by ORS 433.321 and OAR 333-020.

(8) Every infant born in a hospital shall be marked for identification before the infant is removed from the place of delivery and such identification shall not be removed from the infant until the infant is discharged.

(9) A hospital shall not admit visitors to a delivery room, maternity rooms, wards, units, or the nursery except in accordance with the hospital's visiting policy.

(10) A hospital shall ensure that persons entering the nursery are attired according to the hospital infection control policy and that hands are washed before touching an infant.

(11) A hospital shall follow its infection control policy when handling and storing linens.

(12) Formula feedings and any other feedings shall be given only as prescribed in writing by the physician or certified nurse midwife.

(13) A hospital shall maintain and preserve a log of births giving date of birth, name of newborn, and mother's name and chart number, in addition to complying with the requirements of the Department's Center for Health Statistics.

(14) A hospital may use a part of the maternity department for selected, non-communicable non-obstetrical patients as defined by hospital policy and approved by the hospital's infection control program under the following conditions:

(a) Patients admitted or transferred to the maternity department shall be instructed by appropriate maternity service personnel as to their responsibilities regarding use of the facility.

(b) Patients admitted to the maternity department shall be limited to obstetrical patients admitted for delivery, patients with obstetric complications, and selected non-communicable, non-obstetrical patients.

(c) Obstetrical patients and medical/surgical patients shall not occupy the same room.

(d) If necessary, one or more medical/surgical patients shall be transferred to another service in order to admit obstetrical patients.

(15) A hospital shall adhere strictly to the guidelines for standard precautions developed by the Hospital Infection Control Practices Advisory Committee (HICPAC) when caring for obstetrical patients with infectious conditions. Patients with infectious conditions requiring strict isolation according to the above guidelines shall be transferred out of the maternity department following delivery, and given care in an area of the hospital where that isolation can be provided. If a maternity patient is found to have an infectious condition during surgery or delivery, the patient shall be returned to the maternity department and isolated according to hospital infection control policy.

(16) A delivery room suite may be used for surgical procedures on non-obstetrical patients if approved by the Chief of Obstetrics in accordance with medical staff rules and regulations.

(17) A hospital with maternity services may place stable postpartum patients and stable newborns, as those terms are defined in OAR 333-500-0010, on another acute care unit on a periodic basis under the following conditions:

(a) When a postpartum patient or newborn to be transferred out of the OB unit meet the hospital's criteria for care on another unit as described in this rule;

(b) Where the decision to place a postpartum patient or newborn on another unit is based on currently accepted postpartum and newborn care standards and the ability of that unit to meet the needs of the patient; and

(c) When nursing staff on the non-OB unit have received training required by this rule and have demonstrated continuing competence.

(18) A hospital that provides care to postpartum patients and newborns on non-OB units shall:

(a) Develop and implement policies and procedures that include but are not limited to:

(A) The transfer of postpartum patients and newborns to non-OB units including a delineation of the authority for medical, clinical and

ADMINISTRATIVE RULES

administrative nursing staff, and, when applicable, nurse practitioner staff to make the decision;

(B) Staffing guidelines for the nursing care of postpartum patients and newborns on the non-OB unit;

(C) Provision of information to maternity patients of possible or intended placement on a non-OB unit;

(D) Provision of consumer information related to the availability and location of specialty maternity services;

(E) Infection control practices including the use of standard precautions;

(F) Procedures for patient placement, privacy, and safety that prohibit postpartum patients and newborns from occupying the same room as non-obstetrical patients;

(G) Protocols for the placement of newborns without mothers;

(H) Procedures to assure the inclusion of the care of postpartum patients and newborns on non-OB units in the hospital's quality assurance program; and

(I) Delineation of hospital protocols for the return of postpartum patients and newborns to the OB unit, including addressing situations when safe care can no longer be provided on the non-OB unit.

(b) Develop and implement staff training, continuing education, and continuing competency program that includes but is not limited to:

(A) Postpartum nursing care;

(B) Nursing care of the newborn;

(C) Newborn resuscitation;

(D) Newborn feeding;

(E) Maternal and family education;

(F) Infection control practices including the use of standard precautions; and

(G) Maternity services policies and procedures including those required in subsection (18)(a) of this rule.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(12), (13), & (14); HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; HD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0070

Emergency Department and Emergency Services

(1) Hospitals classified as general and low occupancy acute care shall have an emergency department that provides emergency services.

(2) A hospital with an emergency department shall:

(a) Provide emergency services 24 hours a day including providing immediate life saving intervention, resuscitation, and stabilization;

(b) Have a licensed health care practitioner with admitting privileges on-call, 24 hours a day;

(c) Have at least one registered nurse, appropriately trained to provide emergency care within the emergency service area;

(d) Have adequate medical staff and other ancillary personnel necessary to provide emergency care either present in the emergency service area or available 24 hours a day in adequate numbers to respond promptly;

(e) Ensure that when surgical, laboratory, and X-ray procedures are indicated and ordered, due regard is given to promptness in carrying them out;

(f) Ensure that it has items for resuscitation, stabilization, and basic emergency medical care, including airway equipment and cardiac resuscitation medications and supplies for adults, children and infants;

(g) Have a communication system and personnel available 24 hours a day to insure rapid communication with ambulances and departments of the hospital including, but not limited to, X-ray, laboratory, and surgery;

(h) Have a plan for emergency care based on community needs and on hospital capabilities which sets forth policies, procedures and protocols for prompt assessment, treatment and transfer of ill or injured persons, including specifying the response time permissible for medical staff and other ancillary personnel;

(i) Provide for the prompt transfer of patients, as necessary, to an appropriate facility in accordance with transfer agreements, approved trauma system plans, consideration of patient choice, and consent of the receiving facility;

(j) Have written transfer agreements for the care of injured or ill persons if the hospital does not provide the type of care needed;

(k) Ensure that personnel are able to provide prompt and appropriate instruction to ambulance personnel regarding triage, treatment and transportation;

(l) Develop, maintain, and implement current written policies and procedure that include clearly-defined roles, responsibilities, and reporting lines for emergency service personnel;

(m) Maintain emergency records in accordance with OAR 333-505-0050;

(n) Establish a committee of the emergency department staff who shall at least quarterly, review emergency services by evaluating the quality of emergency medical care given, and engage in ongoing development, implementation, and follow-up on corrective action plans; and

(o) Ensure it provides appropriate training programs for hospital emergency service personnel.

(3) If a hospital is also designated or categorized as a trauma hospital under ORS 431.607-431.671, the hospital shall:

(a) Comply with the applicable provisions in OAR 333-200 through 205;

(b) Report trauma data to the State Trauma Registry in accordance with the requirements of the Division; and

(c) Fully cooperate with the approved area trauma system plan.

(4) An officer or employee of a general or low occupancy acute care hospital licensed by the Division may not deny a person an appropriate medical screening examination needed to determine whether the person is in need of emergency medical services if the screening is within the capability of the hospital, including ancillary services routinely available to the emergency department.

(5) An officer or employee of any hospital licensed by the Division may not deny services to a person diagnosed by a physician as being in need of emergency medical services because the person is unable to establish the ability to pay for the services if those emergency medical services are customarily provided at the hospital.

(6) A mental or psychiatric, or orthopedic hospital shall assess and provide initial treatment to a person that presents to the hospital with an emergency medical condition, as that term is defined in 42 CFR § 489.24. The hospital shall admit the person if the emergency medical condition falls within the specialty services provided by the hospital under OAR 333-525.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0005(15) & (16); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0075

Respite Care

(1) A general hospital or low occupancy acute care hospital may provide respite services.

(2) Application for permission to accept respite care guests shall be made to the Division on a form provided by the Division.

(3) The Division may grant permission for a hospital to accept respite care guests if:

(a) Admittance of a respite care patient will not interfere with the care to be provided to other patients.

(b) The hospital has written policies that address respite care services that are evaluated annually, and are implemented and followed by hospital staff. These policies shall address:

(A) Type(s) of guests who may be admitted;

(B) Scope of services provided;

(C) Length of stay (which shall not exceed 30 consecutive days);

(D) Emergency care provisions;

(E) Written criteria delineating situations which necessitate physician contact;

(F) Written criteria delineating situations which necessitate family or personal representative contact; and

(G) Written criteria for administration and storage of medications.

(4) Sufficient physical space shall be provided for respite care guests for dining and activities. Space shall allow for mobility and exercise. Respite care areas shall provide for bathing and toileting facilities. Each respite care guest shall have an assigned licensed bed and storage area for personal belongings. Regular acute care licensed beds may be utilized for respite care guests; however, respite care guests shall not share a room with acute care patients. Activities which are suitable to the needs of respite care guests shall be provided.

(5) Respite care guest records:

(a) There shall be available for each respite care guest an admission summary form containing the guest's name, address, telephone number, and other demographic data including the name, address, and telephone number of attending qualified member of the medical staff and nearest relative or personal representative.

(b) The guest record shall include admission evaluation, medication administration record, flow sheets, assessments, and progress notes as required by paragraph (7)(d)(C) of this rule.

(6) Medical supervision:

(a) The name and telephone number of the guest's physician or other qualified member of the medical staff shall be readily available to respite care staff members.

ADMINISTRATIVE RULES

(b) A qualified health care practitioner order shall not be required for admission to respite care.

(c) An order from a qualified health care practitioner authorized by law shall be required for any new medications or treatments.

(7) Registered nurse (RN) supervision:

(a) Respite care services shall be supervised by an RN.

(b) The RN shall review the guest's medications and usual diet and verify information within four hours of admission. Documented intake information shall include, but not be limited to, current medications, dietary needs, level of ability for assisted or self-care, and any other information germane to the guest's condition. The RN shall document an evaluation of the guest's need on admission.

(c) If the respite care guest stays seven days or more, a nursing assessment shall be performed and documented by the RN on the eighth day and weekly thereafter. If the respite care guest is initially planning to stay for seven or more days, a nursing assessment shall be performed and documented by an RN on admission and weekly thereafter.

(d) In addition to the documentation required in subsections (7)(b) and (c) of this rule, the hospital shall maintain:

(A) Activities of daily living (ADL) sheet by shift;

(B) Medication administration record; and

(C) Weekly progress notes by caregivers.

(8) Medication administration:

(a) Respite care guests taking medication prescribed by their physicians or other qualified health care practitioners may bring such medications in the original containers to the facility. All prescription medications brought in by guests shall be verified by a pharmacist prior to administration.

(b) All medications shall be clearly labeled with the name of the medication, strength/dose, directions for administration, expiration date, and guest's name.

(c) No outdated medication shall be administered.

(d) Any change or alteration in medication shall require an order from a health care practitioner authorized by law.

(e) Medications may be independently self-administered, self-administered under supervision of an RN/LPN, or administered by an RN, LPN, or certified medication aide, depending on the guest's ability. The type of administration shall be determined by the RN. This determination shall be in writing. Medications administered and the type of administration shall be documented on medication administration records.

(9) Quality assurance:

(a) Respite care services shall be included in the hospital-wide quality assurance program.

(b) A mechanism for quality assurance activities shall be defined and implemented.

(c) There shall be documentation of ongoing quality assurance activities.

(d) Quality assurance activities shall be reported to the hospital committee, council, or other reviewing body designated by the hospital as having responsibility for quality assurance.

(10) Nothing in this rule shall be interpreted for creating any obligations for third party payors to reimburse hospital respite care.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 11-2009, f. & cert. ef. 10-1-09

333-520-0120

Psychiatric Services

A hospital classified as mental or psychiatric or a general or low occupancy acute care hospital that provides inpatient psychiatric services and has an inpatient psychiatric unit shall comply with OAR 333-525-0000(2) through (10).

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: PH 11-2009, f. & cert. ef. 10-1-09

333-525-0000

Mental or Psychiatric Hospital

A hospital classified as mental or psychiatric shall:

(1) Be devoted primarily to the diagnosis and treatment of mentally ill persons.

(2) Have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning, including:

(a) A clinical director, service chief, or equivalent who:

(A) Is qualified to provide the leadership required for an intensive treatment program;

(B) Meets the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry;

(C) Monitors and evaluates the quality and appropriateness of services and treatment provided by the medical staff; and

(D) Supervises inpatient psychiatric services.

(b) Doctors of medicine or osteopathy and other appropriate professional personnel available to provide necessary medical and surgical diagnostic and treatment services. If medical and surgical diagnostic and treatment services are not available within the hospital, the hospital must have an agreement with an outside source of these services to ensure that they are immediately available or a satisfactory agreement must be established for transferring patients to a licensed hospital.

(c) A director of psychiatric nursing services who:

(A) Is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing Accrediting Commission, or the Commission on Collegiate Nursing Education, or is qualified by education and experience in the care of the mentally ill; and

(B) Demonstrates competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(d) Registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each patient's active treatment program and to maintain progress notes on each patient.

(e) The availability of a registered professional nurse 24 hours each day.

(f) The provision or availability of psychological services to meet the needs of the patients.

(g) A director of social services who:

(A) Has a master's degree from an accredited school of social work or is qualified by education and experience in the social services needs of the mentally ill; and

(B) Monitors and evaluates the quality and appropriateness of social services furnished.

(h) At least one staff member with a master's degree in social work if the director of social services does not have such a degree.

(i) Social service staff with responsibilities that include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital.

(j) Qualified therapists, support personnel, and consultants adequate to provide comprehensive therapeutic activities consistent with each patient's active treatment program.

(3) Have a therapeutic activities program that is appropriate to the needs and interests of patients and directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(4) Maintain medical records in a manner that permits determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution. Medical records shall stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the patient is hospitalized. A patient's medical record shall include:

(a) The patient's legal status;

(b) The provisional or admitting diagnosis, including the diagnoses of intercurrent diseases as well as the psychiatric diagnoses;

(c) The reasons for admission as stated by the patient or others significantly involved;

(d) The social service records, including reports of interviews with patients, family members, and others, including an assessment of home plans and family attitudes, and community resource contacts as well as a social history;

(e) When indicated, a complete neurological examination recorded at the time of the admission physical examination;

(f) Documentation of all active therapeutic efforts; and

(g) A discharge summary that includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or aftercare, as well as a brief summary of the patient's condition on discharge.

(5) Have a psychiatrist perform a psychiatric evaluation of each patient that:

(a) Is completed within 60 hours of admission;

(b) Includes a medical history;

(c) Contains a record of mental status;

(d) Notes the onset of illness and the circumstances leading to admission;

(e) Describes attitudes and behavior;

(f) Estimates intellectual functioning, memory functioning, and orientation; and

(g) Includes an inventory of the patient's assets in descriptive, not interpretative, fashion.

ADMINISTRATIVE RULES

(6) Develop a written individual comprehensive treatment plan that is based on an inventory of the patient's strengths and disabilities that includes:

- (a) A substantiated diagnosis;
- (b) Short-term and long-range goals;
- (c) The specific treatment modalities utilized;
- (d) The responsibilities of each member of the treatment team; and
- (e) Adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out.

(7) Ensure that progress notes are recorded by:

(a) The doctor of medicine or osteopathy responsible for the care of the patient; and

(b) Nurses, social workers and, when appropriate, others significantly involved in active treatment modalities.

(8) The frequency of progress notes is determined by the condition of the patient but must be recorded at least weekly for the first two months and at least once a month thereafter and must contain recommendations for revisions in the treatment plan as indicated as well as precise assessment of the patient's progress in accordance with the original or revised treatment plan.

(9) Provide discharge planning.

(10) Comply with the applicable rules of the Department, Addictions and Mental Health Division, including OAR 309-031 and 033.

Stat. Auth.: ORS 441.055 & 442.015

Stats. Implemented: ORS 441.055

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 17(Temp), f. & ef. 6-19-72; HD 18, f. 7-31-72, ef. 8-15-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0138; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-073-0000; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

333-525-0010

Orthopedic Hospital

A hospital classified as orthopedic shall:

(1) Be devoted exclusively to the care of orthopedic patients.

(2) Have on the staff professional personnel especially qualified in the diagnosis and treatment of orthopedic conditions.

(3) Provide the mandatory services described in OAR 333-520.

Stat. Auth.: ORS 441.055 & 442.015

Stats. Implemented: ORS 441.055

Hist.: HB 183, f. & ef. 5-26-66; Renumbered from 333-023-0140; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-073-0100; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09

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

Rule Caption: Family Support Services Annual Plan.

Adm. Order No.: SPD 12-2009

Filed with Sec. of State: 9-28-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 411-305-0080

Rules Repealed: 411-305-0080(T)

Subject: To comply with the Community Development Disability Program service planning requirements in OAR 411-320-0120, the Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-305-0080 to reflect that a written Annual Plan for family support services must be developed within the first 60 days of entry into case management and family support service instead of within the first 90 days.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-305-0080

Family Support Services Annual Plan

(1) The CDDP must provide or arrange for an annual planning process to assist families in determining needs, planning for supports, establishing outcomes, and reviewing and redesigning support strategies for all children eligible for family support services. The CDDP, the child (as appropriate for age), and the child's family must develop a written Annual Plan as a result of the annual planning process within the first 60 days of entry into case management and family support services and annually thereafter as long as the child is enrolled in case management and family support services. The child's Annual Plan must be conducted on forms provided by SPD and must include but not be limited to:

(a) The eligible child's first and last name and the name of the child's parent if different than the child's name or the name of the child's guardian;

(b) A description of the child's support needs, including the reason the support is necessary, and any referrals to information or community

resources that meet the child's support needs as described in OAR 411-305-0025(1);

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) Projected direct assistance fund costs, if any, limited to the current fiscal year, with sufficient detail to support estimates;

(e) The types of supports to be purchased with direct assistance funds, including the type of provider;

(f) The proposed schedule of the child's Annual Plan reviews; and

(g) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate for age).

(2) The child's Annual Plan and records supporting development of each child's Annual Plan must include evidence that:

(a) Family members, the child (as appropriate for age), and others of the family's choosing have participated in the planning process;

(b) Direct assistance funds are used only to purchase goods or services necessary for a child to be supported in the family home;

(c) The services coordinator has assessed the availability of other means for providing the supports before using direct assistance funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(d) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(e) Informed decisions by the child's parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(f) Education and support for the child and the child's family to recognize and report abuse.

(3) The CDDP may not use direct assistance funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's services coordinator until the child's services coordinator determines that the new plan meets the applicable requirements of sections (1) and (2) of this rule. In such cases, the services coordinator's signature on the plan shall indicate acceptance of the plan as the child's Annual Plan.

(4) The CDDP may not commit direct assistance funds through the child's Annual Plan beyond the current fiscal year.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's Annual Plan when direct assistance funds are used to purchase services requiring the education and training of a nurse.

(6) The services coordinator must conduct and document reviews of the child's Annual Plan and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the child's Annual Plan and subsequent Annual Plan documents;

(b) At least annually, and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the child's Annual Plan;

(B) Record final direct assistance funds costs;

(C) Note effectiveness of purchases based on services coordinator observation as well as family satisfaction; and

(D) Determine whether changing needs or availability of other resources have altered the family's Annual Plan content needs or for use of direct assistance funds to purchase supports.

(7) The originating CDDP must assist family support recipients when the family and eligible child move to a county outside its area of service by:

(a) Coordinating the application for case management services in the new CDDP; and

(b) Arranging orientation for the child and family to family support services provided by the CDDP of the new county of residence, including transferring the child's file and the child's Annual Plan information, informing the family of how to apply for services in the new CDDP, and coordinating official transition date.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2070, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 10-2009(Temp), f. & cert. ef. 7-28-09 thru 1-23-10; SPD 12-2009, f. 9-28-09 cert. ef. 10-1-09

Rule Caption: Residential Care and Assisted Living Facilities.

Adm. Order No.: SPD 13-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

ADMINISTRATIVE RULES

Rules Amended: 411-054-0005, 411-054-0010, 411-054-0025, 411-054-0034, 411-054-0090, 411-054-0093, 411-054-0130, 411-054-0200, 411-054-0300

Rules Repealed: 411-054-0125

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently modifying various residential care and assisted living facility rules in OAR chapter 411, division 054 to:

- Add definitions;
- Clarify the process for voluntary and emergency closures;
- Comply with the Oregon Indoor Clean Air Act, ORS 433.835 through 433.875;
- Require a resident to provide, prior to move-in, any financial and other legal relationships including advance directives;
- Implement House Bill 2371 (2007) by strengthening emergency and disaster planning;
- Remove the language relating to inactive and provisional licenses;
- Clarify when SPD may deny, suspend, revoke, or refuse to renew a license;
- Add language that was inadvertently left out that requires an assisted living facility to be kept clean and in good repair; and
- Provide general housekeeping to reflect current practice, improve readability, and establish consistency with other SPD rules.

Rules Coordinator: Christina Hartman — (503) 945-6398

411-054-0005

Definitions

For the purpose of these rules, the following definitions apply:

(1) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department of Human Services to perform specific activities in relation to residential care and assisted living facilities including:

- (a) Conducting inspections and investigations regarding protective service, abuse, and neglect;
- (b) Monitoring; and
- (c) Making recommendations to the Seniors and People with Disabilities Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would be able to prevent, such as those resulting from hitting, pinching, striking, rough handling, or corporal punishment. These instances of abuse are presumed to cause physical injury, including pain, to all residents, including those in a coma or those who are otherwise incapable of expressing injury or pain.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity. Abuse under this definition includes abandonment.

(c) Sexual contact with a resident, including fondling, by an employee or agent of a facility by:

(A) Physical force;

(B) Physical or verbal threat of harm or deprivation to the resident or others;

(C) Use of position, authority, or misinformation to compel a resident to do what the resident would not otherwise do; or

(D) Where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.

(d) Theft or diversion of a resident's property, including:

(A) Money, personal property, and medications;

(B) Illegal or improper use of a resident's resources for the personal benefit, profit, or gain of another person;

(C) Borrowing resident funds;

(D) Spending resident funds without the resident's consent;

(E) If the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or

(F) Spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal or mental abuse.

(A) Verbal or mental abuse includes, in extreme forms:

(i) The use of oral, written, or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within their hearing distance, regardless of their age, ability to comprehend, or disability;

(ii) Humiliation;

(iii) Intimidation;

(iv) Harassment;

(v) Threats of punishment or deprivation directed toward the resident; and

(vi) Unwanted or inappropriate crude or sexual language, questions, comments, or other communication.

(B) Examples of verbal and mental abuse include but are not limited to:

(i) Threats of harm;

(ii) Saying things to frighten a resident, such as telling a resident that the resident may never be able to see the resident's family again; and

(iii) Making unwanted sexual comments.

(C) Verbal and mental abuse is distinguished from resident rights violations by the extreme or offensive nature of the communication.

(f) Involuntary seclusion for convenience or discipline.

(A) Involuntary seclusion is defined as the separation of a resident from other residents or from their room or confinement to their room (with or without roommates) against the resident's will or the will of the resident's legal representative.

(B) Emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention until professional staff develop a plan of care to meet the resident's needs, or as part of an inter-disciplinary care plan after other interventions have been attempted.

(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(4) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.

(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(6) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that individual's designee.

(7) "Assisted Living Facility" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult persons with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(8) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.

(9) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.

(10) "Change of Condition — Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(11) "Change of Condition — Significant" means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to:

(a) Broken bones;

(b) Stroke, heart attack, or other acute illness or condition onset;

(c) Unmanaged high blood sugar levels;

(d) Uncontrolled pain;

(e) Fast decline in activities of daily living;

ADMINISTRATIVE RULES

- (f) Significant unplanned weight loss;
 - (g) Pattern of refusing to eat;
 - (h) Level of consciousness change; and
 - (i) Pressure ulcers (stage 2 or greater).
- (12) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.
- (13) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.
- (14) "DHS" means the Department of Human Services.
- (15) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy, supports dignity as does delivering services in a manner that shows courtesy and respect.
- (16) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:
- (a) Medication administration;
 - (b) Resident-focused activities;
 - (c) Assistance with activities of daily living;
 - (d) Supervision and support of residents; and
 - (e) Serving meals, but not meal preparation.
- (17) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.
- (18) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade that renders the licensee unable to operate the facility or the facility is uninhabitable.
- (19) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.
- (20) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.
- (21) "Exception" means a written variance granted by the Seniors and People with Disabilities Division from a regulation or provision of these rules.
- (22) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.
- (23) "FPS" means the Facilities Planning and Safety Program within the Department of Human Services, Public Health Division.
- (24) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.
- (25) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.
- (26) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
- (27) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.
- (28) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
- (29) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
- (30) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.
- (31) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.
- (32) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.
- (33) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes).
- (a) Modified special diets include but are not limited to:
- (A) Small frequent meals;
 - (B) No added salt;
 - (C) Reduced or no added sugar; and
 - (D) Simple textural modifications.
- (b) Medically complex diets are not included.
- (34) "New Construction" means:
- (a) A new building;
 - (b) An existing building or part of a building that is not currently licensed;
 - (c) A major alteration to an existing building; or
 - (d) Additions, conversions, renovations, or remodeling of existing buildings.
- (35) "Nursing Care" means the practice of nursing as governed by ORS Chapter 678 and OAR chapter 851, division 047.
- (36) "Owner" means a person with an ownership interest.
- (37) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
- (38) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.
- (39) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.
- (40) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.
- (41) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.
- (42) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.
- (43) "Residential Care Facility" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a home-like surrounding where six or more seniors and adult persons with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.
- (44) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.
- (45) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.)
- (46) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.
- (47) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.
- (48) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036 that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.
- (49) "Services" means supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.
- (50) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
- (51) "These Rules" means the rules in OAR chapter 411, division 054.
- (52) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:
- (a) The general public;
 - (b) A specific population, including residents with dementia or traumatic brain injury; or
 - (c) Recipients of Medicaid.
- (53) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.
- (54) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09;
SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

411-054-0010

Licensing Standard

(1) No person, entity, or governmental unit acting individually or jointly with any other person, entity, or governmental unit may establish, maintain, conduct, or operate a residential care or assisted living facility, use the term residential care or assisted living facility, or hold itself out as being a residential care or assisted living facility or as providing residential care or assisted living services, without being duly licensed as such.

(2) Each license to operate a residential care or assisted living facility shall expire two years following the date of issuance unless revoked, suspended, terminated earlier, or issued for a shorter specified period.

(3) Each residential care and assisted living facility must be licensed, maintained, and operated as a separate and distinct facility.

(4) A license may not be required:

(a) For a building, complex, or distinct part thereof, where six or more individuals reside where activities of daily living assistance and health services are not offered or provided by the facility;

(b) Facility representatives and written materials do not purport that such care and services are offered or provided by the facility; and

(c) Prospective and actual tenants have no expectations that such care and services are offered or shall be provided by the facility.

(5) The SPD Assistant Director shall determine whether a residential care or assisted living facility license is required in cases where the definition of a facility's operations is in dispute.

(6) NOT TRANSFERABLE. No residential care or assisted living facility license is transferable or applicable to any location, facility, management agent, or ownership other than that indicated on the application and license.

(7) SEPARATE BUILDINGS. Separate licenses are not required for separate buildings of the same license type located contiguously and operated as an integrated unit by the same licensee. Distinct staffing plans are required for each building.

(8) IDENTIFICATION. Every facility must have distinct identification or name and must notify SPD of any intention to change such identification.

(9) DESCRIPTIVE TITLE. A residential care or assisted living facility licensed by SPD may neither assume a descriptive title nor be held under any descriptive title other than what is permitted within the scope of its license.

(10) VOLUNTARY CLOSURE. The licensee must notify SPD 60 days prior to a voluntary or permanent closure of a facility.

(a) A licensee may request a voluntary closure of a facility when residents must be relocated while a facility undergoes extensive remodeling.

(A) At least 60 days prior to notifying the residents of transfer, the licensee must submit a written proposal for voluntary closure to SPD for approval. The proposal for voluntary closure must specify the plan for transfer of any residents.

(B) The licensee must comply with the rules in OAR chapter 333, division 675 (Project Plans and Construction Review) and all other structural requirements when remodeling.

(C) If the license expires during voluntary closure, the licensee must submit an application for renewal in compliance with OAR 411-054-0013.

(D) Nothing in this rule is intended to preclude SPD from taking other regulatory action on a violation of the licensing requirements in these rules during the time of voluntary closure.

(b) The licensee must return the license to SPD upon permanent closure of the facility.

(11) EMERGENCY CLOSURE. In the event of an emergency or disaster that requires all residents to be immediately evacuated, SPD may renew the existing license for a period not to exceed two years from the renewal date. The licensee may not allow residents to move in until the facility is in compliance with the building requirements of these rules.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

411-054-0025

Facility Administration

(1) FACILITY OPERATION. The licensee is responsible for the operation of the facility and the quality of care rendered in the facility. Reasonable precautions must be exercised against any condition that could threaten the health, safety, or welfare of residents.

(a) The licensee is responsible for the supervision, training, and overall conduct of staff when acting within the scope of their employment duties.

(b) The licensee must obtain a criminal records check from any person 16 years of age or older, who operates, receives training, or works in a

facility. A criminal records check must be submitted to an authorized division representative for a criminal fitness determination in accordance with the criminal records check rules in OAR chapter 407, division 007.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(2) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license;

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility;

(c) The current facility-staffing plan; and

(d) Other notices relevant to residents or visitors required by state or federal law.

(3) NOTIFICATION. The facility must notify SPD program staff in Salem Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services in which the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food;

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable;

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility;

(e) Unusual resident death or suicide; or

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(4) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment.

(a) The facility must develop and implement a policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in their daily living.

(b) The facility must develop and implement a written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) The facility must develop and implement effective methods of responding to and resolving resident complaints.

(d) The facility must develop all additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).

(e) The facility must develop and implement a policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(5) RECORDS. The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility the licensee must provide SPD with written notification of the location of all records.

(6) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(7) DISCLOSURE — RESIDENCY AGREEMENT. The facility must provide a SPD designated Uniform Disclosure Statement (form SDS 9098A) to each person who requests information about the facility. The residency agreement and the disclosure information described in section (7)(a) of this rule are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by SPD prior to distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition;

ADMINISTRATIVE RULES

(B) Payment provisions, including the basic rental rate, and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable;

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided;

(D) Policy for increases, additions, or changes to the rate structure. Disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan;

(E) Refund and proration conditions;

(F) A description of the scope of services available according to OAR 411-054-0030 (Resident Services);

(G) A description of the service planning process;

(H) Additional available services;

(I) The philosophy of how health care and ADL services are provided to the resident;

(J) Resident rights and responsibilities;

(K) The facility system for packaging medications and that residents may choose a pharmacy that meets the requirements of ORS 443.437;

(L) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move;

(M) Resident's rights pertaining to notification of involuntary move-out;

(N) Notice that DHS has the authority to examine resident records as part of the evaluation of the facility; and

(O) Staffing plan.

(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence;

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to their designated representative; and

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to SPD before distribution.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

411-054-0034

Resident Move-In and Evaluation

(1) INITIAL SCREENING AND MOVE-IN.

(a) The facility must determine whether a potential resident meets the facility's admission requirements.

(b) Prior to the resident moving in, the facility must conduct an initial screening to determine the prospective resident's service needs and preferences. The screening must determine the ability of the facility to meet the potential resident's needs and preferences while considering the needs of the other residents and the facility's overall service capability.

(c) Prior to move-in and updated as needed, each resident record must include the following information:

(A) Prior living arrangements;

(B) Emergency contacts;

(C) Service plan involvement — resident, family, and social supports;

(D) Financial and other legal relationships if applicable, including but not limited to:

(i) Advance directives;

(ii) Guardianship;

(iii) Conservatorship; and

(iv) Power of attorney.

(E) Primary language;

(F) Community connections; and

(G) Health and social service providers.

(2) RESIDENT EVALUATION — GENERAL. The resident evaluation is the foundation that a facility uses to develop the service plan and reflects the resident's current health and mental status. The evaluation information may be collected using tools and protocols established by the facility, but must contain the elements stated in this rule.

(a) Resident evaluations must be performed:

(A) Before the resident moves into the facility, with updates and changes as appropriate within the first 30-days; and

(B) At least quarterly, to correspond with the quarterly service plan updates.

(b) Resident evaluations must be reviewed and updates documented each time a resident has a significant change in condition.

(c) The resident evaluation must be done in person and the facility must gather data that is relevant to the needs and current condition of the resident.

(d) Resident evaluations must be documented, dated, and indicate who was involved in the evaluation process.

(e) Twenty-four months of past evaluations must be kept in the resident's files in an accessible, on-site location.

(f) The facility administrator is responsible for assuring that only trained and experienced staff perform resident evaluations.

(3) EVALUATION REQUIREMENTS AT MOVE-IN.

(a) The resident evaluation must be completed before the resident moves into the facility. This evaluation provides baseline information of the resident's physical and mental condition at move-in.

(b) If there is an urgent need and the evaluation is not completed prior to move-in, the facility must document the reasons and complete the evaluation within eight hours of move-in.

(c) The initial evaluation must contain the elements specified in section (5) of this rule, and address sufficient information to develop an initial service plan to meet the resident's needs.

(d) The initial evaluation must be updated and modified as needed during the 30-days following the resident's move into the facility.

(e) After the initial 30-day move-in period, the initial evaluation must be retained in the resident's file for 24 months. Future evaluations must be separate and distinct from the initial evaluation.

(4) QUARTERLY EVALUATION REQUIREMENTS.

(a) Resident evaluations must be performed quarterly after the resident moves into the facility.

(b) The quarterly evaluation is the basis of the resident's quarterly service plan.

(c) The most recent quarterly evaluation, with documented change of condition updates, must be in the resident's current record and available to staff.

(d) If the evaluation is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.

(5) The resident evaluation must address the following elements:

(a) Resident routines and preferences including:

(A) Customary routines — sleep, dietary, social, and leisure; and

(B) Spiritual, cultural preferences.

(b) Physical health status including:

(A) List of current diagnoses;

(B) List of medications and PRN use;

(C) Visits to health practitioners, emergency room, hospital, or nursing facility in the past year;

(D) Vital signs if indicated by diagnoses, health problems, or medications.

(c) Mental health issues including:

(A) Presence of depression, thought disorders, or behavioral or mood problems;

(B) History of treatment; and

(C) Effective non drug interventions.

(d) Cognition, including:

(A) Memory;

(B) Orientation;

(C) Confusion; and

(D) Decision making abilities.

(e) Communication and sensory including:

(A) Hearing;

(B) Vision;

(C) Speech;

(D) Assistive devices; and

(E) Ability to understand and be understood.

(f) Activities of daily living including:

(A) Toileting, bowel, and bladder management;

(B) Dressing, grooming, bathing, and personal hygiene;

(C) Mobility ambulation, transfers, assistive devices; and

(D) Eating, dental status, assistive devices.

(g) Independent activities of daily living including:

(A) Ability to manage medications;

(B) Ability to use call system;

(C) Housework and laundry; and

(D) Transportation.

(h) Pain pharmaceutical and non-pharmaceutical interventions.

(i) Skin condition.

(j) Nutrition habits, fluid preferences, and weight if indicated.

(k) List of treatments type, frequency, and level of assistance needed.

(l) Indicators of nursing needs, including potential for delegated nursing tasks.

(m) Review of risk indicators including:

(A) Fall risk or history;

(B) Emergency evacuation ability;

(C) Complex medication regimen;

(D) History of dehydration or unexplained weight loss or gain;

ADMINISTRATIVE RULES

- (E) Recent losses;
 - (F) Unsuccessful prior placements;
 - (G) Elopement risk or history; and
 - (H) Smoking, alcohol use, or drug abuse. Resident's ability to smoke safely must be evaluated and addressed in the service plan.
- (n) If the information has not changed from the previous evaluation period, the information does not need to be repeated. A dated and initialed notation of no changes is sufficient. The prior evaluation must then be kept in the current resident record for reference.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

411-054-0090 Fire and Life Safety

(1) FIRE DRILLS. Unannounced fire drills must be conducted and recorded every other month at different times of the day, evening, and night shifts. Fire and life safety instruction to staff must be provided on alternate months. The Fire Authority may develop an alternative fire drill plan for the facility. Any such plan must be submitted to SPD.

(a) A written fire drill record must be kept to document fire drills that include:

- (A) Date and time of day;
- (B) Location of simulated fire origin;
- (C) The escape route used;
- (D) Comments relating to residents who resisted or failed to participate in the drills;
- (E) Evacuation time period needed; and
- (F) Whether the alarm system was operative at the time of the drill.

(b) Alternate exit routes must be used during fire drills to react to varying potential fire origin points.

(c) The evacuation capability of the residents and staff is a function of both the ability of the residents to evacuate and the assistance provided by the staff.

(d) Staff must provide fire evacuation assistance to residents from the building to a designated point of safety as determined by the Fire Authority having jurisdiction. Points of safety may include, outside the building, through a horizontal exit, or other areas as determined by the Fire Authority having jurisdiction.

(e) Fire alarms, smoke detectors, or other approved signal devices must be set off during each fire drill, unless otherwise directed by the Fire Authority having jurisdiction.

(2) If the facility is unable to meet the applicable evacuation level, the facility must make an immediate effort to make changes to ensure the evacuation standard is met. Changes must include but not be limited to increasing staff levels, changing staff assignments, requesting change in resident rooms, and arranging for special equipment. If the facility fails to meet the applicable evacuation level, the facility must issue an involuntary move-out notice to the residents in accordance with OAR 411-054-0080.

(3) Fire detection and protection equipment, including visual signals with alarms for hearing impaired residents, must be maintained in accordance with the Oregon Fire Code and the manufacturer's instructions.

(a) The facility must provide and maintain one or more 2A:10B:C fire extinguishers on each floor in accordance with the Oregon Fire Code.

(b) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original containers in accordance with the fire authority having jurisdiction.

(4) SAFETY PROGRAM. A safety program must be developed and implemented to avoid hazards to residents, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, broken glass, water temperatures, and fire prevention.

(5) TRAINING FOR RESIDENTS. Residents must be instructed about the facility's fire and life safety procedures.

(a) Each resident must be instructed within 24 hours of admission and re-instructed at least annually in general safety procedures, evacuation methods, responsibilities during fire drills, and designated meeting places outside the building or within the fire safe area in the event of an actual fire. This requirement does not apply to residents whose mental capability does not allow for following such instruction.

(b) A written record of fire safety training, including content of the training sessions and the residents attending, must be kept.

(6) UNOBSTRUCTED EGRESS. Stairways, halls, doorways, passageways, and exits from rooms and from the building must be unobstructed.

(7) FIRST AID SUPPLIES. First aid supplies must be provided, properly labeled, and readily accessible.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

411-054-0093 Emergency and Disaster Planning

An emergency preparedness plan is a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

(1) The facility must prepare and maintain a written emergency preparedness plan in accordance with the Oregon Fire Code (OFC) in OAR chapter 837, division 040.

(2) The emergency preparedness plan must:

(a) Include analysis and response to potential emergency hazards including but not limited to:

- (A) Evacuation of a facility;
- (B) Fire, smoke, bomb threat, or explosion;
- (C) Prolonged power failure, water, or sewer loss;
- (D) Structural damage;
- (E) Hurricane, tornado, tsunami, volcanic eruption, flood, and earthquake;

(F) Chemical spill or leak; and

(G) Pandemic.

(b) Address the medical needs of the residents including:

(A) Access to medical records necessary to provide care and treatment; and

(B) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation.

(c) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.

(3) The facility must notify SPD, or the local AAA office or designee, of their status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(4) The facility must conduct a drill of the emergency preparedness plan at least twice a year in accordance with the OFC in OAR chapter 837, division 040 and other applicable state and local codes as required. One of the practice drills may consist of a walk-through of the duties or a discussion exercise with a hypothetical event, commonly known as a tabletop exercise. These simulated drills do not take the place of the required fire drills.

(5) The facility must annually review or update the emergency preparedness plan as required by the OFC in OAR chapter 837, division 040 and the emergency preparedness plan must be available on-site for review upon request.

(6) A summary of the facility's emergency preparedness plan must be submitted to SPD annually on July 1, and at a change of ownership, in a format provided by SPD.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455, 443.991, OL 2007 ch. 205
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

411-054-0130 Non-Renewal, Denial, Suspension or Revocation of License

(1) SPD may deny, suspend, revoke, or refuse to renew a license under the following conditions:

(a) Where SPD finds there has been substantial failure to comply with these rules;

(b) Where the State Fire Marshal or authorized representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire;

(c) If the licensee fails to implement a plan of correction or comply with a final order of SPD imposing an administrative sanction, including the imposition of a civil penalty;

(d) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application;

(e) Where imminent danger to the health or safety of residents exists;

(f) Abandonment of facility operation;

(g) Loss of physical possession of the premise;

(h) Loss of operational control of the facility; or

(i) Appointment of a receiver, trustee, or other fiduciary by court order.

(2) Such revocation, suspension, denial, or non-renewal shall be done in accordance with the rules of SPD and ORS chapter 183.

(3) Nothing in this rule is intended to preclude SPD from taking other regulatory action on a suspended licensee for violation of the licensing regulations in these rules.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09

ADMINISTRATIVE RULES

411-054-0200

Residential Care Facility Building Requirements

A residential care facility may have individual or shared living units, where six or more people reside and must be built to the following specifications.

(1) **BUILDING CODES.** Each residential care facility must meet the requirements of the facility standards set forth in these rules, the Oregon Structural Specialty Code (OSSC), and the Oregon Fire Code (OFC) in effect at the time of original licensure.

(a) Facilities must comply with Title III of the Americans with Disabilities Act (ADA), Fair Housing Act, and Fair Housing Design Guidelines (FHA) where applicable.

(b) Subsequent modifications made to a facility including but not limited to demolition, remodeling, construction, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes in place at the time of the modification.

(c) If a change in use and building code occupancy classification occurs, license approval shall be contingent on meeting the OSSC and minimum standards of ADA in effect at the time of such change.

(d) All two or more story residential care facilities with a capacity of more than 16, must be constructed to include a minimum of one two-hour area separation wall constructed to standards as defined in the OSSC (SR 104.3.1 Fire Barrier).

(e) Facilities must comply with the Public Health Division's, Facilities Planning and Safety Program requirements for submission of building plans and specifications per OAR 333-675-0000 (Submission of Project Plans and Specifications for Review).

(f) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety, and comfort of the resident will be kept clean and in good repair.

(2) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the facility's common use areas and entrance and exit ways must be of hard, smooth material, accessible, and maintained in good repair.

(b) Measures must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) The facility grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) At least one primary grade level entrance to the building must be arranged to be fully accessible to disabled persons. Alzheimer's Indorsed Facilities must be located on the ground floor.

(e) Storage must be provided for all maintenance equipment, including yard maintenance tools.

(f) An accessible outdoor recreation area is required. The outdoor recreation area must be available to all residents. Lighting must be equal to a minimum of five foot-candles. Alzheimer's Indorsed Facilities must provide residents with direct access to a secure outdoor recreation area.

(g) Outdoor perimeter fencing must not be secured to prevent exit unless the facility has written approval of SPD or is in compliance with OAR chapter 411, division 057 (Indorsement of Alzheimer's Care Units) or OAR 309-032-0720 through 309-032-0830 (Standards for Enhanced Care Services).

(h) Facilities must have an entry and exit drive to and from the main building entrance that allows for picking up and dropping off residents and for mail deliveries without the need for vehicles to back up.

(3) **GENERAL BUILDING INTERIOR.** Designers must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) **RECEPTION AREA.** A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the facility.

(b) **CORRIDORS.** Resident-use areas and units must be accessible through temperature controlled common corridors with a minimum width of 48 inches.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common area, must have a minimum width of 72 inches.

(B) Corridors must not exceed 150 feet in length from any resident unit to seating or other common area.

(C) Handrails must be installed at one or both sides of resident use corridors.

(c) **FLOORS.** Hard surface floors and base must be free from cracks and breaks.

(A) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(B) Thresholds and floor junctures must be designed and installed for passage of wheelchairs and to prevent a tripping hazard.

(d) **INTERIOR DOORS.** Bathrooms and other common use areas must provide a minimum clear opening of 32 inches (36-inch doors recommended). Lever-type or other OSSC/ADA approved hardware must be provided on all doors used by residents.

(e) **EXIT DOORS.** Exit doors must not include locks that delay evacuation except as approved by the Fire Authority and Oregon Building Codes Agencies having jurisdiction. Such locks may not be installed except with written approval of SPD.

(A) Exit doors may not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door that code must be clearly posted for residents, visitors, and staff use.

(f) **WALLS AND CEILINGS.** Walls and ceilings must be washable in kitchen, laundry, and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) **ELEVATORS.** Facilities with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(4) **RESIDENT UNITS.** Resident units may be limited to a bedroom only, with bathroom facilities centrally located off common corridors. Each resident unit shall be limited to not more than two residents.

(a) For bedroom units, the door must open to an indoor, temperature controlled common area or common corridor and residents may not enter a room through another resident's bedroom.

(b) Resident units must include a minimum of 80 square feet per resident exclusive of closets, vestibules, and bathroom facilities and allow for a minimum of three feet between beds;

(c) All resident bedrooms must be accessible for persons with disabilities, meeting requirements of the OSSC, FHA, and the ADA.

(d) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(e) **WARDROBE CLOSET.** A separate wardrobe closet must be provided for each resident's clothing and personal belongings. Resident wardrobe and storage space must total a minimum volume of 64 cubic feet for each resident. The rod must be adjustable for height or fixed at no higher than 48 inches and no lower than 36 inches for accessibility. Closet height may not exceed eight feet and a depth of two feet.

(f) **WINDOWS.** All units must have an escape window that opens directly onto a public street, public alley, yard, or exit court, except for Alzheimer's Care Units constructed to an SR-2 or I-2 occupancy classification. This window section must be operable from the inside to provide a full clear opening without the use of separate tools and must comply with the specifications of an escape window when required by the OSSC. Windows may not be below grade.

(A) Each resident's unit must have an exterior window that has an area at least one tenth of the floor area of the room. Windows must also have a nominal maximum window sill height of 38 inches. Operable units must be designed to prevent accidental falls when sill heights are lower than 36 inches and above the first floor.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(g) **RESIDENT UNIT BATHROOMS.** If resident bathrooms are provided within a resident unit, they must include a toilet, hand wash sink, mirror, and towel bar (36" in height). The bathrooms must be accessible for persons who use wheelchairs.

(h) **UNIT KITCHENS.** If cooking facilities are provided in resident units, cooking appliances must be readily removable or disconnect-able and the facility must have and carry out a written safety policy regarding resident use and nonuse.

(5) COMMON USE AREAS.

(a) **BATHING FACILITIES.** Centralized bathing fixtures must be provided at a minimum ratio of one tub or shower for each ten residents not served by fixtures within their own unit. At least one centralized shower or tub must be designed for disabled access without substantial lifting by staff. Curbless showers or tubs equipped for horizontal transfer or hydraulic lift are acceptable. All bathing facilities must meet ADA and OSSC requirements.

(A) Grab bars must be provided in all resident showers.

(B) Showers must be equipped with a hand-held showerhead and a cleanable shower curtain.

(C) Bathing facilities must be located or screened to allow for resident privacy while bathing and provide adequate space for an attendant.

(D) A non slip floor surface in bathing areas is required.

(b) **TOILET FACILITIES.** Toilets and hand wash sinks with an accessible mirror must be located for resident use at a minimum ratio of one to six residents for all residents not served by these fixtures in their own unit.

(A) Toilet facilities for all of the licensed resident capacity must be accessible to persons with disabilities in accordance with the ADA and the

ADMINISTRATIVE RULES

OSSC as enforced by the Oregon Building Codes Division or local jurisdictions having authority.

(B) At least one separate toilet and hand wash lavatory must be provided for staff and visitor use in facilities licensed for more than 16.

(c) DINING AREA. Dining space must be provided to seat all residents with a minimum area of 22 square feet per resident, exclusive of serving carts and other equipment or items that take up space in the dining room. The facility must have policies and equipment to assure that food is served fresh and at proper temperature.

(d) LOUNGE AND ACTIVITY AREAS. The facility must include lounge and activity areas for social and recreational use totaling a minimum of 15 square feet per resident.

(6) SUPPORT SERVICE AREAS.

(a) MEDICATION STORAGE. Facilities must have a locked and separate closed storage for medications, supportive of the distribution system utilized including:

(A) A method for refrigeration of perishable medications that provides for locked separation from stored food items;

(B) In residential care facilities of 17 or greater capacity, a medication sink must be provided; and

(C) Medications must be stored in an area that is separate from any poisons, hazardous material, or toxic substance.

(b) HOUSEKEEPING AND SANITATION. The facility must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(c) LAUNDRY FACILITIES. Laundry facilities may be located to allow for both resident and staff use when a time schedule for resident use is provided and equipment is of residential type. When the primary laundry is not in the building or suitable for resident use, separate resident-use laundry facilities must be provided.

(A) Laundry facilities must be operable at no additional cost to the resident.

(B) There must be adequate space and equipment to handle laundry-processing needs. Laundry facilities must be separate from food preparation and other resident use areas.

(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(d) SOILED LINEN PROCESSING. For the purpose of this rule "soiled linens or soiled clothing," means linens or clothing contaminated by a person's bodily fluids (e.g., urine, feces, blood, etc.)

(A) There must be a separate area or room and closed containers that ensure the separate storage and handling of soiled linens.

(B) Arrangement must provide a one-way flow of linens from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(C) Soiled linen and clothing must be stored and processed separately from other linen and clothing.

(D) The soiled linen room, or area, must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(E) When washing soiled linens, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(e) KITCHEN AND FOOD STORAGE. Kitchen facilities and equipment in residential care facilities of 16 or less capacity may be of residential type except as required by the OSSC and OFC. Residential care facilities licensed for a capacity of more than 16 must comply with OAR 333-150-0000 (Food Sanitation Rules).

(A) Dry storage space, not subject to freezing, must store a minimum one-week supply of staple foods.

(B) There must be refrigeration and freezer space at proper temperature to store a minimum two days' supply of perishable foods.

(C) Storage for all dishware, utensils and cooking utensils must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) In facilities licensed to serve 16 or fewer residents, a dishwasher must be provided (may be residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit (160 degrees recommended), unless a chemical disinfectant is used in lieu of the otherwise required water temperature. In facilities of 17 or more capacity, a commercial dishwasher is required meeting OAR 333-150-0000 (Food Sanitation Rules).

(E) In residential care facilities of 16 or less capacity, a two compartment sink or separate food preparation sink and hand wash lavatory must be provided. In residential care facilities of 17 or more capacity, a triple pot wash sink (unless all pots are sanitized in the dishwasher), a food prep sink, and separate hand wash lavatory must be provided.

(F) Food preparation and serving areas must have smooth and cleanable counters.

(G) Stove and oven equipment for cooking and baking needs.

(H) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(I) Storage for a mop and other cleaning tools and supplies used for dietary areas. Such tools must be separate from those used in toilet rooms, resident, and other support areas. In residential care facilities of 17 or more capacity, a separate janitor closet or alcove must be provided with a floor or service sink and storage for cleaning tools and supplies.

(J) Storage must be available for cookbooks, diet planning information, and records.

(7) HEATING AND VENTILATION SYSTEMS. Systems must comply with the Oregon Mechanical Specialty Code in effect at the time of construction.

(a) TEMPERATURE. For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(A) Facilities must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 70 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours.

(B) During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(b) EXHAUST SYSTEMS. All toilet and shower rooms must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(c) FIREPLACES, FURNACES, WOODSTOVES, AND BOILERS. Where used, installation must meet standards of the Oregon Mechanical Specialty Code.

(d) WALL HEATERS. Covers, grates, or screens of wall heaters and associated heating elements must not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material.

(8) PLUMBING SYSTEMS. Plumbing systems must conform to the Oregon Plumbing Specialty Code in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 - 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) SPRINKLER SYSTEM. Facilities must have a sprinkler system installed in accordance with the OSSC.

(d) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts, and garbage cans.

(9) ELECTRICAL REQUIREMENTS.

(a) WIRING SYSTEMS. All wiring systems must meet the Oregon Electrical Specialty Code (OESPC) in effect at the date of installation and devices must be properly wired and in good repair.

(b) All electrical circuits must be protected by circuit breakers or limiters in fuse boxes of proper capacity. Electrical loads on circuits must be limited in accordance with proper circuit capacity.

(c) Sufficient electrical outlets must be provided to meet resident and staff needs without the use of extension cords or other special taps.

(d) LIGHTING. Lighting fixtures must be provided in each resident bedroom and bathroom, switchable near the entry door.

(A) Lighting for evacuation must be operable during a failure of the normal power supply.

(B) Each resident bedroom must have illumination for way finding from the room entrance, to each bed, and to the adjoining toilet room, if one exists, with at least 20-foot candles of illumination measured at the floor.

(C) Lighting in resident toilet rooms and bathing areas must be at least 50-foot candles, measured at the hand wash basin and three feet above the shower floor with the curtain open.

(D) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(E) Task lighting in dining rooms must equal a minimum of 25-foot candles, without light from windows, measured from table height.

(10) CALL SYSTEM. A call system must be provided connecting resident units to the care staff center or staff pagers.

(a) A manually operated emergency call system must be provided in each toilet and bathing room.

(b) EXIT DOOR ALARMS. An exit door alarm or other acceptable system must be provided for security purposes and to alert staff when residents exit the facility. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include electronic pendants, bracelets, pins, etc.

(11) TELEPHONES. Adequate telephones must be available for resident, staff, and visitor use, including those who have physical disabilities. If the only telephone is located in a staff area, it must be posted that the phone is available for normal resident use at any time and that staff shall ensure the resident's uninterrupted privacy. Staff may provide assistance when necessary or requested.

ADMINISTRATIVE RULES

(12) **TELEVISION ANTENNA OR CABLE SYSTEM.** A television antenna or cable system with an outlet in each resident unit must be provided.

(13) **FIRE ALARM SYSTEM.** An approved fire alarm system that includes interconnected smoke detectors, annunciator and control panels, and manual pull stations is required in residential care facilities. The fire alarm system must meet the requirements of the OSSC, the OFC, the OESPC, and the applicable standards of the National Fire Protection Association.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
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411-054-0300

Assisted Living Facility Building Requirements

An assisted living facility must have individual living units that have a lockable door, private bathroom, and kitchenette, and must be built to the following requirements.

(1) **BUILDING CODES.** Each assisted living facility must meet the requirements of the facility standards set forth in these rules, the Oregon Structural Specialty Code (OSSC), and the Oregon Fire Code (OFC) in effect at the time of original licensure.

(a) Facilities must comply with Title III of the Americans with Disabilities Act (ADA), Fair Housing Act, and Fair Housing Design Guidelines (FHA) where applicable.

(b) Subsequent modifications made to a facility including but not limited to demolition, remodeling, construction, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes in place at the time of the modification.

(c) If a change in use and building code occupancy classification occurs, license approval shall be contingent on meeting the OSSC and minimum standards of ADA in effect at the time of such change.

(d) All two or more story facilities must be constructed to include a minimum of one two-hour area separation wall constructed to standards as defined in the OSSC (SR 104.3.1 Fire Barrier).

(e) Facilities must comply with the Public Health Division, Facilities Planning and Safety Program requirements for submission of building plans and specifications per OAR 333-675-0000 (Submission of Project Plans and Specifications for Review).

(f) All interior and exterior materials and surfaces (e.g. floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety, and comfort of the resident must be kept clean and in good repair.

(2) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the facility's common use areas and entrance and exit ways must be of hard, smooth material, accessible, and maintained in good repair.

(b) Measures must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) The facility grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) At least one primary grade level entrance to the building must be arranged to be fully accessible to disabled persons. Alzheimer's Indorsed Facilities must be located on the ground floor.

(e) Storage must be provided for all maintenance equipment, including yard maintenance tools.

(f) An accessible outdoor recreation area is required. The outdoor recreation area must be available to all residents and have lighting equal to a minimum of five foot candles. Alzheimer's Indorsed Facilities must provide residents with direct access to a secure outdoor recreation area.

(g) Outdoor perimeter fencing must not be secured to prevent exit unless the facility has received written approval of SPD or is in compliance with OAR chapter 411, division 057 (Indorsement of Alzheimer's Care Units) or OAR 309-032-0720 through 309-032-0830 (Standards for Enhanced Care Services).

(h) Facilities must have an entry and exit drive to and from the main building entrance that allows for picking up and dropping off residents and for mail deliveries without the need for vehicles to back up.

(3) **GENERAL BUILDING INTERIOR.** Designers must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) **RECEPTION AREA.** A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the facility.

(b) **CORRIDORS.** Resident-use areas and units must be accessible through temperature controlled common corridors with a minimum width of 48 inches.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common area, must have a minimum width of 72 inches.

(B) Corridors must not exceed 150 feet in length from any resident unit to seating or other common area.

(C) Handrails must be installed at one or both sides of resident use corridors.

(c) **FLOORS.** Hard surface floors and base must be free from cracks and breaks.

(A) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(B) Thresholds and floor junctures must be designed and installed for passage of wheelchairs and to prevent a tripping hazard.

(d) **INTERIOR DOORS.** Bathrooms and other common use areas must provide a minimum clear opening of 32 inches (36-inch doors recommended). Lever-type or other OSSC/ADA approved hardware must be provided on all doors used by residents.

(e) **EXIT DOORS.** Exit doors must not include locks that delay evacuation except as approved by the Fire Authority and Oregon Building Codes Agencies having jurisdiction. Such locks may not be installed except with written approval of SPD.

(A) Exit doors may not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door that code must be clearly posted for residents, visitors, and staff use.

(f) **WALLS AND CEILINGS.** Walls and ceilings must be washable in kitchen, laundry, and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) **ELEVATORS.** Facilities with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(4) **RESIDENT UNITS.** All resident units must be comprised of individual adaptable and accessible apartments with a lockable door, private bathroom, and kitchenette facilities conforming to the requirement of the OSSC, FHA, and the facility standards set forth in these rules.

(a) **UNIT DIMENSIONS.** New construction units must have a minimum of 220 net square feet not including the bathroom. Units in pre-existing structures being remodeled must have a minimum of 160 square feet not including the bathroom.

(b) **WINDOWS.** All units must have an escape window that opens directly onto a public street, public alley, yard, or exit court. This window section must be operable from the inside to provide a full clear opening without the use of separate tools and must have a minimum net clear open area of 5.7 square feet, a minimum net clear opening height of 24 inches, a minimum net clear open width dimension of 20 inches, and must not be below grade.

(A) Each resident's living room and bedroom must have exterior windows that have an area at least one-tenth of the floor area of the room. One window must be at least 3'-6" x 5'-0" in size and have a maximum sill height of 36 inches. Operable units must be designed to prevent accidental fall when sill heights are lower than 36 inches.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(c) **DOORS.** Each unit must have an entry door that is self-closing, does not swing into the exit corridor, and is equipped with lever handles.

(A) A locking device must be included that is released with action of the inside lever. Locks for the entry door must be individually keyed, master keyed, and a key supplied to the resident.

(B) The unit exit door must open to an indoor, temperature controlled, common area or common corridor.

(d) **BATHROOM.** The unit bathroom must be a separate room with a toilet, sink, a roll-in, curbless shower, have at least one towel bar (36 inch height), one toilet paper holder, one accessible mirror, and storage for toiletry items. The door to the bathroom must open outward or slide into the wall.

(A) The unit bathroom must have unobstructed floor space of sufficient size to inscribe a circle with a diameter of not less than 60 inches or a "T" turn conforming to the requirements of the OSSC and ADA, for maneuverability by residents using wheelchairs or other mobility aids. The "circle" or "T" may infringe in the space of the roll-in shower stall by a maximum of 12 inches.

(B) Wall construction must have proper and appropriately placed blocking near toilets and in showers to allow installation of grab bars.

(C) Roll-in shower stalls must meet OSSC and ADA requirements except as noted in this rule. The minimum number of resident unit bathroom showers required by OSSC must have a clear inside dimension of 36 inches deep by 60 inches long. All other resident unit showers must have a minimum nominal dimension of 36 inches deep by 48 inches long. A folding seat is not required.

(D) Showers must have non-slip floor surfaces in front of roll-in showers, a hand-held showerhead, cleanable shower curtains, and appropriate grab bar.

ADMINISTRATIVE RULES

(E) Shower curb must not exceed one-quarter inch in height at front of shower. Ramps are not allowed in front of roll-in showers.

(F) Water closets and lavatories must meet OSSC and ADA requirements to be fully accessible unless otherwise noted in this rule. The lavatory must have readily removable cabinets underneath or be readily adaptable to meet the OSSC and ADA requirements for a forward approach by a wheelchair.

(e) **KITCHENS.** Each unit must have a kitchen area equipped with a sink, refrigerator, a cooking appliance that can be removed or disconnected, adequate space for food preparation, and storage space for utensils and supplies.

(A) Counter heights must be 34 inches. The sink, refrigerator, and cooking appliance must meet OSSC and the ADA reach and clear floor space requirements for wheelchairs.

(B) The sink must have readily removable cabinets underneath or be readily adaptable to meet the OSSC and ADA requirements for a forward approach by a wheelchair.

(C) Fifty percent of the shelving must be within the reach ranges per the OSSC and ADA.

(f) **RESIDENT STORAGE SPACE.** Each unit must provide usable space totaling at least 100 cubic feet for resident clothing and belongings and include one clothes closet with a minimum of four linear feet of hanging space. The rod must be adjustable for height or fixed at no higher than 48 inches and no lower than 36 inches for accessibility. In calculating usable space, closet height must not exceed eight feet and a depth of two feet. Kitchen cabinets must not be included when measuring storage space.

(g) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(5) COMMON USE AREAS.

(a) **BATHING ROOM.** There must be a special bathing room with a tub with whirlpool action, accessible by side transfer, without the use of mechanical aids and designed for staff assistance.

(A) The room must have individual heat control and be equipped with an exhaust to the outside.

(B) There must be direct access to a toilet and sink in the same room or in an adjacent room.

(C) There must be a non-slip floor surface and a manually operated emergency call system.

(b) **PUBLIC RESTROOMS.** There must be accessible public restrooms for visitor, staff, and resident use, convenient to dining and recreation areas.

(A) The public restroom must contain a toilet, sink, waste container, and a hand drying means that cannot be reused.

(B) There must be a manually operated emergency call system in the public restrooms.

(c) **DINING ROOM.** The building must have a dining area with the capacity to seat 100 percent of the residents. The dining room must provide 22 sq. ft. per resident for seating, exclusive of service carts and other equipment or items that take up space in the dining room. This rule is exclusive of any separate private dining rooms.

(d) **SOCIAL AND RECREATION AREAS.** The building must have common areas for social-recreational use totaling at least 15 sq. ft. per resident.

(e) **STOVE.** If a stove is provided in the activities or common area available for resident use, a keyed, remote switch, or other safety device must be provided to insure staff supervision.

(f) **RESIDENT LAUNDRY FACILITIES.** Laundry facilities must be operable at no additional cost with at least one washer and dryer accessible by residents using wheelchairs.

(g) **MAILBOX.** Each resident or unit must be provided a mailbox that meets OSSC and ADA reach and clear floor space requirements for wheelchairs. It must also meet US Postal Service requirements.

(6) SUPPORT SERVICE AREAS.

(a) **MEDICATION STORAGE.** The facility must provide a secured space for medication storage with access to a sink and cold storage in the same area. Space for necessary medical supplies and equipment must be provided.

(b) **HOUSEKEEPING AND SANITATION.** The facility must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(c) **LAUNDRY FACILITIES.** Laundry facilities may be located to allow for both resident and staff use when a time schedule for resident use is provided and equipment is of residential type.

(A) If the primary laundry is not suitable for resident use, separate resident laundry facilities must be provided.

(B) Laundry facilities must be separate from food preparation and other resident use areas.

(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(d) **SOILED LINEN PROCESSING.** For the purpose of this rule "soiled linens or soiled clothing," means linens or clothing contaminated with a person's bodily fluids (e.g., urine, feces, blood, etc.)

(A) Soiled linen and clothing must be stored and processed separately from other linen and clothing.

(B) There must be a separate area or room with closed containers that ensure the separate storage and handling of soiled linens.

(C) Arrangement must provide a one-way flow of linens from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(D) The soiled linen room, or area, must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(E) There must be adequate space and equipment to handle laundry-processing needs. Personnel handling soiled laundry must be provided with waterproof gloves.

(F) When washing soiled linens, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(G) Covered or enclosed clean linen storage must be provided that may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(e) **KITCHEN AND FOOD STORAGE.** Assisted living facilities must comply with OAR 333-150-0000 (Food Sanitation Rules), for food handling and primary meal preparation areas.

(A) Dry storage space, not subject to freezing, must store a minimum one-week supply of staple foods.

(B) There must be refrigeration and freezer space at proper temperature to store a minimum two days supply of perishable foods.

(C) Storage for all dishware and utensils used by residents must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) Storage for a mop and other cleaning tools and supplies used for dietary areas. Such tools must be separate from those used in toilet rooms, resident, and other support areas. There must be a separate janitor closet or alcove with a floor or service sink and storage for cleaning tools and supplies.

(E) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(F) Storage must be available for cookbooks, diet planning information, and records.

(7) **HEATING AND VENTILATION SYSTEMS.** Heating and ventilation systems must conform to the Oregon Mechanical Specialty Code in effect at the time of facility construction.

(a) **TEMPERATURE.** For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(b) Facilities must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 70 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours.

(c) **TEMPERATURE CONTROLS.** Each unit must have individual thermostatic heating controls.

(d) **WALL HEATERS.** Covers, grates, or screens of wall heaters and associated heating elements must not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material.

(e) **FANS.** During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(f) **EXHAUST SYSTEMS.** All toilet and shower rooms must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(g) **VENTILATION.** Ventilation in each unit must occur via an open window to the outside, or with a mechanical venting system capable of providing two air changes per hour with one-fifth of the air supply taken from the outside.

(8) **PLUMBING SYSTEMS.** Plumbing systems must conform to the Oregon Plumbing Specialty Code in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 - 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) **SPRINKLER SYSTEM.** Facilities must have a sprinkler system installed in accordance with the OSSC.

(d) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts, and garbage cans.

(9) ELECTRICAL SYSTEMS.

(a) **WIRING SYSTEMS.** All wiring systems must meet the Oregon Electrical Specialty Code (OESPC) in effect at the date of installation and devices must be properly wired and in good repair.

ADMINISTRATIVE RULES

(b) All electrical circuits must be protected by circuit breakers or type 'S' fuses and fuse holders of proper capacity. Electrical loads on circuits must be limited in accordance with proper circuit capacity.

(c) Sufficient electrical outlets must be provided to meet resident and staff needs without the use of extension cords or other special taps.

(d) LIGHTING. Each unit must have general illumination in the bath, kitchen, living space, and sleeping area. The general lighting intensity in the unit for way finding must be at least 20-foot candles measured from the floor.

(A) Lighting in the unit bathroom must be at least 50-foot candles measured from the height of the basin.

(B) Task lighting at the unit food preparation or cooking area must be at least 50-foot candles measured from counter height.

(C) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(D) Task lighting in the dining room must equal a minimum of 25-foot candles without light from windows measured from table height.

(10) CALL SYSTEM. A call system must be provided, connecting resident units to the care staff center or staff pagers.

(a) A manually operated emergency call system must be provided at each resident bathroom, central bathing rooms, and public-use restrooms.

(b) EXIT DOOR ALARMS. Exit door alarms must be provided for security purposes and to alert staff when residents exit the facility. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include electronic pendants, bracelets, pins, etc.

(11) TELEPHONES.

(a) RESIDENT PHONES. Each unit must have at least one telephone jack to allow for individual phone service.

(b) PUBLIC TELEPHONE. There must be an accessible local access public telephone in a private area that allows a resident or another individual to conduct a private conversation.

(12) TELEVISION ANTENNA OR CABLE SYSTEM. A television antenna or cable system with an outlet in each resident unit must be provided.

(13) FIRE ALARM SYSTEM. An approved fire alarm system that includes interconnected smoke detectors, annunciator and control panels, and manual pull stations is required in assisted living facilities. The fire alarm system must meet the requirements of the OSSC, the OFC, the OESPC, and the applicable standards of the National Fire Protection Association.

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Rule Caption: Nursing Facilities, Emergency and Disaster Planning and Smoking.

Adm. Order No.: SPD 14-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 411-086-0320, 411-086-0350

Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently amending:

- OAR 411-086-0320 to implement House Bill 2371 (2007) by strengthening emergency and disaster planning for nursing facilities by aligning the rule with related state and federal regulations and requiring comprehensive emergency planning and preparedness to assure the provision of essential services to nursing facility residents in the event of an emergency or disaster; and

- OAR 411-086-0350 to reflect that nursing facilities must comply with the 2007 Smokefree Workplace Law (Oregon Laws 2007, chapter 602) that became effective on January 1, 2009.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-086-0320

Emergency and Disaster Planning

An emergency preparedness plan is a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

(1) The nursing facility must prepare and maintain a written emergency preparedness plan in accordance with the Oregon Fire Code (OFC) in OAR chapter 837, division 040 and the 2009 National Fire Protection Association (NFPA) 101 Life Safety Code.

(2) The emergency preparedness plan must:

(a) Include analysis and response to potential emergency hazards including but not limited to:

(A) Evacuation of a facility;

(B) Fire, smoke, bomb threat, or explosion;

(C) Prolonged power failure, water, or sewer loss;

(D) Structural damage;

(E) Hurricane, tornado, tsunami, volcanic eruption, flood, and earthquake;

(F) Chemical spill or leak; and

(G) Pandemic.

(b) Address the medical needs of the residents including:

(A) Access to medical records necessary to provide care and treatment; and

(B) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation.

(c) Include provisions and supplies sufficient to shelter in place for a minimum of five days without electricity, running water, or replacement staff.

(3) The facility must notify SPD, or the local AAA office or designee, of their status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(4) The facility must conduct a drill of the emergency preparedness plan at least twice a year in accordance with the OFC in OAR chapter 837, division 040 and other applicable state and local codes as required. One of the practice drills may consist of a walk-through of the duties or a discussion exercise with a hypothetical event, commonly known as a tabletop exercise. These simulated drills do not take the place of the required fire drills.

(5) The facility must annually review or update the emergency preparedness plan as required by the OFC in OAR chapter 837, division 040 and the emergency preparedness plan must be available on-site for review upon request.

(6) A summary of the facility's emergency preparedness plan must be submitted to SPD annually on July 1, and at a change of ownership, in a format provided by SPD.

Stat. Auth.: ORS 410.070, 410.090, & 441.055

Stats. Implemented: ORS 441.055, 441.615, OL 2007 ch. 205

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 14-2009, f. 9-30-09, cert. ef. 10-1-09

411-086-0350

Smoking

(1) A nursing facility must be in compliance with:

(a) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(b) The rules in OAR chapter 333, division 015; and

(c) Any other applicable state and local laws.

(2) A facility must provide a place of employment that is free of tobacco smoke for all employees.

(3) Smoking may only be allowed outside the facility as prescribed by OAR 333-015-0064.

(4) The facility must take adequate precautions to protect all residents from injury where residents are allowed and choose to smoke.

(5) The facility must develop and implement a smoking policy that includes resident assessment and care planning.

(6) If the facility's smoking policy changes, the licensee must provide written notice to all residents 30 days' prior to such change.

(7) Nothing in this rule shall prevent the licensee from designating any part of the facility or the entire facility as a non-smoking area. If the facility decides to designate the entire facility as a non-smoking area, all persons admitted thereafter must be so notified by the facility prior to or at the time of admission. Such facility must continue to provide an outdoor smoking area as prescribed by OAR 333-015-0064 for residents who smoke and were admitted prior to the facility decision.

Stat. Auth.: ORS 410.070, 410.090, & 441.055

Stats. Implemented: ORS 433.835 to 433.990, 441.055, & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SPD 14-2009, f. 9-30-09, cert. ef. 10-1-09

Department of Justice

Chapter 137

Rule Caption: Clarifies processes for good cause, continuation of services, arrears disbursement and adjusting case balances.

Adm. Order No.: DOJ 12-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 137-055-1090, 137-055-1100, 137-055-6010, 137-055-6200

Subject: OAR 137-055-1090 is amended to incorporate good cause language that was previously in the continuation of services rule (OAR 137-055-1100), and to clarify under what conditions the

ADMINISTRATIVE RULES

Director of the Child Support Program will make a good cause determination versus when the administrator (including an authorized representative) may make the determination. Additionally, references to an "address of record" were removed because the "address of record" rule was repealed.

OAR 137-055-1100 is amended to clarify that it is the applicant (rather than just the obligee) that may request case closure, and when that happens, case closure procedures must be followed. The rule is also being amended to memorialize federal notice requirements and to clarify what happens to payments when a child attending school requests closure or non-enforcement.

OAR 137-055-6010 is amended to illustrate distribution of particular categories of assigned arrears in Temporary Assistance to Needy Families (TANF) cases after October 1, 2009.

OAR 137-055-6200 is amended to add an administrative review step and process when a case balance is adjusted and the division has been the record keeper for the life of the case.

Rules Coordinator: Vicki Tungate—(503) 946-6086

137-055-1090

Good Cause

(1) For the purposes of OAR chapter 137, division 055, "good cause" means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. This definition specifically excludes good cause for not withholding as defined in ORS 25.396 and OAR 137-055-4060 and good cause found for distribution of support to other than a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) If an obligee believes that physical or emotional harm to the family may result if services under ORS 25.080 are provided, the obligee may request, either verbally or in writing, that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will:

(a) On an open TANF or Medicaid case, immediately suspend all activity on the case, notify DHS or OHA to add good cause coding, and send a safety packet to the obligee requesting a response be sent to DHS; or

(b) On any other case, immediately suspend all activity on the case, add good cause case coding pending a final determination, and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(3) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF, Title IV-E or Medicaid benefits are being provided;

(b) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA's custody;

(c) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(d) The administrator when the provisions of subsections (a) through (c) of this section do not apply.

(4) When the provisions of subsection (3)(d) apply and the obligee makes a written claim that the provision of services may result in emotional or physical harm to the child or obligee or completes and returns the good cause document contained in the Client Safety Packet, the administrator will:

(a) Make a finding and determination that it is in the best interests of the child not to provide services;

(b) Proceed with case closure pursuant to OAR 137-055-1120; and

(c) Except for arrears permanently assigned to the Oregon Youth Authority, satisfy any and all permanently assigned arrears as defined in OAR 137-055-6010.

(5) In determining whether providing services is in the best interest of the child under section (3)(c), the CSP Director will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(6) A finding and determination by the CSP Director that good cause does not apply, may be appealed as provided in ORS 183.484.

(7) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(8) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(9) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(10)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet; and

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(11)(a) If a request for services under ORS chapter 110 is received from another state and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring state of the finding and determination of good cause and request that the state consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring state and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring state advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(12) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

ADMINISTRATIVE RULES

(b) If the child is in OYA's custody, OYA will, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(13) When the provisions of section (12) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(14) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services on the case or related cases unless and until good cause coding is removed by DHS or OYA.

(15) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(16) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 12-2009, f. & cert. ef. 10-1-09

137-055-1100

Continuation of Services

(1) When a family's assistance grant is closed, services under ORS 25.080 will automatically be continued. The Division of Child Support (DCS) will notify the support obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, in writing, of the services to be provided and the consequences of receiving those services, including a listing of available services, fees, the state's policy on cost recovery and its distribution policies. DCS will notify the obligee, and the child attending school that subject to the obligor's right to request services:

(a) An obligee or applicant for services may at any time request that support enforcement services no longer be provided. If the obligee or applicant so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee or applicant will be discontinued. However, except as provided in OAR 137-055-1090, if an order has already been established, DCS will continue efforts to collect arrears assigned to the state. DCS will apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under OAR 137-055-1090 that support enforcement services no longer be provided for either the obligee or the state.

(c) A child attending school may request that support enforcement services no longer be provided on his or her behalf, even if not the applicant. If the child attending school so requests, all support enforcement services on behalf of the child attending school will be discontinued, and support will be redirected to the obligee.

(2) In cases where current child support is not assigned to the state but medical support is assigned to the state, the obligee may elect to not pursue establishment and enforcement of a child support obligation other than medical child support. In those cases, if the obligee so elects, the administrator will provide only those services necessary to establish and enforce an order for medical child support, including establishment of paternity where necessary.

(3) If a case has been closed pursuant to this rule, an obligee or applicant may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240 or 137-055-5120, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services.

Stat. Auth.: ORS 25.080 & 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 12-2009, f. & cert. ef. 10-1-09

137-055-6010

Definitions for Distribution and Disbursement

For purposes of OAR 137-055-6020 through 137-055-6024, the following definitions apply:

(1) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority (OYA).

(2) "Current support" means the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(3) "Electronic funds transfer (EFT)@" and "Electronic data interchange (EDI)@" means the movement of funds and information by non-paper means, usually through a payment system including, but not limited to, an automated clearing house (ACH), the Federal Reserve's Fedwire system, magnetic tape, direct deposit or stored value card.

(4) "Family's conditionally-assigned arrears" means past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Beginning October 1, 2009, for TANF assignments, the family's conditionally-assigned arrears are no longer temporarily-assigned to the state during assistance periods. They remain conditionally-assigned to the family. For foster care and OYA assignments, family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the child or children are in the state's care.

(5) "Family's unassigned arrears" means past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(6) "Family's unassigned arrears during assistance period" means past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(7) "Future support" means an amount received which represents payment on current support or arrears for future months.

(8) "Pass-through" means current support for a child or children, which is assigned for TANF but is disbursed to the obligee before any remaining amount of current support is retained by the state.

(9) "State's permanently-assigned arrears" means:

(a) Past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only; or

(b) Advance payments owed to the State of Oregon under OAR 137-055-6210.

(10) "State's temporarily-assigned arrears" means past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. Beginning October 1, 2009, for TANF assignments, state's temporarily-assigned arrears permanently revert to family's conditionally-assigned arrears when the family is no longer receiving assistance, and unassigned family arrears which accrue during non-assistance periods will no longer be temporarily-assigned to the state during assistance periods. For foster care and OYA assignments, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the child or children are not in the state's care.

(11) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 25.020; 412.024 & 418.032
Hist.: DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 12-2009, f. & cert. ef. 10-1-09

137-055-6200

Adjusting Case Arrears When an Error is Identified

The purpose of this rule is to set out what the administrator will do when an error is identified which requires adjusting the arrears of a case.

(1) "Complete payment record" means that the Division of Child Support (DCS) has kept the payment record for the support judgment from the date of the first support payment required under the judgment, or the obligee or the administrator established arrears for the time period when DCS did not keep the payment record on the case.

(2) A notice will only be sent as provided for in this rule when the amount of arrears to be adjusted is at least \$5.

(3) If the error occurred within the current billing cycle, the administrator will adjust the arrears on the case record.

ADMINISTRATIVE RULES

(4) If DCS has a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, the administrator will adjust the arrears on the case record and send a notice to the parties advising of:

(a) The change in the case arrears; and

(b) The right to, within 14 days of the date of the notice from DCS, submit a written request for an administrative review to determine if DCS's record-keeping and accounting related to the adjustment of arrears is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review. The notice will include a citation of the parties' rights to appeal the decision under ORS 183.484.

(6) If DCS does not have a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, but within the previous 180 days, the administrator will:

(a) Send a notice to the parties that the administrator will adjust the arrears on the case record as indicated in the notice if none of the parties object within a 30-day period following the date of the notice;

(b) If none of the parties object within 30 days of the notice, the administrator will adjust the arrears on the case record as indicated in the notice;

(c) If any party objects within 30 days of the notice, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(7) If DCS does not have a complete payment record for the support payment judgment and the error occurred over 180 days ago, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(8) Notwithstanding any other provision of this rule, if under a contingency order the error is due to a failure to accurately reflect on the case record the periods of residence of the child in state care, the administrator will adjust the arrears on the case record and notify the obligor unless the Department of Human Services or Oregon Youth Authority directs otherwise.

(9) On a closed case:

(a) If all the arrears to be added to the case are assigned to the state, the administrator will not open the case if it is for a period of less than four months of accrual or less than \$500;

(b) If all the arrears to be added to the case are assigned to the state and the arrears are for a period of a least four months or \$500, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(c) If any of the arrears to be added to the case are owed to the obligee, the administrator will send a notice to the obligee and, if the arrears are for at least \$25, ask if the obligee wants enforcement of the arrears. If the obligee requests enforcement, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(d) If any of the arrears to be added to the case are owed to an adult child as defined in OAR 137-055-5110, the administrator will send a notice to the adult child but will not open the case for the adult child until the adult child qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110;

(e) Except as otherwise provided in OAR 137-055-4455 or 137-055-6220, if the error was due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will return the excess amount to the obligor if the amount is at least \$5 and the payment was applied to a state account; or

(f) If the error was not due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will send an informational notice to the parties.

(10) Notwithstanding section (6) or section (9), on any case in which the applicant for services has requested non-enforcement and the error only affects the amount of arrears owed to the obligee, the administrator will update the case record appropriately.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 12-2009, f. & cert. ef. 10-1-09

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Department of Oregon State Police Chapter 257

Rule Caption: Clarifies which tow businesses and individuals are subject to the rules; method of recording hearings.

Adm. Order No.: OSP 2-2009

Filed with Sec. of State: 10-8-2009

Certified to be Effective: 1-1-10

Notice Publication Date: 10-1-2009

Rules Amended: 257-050-0020, 257-050-0040, 257-050-0050, 257-050-0060, 257-050-0070, 257-050-0090, 257-050-0095, 257-050-0100, 257-050-0110, 257-050-0115, 257-050-0125, 257-050-0130, 257-050-0140, 257-050-0145, 257-050-0150, 257-050-0155, 257-050-0157, 257-050-0170, 257-050-0180, 257-050-0200

Rules Repealed: 257-050-0020(T), 257-050-0040(T), 257-050-0050(T), 257-050-0060(T), 257-050-0070(T), 257-050-0090(T), 257-050-0095(T), 257-050-0100(T), 257-050-0110(T), 257-050-0115(T), 257-050-0125(T), 257-050-0130(T), 257-050-0140(T), 257-050-0145(T), 257-050-0150(T), 257-050-0155(T), 257-050-0157(T), 257-050-0170(T), 257-050-0180(T), 257-050-0200(T)

Subject: These amendments will make permanent the amendments contained in the temporary rules which became effective August 6, 2009. The administrative rules in existence prior to the temporary rule amendments referred to the undefined terms of "approved tow business," "authorized tow business," and "registered tow business," as well as the defined terms of "tow business" and "qualified tow business." Additionally, the rules required that "tow businesses" (when applying for a letter of appointment), or "qualified tow businesses" (after having received a letter of appointment) must be licensed as a "separate legal entity." Moreover, under ORS chapter 648, an "entity" for purposes of licensing includes domestic corporations but not assumed business names. The Department currently has several "qualified tow businesses" on the non-preference tow rotation list that operate under assumed business names. These rules clearly identify which tow businesses may conduct non-preference tows on behalf of the Department and create a clearer distinction between "tow businesses" generally and "qualified tow businesses" in particular, and clarify that "qualified tow businesses" include tow businesses that operate under assumed business names. These rules further clarify that tow businesses acting through their authorized agents or representatives must complete applications for letters of appointment and certify compliance with all applicable laws and the Department's administrative rules. These rules also clarify when the Department shall deny, suspend, or revoke either the application of a tow business, or the letter of appointment of a qualified tow business, when the tow business, qualified tow business, or owner or employee of a tow business or qualified tow business, is convicted of a felony conviction. Finally, these rules delete the requirement that Departmental hearings must be recorded on tape, and allows the Department to record hearings by any means, including digital recording.

Rules Coordinator: Cort Dokken—(503) 934-0228

257-050-0020

Policy and Purpose

It is the policy and purpose of the Oregon State Police that:

(1) To further the Oregon State Police's interest in the prompt and orderly removal of disabled or abandoned vehicles from the highways of the State of Oregon, and to meet the towing needs of the Department, the Department has established a non-preference tow program as defined in Oregon Administrative Rules (OAR) 257-050-0020 to 257-050-0200. The program, in part, consists of a non-preference tow rotational list comprised of qualified tow businesses. The non-preference tow rotational list is computer generated and does not favor any one qualified tow business. The non-preference tow rotational list is not a guarantee of business to the towing industry by the Department. Qualified tow businesses participating in the non-preference tow rotational list understand that they may be called upon to conduct vehicle tows at the operational need of the Oregon State Police, as may be determined by the requesting State Police Officer or Department member.

(2) Because the non-preference tow rotational list is designed to meet the towing needs of the Department, tow businesses do not need to be on the list to conduct business with the general public in the State of Oregon.

(3) The Oregon State Police do not charge any fees to the owner or driver of a vehicle towed under its non-preference tow program. Therefore, the Department does not require any qualified tow business participating in the non-preference tow rotational list to charge any fees to the owner or driver of a vehicle towed under the Department's non-preference tow program. Accordingly, the Department shall not establish, recommend, or in any way dictate the cost of a non-preference tow conducted by a qualified tow business under the Department's non-preference tow program. It is also

ADMINISTRATIVE RULES

the policy of the Department that qualified tow businesses that participate in the Department's non-preference tow rotational program shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(4) Qualified tow businesses called upon by the Oregon State Police to conduct non-preference tows must reflect the highest standards of professionalism. Qualified tow businesses that, through their conduct or actions, abuse the non-preference tow system or the integrity, trust or security of the Oregon State Police shall be removed from the non-preference tow rotational list through the suspension and/or revocation processes.

Stat. Auth.: ORS 181.440

Stats. Implemented: 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0040

Authority

(1) These Administrative Rules are promulgated pursuant to ORS 181.440, which permits the Superintendent of the Oregon State Police to make rules governing the eligibility of tow businesses to be placed and remain on any list of qualified tow businesses used by the Department when it requests towing services on behalf of any person.

(2) All qualified tow businesses providing service to the public and the Department through calls received from the Oregon State Police shall conduct their operation in accordance with all applicable federal, state, and local laws, rules, or their equivalent.

(3) In the event the Oregon State Police enters into an agreement with any other state agency, allowing that state agency the use of the non-preference tow rotational list, then these rules shall apply to tow requests made by that state agency.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0050

Definitions

(1) "Abandoned Auto" or "Abandoned Vehicle" — A vehicle that has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance.

(2) "Area Commander" or "Station Commander" — The local commanding officer of an area established by the Oregon State Police.

(3) "Tow business" — Any person, enterprise, corporation or partnership that engages in the impounding, transporting, recovery or storage of towed or abandoned vehicles or in the disposal of abandoned vehicles.

(4) "Business Records" — Those records maintained by a qualified tow business that relate to the non-preference tows and which include, but are not limited to, tow bills, letters of appointment, and inspection sheets.

(5) "Certified" or "Certification" — The successful completion by an employee of a tow business of a written test administered by a nationally recognized towing affiliated body/organization relating to the level of towing the employee operates.

(6) "Convicted" — An adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7) "Denial" — Action taken by the Department in refusing to issue a letter of appointment to a tow business.

(8) "Department" — The Department of State Police, also referred to as "Oregon State Police," and its employees.

(9) "Employee" — Any person in the service of a tow business under contract of hire, express or implied, oral or written, where the business has the power or right to control and direct the employee in the material details of how the work for the business is to be performed.

(10) "Fencing" — Permanent fencing meeting zoning requirements, with a minimum height of six (6) feet.

(11) "Hazardous Vehicle" — the meaning as given in the Oregon State Highway Division Administrative Rule OAR 734-020-0147.

(12) "Hearings Officer" — A person appointed by an agency or entity contracted by the Department of State Police to conduct contested case hearings.

(13) "Highway" — Every public way, road, street, thoroughfare and place including bridges, viaducts and other structures within the boundaries of the state open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right (ORS 801.305).

(14) "Inspector" — A commissioned officer or other appointed representative of the Oregon State Police who has been designated by the Department to examine tow trucks and qualified tow businesses.

(15) "Letter of Appointment" — A letter issued by the Department that authorizes a tow business to tow abandoned or disabled vehicles on a non-preference rotational basis for the Oregon State Police.

(16) "Non-Preference tow rotational List" or "Non-Preference List" — The list of qualified tow businesses maintained at Oregon State Police

Headquarters that is used to dispatch the tow trucks on an equitable basis when no choice or preference to a tow business is stated by the vehicle owner, driver, or other person responsible for the vehicle.

(17) "On Road Time" — The time it takes a qualified tow business to have a tow truck started and on the road from the time the dispatcher was called by the Department.

(18) "Patrol Services Division" — The administrative body of the Oregon State Police that is located at General Headquarters in Salem, Oregon.

(19) "Place of Business" — A separate building or physical structure that a qualified tow business occupies, either continuously or at regular times, where the qualified tow business' business books and records are kept and the business of towing vehicles is transacted in each assigned tow zone. Multiple or different qualified tow businesses may operate on a single piece of real property, provided that each qualified tow business maintains individual and separate records, storage facilities, and letters of appointment in order to be placed on the Department's non-preference tow rotational list.

(20) "Qualified Tow Business" is a tow business with a current letter of appointment issued by the Department.

(21) "Region Commander" or "District Commander" — The commanding officer of the region as established by the Oregon State Police.

(22) "Recovery Vehicle" — A motor vehicle that is:

(a) A commercially available truck chassis equipped with a commercially manufactured tow body or bed, that is rated and issued a serial number by the manufacturer;

(b) Designed and equipped for, and used in, the towing and/or recovery of vehicles;

(c) Capable of towing a vehicle by means of a tow bar, sling or wheel lift; and

(d) Capable of recovering a vehicle by means of a hoist, winch and towline.

(23) "Response Time" — The reasonable driving time it takes a tow truck to respond to the dispatched location once the tow truck is on the road.

(24) "Revocation" and "revoked" — The withdrawal of a letter of appointment and the removal from the Oregon State Police's non-preference towing program for a period of not less than 10 years, which becomes effective from the date of the Notice of Revocation from the Oregon State Police.

(25) "Suspension" and "suspend" — The removal from the Oregon State Police non-preference towing program for a period of not more than 10 years.

(26) "Tow Vehicle" — A motor vehicle that is:

(a) Altered or designed and equipped for, and used in, the business of towing vehicles; and

(b) Used to tow vehicles by means of a crane hoist, tow bar, towline or dolly, or otherwise used to render assistance to other vehicles (ORS 801.530).

(27) "Tow Zone" — The geographical area designated by the area commander for the removal of vehicles.

(28) "Vehicle Storage Area" — The approved yard or enclosed building where a qualified tow business keeps or stores towed vehicles.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 2-2000(Temp), f. & cert. ef. 7-14-00 thru 1-9-01; Administrative correction 6-12-01; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0060

Application for Appointment

(1) An application for letter of appointment to provide towing services for the Department shall be filed by the authorized agent or representative of a tow business with the Patrol Services Division on a form prescribed by the Department. In case of a tow business that is a partnership, each partner will apply on the form prescribed by the Department. In the case of a tow business that is a corporation, the Department may require that each of the present, and any subsequent officers, managers, and stockholders holding 10% or more of the total issued and outstanding stock of the applicant corporation complete an application form.

(2) The application form will be assigned a document number by the Patrol Services Division which shall be its yearly identification number for all matters relating to appointments, granted or denied, and any other correspondence thereafter.

(3) The filing of an application for a letter of appointment to provide towing to the Department from a non-preference list does not in itself authorize a tow business to provide towing services pursuant to these regulations until a letter of appointment has been granted by the Department. The Department shall not call a towing business for non-preference towing

ADMINISTRATIVE RULES

unless a current/valid yearly appointment letter has been issued in connection with such tow business by the Department. Nothing herein shall prohibit the Department from calling a towing business upon a specific request of the person responsible for the vehicle or his agent. An appointment letter will not be granted until all application sections of the application form have been completed by the authorized agent or representative of a tow business.

(4) During implementation of the Administrative Rules, the present non-preference tow list system will be in effect until such time that the Administrative Rules are in place at the Patrol Services Division of the Department.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0070

Application Requirements

(1) Application for placement on the non-preference tow rotational list shall be made on the forms furnished by the Department and shall be accompanied by an inspection report. The inspection report shall be furnished by the Department, and shall be completed by the authorized agent or representative of a tow business. The application form shall establish or provide all of the following:

(a) The tow business has an established place of business at the address shown.

(b) The tow business' place of business has an office area that is accessible to the public without entering the storage area and that the storage area complies with these Administrative Rules and all local zoning rules and regulations.

(c) Each tow business is separately registered with the Secretary of State Corporate Division, with a separate place of business and a separate storage area. Only one tow business may be operated at any one place of business.

(d) The authorized agent or representative of the tow business has inspected and certifies, under penalty of perjury, suspension, revocation and/or criminal prosecution that all of the information supplied in the application form and inspection form is true and accurate and that the tow business' place of business and all tow truck equipment meet the minimum requirements established by these Administrative Rules.

(e) The tow business has proof of the following current, minimum insurance coverage (Proof of required current insurance coverage shall be submitted with applications and inspection forms.):

(A) \$750,000, or the minimum required by the Federal Motor Carrier Regulations, or the Oregon Department of Transportation (ODOT), whichever is greater when towing under authority of Federal Motor Carrier Regulations or ODOT, for liability, for bodily injury or property damage per occurrence;

(B) Garage keeper's legal liability (for care, custody and control) per occurrence in the amount of:

- (i) Class A — \$50,000;
- (ii) Class B — \$150,000;
- (iii) Class C — \$200,000;
- (iv) Class D

(Note: Class "D" equipment is not considered to be recovery tow vehicles):

(I) Class D-A or Other Equipment under this classification — \$50,000;

(II) Class D-B or Other Equipment under this classification — \$75,000;

(III) Class D-C or Other Equipment under this classification — \$200,000.

(C) Insurance to protect against vehicle damage including, but not limited to fire and theft, from the time a vehicle comes into custody and control of the tow business and is hooked onto, throughout the recovery, and until that vehicle is reclaimed or sold.

(D) Insurance for cargo transported in the amount of:

- (i) Class A — \$50,000;
- (ii) Class B — \$100,000;
- (iii) Class C — \$200,000;
- (iv) Class D-A — or Other Equipment under this classification — \$50,000;

(v) Class D-B — or Other Equipment under this classification — \$100,000;

(vi) Class D-C — or Other Equipment under this classification — \$200,000.

(f) Nothing in this section will relieve a tow business or qualified tow business from maintaining insurance in the amounts and providing coverage of the type for motor carriers in ORS Chapter 825 if the amounts exceed, or coverage is different from, that required by this section.

(g) A certificate of insurance from the insurance carrier to the Department that includes the type and amounts of coverage and provides for notification of cancellation of the tow business's insurance is mandatory.

(h) The information for the letter of appointment may be included in the inspection form that is completed by the authorized agent or representative of the tow business.

(i) The tow business or tow business owner has a minimum of three (3) years of documented experience in the towing industry, either as a tow business or a tow business owner or tow vehicle driver for a tow business.

(j) The tow business has a dedicated recovery vehicle assigned to the tow zone applied for and capable of handling the classifications of tows requested in the application. A tow business may list a class B recovery vehicle to cover both class A and class B tows and a tow business may list a class C recovery vehicle to cover both class B and/or class A tows. If a larger recovery vehicle is listed by a tow business, that vehicle may only be listed for one tow zone for the smaller recovery tow classes it is used for, even if the larger tow vehicle tow zone overlaps with the other tow classification zones. Recovery Tow vehicles may only be listed for one tow zone. All tow vehicles approved must comply with these Administrative Rules for the classification of tow applied for. Only equipment approved through the letter of appointment to be used for the non-preference tow program for a specific tow zone can be used in that tow zone.

NOTE: A written waiver may be granted by the Oregon State Police based on local non-preference towing operational needs.

(k) The names of all drivers authorized by a tow business to drive in the tow zone for which the tow business applied, and all employees of a tow business who will have contact with the towed/assisted vehicle(s) and/or the driver/owner of the towed/assisted vehicle(s) or other representative(s) of the towed/assisted vehicle(s) owner(s). The use of non-listed and/or unreported drivers by a qualified tow business shall not be permitted.

(2) Within 30 days of the receipt of a request for an application for a letter of appointment, the Patrol Services Division of the Oregon State Police shall send an application packet, and include a current copy of these Administrative Rules and all forms related to the self certification, inspection and certification of equipment, and other related information required by these Administrative Rules.

(3) The address the tow business lists on its application shall be the place of business where the tow business keeps its business records. The application also shall list all locations of vehicle storage areas and places for redemption of vehicles. If there is a change in address of the tow business, the authorized agent or representative of the tow business shall immediately notify the Patrol Services Division, and in no event will notification take longer than ten (10) days.

(4) All tow trucks shall display the tow business's name, city, and telephone number. This information shall be painted or permanently affixed to both sides of the vehicle and the lettering shall be at least 2 inches in height with 1/2 inch stroke and in a color that is in contrast with the tow truck's color.

(5) Any tow business in violation of this Administrative Rule may be denied a letter of appointment and shall be notified of the denial in writing. The Department may also deny a renewal application for any qualified tow business with an existing letter of appointment that is in violation of this Administrative Rule and may have its existing letter of appointment immediately suspended, prior to any hearing and shall be notified of the suspension in writing. A suspension under this rule will be in effect until the violation is corrected and inspected. Other sanctions, up to revocation and/or criminal prosecution, may be applied to a qualified tow business upon finding by the Department that the qualified tow business is in violation of this Administrative Rule.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0090

Inspections

The authorized agent or representative of the tow business shall self-certify on its application under penalty of False Swearing related to Regulation of Vehicles related to Businesses (ORS 822.605), penalty of Perjury (ORS 162.065), suspension or revocation from the non-preference tow rotational list that its tow business, employees and vehicles meet the minimum requirements as set forth in these Administrative Rules. This self-certification shall verify that the tow business' request for a letter of appointment complies with all applicable local laws and regulations as prescribed for the geographical area where the tow business will be established. If local zoning regulations are applicable, the authorized agent or representative of the tow business must include with the application a copy of the certification of approval from the local planning department, zoning commission or other authorized unit of local government, to the

ADMINISTRATIVE RULES

Department. A zoning certification will become part of the permanent record maintained for each qualified tow business by the Department.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0095

Letter of Appointment

The letter of appointment shall be completed by the Department establishing that the tow business has met the requirements for a letter of appointment. The designated tow zone(s), class of tow vehicle(s), specific vehicles authorized to operate in each zone, and any waivers will be listed in the letter.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0100

Issuance of Letter of Appointment

(1) No tow business shall be called upon to perform a non-preference towing service at the request of the Department unless such tow business has a valid letter of appointment from the Department, as described herein. A letter of appointment will not be issued by the Department unless the Department is satisfied that all qualifications set out in these Administrative Rules either have been met by the tow business or that a waiver of one or more qualifications has been granted by the Department.

(2) A letter of appointment will be valid only in the zone or zones assigned by the area commander and will identify specific vehicles of a qualified tow business authorized to operate in each zone. Applications for additional letters of appointment in other zones must be based on a complete and separate place of business capable of independent operation within the additional zone.

(3) A tow business may petition the Department for a waiver of a non-safety related requirement. The waiver shall be sent to the area commander who may make a recommendation regarding the waiver as an operational need. The Department may grant a waiver if, it finds that the towing services available to the Department are inadequate in the area to meet the needs of the public.

(4) In the event a qualified tow business that meets all requirements and qualifications receives a letter of appointment in the same zone as a qualified tow business that has been granted a waiver, the qualified tow business currently operating under a waiver, upon notification, will be advised that it has up to 30 days to come into compliance with these rules before removal from the affected non-preference tow zone. If the qualified tow business operating under a waiver fails to come into compliance within the time specified by the Department, it may have its letter of appointment suspended or revoked by the Department and will not be called for Department non-preference tows.

(5) Every letter of appointment shall be issued in the name of a tow business and the holder thereof shall not allow any other person or qualified tow business to use the letter of appointment.

(6) The letter of appointment will be valid only for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment shall be valid for one (1) year unless suspended or revoked by the Department.

(8) Each separate place of business will have a letter of appointment.

(9) Before a letter of appointment can be issued by the Department the tow business must have a tow vehicle meeting the minimum standards set forth in these OARs 257-050-0020 to 257-050-0200.

(10) The letter of appointment shall state the zone the qualified tow business is authorized to operate in. The zones will be determined by the area commander.

(11) All qualified tow businesses shall agree to tow abandoned vehicles in accordance with Chapter 819 of the Oregon Revised Statutes.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0110

Suspension, Revocation and Voluntary Relinquishment of Letter of Appointment

(1) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with any requirement or provision of these Administrative Rules or that the authorized agent or representative of a tow business has falsified any documentation or certification related to compliance of these Administrative Rules in an application for a letter of

appointment, the Department shall suspend or revoke the qualified tow business's letter of appointment. The Department may suspend or revoke the qualified tow business's letter of appointment at any time once the qualified tow business has been given notice in accordance with these Administrative Rules. A qualified tow business whose letter of appointment has been suspended or revoked may request an administrative hearing as outlined in these Administrative Rules.

(2) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with the requirements of these Administrative Rules, the qualified tow business's letter of appointment shall be suspended or revoked by the Department.

(3) The qualified tow business may voluntarily relinquish his/her appointment. The Department will be advised in writing of this voluntary relinquishment. After receiving written notice the Department will cause an inspector to obtain the original letter of appointment and forward the same to the Department.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0115

Suspension and Revocation

(1) For purpose of 257-050-0115, the following suspension periods apply:

(a) "First suspension" — any first violation of OAR 257-050-0115 shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation of OAR 257-050-0115 that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation of OAR 257-050-0115 that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitutes grounds for suspension of a qualified tow business:

(a) A qualified tow business that commits a violation, traffic crime or traffic infraction of Oregon Law during the course and operation of the qualified tow business's business shall be suspended.

(b) An employee of a qualified tow business that commits any violation or traffic infraction of Oregon Law while in the performance of his or her duties of employment shall be suspended.

(3) The following constitutes grounds for revocation of a qualified tow business:

(a) A qualified tow business that commits a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony during the course and operation of the qualified tow business's business shall be revoked.

(b) An employee of a qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment shall be revoked.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0125

Reinspection/Certification

(1) Self Certification/re-inspections will be conducted at least once a year by all qualified tow businesses. Unscheduled inspections of the qualified tow business may be conducted without notice by any Oregon State Police inspector to determine the fitness of tow trucks, facilities, and business records. These inspections shall be done during business hours.

(2)(a) In the event of missing or defective tow truck equipment that is not safety related, but that was required for initial approval, the Oregon State Police shall advise the qualified tow business of the defect. If the qualified tow business fails or refuses to repair the defect within 15 days of the notice, the defective truck will be removed from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference tow rotation list for the duration of the letter of appointment without renewal, until after the last day of authorization of the letter of appointment and the defect is repaired.

(b) In the event of a violation of these Administrative Rules by a qualified tow business relating to the qualified tow business's facilities, records or other conditions, the Oregon State Police shall advise the qualified tow business of the violation. If the qualified tow business fails or refuses to fix the violation within 15 days of the notice, the qualified tow business's letter of appointment will be suspended for its duration without renewal until after the last day of authorization of the letter of appointment and the violation is fixed.

(c) A qualified tow business may avoid suspension under this section by voluntarily removing the involved tow or recovery vehicle from the list

ADMINISTRATIVE RULES

of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the qualified tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon 97310, advising the Oregon State Police of the qualified tow business's voluntary removal of the vehicle from service on non-preference calls for the Oregon State Police. This voluntary removal of defective equipment letter shall be received by the Oregon State Police, Patrol Services Division no later than 15 days after the initial notification of the defect.

(3)(a) In the event of a safety related violation which renders the tow truck a safety hazard upon a public highway, the tow truck shall be immediately removed from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference tow rotation list. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow truck shall be reinstated on the tow business's letter of appointment. If the defect is not corrected and reinspected within 30 days, the suspension will continue without reinstatement until after the last day of the authorization of the letter of appointment and the defect is repaired and reinspected.

(b) In the event of a safety related violation which renders a qualified tow business's facilities unsafe, the qualified tow business shall immediately be suspended for the duration of the letter of appointment from the Department's non-preference tow rotational list, without renewal until after the last day of the authorization of the letter of appointment and the defect is repaired. If the defect is corrected and reinspected within 30 days of the immediate suspension, the qualified tow business's letter of appointment shall be reinstated.

(c) A qualified tow business may avoid immediate suspension under this section by voluntarily removing the tow or recovery vehicle from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the qualified tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon, 97310, advising of the qualified tow business's voluntary removal of the vehicle from service or the business on non-preference calls for the Oregon State Police. This voluntary removal safety hazard letter shall be received by the Oregon State Police, Patrol Services Division no later than 30 days after the initial notification of the defect.

(4) Upon repair or correction of a defect of a voluntarily removed tow truck or a defect related to a qualified tow business, an Oregon State Police inspector, upon written request from the affected qualified tow business, shall reinspect the equipment/facility which was found to be defective or missing. If the defects have been satisfactorily corrected, the inspector shall reinstate the tow truck to the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference list and/or shall reinstate a qualified tow business's letter of appointment. In the event an Oregon State Police inspector is not readily available to reinspect, another officer appointed by the inspector's supervisor may reinspect and re-instate the tow truck or qualified tow business. The reinspection shall be completed as soon as possible after a written request from the qualified tow business has been received by the Patrol Services Division, advising that the defect has been repaired. In no event shall a reinspection take longer than ten (10) business days after the written request for inspection has been received by the Patrol Services Division.

(5) Upon revocation, suspension, expiration or voluntary relinquishment of a letter of appointment, a qualified tow business's right to conduct non-preference tows at the request of the Department is terminated, unless the call for service is a preference tow made by the owner and/or driver of a vehicle.

(6) Upon sale or transfer by the qualified tow business of a truck listed in the qualified tow business's letter of appointment that is authorized for use in the Department's non-preference tow rotation list, the qualified tow business shall advise the department so that the truck may be removed from the non-preference list and the qualified tow business's letter of appointment. This notification must be made immediately and in no event may exceed ten (10) days after the sale or transfer.

(7) Upon the purchase or acquisition of any additional tow truck(s) to be used pursuant to this rule, a qualified tow business shall immediately notify the Department. The qualified tow business shall make a self-certified inspection of the new unit and submit this inspection to the Department, prior to the tow truck being added to the qualified tow business's letter of appointment and being used for non-preference towing.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0130

Appeal

A tow business or qualified tow business aggrieved by the decision of the Hearings Program officer denying, suspending, or revoking a letter of appointment must make any further appeal of such decision to the Oregon Court of Appeals.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0140

Place of Business Requirement and Business Hours

A qualified tow business's hours for the purpose of inspection of business records and towing equipment shall be 8AM-5PM, excluding weekends and holidays:

(1) When a qualified tow business is not open and does not have personnel present at the place of business, the qualified tow business shall post a clearly visible telephone number at its place of business for the purpose of public contact for the release of vehicles or personal property.

(2) The qualified tow business shall maintain personnel who can be contacted 24 hours a day to release impounded vehicles within a 30-minute period of time.

(3) The qualified tow business must post and maintain its letter of appointment at its place of business.

(4)(a) Dispatch service. The qualified tow business shall provide dispatch services 24 hours a day, 365 days a year. Each tow vehicle used by a qualified tow business shall be equipped with a two-way radio (not a citizen's band radio) or cellular phone capable of direct communications with the qualified tow business's dispatch service. Equipment provided shall be subject to approval of the Oregon State Police. Equipment shall be maintained in proper working condition at all times.

(b) Failure to respond to a call:

(A) Refusal or failure of a qualified tow business to respond to calls from the Department for non-preference tows may result in the suspension or revocation of the qualified tow business's letter of appointment;

(B) The qualified tow business shall advise the appropriate Oregon State Police Dispatch Center when the qualified tow business is temporarily unavailable to respond to non-preference tow calls. Unavailability may occur due to conditions which include, but are not limited to, a disabled tow truck or a tow truck under repair, or unforeseen driver shortage due to illness or vacation. The qualified tow business shall advise the Oregon State Police Dispatch Center once the qualified tow business is available to resume its normal operation;

(C) Regardless of the unavailability of any qualified tow business, the non-preference list rotation shall continue as if the qualified tow business was available.

(5) Service call response time. Response times are mandatory. Class A and D-A tow trucks shall be on the road within fifteen minutes. Class B, C, D-B and D-C tow trucks shall be on the road within thirty minutes. At the time of the dispatch, all classes of tow trucks shall provide an estimated time of arrival at the scene. The station commander may waive this requirement due to inclement weather or unusual circumstances that might exist.

(6) For abandoned vehicles not deemed to be a hazard, tow requests will be made during business hours, defined as 8 A.M. to 5 P.M., seven (7) days a week, including holidays. Qualified tow businesses may tow abandoned vehicles at the qualified tow business's convenience during business hours on the date of the tow request. Once a vehicle is removed from the roadway and in possession of the qualified tow business, the qualified tow business shall notify the requesting Oregon State Police Office Dispatch Center as soon as possible on the date of the tow request of its possession of the abandoned vehicle. Notification of possession of the abandoned vehicle should be made immediately by the qualified tow business. In no case will notification to the Oregon State Police be made more than two hours after the abandoned vehicle comes into the possession of the qualified tow business.

(7) At the time a response is requested, the Department will provide the location, make, model, year of car license plate and estimated gross vehicle weight (if necessary) to the qualified tow business. Also, the Department will inform the qualified tow business about any condition or circumstances that may require special handling or assistance. The qualified tow business shall transmit the information to the person driving the tow truck.

(8) Qualified Tow business's record requirements: At its place of business of each tow zone, qualified tow businesses shall maintain the following records on each vehicle towed for a period of three years:

(a) Vehicle description:

ADMINISTRATIVE RULES

- (b) License number;
- (c) Issuing state;
- (d) Make;
- (e) Model;
- (f) Year;
- (g) Vehicle identification number;
- (h) Towing location;
- (i) Location vehicle was towed from;
- (j) Location to where the vehicle was towed;
- (k) Qualified Tow Business, Name, Address and Phone Number;
- (l) Name of tow truck driver;
- (m) Reasons for towing and/or service;
- (n) Time and date of service include storage dates as applicable;
- (o) Class of tow truck or truck number;
- (p) OSP Impound Forms;
- (q) All invoices for abandoned vehicles towed;
- (r) All invoices for all OSP non-preference tows.

(9) All fees for service shall be itemized. A copy of voided invoices shall be filed by invoice number at the qualified tow business's place of business and shall be retained in a file for a period of three years.

(10) All vehicles shall be handled and returned in substantially the same condition that they were in before being towed.

(11) All employees who operate tow truck(s) for a qualified tow business shall have an operator's license with the proper class or type for vehicle combinations. As prescribed by the state issuing the license, Oregon licensees shall comply with all applicable Oregon laws.

(12) Any person who shows proof of ownership or written authorization from the owner of the impounded vehicle may inspect and view the vehicle without charge during normal business hours. This does not apply to a vehicle seized and stored as evidence.

(13) All towing receipts on impounded vehicles, or confiscated vehicles, shall be made available by the qualified tow business to the nearest Department office after the tow has been completed.

(14) The qualified tow business shall notify the Oregon State Police Dispatch Center immediately when any person seeks to redeem any vehicle towed as abandoned or where a police hold has been placed on the vehicle. Release of vehicle under temporary or formal hold shall require written release from the Department. When a person entitled to take possession of the vehicle subject to a hold presents the qualified tow business with an official Oregon State Police release form, the qualified tow business shall release the vehicle to the person named.

(15) When inspection or reinspection of a tow truck is necessary, the area commander shall designate a location and time for the inspection to be conducted. When practical the inspection or reinspection shall be made within ten (10) days following the request by the qualified tow business.

(16) The qualified tow business shall provide either locked outside storage or locked, secure indoor storage, or both, which meets the following requirements:

(a) The qualified tow business's storage facility shall be in conformance with all zoning requirements of all applicable governments. Storage shall be provided, and of sufficient size, for each class of vehicle towed for the Oregon State Police, including semi trucks and motor homes, except as provided in ORS 819.110. Storage shall be located within the contractual geographical service area described as tow zones. The vehicle storage area may be located up to five (5) miles from the qualified tow business's place of business, provided that both facilities are located within the appointed tow zone. Contact phone numbers and addresses are to be posted at both locations for the place of business and the storage area. When the towed vehicle storage area is not located at the qualified tow business's place of business, employees shall be able to respond from one location to the other within 30 minutes or less.

(b) The storage area will be under the exclusive access and control of the individual qualified tow business. The storage area cannot be shared with other businesses, including non-tow businesses not owned by the owner of a qualified tow business.

(17) The qualified tow business shall provide fencing around the outside storage area. The fencing must meet the following requirements:

(a) Fencing must comply with the requirements established in these Administrative Rules and all local zoning rules and regulations.

(b) Fencing shall be either made of a woven wire composition normally referred to as "cyclone fencing-chain link fencing," or made of a solid material, such as wood or concrete block, inclusive of a permanent natural barrier which would prevent access and unauthorized entry to the storage area. Fencing shall be topped by a minimum of three (3) strands of barbed wire. Fencing not meeting the requirements of these regulations as determined by the Oregon State Police will not be accepted. Qualified tow businesses that are unable to comply with these fencing requirements due to local zoning requirements will be addressed on a case by case basis by the Department.

(c) Gates and entryways shall be of a solid frame, and the same minimum height as the other fencing material. All gates and entryways shall be designed to afford locking the gate or entryway securely to prevent unauthorized entry.

(18) The qualified tow business shall allow the owner of a towed vehicle or anyone authorized in writing by the Oregon State Police, and/or an Oregon State Police Officer or other Department Member, to go to the vehicle and remove items of personal emergency nature, e/g/ eyeglasses, medication, clothing, identification, wallets-purses (and their contents), credit cards, check books, any known money-currency, child safety car and booster seats, except as provided in ORS 819.110 and 819.160.

(19) The qualified tow business shall be responsible for the contents, storage and disposal of all personal items, except items taken by authorized personnel in OAR 257-050-0140(18).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0145

Felony Convictions

The Oregon State Police in the interest of public safety shall deny, suspend, or revoke a tow business' application or a qualified tow business' letter of appointment for the Department's non-preference towing program for any of the following reasons:

(1) A tow business, or any owner or employee of a tow business, convicted of any felony charge, or any charge in any state, which in Oregon is considered to be a felony, within the last fifteen (15) years from the date the tow business' application is received by the Oregon State Police. This subsection is subject to the provisions set forth under ORS 166.270.

(2) Any tow business, qualified tow business, or owner or employee of a tow business or qualified tow business convicted of two felony charges, regardless of when those felonies were committed.

(3) Any owner or employee of a tow business or qualified tow business convicted of a felony charge, or any charge from another state which in Oregon is considered to be a felony, where a weapon was used or threatened to be used in the commission of the crime, regardless of the date of the felony charge.

(4) Any owner or employee of a tow business or qualified tow business convicted of any of the sex crimes listed in ORS 181.594(4) or the equivalent conviction of a sex crime from another jurisdiction regardless of the degree of the charge.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0150

Towing

(1) The Department shall not establish, recommend or in any way dictate the cost of a non-preference tow conducted by a qualified tow business.

(2) A qualified tow business that conducts a non-preference tow under these administrative rules shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(3) Qualified tow businesses shall furnish the Patrol Services Division with an itemized list of charges that can be incurred during a non-preference tow including, but not limited to:

(a) Hookup charge;

(b) Mileage fee;

(c) Response fee.

(4) Qualified tow businesses shall not charge for items not declared on the list relating to the towing of a vehicle. This does not include mechanical work, bodywork or other repair work conducted subsequent to the tow.

(5) Complaints of unfair charges against a qualified tow business shall be referred to the Oregon Attorney General's Office.

(6) Qualified Tow businesses shall not transport passengers in any towed or carried vehicle(s).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0155

Suspension and Revocation (for Violation of a Law Chargeable as a Violation or Crime)

(1) The following suspension or revocation periods apply when a qualified tow business, or any owner or employee of a qualified tow business, has been convicted of a violation of law charged as a Violation or Crime:

ADMINISTRATIVE RULES

(a) "First Suspension" — any first violation shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitute grounds for suspension of a qualified tow business' letter of appointment:

(a) A qualified tow business that commits a violation or traffic crime of Oregon Law during the course and operation of the qualified tow business' tow business.

(b) An owner or employee of a qualified tow business that commits any violation of Oregon Law while in the performance of his or her duties of employment.

(3) The following constitutes grounds for revocation of a qualified tow business' letter of appointment:

(a) A qualified tow business that commits a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony during the course and operation of the qualified tow business' tow business.

(b) An owner or employee of a qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0157

Suspension or Revocation for Violation (other than a Law Chargeable as a Violation or Crime)

(1) Suspensions or revocations of a letter of appointment, unless otherwise outlined or defined in these rules, shall fall under one of the following four levels:

(a) Immediate suspension — A suspension that takes place immediately, upon written notice from the Oregon State Police, as evidenced by the date of the postmark, removing a tow vehicle, tow equipment or a qualified tow business from the non-preference rotational tow list.

(b) Level one suspension — any first violation of these Administrative Rules unless otherwise defined in the rule and shall be for a period of not less than sixty (60) days, and not more than one (1) year in length.

(c) Level two suspension — any second violation of these Administrative Rules that is committed within a one (1) year period from the date of any final order and shall be for a period of not less than one (1) year and not more than two (2) years in length.

(d) Revocation — any third violation of these Administrative Rules that is committed within a three (3) year period of the date of any final order and shall result in a revocation of a qualified tow business' letter of appointment.

(2) A suspension shall be in effect until the violation is corrected, or the Department orders reinstatement of a qualified tow business' letter of appointment.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0170

Hearings

(1) The Oregon Administrative Procedures Act shall govern the conduct of any hearing held pursuant to these regulations. The burden of proof in any hearing before the Hearing Officer shall be on the tow business seeking a letter of appointment, or on the qualified tow business that has had its letter of appointment suspended or revoked by the Oregon State Police.

(2) A request for an administrative hearing must be in writing and be received by the Department no later than fifteen (15) days from the date of notice of denial, suspension and/or revocation as evidenced by the postmark. The Department may also initiate or request an administrative hearing, regarding a denial, suspension and/or revocation of a letter of appointment.

(3) An administrative hearing must be conducted within ninety (90) days from the date the written request is received by the Department or on the first business day thereafter if the 90th day is a weekend or holiday, unless the parties agree to an extension of time.

(4) Any request by a qualified tow business for a continuance or reset of the hearing after the original scheduled date will result in the temporary suspension and/or extension of any temporary suspension of the qualified tow business' letter of appointment until a ruling is issued from the hearing with no liability to the Department. If the Department requests a continuance or reset of a hearing, the qualified tow business shall be left on the non-preference tow rotational list until a ruling is issued from the hearing

unless a temporary suspension has been levied against the qualified tow business.

(5) Oral proceedings shall be recorded and shall become part of the hearing record.

(6) The Department shall appoint a Hearing Officer to conduct the hearing. The Hearing Officer shall issue a proposed order that shall include written findings of facts based on the evidence and written conclusions of law based on the findings.

(7) Exceptions to proposed orders must be submitted to the Department in writing within ten (10) days of the date the proposed order is issued, or on the first business day thereafter if the 10th day is a weekend or holiday. Written argument submitted with the exceptions will be considered; no opportunity for oral argument will be allowed. The Department shall issue a final order.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0180

Judicial Review

A tow business or qualified tow business aggrieved by a final order of the Department denying, suspending, or revoking a letter of appointment may seek judicial review of such decision in the Oregon Court of Appeals. The denial, suspension or revocation shall remain in effect during the appeal.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

257-050-0200

Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

(1) All tow vehicles operated by a qualified tow business under a letter of appointment under these rules shall have the following minimum equipment:

(a) Minimum of two (2) lights mounted behind the cab of the tow truck controlled by a dedicated on/off switch. This lighting must be capable of illuminating the area of the tow under darkened, foggy or dangerous conditions;

(b) An FCC licensed two-way radio, in conformance with Part 93 FCC Regulations, or cellular phone (citizen band radios so not meet this requirement);

(c) Cables or wire ropes as called for in each class. Cable/wire rope lengths shall be measured from the point of attachment on each drum. Cables/wire ropes shall meet the following requirements.

(A) Each cable shall be capable of being fully extended from and fully wound onto its drum;

(B) Cables or wire ropes shall be free from the following defects or conditions:

(i) There shall be no more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay;

(ii) There shall be no evidence of any heat damage from any cause;

(iii) There shall be no end attachments that are cracked, deformed, worn or loosened;

(iv) Where a wire rope is attached to a hook with clamps instead of being swaged, a minimum of three clamps shall be used on end attachments. Clamps shall be spaced at least six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the rope. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size.

(d) Two revolving or intermittent red or amber lamps with 360 degree visibility. The truck may also be equipped with flashing amber lights, which may be used in conjunction with the red lamp(s). Such lighting will not be used when responding to a call, but only at the scene when necessary to warn approaching traffic of impending danger.

(e) A broom and a shovel. The broom shall be at least twelve inches wide and have a handle at least four feet long. The shovel shall be flat scoop type with a minimum width of seven inches and overall length of a least three feet. Tow truck driver shall clean accident/incident scenes of all vehicle glass and debris required by ORS 822.225.

(f) A tow sling, wheel lift, car carrier or other comparable device made of a material designed to protect vehicles.

(g) Motorcycle Tows — A tow sling, wheel lift, car carrier or other comparable device that has the ability to tow motorcycles.

(h) One fire extinguisher, 25 BC rating or equivalent.

(i) One snatch block, or equivalent block, in good working condition for each working line.

(j) Commercially manufactured dollies on all class A recovery vehicles and class B recovery vehicles up to 26,000 GVW. Commercially man-

ADMINISTRATIVE RULES

ufactured dollies are required for all tow class categories when dollies are used and/or defined for use up to 26,000 GVW.

(k) All class A and B tow vehicles that are inclusive of class DA and DB tow vehicles shall carry at least one pinch bar, or an equivalent device. The bar or equivalent device must be 4 feet in length and 3/4 inch in diameter, and the ends may either be tapered or flattened.

(l) Portable lights for unit being towed including, but not limited to, tail lights, stop lights and directional signals.

NOTE: Class D tow trucks roll backs are exempt from this section if not towing a second vehicle.

(m) All tow vehicles must have a minimum of two "wreck ahead" signs to be placed by tow truck drivers as required by ORS 822.220. The signs shall conform to all specifications as set forth in the Oregon Department of Transportation's publication "Traffic Control on State Highways for Short Term Work Zones" (Form 734-2272) and the "Manual Uniform of Traffic Control Devices."

(n) All tow trucks and equipment used to perform services under these rules shall be maintained in good working order. Failure to maintain equipment shall be cause for suspension and removal of the defective equipment from the non-preference list. If equipment does not meet the Department's criteria for non-preference tows under these Administrative Rules, the Department may suspend and remove the equipment from the qualified tow business's letter of appointment and the non-preference list.

(2) Class A Tow Trucks (Small): Tow trucks shall be provided that are capable of towing and recovery operations for passenger cars, pickup trucks, small trailers or equivalent vehicles. All equipment used in conjunction with the tow truck must be compatible with the manufacturer's basic boom rating and must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Ten thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Dual tires on the rear axle or duplex type tires, referred to as super single with a load rating that is comparable to dual tire rating;

(c) Six ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(d) A minimum of one hundred (100) feet of 3/8-inch continuous length cable; and

(e) A wheel lift for this class of tow truck.

(3) Class B Tow Trucks (Medium): Class B tow trucks shall be capable of towing and recovery operations for medium size trucks, trailers, motor homes or equivalent vehicles. In addition to standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Ten ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Class B tow trucks in excess of 26,000 pounds GVW will not be required to carry dollies when used for heavy towing;

(d) A wheel lift for this class of tow truck; and

(e) A minimum of 150 feet of seven-sixteenths inch cable.

(4) Class C Tow Trucks (Large): Tow trucks that are capable of towing and recovery operations for large trucks, trailers, motor homes or equivalent vehicles. In addition to the standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Twenty-five ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Minimum of 150 feet of cable, five-eighths inch diameter;

(d) Air brakes and an air system capable of supplying air to the towed unit;

(e) Portable dollies are not required;

(f) Tandem rear axle truck chassis (three axle truck);

(g) May include an under-lift for this class of tow truck.

(h) Exception to commercially manufactured tow vehicles (for Class C recovery tow trucks/equipment only). Class C Recovery Tow Equipment that has been approved by the Oregon State Police to be used on the Department's non-preference towing list prior to the adoption of these Administrative Rules, but does not meet the criteria outlined under these Administrative Rules, may continue to be used for the Department's non-preference tows if the following conditions are met:

(A) The equipment must first be inspected and approved by the Oregon State Police;

(B) If a qualified tow business has the only "Class C" tow truck in a zone, then the qualified tow business must replace the equipment after 5 years from the adoption date of these rules. The Oregon State Police reserve the option to extend the time period for the use of Class C Towing

Equipment under this exception based on operational need by the Department; and

(C) If it is determined at any time that the equipment does not meet Oregon State Police criteria for towing under these Administrative Rules, then the Oregon State Police can remove the equipment from the qualified tow business's letter of appointment and the non-preference list.

(5) Class D Tow Trucks (Trucks and equipment in this class are not considered recovery vehicles):

(a) Tow trucks and other vehicles in this class are to be used for towing and/or hauling purposes only. No recovery can be performed by equipment in this class;

(b) Equipment in this class capable of towing/hauling passenger cars, pickup trucks, trailers, trucks or equivalent vehicles, and debris is based on the size and ratings of the Class D tow unit used. All equipment used in conjunction with the tow truck must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(A) Class D-A:

(i) Eleven thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of fifty feet three-eighths inch continuous length cable;

(iv) May include wheel lift, if chassis GVW is over 14,500 pounds; and

(v) If a Metro unit, dollies and a wheel lift.

(B) Class D-B:

(i) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of 50 feet of three-eighths inch cable;

(iv) May include wheel lift; and

(v) If a Metro unit, dollies and a wheel lift.

(C) Class D-C:

(i) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent.

(ii) Minimum of 50 feet of cable, five-eighths inch diameter.

(iii) Tandem rear axle truck chassis (three axle truck).

(iv) May include wheel lift; and

(v) Air brakes and an air system capable of supplying air to the towed unit.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10

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Department of Public Safety Standards and Training Chapter 259

Rule Caption: Physical Examination of Law Enforcement Officer After Separation due to Inability to Perform Essential Tasks.

Adm. Order No.: DPSST 10-2009

Filed with Sec. of State: 9-21-2009

Certified to be Effective: 9-21-09

Notice Publication Date: 3-1-2009

Rules Amended: 259-008-0010

Subject: Requires a law enforcement officer who is separated from employment for a reason related to a physical inability to perform the essential task(s) of a law enforcement officer to successfully complete a physical examination prior to obtaining re-employment in a certifiable position.

Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or within 90 days prior to the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon

ADMINISTRATIVE RULES

State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer, instructor, telecommunicator, or EMD who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(A) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(B) Discretionary disqualifying misconduct described in OAR 259-008-0070(4).

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language.

(A) The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading/writing test prior to attending a course identified in this section.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) Except as provided in (e) below, the Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Notwithstanding subsection (c), any law enforcement officer who is separated from employment for a reason related to a physical inability to perform an essential task of a law enforcement officer must successfully complete a physical examination prior to obtaining re-employment in a certifiable position or applying for certified retired officer status.

(f) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(g) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(h) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(i) If amplification device(s) is (are) necessary to meet the criteria in (g) or (h) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(j) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not

ADMINISTRATIVE RULES

interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(k) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (k), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (k), it will be at the expense of the applicant or hiring authority.

(I) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(m) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(n) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(o) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(p) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(f) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(g) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

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

Stat. Auth.: ORS 181.640, 181.644, 183.341

Stats. Implemented: ORS 181.640, 181.644, 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08; DPSST 4-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 10-2009, f. & cert. ef. 9-21-09

Rule Caption: Electronic Transmission of Public Rulemaking Notices.

Adm. Order No.: DPSST 11-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 9-1-2009

Rules Amended: 259-001-0005

Subject: Establishes an interested parties list that can retrieve notice of proposed rulemaking electronically.

Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-001-0005

Notice of Proposed Permanent Rulemaking and Adoption of Temporary Rules

(1) Except as provided in ORS 183.335(7) or (12) or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Department will give notice of its intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To persons on the interested parties lists described in section (2) of this rule at least 28 days before the effective date of the rule;

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

(d) To other persons, agencies, or organizations to whom the Department is required to provide an opportunity to comment pursuant to state statute at least twenty-eight (28) days before the effective date of the rule.

(e) In addition to the above, the Department may send notice of intended action to other persons, agencies or organizations that the Department, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Department will maintain an interested parties list for each OAR chapter of rules for which the Department has administrative responsibility. A person, group, or entity that wants to be placed on such a list to receive notices of proposed permanent adoption, amendment, or repeal of a rule must make a request in writing or by electronic mail to the rules coordinator. The request must include either a mailing address or an electronic mail address where notices may be sent.

(3) Notices under this rule may be sent by use of hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Department recog-

ADMINISTRATIVE RULES

nizes state shuttle as “mail” and may use this means to notify other state agencies.

(A) An email notification under section (1) of this rule may consist of any of the following:

(A) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(B) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(C) An email with specific instructions within the body of the email, usually including an electronic URL (Universal Resource Locator) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) The Department may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule must include the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact, or specific instructions to locate these documents online.

(c) The Department will honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Department adopts or suspends a temporary rule, the Department will notify:

(a) Legislators specified in ORS 183.335(15);

(b) Persons on the interested parties list described in Section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter; and

(c) Other persons, agencies, or organizations that the Department is required to notify pursuant to state statute or federal law.

(d) In addition to the above, the Department may send notice to other persons, agencies, or organizations that the Department, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking.

(4) The Department may state how and where a copy of a proposed rule or temporary rule may be obtained on paper, by electronic mail, or from a specified web site.

Stat. Auth.: ORS 181.640 & 183.341

Stats. Implemented: ORS 181.640, 183.330, 183.335 & 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 2-2009, f. & cert. ef. 4-8-09; DPSST 11-2009, f. & cert. ef. 10-15-09

Rule Caption: Amends Rules Relating to Wildland Interface Fire Fighter, NFPA 1033 Fire Investigator, Update NWCG Standards.

Adm. Order No.: DPSST 12-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 9-1-2009

Rules Amended: 259-009-0005, 259-009-0062

Subject: Defines Wildland Interface Fire Fighter, Wildland Interface Engine Boss, Wildland Interface Strike Team/Task Force Leader and Wildland Interface Division/group Supervisor and NFPA Fire Inspector II;

Adopts NFPA 1033 Fire Investigator, Edition 2009;

Adopts current NWCG standards relating to Wildland Interface Fire Fighter, Wildland Interface Engine Boss, Wildland Interface Strike Team/Task Force Leader Engine and Wildland Interface Division/Group supervisor.

Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-009-0005

Definitions

(1) “Authority having jurisdiction” shall mean the Department of Public Safety Standards and Training.

(2) “Agency Head” means the chief officer of a fire service agency directly responsible for the administration of that unit.

(3) “Board” means the Board on Public Safety Standards and Training.

(4) “Cargo Tank Specialty” means a person who provides technical support pertaining to cargo tank cars, provided oversight for product removal and movement of damaged cargo tanks, and acts as liaison between technicians and outside resources.

(5) “Chief Officer” means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and super-

vises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(6) “Community College” means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) “Company Officer” means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(8) “Content Level Course” is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(9) “Department” means the Department of Public Safety Standards and Training.

(10) “Director” means the Director of the Department of Public Safety Standards and Training.

(11) “Entry Level Fire Fighter” means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(12) “Field Training Officer” means an individual who is authorized by a fire service agency of by the Department to sign as verifying completion of tasks required by task books.

(13) “Fire Company” means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(14) “Fire Fighter” is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(15) “Fire Ground Leader” means a Fire Service Professional who is qualified to lead emergency scene operations.”

(16) “Fire Inspector” means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(17) “Fire Service Agency” means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(18) “Fire Service Professional” means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. “Fire service professional” does not include forest fire protection agency personnel.

(19) “Fire Training Officer” means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire service agency training program.

(20) “First Responder” means an “Operations Level Responder”

(21) “Hazardous Materials Safety Officer means a person who works within an incident management system (IMS) (specifically, the hazardous materials branch/group) to ensure that recognized hazardous materials/WMD safe practices are followed at hazardous materials/weapons of mass destruction (WMD) incidents.

(22) “Hazardous Materials Technician” means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents using a risk-based response process by which they analyze a problem involving hazardous materials/weapons of mass destruction (WMD), select applicable decontamination procedures, and control a release using specialized protective and control equipment.

(23) “Incident Commander” (IC) means a person who is responsible for all incidents activities, including the development of strategies and tactics and the ordering and release of resources.

(24) “Intermodal Tank Specialty” means a person who provides technical support pertaining to intermodal tanks, provided oversight for product removal and movement of damaged intermodal tanks, and acts as a liaison between technicians and outside resources.

(25) “Marine Tank Vessel Specialty” means a person who provides technical support pertaining to marine tank vessels, provided oversight for product removal and movement of damaged marine tank vessels, and acts as a liaison between technicians and outside resources.

(26) “NFPA” stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(27) “NFPA Airport Firefighter” means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

ADMINISTRATIVE RULES

(28) "NFPA Driver-Operator" means a member of a fire service agency licensed to operate a fire service agency vehicle/apparatus in accordance with the job performance requirements of NFPA 1002 and who have met the Entry Level Fire Fighter requirements. Fire service agency vehicle/apparatus operators are required to be certified at NFPA 1001 fire fighter I standard prior to driver operator duties. Additional requirements are involved for those driver operators of apparatus equipped with an attack or fire pump, aerial devices, a tiller, aircraft firefighting and rescue vehicles, wildland fire apparatus, and mobile water supply apparatus (tanker/tender).

(29) "NFPA Fire Fighter I" means a member of a fire service agency who has met the Level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(30) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent Level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(31) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the Level I job performance requirements of NFPA Standard 1031.

(32) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the Level II job performance requirements of NFPA standard 1031.

(33) "NFPA Fire Inspector III" means an individual at the third and most advanced level of progression who has met the job performance requirements specified in this standard for Level III. The Fire Inspector III performs all types of fire inspections, plans review duties, and resolves complex code-related issues.

(34) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(35) "NFPA Fire Officer I" means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(36) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

(37) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(38) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(39) NFPA Instructor I means a fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapt lesson plans to the unique requirements of the students and authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of authority having jurisdiction.

(40) NFPA Instructor II means a fire service instructor who, in addition to meeting Instructor I qualifications, has demonstrated the knowledge and ability to develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments; schedule training sessions based on overall training plan of authority having jurisdiction; and supervise and coordinate the activities of other instructors.

(41) NFPA Instructor III means a fire service instructor who, in addition to meeting Instructor II qualifications, has demonstrated the knowledge and ability to develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organization needs analysis; and develop training goals and implementation strategies.

(42) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(43) "Operations Level Responder" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents for the purpose of implementing or supporting actions to protect nearby persons, the environment, or property from the effects of the release.

(44) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(45) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(46) "Tank Car Specialty" means a person who provides technical support pertaining to tank cars, provided oversight for product removal and movement of damaged tank cars, and acts as a liaison between technicians and outside resources.

(47) "Task Performance" means to be able to demonstrate the ability to perform the tasks, of a certification level, in a controlled environment while being evaluated.

(48) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(49) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(50) "Track" means a field of study required for certification.

(51) "Waiver" means to refrain from pressing or enforcing a rule.

(52) "Wildland Interface Fire Fighter" means a person at the first level of progression who demonstrated the knowledge and skills necessary to function safely as a member of a wildland fire suppression crew with direct supervision.

(53) "Wildland Interface Engine Boss" means a person at the second level of progression who has demonstrated the skills and depth of knowledge necessary to function under general supervision while operating a piece of apparatus such as an engine.

(54) "Wildland Interface Strike Team/Task Force Leader" means a person who is responsible for supervising and directing multiple wildland fire suppression resources, such as a hand crews, tenders or engines.

(55) "Wildland Interface Division/Group Supervisor" means a person who is responsible for commanding and managing resources on a particular geographic area of a wildland fire. The Division Supervisor is responsible for the suppression tactics of an extended attack wildland or an initial attack fire.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006, f. & cert. ef. 7-7-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09

259-009-0062

Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2008 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 1.3.1.

NOTE: this references NFPA 1500.

(C) Delete section 2.2.

NOTE: this references NFPA 1500 and 1582.

(D) Entry Level Fire Fighter means an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard 1403, 2007 Edition, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(E) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2003 Edition, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) 5.1 General. The requirements of NFPA 1001 Fire Fighter I, as specified by the Department and the job performance requirements defined in Sections 5.1 and 5.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must

ADMINISTRATIVE RULES

be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program".

(H) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(I) An individual who completes the requirements of Chapter 4 and meets the requirements of Entry Level Fire Fighter (NFPA 1403) may be certified as a Driver.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications,"

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled "Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 2.2.

NOTE: This references NFPA 1500.

(C) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(F) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009, will need to show completion of the approved task book.

(e) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department approved Task Book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(B) All applicants for certification as an NFPA Fire Inspector II must:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years inspec-

tion experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(f) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department approved Task Book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department's Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a Task Book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve a Field Training Officers with equivalent training, education and experience.

(g) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II," Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title of "Fire Screener" to "Fire Screening" and the definition to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services."

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "using state-approved prepared forms and guidelines."

(VII) 1-4.22 Add "...or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction."

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(h) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II. This requirement is effective for any application for certification after January 4, 2002.

(i) The provisions of the NFPA Standard 1021, 2003 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.2 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Written Communication, Advanced Speech, Technical Writing/Business Writing, Math, and Physics or Chemistry.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

ADMINISTRATIVE RULES

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.2 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.2 through 6.7 of the Standard. Amend section 6.1 to allow individuals certified as NFPA 1033 Fire Investigator, NFPA 1035 Public Fire and Life Safety Educator, or NFPA 1031 Fire Inspector III to apply for certification without attaining NFPA 1001 Fire Fighter II.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.2 through 7.7 of the Standard.

(i) 5-1.2 General Requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(j) Hazardous Materials Responder (DPSST-P-12 1/96).

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in seven areas:

(i) Building Construction: Non-Combustible;

(ii) Building Construction: Combustible;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Managing Water Supplies Operations;

(v) MCTO — Preparation or PICO;

(vi) MCTO — Decision Making;

(vii) MCTO — Tactics or STICO;

(viii) Incident Command System;

(ix) Fire Investigation.

(D) A task book must be completed before certification is awarded.

(l) Wildland Interface Fire Fighter.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Fire Fighter must document training in the following areas at the time of application:

(i) S-130 Fire Fighter Training;

(ii) S-190 Wildland Fire Behavior;

(iii) S-131 Firefighter Type I;

(iv) I-100 Intro to ICS; and

(v) Completion of the NWCG FFT1 Task Book;

(m) Wildland Interface Engine Boss.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Engine Boss must be certified as Wildland Interface Fire Fighter prior to applying for Wildland Interface Engine Boss and must document training in the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 or S231 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the NWCG Interface Engine Task Book.

(n) Wildland Interface Strike Team/Task Force Leader Engine.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team/Task Force Leader Engine must be certified as Wildland Interface Engine Boss prior to applying for Wildland Interface Strike Team/Task Force Leader Engine and must document training in the following areas at the time of application:

(i) Wildland Interface Strike Team/Leader Engine;

(ii) S-215 Fire Operations in the WUI;

(iii) S-330 Task Force/Strike Team Leader;

(iv) I-300 Intermediate ICS; and

(v) Completion of the NWCG Wildland Interface Strike Team/Task Force Leader Task Book.

(o) Wildland Interface Division/Group Supervisor.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Division/Group Supervisor must be certified as Wildland Interface Strike Team/Task Force Leader prior to applying for certification as Wildland Interface Division/Group Supervisor and must document training in the following areas at the time of application:

(i) S-390 Intro. to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

(iii) Completion of the Wildland Interface Division/Group Supervisor Task Book.

(p) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(A) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(iii) All applications received after October 1, 2004, will need to show completion of the approved task book.

(q) Certification guide for Wildland Fire Investigator (August, 2005).

(r) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire service agency.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.

(C) Instructors:

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the task book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(s) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(t) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications hereinafter stated:

(A) Hazardous Materials Technician: All applicants for certification must first certify as an Operations Level Responder and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(B) Hazardous Materials Safety Officer: All applicants for certification must first certify as a Hazardous Materials Technician and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:

(i) Analyzing the Incident;

(ii) Planning the Response;

(iii) Implementing the Planned Response;

ADMINISTRATIVE RULES

(iv) Evaluating the Progress.

(C) Incident Commander: The level of certification formerly known as "On-Scene Incident Commander" is now known as "Incident Commander." The Incident Commander correlates directly with NFPA 472. All applicants for certification must first certify as an Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as "First Responder" is now known as "Operations Level Responder." The Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an Operations Level Responder.

(u) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

- (i) Cargo Tank Specialty;
- (ii) Intermodal Tank Specialty;
- (iii) Marine Tank Vessel Specialty;
- (iv) Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09

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Rule Caption: Clarifies Written Examination and Four-Hour Assessment Module will be conducted in English.

Adm. Order No.: DPSST 13-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 9-1-2009

Rules Amended: 259-060-0065, 259-060-0075

Subject: All written examinations covering the required classroom instructional materials are in English. Each applicant must be able to complete the examination without using assistance reading, writing or understanding English.

All four-hour assessment modules are conducted in English. Clarifies in administrative rule that all activities associated with the four-hour assessment module are conducted in English and each applicant must be able to sufficiently read, write and speak English to successfully complete the task-related skills associated with the assessment module.

Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-060-0065

Written Examinations

(1) Written examinations covering the required classroom instructional materials will be prepared and approved by the Board or its designated staff. All examinations are in English. Each applicant must be able to complete the examination without any assistance reading, writing or understanding English.

(2) A Department-certified instructor must administer the applicable written examination.

(3) The applicant must achieve a minimum of 80 percent correct answers on general test questions.

(4) A Department-certified instructor must review each incorrect test question with the applicant, explaining the principle behind the question, the correct answer and the basis for the correct answer. Oral responses of the applicant and the instructor's assessment of whether the applicant understands the underlying principles and the appropriate answer may cause the termination of training or indication on the Form PS-6 that the applicant has failed to successfully complete the required training. The instructor has the option of:

(a) Remediating the incorrect test responses (i.e., counting as correct the initially incorrect test answers) if the score is 50 to 99 percent correct; or

(b) Advising the applicant to repeat those portions of the training applicable to the missed questions and to retake the applicable sections of the written examination if the score is under 50 percent.

(5) The Department-certified instructor must complete Form PS-6 affirming that the applicant's identity was confirmed and that the integrity of the examination process was maintained. No one other than the administering instructor may sign the Form PS-6 reflecting completion of training.

(6) The Department-certified instructor must fully complete, enclose and seal Form PS-6 in the approved tamper-proof bag and present the form(s) to the applicant to be sent to the Department along with Form PS-1 (Application for Licensure or Certification of Private Security Services Providers).

(7) Private Security managers and instructors will complete the written examination utilizing the management-specific training manual provided by the Department. The written examination will be taken to the four-hour orientation for grading by the Department's designee.

(8) The applicant may also elect to complete Form PS-7 (Private Security Instructor Evaluation) for submission to the Department together with the other application materials. The instructor has no authority to view this completed form, which will be used by the Department to evaluate performance.

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

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 13-2009, f. & cert. ef. 10-15-09

259-060-0075

Four-Hour Assessment Module

(1) For purposes of these rules, an approved or accredited four-hour assessment module means a four-hour curriculum given to private security professionals that includes, but is not limited to, demonstration of task-related skills learned in the eight-hour basic curriculum instruction as applied to hypothetical situations, administered by a Department-certified private security instructor. Managers will complete the four-hour orientation under the direction of the Department's designee, rather than a certified private security instructor.

(2) The required activities must include applicant completion of task-related skills based on classroom curriculum. All activities are in English. Each applicant must be able to complete the activities without any assistance reading, writing or understanding English.

(3) It is the responsibility of the applicant to obtain a completed Form PS-6 and forward this to the Department. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) It is not necessary for a prospective applicant to be employed as a private security provider to receive the eight-hour classroom training and four-hour assessment module.

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

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 13-2009, f. & cert. ef. 10-15-09

ADMINISTRATIVE RULES

Department of Revenue Chapter 150

Rule Caption: Definition of 'moist snuff' for purposes of taxation.

Adm. Order No.: REV 7-2009(Temp)

Filed with Sec. of State: 10-7-2009

Certified to be Effective: 10-7-09 thru 3-31-10

Notice Publication Date:

Rules Adopted: 150-323.500(9)

Subject: The rule clarifies the types of tobacco that are included in the definition of 'moist snuff' for purposes of taxation under HB 2672 (2009 Oregon Laws, Ch. 717).

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-323.500(9)

Definition of Moist Snuff

(1) Moist snuff means any finely cut, ground, milled or powdered tobacco product that is not intended to be smoked or placed in the nasal cavity. Words such as long cut, mid cut, fine cut and snus only describe minor differences of product that fit within this tobacco category.

(2) Moist snuff also includes other products containing tobacco that are not intended to be consumed by burning. Examples include, but are not limited to:

(a) Pouches, which hold fine cut tobacco in a small, teabag-like pouch.

(b) Dissolvable tobacco, which consists of finely-processed tobacco developed in such a way as to allow the substance to dissolve on the tongue or in the mouth and includes strips, sticks, orbs, and compressed tobacco lozenges.

(3) Moist snuff does not include dry snuff or chewing tobacco.

(a) Dry snuff is powdered tobacco that is intended to be placed in the nasal cavity.

(b) Chewing tobacco means any leaf tobacco that is not intended to be smoked. Examples of chewing tobacco include, but are not limited to:

(A) Coarsely shredded tobacco leaves, such as those sweetened and packaged loosely in aluminum lined pouches;

(B) Plug tobacco, which is tobacco press formed into sheets and cut into individually wrapped plugs; and

(C) Twist tobacco, which is tobacco spun and rolled into rope-like strands.

Stat. Auth.: ORS 305.100 & 323.575

Stats. Implemented: ORS 323.500

Hist.: REV 7-2009(Temp), f. & cert. ef. 10-7-09 thru 3-31-10

Rule Caption: Implementation of tax amnesty program provided by SB 880 (Chapter 710, Oregon Laws 2009).

Adm. Order No.: REV 8-2009(Temp)

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09 thru 3-31-10

Notice Publication Date:

Rules Adopted: 150-305.100-(C)

Subject: 150-305.100(C) is adopted to define terms and articulate policy relating to the tax amnesty program enacted by the 2009 Legislature with SB 880 (Chapter 710, Oregon Laws 2009). Specifically, the rule explains:

(1) Filing dates and deadlines;

(2) Installment payments; and

(3) Amnesty-related closing agreements.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-305.100-(C)

Tax Amnesty Program

(1) Definitions. For purposes of Chapter 710, Oregon Laws 2009 (Senate Bill 880) and this rule:

(a) "Amnesty program" refers to the tax amnesty program created by Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) "Amnesty period" refers to the time in which the application is required to be filed (October 1 through November 19, 2009).

(c) "Amnesty return" refers to the original or amended tax return filed in accordance with section (3) of this rule.

(d) "Amnesty liability" is a liability that is reported on an original tax return or additional liability that is reported on an amended tax return filed in conjunction with the amnesty program.

(e) "Application" is the department-produced form entitled "Amnesty Application" that is referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(e) "Participant" means the person, entity, or corporation taking part in the amnesty program.

(f) "Post amnesty penalty" means the 25 percent penalty established by Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(h) "Tax program" means a type of tax that is collected and administered by the Department of Revenue and that is eligible for amnesty. The following are tax programs eligible for amnesty:

(A) Personal Income Tax;

(B) Corporate Income or Excise Tax;

(C) Inheritance Tax;

(D) Fiduciary (trust/estate) Tax;

(E) Transit District (self-employment) Tax.

(2) Applications. In order to be eligible for amnesty, a participant must file an application within the amnesty period on a form prescribed by the department. Applications are due on or before November 19, 2009 and must be complete and signed by the participant(s). Applications that are not complete or received after November 19, 2009 will not be accepted and the participant will not qualify for the amnesty being sought on that application.

(3) Amnesty Returns. Amnesty returns may be filed with or after the application but are due no later than January 19, 2010. Amnesty returns that are not complete or are received after January 19, 2010 will not qualify for the amnesty being sought and all amnesty-related waivers of penalty and interest will be disallowed. Disqualified amnesty returns will be processed as if there had been no amnesty program.

(4) Installment Payments.

(a) Amnesty participants may enter into an installment payment agreement with the department to satisfy an amnesty liability by making regular monthly, or more frequent, payments over a designated period of time.

(A) No agreement may extend beyond May 31, 2011 and participant(s) must satisfy all amnesty liabilities on or by May 31, 2011.

(B) If an amnesty participant fails to fully comply with the terms of an installment payment agreement, all amnesty-related waivers of penalty and interest will be disallowed. However, the participant may ask the department to find that the failure to fully comply with the terms of the installment payment agreement was due to "reasonable cause" as that term is defined in subsection (b) of this section. If the department makes such a finding, the installment payment agreement may resume, notwithstanding the failure to fully comply, subject to further conditions satisfactory to the department and provided that full payment is received no later than May 31, 2011. Upon a department finding of "reasonable cause," the participant will remain eligible for the penalty and interest waivers referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) For purposes of this section, "reasonable cause" exists when the participant exercises ordinary care and prudence in abiding by the terms of the installment agreement but was unable to comply with that agreement due to the participant's individual circumstances. To determine if the participant used ordinary care and prudence, the department will consider:

(A) The participant's reasons for not abiding by the terms of the installment plan;

(B) The length of time between the event cited as a reason for the non-compliance and the missed or reduced installment payment(s); and

(C) Whether or not the participant could have anticipated the event(s) causing the noncompliance and taken reasonable steps to avoid it.

(c) The following nonexclusive list describes circumstances when reasonable cause may exist:

(A) Death or serious illness of the participant or a member of the participant's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the participant's home, or place of business;

(C) Unavoidable and unforeseen absence of the participant from the state immediately prior to the due date of the missed or reduced installment payment;

(D) An unplanned and significant change in the participant's financial circumstances, through no fault of the participant, such that the participant demonstrates to the department's satisfaction that they are unable to meet reasonably necessary living expenses and also comply with the terms of the agreement; or

(E) Erroneous written information from the department which caused the failure of the participant to timely pay.

(d) The following nonexclusive list describes circumstances that do not, in isolation, result in a determination of reasonable cause:

(A) Reliance on an employee or tax professional to pay on time; or

(B) Inability of, or failure of oversight by, the participant to pay the amnesty liability.

(5) Applicable waivers of penalty and interest under Chapter 710, Oregon Laws 2009 (Senate Bill 880) will occur only after the participant has paid all of the tax and one-half of the interest due.

(6) Closing Agreements.

ADMINISTRATIVE RULES

(a) Policy. In order to assure that the amnesty program is administered efficiently and equitably, the department may waive penalties and interest for taxpayers entering into a closing agreement, under subsections (b) and (c) of this section, for the period of time immediately prior to, or during, the amnesty period. Or, if the taxpayer has filed a timely and complete application, a closing agreement may be executed through January 19, 2010.

(b) Interest waiver. Consistent with its authority under ORS 305.145(3) and notwithstanding OAR 150-305.145(3), the department may, when it determines that "good and sufficient cause" exists, based on the facts and circumstances of each case, waive up to 50% of the interest normally imposed. For purposes of this paragraph, "good and sufficient cause" exists when the department determines that entering into a closing agreement will result in an equity or efficiency by providing a streamlined alternative filing mechanism for taxpayers.

(c) Penalty waiver. Consistent with its authority under ORS 305.145(4) the department may, based on the facts and circumstances of each case and when it determines that entering into a closing agreement under this section will enhance the long-term effectiveness, efficiency or administration of the tax system, waive all, or a portion of, penalties otherwise imposed.

(7) Post amnesty penalty.

(a) Generally, the post amnesty penalty imposed under Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880) will be applied to any unpaid tax that is otherwise due for any tax year or reporting period for which amnesty could be sought under Chapter 710, Oregon Laws 2009 (Senate Bill 880) and for which:

(A) The taxpayer failed to apply (and file a return or report) for amnesty; or

(B) The taxpayer filed for amnesty and underreported tax liability on the amnesty return.

(b) The department will not impose the post amnesty penalty when an additional tax liability results from an adjustment made to a return by the Internal Revenue Service unless the service has finally imposed a penalty under sections 6662, 6662A, 6663 or 7201 of the Internal Revenue Code. In addition, the department generally will not impose the post amnesty penalty under the following circumstances including, but not limited to, when an adjustment to a return occurs:

(A) Based on an arithmetical error or transposition of numbers on a return or schedule;

(B) Based on an inadvertent error made in calculating a depreciation tax deduction allowed to recover the cost or other basis of certain property allowed under the Internal Revenue Code or the Oregon Revised Statutes;

(C) Based on an error or omission of an item of income, deduction or credit that results in an additional tax due that is de minimis.

(c) Generally and notwithstanding subsection (b) of this section, the department will impose the post amnesty penalty when a penalty is also imposed under:

(A) ORS 314.402 (substantial understatement of income);

(B) ORS 305.265 (failure to file a report or return with intent to evade the tax);

(C) ORS 314.403, 314.404 or 314.406 (abusive tax avoidance transaction);

(D) ORS 314.075 (evasion of any requirement of any law imposing income taxes);

(E) ORS 305.815 or 305.265(13) (filing false return or report); or

(F) ORS 118.260, 305.992, or 314.400(2) or (3) (failure to file);

(G) A finally imposed penalty under Internal Revenue Code Sections 6662, 6662A, 6663 or 7201.

[Publications: Publications referenced in this rule are available from the Agency]

Stat. Auth.: ORS 305.100, 305.145, 305.229

Stats. Implemented: Ch 710, 2009 OL (SB 880)

Hist.: REV 8-2009(Temp), f. & cert. eff. 10-15-09 thru 3-31-10

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

Rule Caption: Establishes qualification and fees to access certain public DMV records.

Adm. Order No.: DMV 16-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 735-010-0030

Subject: As one of its services, DMV provides Real-time Access to Oregon Driving Records (RADR) to qualified customers. The service provides electronic access to three-year employment driving records, three-year non-employment driving records and certified court prints. This amendment establishes customer qualifications and

the record fee to access and obtain copies of driving records using the RADR service. This amendment also establishes the fee for obtaining an Identification Card Information Report. Other non-substantive changes were made to update references to DMV systems for accessing records and to simplify and clarify rule language.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-010-0030

Types of Driver and Identification Card Records Available and Their Fees

(1) This rule specifies the types of driver records available from DMV's driver records database and the fee amounts for the records:

(a) Abstract of Employment Driving Record — Computer-produced record of an individual's employment driving record. The record includes employment-related accidents, suspensions and convictions for violation of motor vehicle laws, as set forth in ORS 802.200(9). The record covers the three-year period preceding the date of the request. Miscellaneous administrative entries may also be included as determined by DMV. The record does not include convictions for offenses that result in a mandatory revocation or suspension under ORS 809.409, 809.411, 809.413 and 813.400. The fee for each record is:

(A) \$2 for a certified record ordered by mail or through DMV's Interactive Voice Response System (IVR);

(B) \$2 for an uncertified record provided on magnetic tape;

(C) \$2 for an uncertified record provided through DMV's Real-Time Access to Oregon Driving Record Service (RADR);

(D) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(b) Abstract of Non-employment Driving Record — Computer-produced record of an individual's non-employment driving record. The record includes motor vehicle accidents, convictions for violations of motor vehicle laws, other than those included in the employment driving record, and DUII diversion agreements for the three years preceding the date of the record request. The record also includes suspensions, revocations or cancellations of driving privileges, except those suspensions terminated by court notice under ORS 809.220. Miscellaneous administrative entries may also be included as determined by the department. The fee for each record is:

(A) \$1.50 for a certified record ordered by mail or through IVR;

(B) \$1.50 for an uncertified record provided on magnetic tape;

(C) \$2 for an uncertified record provided through RADR.

(D) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(c) Insurance Abstract of Non-employment Driving Record — Computer-produced record containing certain entries of an individual's non-employment driving record as described in subsection (b) of this section. The record includes motor vehicle accidents, convictions for violations of motor vehicle laws, other than those included in the employment driving record, DUII diversion agreements and suspensions, revocations or cancellations of driving privileges, except those suspensions terminated by court notice under ORS 809.220. This record is available only to insurers or insurance support organizations. An individual may request his or her own insurance abstract to obtain an insurance discount under ORS 746.265(3). The fee for each record is:

(A) \$1.50 for a certified record ordered by mail;

(B) \$1.50 for an uncertified record provided on magnetic tape;

(C) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(d) Driver License Information Report — Information on the report includes driver name, address, license number, license type, license expiration date, license restrictions, license issue date and status of license. Driver license information may be provided orally or by computer-produced certified print. The fee for each report is:

(A) \$1.50 for a computer-produced certified report or for an oral report from a DMV employee requested in person or over the phone. Information over the phone will only be provided to a record account holder. DMV will charge a search fee of \$1.50 for any information requested under this paragraph but not found in DMV's driver records database;

(B) \$1.20 for a report obtained through IVR. DMV will charge a search fee of \$1.20 for any information requested under this paragraph but not found through IVR.

(e) Identification Card (ID card) Information Report — Information on the report includes ID card holder's name, address, ID card number, ID card expiration date, issue date, and status of ID card. ID card information may be provided orally through IVR or by computer-produced certified print. The fee for each report is:

(A) \$1.50 for a computer-produced certified report or for an oral report from a DMV employee requested in person or over the phone. Information over the phone will only be provided to a record account holder.

ADMINISTRATIVE RULES

er. DMV will charge a search fee of \$1.50 for any information requested under this paragraph but not found in DMV's records database;

(B) \$1.20 for a report obtained through IVR. DMV will charge a search fee of \$1.20 for any information requested under this paragraph but not found in IVR.

(f) Oregon Police Traffic Crash Report — The fee for a copy of an Oregon Police Traffic Crash Report is \$9.50 for a certified copy or \$8.50 for an uncertified copy. The fee for bulk requests for copies of Oregon Police Traffic Crash Reports filed with DMV on a specific day are \$.50 per report, plus postage, and are not available in certified form.

(g) Driver License/ID Card Application History — The fee for a copy of an original, renewal or duplicate application for a driver license or ID card is \$18.50 for a certified copy or \$17.50 for an uncertified copy.

(h) Miscellaneous Driver Document Copy — Copies of any document or transaction related to a person's driving record, driver license, or driving privilege. The fee for a miscellaneous driver document is \$5 for a certified copy or \$4 for an uncertified copy.

(i) Driver File History — Computer-produced print containing all entries shown on the computer file for a driver, except those entries exempted under the Oregon Public Records Law, ORS 192.410 to 192.505. For example, medical information is exempt from disclosure. The fee for a driver file history is \$2. DMV will charge a search fee of \$1.50 for any driver file requested under this subsection but not found in DMV's driver records database.

(j) Court Print — Computer-produced record of an individual's employment and non-employment driving record. The record includes convictions for major traffic offenses, DUII diversion agreements and any alcohol rehabilitation entries for the ten years preceding the date of the request, and convictions for minor traffic offenses and motor vehicle accidents for the five years preceding the date of the request. The record also includes suspensions, cancellations, revocations and miscellaneous administrative entries, but does not include information exempt from disclosure under the Oregon Public Records Law. The fee for each record is:

(A) \$3 for a certified print ordered by mail, through IVR or through the Automated Reporting Service (A.R.S.);

(B) \$2 for a record accessed through RADR;

(C) \$3 for a court print provided on magnetic tape. A court print on magnetic tape is not certified;

(D) A \$1.50 search fee for any record requested under this subsection but not found in DMV's driver records database.

(k) Suspension Package — Certified court print and certified copies of any of the following documents needed for a court proceeding: a suspension, revocation or cancellation notice; returned envelope, signed receipt, or affidavit showing service of the notice; hardship permit application; license restrictions; or any letter sent by DMV informing the person of a suspension, revocation or cancellation. The fee for a suspension package is \$11.50. There is a \$1.50 search fee if a court print requested under this subsection cannot be found in DMV's driver records database;

(L) Driver Records List — Computer produced list of driver names, addresses or other record information created using selection criteria. For example, the selection criteria may be the names and addresses of all licensed drivers of a specific age group. The following apply to a request for a driver records list:

(A) The requester must describe how the list will be used. If the purpose of the list is for bulk distribution, as defined in OAR 735-010-0008, the list will only include individuals who have requested that their personal information be provided to bulk distributors.

(B) The requester must provide paper or magnetic tape. No more than 50,000 records will be provided on paper.

(C) DMV's computer system must be programmed to use the selection criteria requested. If the selection criteria requested requires additional computer programming, DMV will not provide the list unless DMV computer programming resources are available and the requester pays the actual programming costs as set forth in OAR 735-010-0000.

(D) The fee for a driver records list furnished on paper or magnetic tape is \$700.

(m) Purged Information Driving Record — Copy of a microfilmed driving record containing entries that have been purged from DMV's driver records database. The fee for a purged information driving record is \$2.50 for a certified copy or \$1.50 for an uncertified copy.

(n) Insurance Information Search — A search of DMV records to identify the insurance company and policy number for a vehicle or individual. This information may be provided orally by a DMV employee if requested in person or over the phone or by letter from DMV. The fee for an insurance information search is \$10.

(o) Automated Reporting Service (A.R.S.) — A court print sent automatically to an enrolled record account holder when an accident, conviction, DUII diversion or suspension, revocation or cancellation is posted to a listed individual's driving record. The fee for an A.R.S. court print is \$3.00. If the account holder requests that DMV add or delete an individual

from A.R.S. there is a \$2.00 fee. There is no fee to add or delete an individual if the record account holder uses DMV's online system.

(2) The fee to review a driver record using a video terminal at a DMV office is the fee for the particular record as set forth in section (1) of this rule. To use a video terminal, the person must:

(a) Meet the qualification requirements for obtaining personal information set forth in ORS 802.175 to 802.191 and OAR 735-010-0200 to 735-010-0230; and

(b) Make an appointment through the DMV Records Services Unit.

(3) Personal information will not be included in any driver record requested unless the requester qualifies to receive such information under ORS 802.175 to 802.191 and OAR 735-010-0200 to 735-010-0230.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.010, 802.179, 802.183, 802.200, 802.220, 802.230

Stats. Implemented: ORS 802.200, 746.265, 802.230 & 802.220

Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 8-1985, f. & ef. 8-1-85; MV 20-1987, f. 9-21-87, ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0035; MV 44-1989, f. & cert. ef. 10-16-89; MV 15-1990, f. 8-30-90, cert. ef. 9-1-90; MV 12-1992, f. & cert. ef. 10-16-92; DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 20-2001, f. & cert. ef. 10-18-01; DMV 1-2002, f. & cert. ef. 1-17-02; DMV 5-2005, f. & cert. ef. 2-16-05; DMV 16-2009, f. 9-29-09 cert. ef. 10-1-09

Rule Caption: Implements section 10 of chapter 448, Oregon Laws 2009 & ORS 803.015 regarding branded vehicle titles.

Adm. Order No.: DMV 17-2009(Temp)

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09 thru 3-20-10

Notice Publication Date:

Rules Amended: 735-024-0015, 735-024-0025

Subject: Chapter 448, Oregon Laws 2009, amends Oregon's vehicle consumer warranty laws concerning lemon vehicles under ORS chapter 646.

Section 10, chapter 448, Oregon Laws 2009 requires a vehicle manufacturer that is required to replace a vehicle or refund the full price of a vehicle to a consumer to make a request to DMV to: (1) Title the vehicle in the manufacturer's name and inscribe (brand) the vehicle's title "Lemon Law Buyback;" and (2) Record the "Lemon Law Buyback" brand on DMV's records for the vehicle.

ORS 803.015 requires Oregon vehicle titles to contain any brand or notation specified by DMV. In order to implement section 10, chapter 448, Oregon Laws 2009, DMV is making temporary amendments to OAR 735-024-0020 and 735-024-0025 relating to update definitions and circumstances when DMV will add or remove a Lemon Law Buyback title brand on an Oregon vehicle title or Oregon Salvage Title Certificate.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-024-0015

Definitions; Title Brands

As used in this rule through 735-024-0025, the following definitions apply:

(1) "Brand," "branded title," or "title brand" means a notation, inscription, indicator, symbol or phrase that is or has been printed, inscribed, stamped or otherwise affixed to a certificate of title to indicate the history, condition, or circumstances of a vehicle. A title brand does not necessarily indicate the extent to which a vehicle may have been damaged, whether a vehicle has been repaired or to what degree a damaged vehicle has been repaired.

(2) "Assembled vehicle" as defined in ORS 801.130 and these rules means a vehicle:

(a) With a body that does not resemble any particular year model or make of vehicle;

(b) That is not a vehicle rebuilt by a manufacturer;

(c) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica.

(3) The following title brands defined under this section are adopted pursuant to 2009 Or. Laws, Ch. 448 and ORS 803.015. Title brands indicate a determination of a vehicle's condition made by another jurisdiction, or in the case of "glider kit," "reconstructed," "replica vehicle," "totaled" or "Lemon Law Buyback," a determination made by Oregon DMV:

(a) "Branded" means:

(A) A listing of two or more brands on an out-of-state title or similar document; or

(B) A brand not specifically defined or identified under this rule.

ADMINISTRATIVE RULES

(b) "Flood damaged," "flood," or a word of similar import means a brand to indicate that a vehicle has been submerged in water to the point that the vehicle sustained damage;

(c) "Glider kit" or a word of similar import means a brand to indicate:

(A) A kit consisting of a new truck cab or cab and hood assembly, including a front axle assembly and frame rails, with or without an engine, transmission and rear axle, manufactured and sold with a manufacturer's statement of origin, has been used to replace damaged or worn components of an existing heavy truck or tractor; or

(B) A heavy truck or tractor was assembled using a kit consisting of all new component parts, including engine, transmission and rear axle, manufactured and sold with a manufacturer's statement of origin, and assembled by a person other than the manufacturer of the components.

(C) For purposes of this subsection, "heavy truck or tractor" means truck or tractor with a gross vehicle weight rating of more than 16,000 pounds.

(d) "Lemon," "lemon-defective," "lemon law buyback," "returned to manufacturer," or a word of similar import means a brand to indicate a vehicle was returned to the manufacturer because of a defect or condition that could not be corrected or repaired and that substantially impaired the safety, market value, or the use, or intended use, of the vehicle.

(e) "Previous damage" means a title brand issued by DMV prior to August 20, 2004, to indicate that DMV had received information from another jurisdiction that a vehicle was damaged, destroyed, wrecked or salvaged, or words of similar import. The term "previous damaged" does not apply to vehicles issued a junk title or similar ownership document by another jurisdiction as described under OAR 735-020-0070;

(f) "Reconstructed vehicle," or "reconstructed" as defined in ORS 801.408 and these rules, means either:

(A) A vehicle that:

(i) Has a body that resembles and primarily is a particular year model or make of vehicle;

(ii) Is not a vehicle rebuilt by a manufacturer;

(iii) Is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(iv) Is not a replica; or

(B) A motor truck that has been rebuilt using a component kit if the manufacturer of the kit assigns a vehicle identification number and provides a manufacturer's certificate of origin for the kit.

(g) "Totaled vehicle" or "totaled" as defined in ORS 801.527 and these rules means a vehicle that:

(A) Is declared a total loss by an insurer that is obligated to cover the loss or that the insurer takes possession of or title to.

(B) Is stolen, if it is not recovered within 30 days of the date that it is stolen and if the loss is not covered by an insurer.

(C) Has sustained damage that is not covered by an insurer and the estimated cost to repair the vehicle is equal to at least 80 percent of the retail market value of the vehicle before it was damaged. For purposes of this subsection, "retail market value" shall be as reflected in publications relied upon by financial institutions doing business in this state, including but not limited to the Title and Registration Textbook of the National Automobile Dealers Association (N.A.D.A. Guide), the Automobile Red Book or the Kelley Blue Book .

(h) "Replica" as defined in ORS 801.425 and these rules, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer.

(4) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation;

(5) "Oregon Certificate of Title" or "Oregon title" means a certificate of title, as that term is defined in ORS 801.185, issued by DMV.

(6) "Oregon Salvage Title Certificate" means a written document issued by DMV under the provisions of ORS 803.140 and 819.016 as evidence of vehicle ownership. An Oregon Salvage Title Certificate is not an Oregon Certificate of Title.

(7) "Salvage title," "salvage certificate" and "dismantler (wrecker) bill of sale" means a document issued by another jurisdiction to indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. "Salvage title" does not refer to an Oregon salvage title certificate as defined by ORS 801.454 and this rule, unless the Oregon salvage title certificate reflects a brand that indicates the vehicle was damaged in another jurisdiction, before being titled in Oregon.

(8) "Word(s) of similar import" means any word, term, indicator, symbol or phrase that means the same or has the same effect as the terms described under OAR 735-020-0070 (junk titles) and defined under sections (2) and (3) of this rule.

(9) For purposes of this rule, OAR chapter 735, division 024, division 152, ORS Chapters 819 and 822, "Auto Recycler" has the same meaning as "dismantler" as defined under OAR 735-152-0000 and means a person issued a dismantler certificate under ORS 822.110.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.140, 819.016, 821.060 & OL 2009, Ch. 448

Stats. Implemented: ORS 803.015, 803.420 & OL 2009, Ch. 448

Hist.: DMV 18-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 17-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10

735-024-0025

Title Brands; When Issued, Removed and Exceptions

(1) When Issued. DMV will issue a branded title or a title with an "assembled" make when an application for an Oregon title is submitted and:

(a) The vehicle's title carries a brand(s) described under OAR 735-024-0015(2) and (3);

(b) Pursuant to 2009 Or. Laws, Ch. 448, DMV receives notice from a vehicle manufacturer to inscribe "Lemon Law Buyback" on the certificate of title for the vehicle.

(c) The vehicle meets the definition of an "Assembled vehicle" as defined under OAR 735-024-0015(2); or

(d) The vehicle meets the definition of a "Reconstructed Vehicle," a "Replica" or a "Totaled vehicle" as those terms are defined under OAR 735-024-0015.

(e) Will be issued with a brand or "assembled" make described under OAR 735-024-0015.

(2) An Oregon title issued under section (1) of this rule:

(a) Will not necessarily be issued with the same brand that appeared on the vehicle's previous certificate of title or other ownership document(s);

(b) Will be issued with a brand described under OAR 735-024-0015 determined by DMV to be most comparable to the brand that appeared on the previous certificate of title. This subsection does not apply to a "branded" brand or an Oregon title with a "Lemon Law Buyback" brand, issued pursuant to 2009 Or. Laws, Ch. 448;

(c) Will indicate the name of the jurisdiction that issued the title brand, unless the title brand was issued by DMV; and

(d) Will be issued with a brand or "assembled" make described under OAR 735-024-0015 when DMV determines from a previous title or vehicle record, from the application for title or from information obtained from any source that a brand or "assembled" make should be placed on the Oregon title as set forth in section (1) of this rule. DMV may require documentation to determine if a vehicle should be issued an Oregon title with an "assembled" make, or a "reconstructed" or "replica" brand.

(3) Except as specifically provided in section (4) of this rule, once a title brand or "assembled" make has been placed on a vehicle's Oregon Certificate of Title that brand or "assembled" make will appear on any subsequent Oregon title issued for the vehicle.

(4) DMV may omit, remove, add or change a title brand or "assembled" make when:

(a) DMV receives information that indicates an Oregon title or Oregon Salvage Title Certificate was issued with an incorrect brand or "assembled" make. For example, DMV receives written information from an originating jurisdiction that indicates its title incorrectly reflects a title brand;

(b) DMV is satisfied the title brand or "assembled" make was placed on the Oregon title or Oregon Salvage Title Certificate in error;

(c) DMV failed to place a title brand or "assembled" make on the Oregon title or Oregon Salvage Title Certificate when required under section (1) of this rule or subsections (d), (e) and (f) of this section.

(d) A subsequent accident or occurrence causes the vehicle to be identified with a brand or different brand such as "totaled," "reconstructed," or "Lemon Law Buyback" issued pursuant to 2009 Or. Laws, Ch. 448.

(e) A vehicle issued an Oregon title with any brand or an "assembled" make other than totaled is reported to DMV as a totaled vehicle under ORS 819.012 or 819.014. Except as described in subsection (f) of this section, if DMV issues a new Oregon title, it will include a totaled brand, which replaces any previous brand shown on the Oregon title. For example, a vehicle issued an Oregon title with a flood brand will be issued an Oregon title with a totaled-reconstructed brand when the vehicle is reported to DMV as a totaled vehicle and is subsequently titled as a reconstructed vehicle;

(f) Notwithstanding subsection (e) of this section, a vehicle issued an Oregon title with an "assembled" make, or glider kit, "Lemon Law Buyback" issued pursuant to 2009 Or. Laws, Ch. 448, reconstructed or replica brand is reported to DMV as a totaled vehicle. If DMV issues a new Oregon title, it will include the original brand and a totaled brand. For example, a vehicle issued an Oregon title with a "replica" brand that is later reported to DMV as "totaled" under ORS 819.020 or 819.014, will be issued an Oregon title with a "replica-totaled-reconstructed" brand when the vehicle is reported to DMV as a totaled vehicle and is subsequently titled as a reconstructed vehicle; or

ADMINISTRATIVE RULES

(g) The reason the vehicle was reported to DMV as a totaled vehicle is theft and the vehicle is recovered and no longer meets the definition of a "totaled vehicle" under ORS 801.527.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.0140, 819.016, 821.060 & OL 2009, Ch. 448
Stats. Implemented: ORS 803.015, 803.420 & OL 2009, Ch. 448
Hist.: DMV 18-2004, f. & cert. ef. 8-20-04; DMV 10-2005, f. 3-18-05; DMV 17-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10

Rule Caption: Registration plate fees.

Adm. Order No.: DMV 18-2009(Temp)

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 10-1-09 thru 3-29-10

Notice Publication Date:

Rules Amended: 735-032-0010

Subject: The amendment of ORS 803.570 by section 44, chapter 865, Oregon Laws 2009, requires DMV to establish, by rule, the fee amount collected upon issuance of a single registration plate and for each pair of plates, respectively. The plate fee amounts established by DMV must be calculated by: (1) Determining DMV's costs to manufacture a single registration plate and a pair of registration plates, respectively, and rounding the fee amount(s) to the next higher half-dollar; and (2) Adding \$10 for a single plate and \$20 for a pair of plates, respectively.

Based on the required calculation, the fee for a single registration plate is \$12 (\$2 cost + \$10 = \$12). The fee for a pair of registration plates is \$23.00 (\$3 cost + \$20 = \$23).

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-032-0010

Registration Plate Fees

(1) ORS 803.570 requires DMV to establish the fee amounts for each registration plate issued and for each pair of plates issued.

(2) The plate fee amounts are calculated by:

(a) Determining the cost to manufacture a single registration plate and a pair of registration plates (cost), respectively, and rounding the cost amount(s) to the next higher half-dollar; and

(b) Adding \$10 for a single plate and \$20 for a pair of plates, respectively.

(3) Based on the calculation under section (2) of this rule, registration plate fees are:

(a) \$12 for a single plate issued (\$2 cost + \$10 = \$12).

(b) \$23.00 for a pair of plates issued (\$3 cost + \$20 = \$23).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.570 as amended by 2009 OL Ch 865, section 44

Stats. Implemented: ORS 803.570 as amended by 2009 OL Ch 865, section 44
Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0310; MV 21-1988, f. 6-29-88, cert. ef. 7-1-88; DMV 4-1997, f. 1-24-97, cert. ef. 4-1-97; DMV 5-2003(Temp), f. 5-14-03, cert. ef. 7-1-03 thru 12-27-03; DMV 32-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 8-2004, f. & cert. ef. 5-24-04; DMV 18-2009(Temp), f. 9-29-09, cert. ef. 10-1-09 thru 3-29-10

Rule Caption: Amends rule language to comply with ORS 802.370.

Adm. Order No.: DMV 19-2009(Temp)

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09 thru 3-20-10

Notice Publication Date:

Rules Amended: 735-150-0005

Subject: OAR 735-150-0000 establishes the Oregon Dealer Advisory Committee (ODAC) as the advisory committee required under ORS 802.370. The rule includes provisions for the designation of members, committee member terms and the appointment and interest of member representation. During a recent review of the rule, it was found that section (9) of the rule does not fully comply with ORS 802.370(2).

The temporary amendment of OAR 735-150-0005 amends language in section (9) of the rule to clarify that DMV will consult with ODAC before taking immediate disciplinary action against a dealer who is jeopardizing the public health and safety. The temporary amendment will bring the rule into compliance with the requirements of ORS 802.370(2).

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0005

Oregon Dealer Advisory Committee

(1) The Oregon Dealer Advisory Committee is established pursuant to ORS 802.370.

(2) The committee's membership will consist of the following individuals appointed by the DMV administrator:

(a) Two individuals who represent franchise dealers of new vehicles;

(b) Two individuals who represent dealers of used vehicles;

(c) Two individuals who represent Oregon dismantlers;

(d) Two individuals who represent the interests of the general public;

(e) One individual who represents recreational vehicle dealers;

(f) One individual who represents vehicle dealership office management interests;

(g) One individual who represents auto auctions;

(h) One individual who represents Oregon towing businesses; and

(i) One individual who represents dealers of motorcycles, mopeds, or all-terrain vehicles.

(j) In addition to the committee membership described under subsections (a) through (i) of this section, membership may also include one individual, whose term of appointment and interest of representation is determined by the DMV Administrator.

(3) DMV will designate one member listed in section (2) of this rule as chair of the committee. The chair's term expires December 31 of each year.

(4) Committee members are appointed to a three-year term and may be reappointed by the DMV administrator to serve an additional term(s). However, members serve at the pleasure of the DMV Administrator. Member terms will be staggered in a manner determined by DMV. In the event of a vacancy, the DMV administrator will appoint a new committee member to serve the duration of the three-year term.

(5) DMV will seek the recommendation of existing ODAC committee members or a trade or professional association generally recognized to represent a membership category before appointing a committee member, however, DMV is not bound by any recommendation.

(6) Meetings will be held quarterly beginning in January of each year, unless a meeting is cancelled, postponed or rescheduled as agreed to by DMV and a majority of the committee members. A committee member may be replaced by the DMV administrator for missing two consecutive quarterly meetings without good cause.

(7) DMV will consult with the committee before:

(a) Adopting administrative rules under ORS 822.035;

(b) Taking disciplinary action against a dealer under ORS 822.050 to revoke, suspend or place a dealer on probation;

(c) Levying a civil penalty against a dealer under ORS 822.009(1); or

(d) Taking disciplinary action against an Oregon dismantler under OAR 735-152-0050 to revoke, suspend or place a dismantler on probation.

(8) DMV may consult with the committee as required by section (7) of this rule at a committee meeting, or by mail, telephone, or other electronic means. DMV will provide written information on a proposed action described in section (7) of this rule to the committee members at least seven days before a committee meeting or the date a recommendation from the committee members is due. DMV may provide the written information by mail, fax, or other electronic means.

(9) The requirements of section (8) of this rule do not apply if DMV determines it must take immediate disciplinary action because the continued operation of a business regulated under ORS Chapter 822 jeopardizes public health or safety. DMV will consult with the committee before taking any action described under this section. Following the action, DMV will provide written notification of DMV's action to the committee.

(10) Recommendations of the committee and the individual committee members are advisory only and the Department of Transportation, including DMV, is not bound by any recommendation.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 802.370

Hist.: MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 7-2009, f. & cert. ef. 3-20-09; DMV 19-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10

Department of Transportation, Highway Division Chapter 734

Rule Caption: Chains or Traction Tires.

Adm. Order No.: HWD 8-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09

Notice Publication Date: 8-1-2009

Rules Amended: 734-017-0015, 734-017-0025

ADMINISTRATIVE RULES

Subject: These rules were amended to allow for use of variable message sign technology to inform motorists of the need to carry or use chains or traction tires. The amendment also accommodates a fourth condition requested by the Oregon Trucking Association that would require chains for single drive axle vehicles with a rated gross vehicle weight over 10,000 pounds as well as passenger vehicles that are towing.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-017-0015

Use of Chains or Traction Tires

A Department of Transportation District Manager or persons authorized by a District Manager shall authorize the posting of appropriate signs and determine when weather conditions require the following:

- (1) Chains or traction tires must be carried but are not required to be used;
 - (2) Chains to be used on vehicles with a rated gross vehicle weight (GVW) of 10,000 pounds or less that are towing and single drive axle vehicles with a rated gross vehicle (GVW) over 10,000 pounds.
 - (3) Chains must be used on vehicles towing or with a rated gross vehicle weight (GVW) over 10,000 pounds;
 - (4) Chains or traction tires must be used on all vehicles except those vehicles exempt in ORS 815.145 and Division 17 rules.
- Stat. Auth.: ORS 184.616, 184.619 & 815.045
Stats. Implemented: ORS 815.045 & 815.140
Hist: 2 HD 15-1981, f. & ef. 11-20-81; HWY 4-1995, f. & cert. ef. 10-17-95; HWY 5-1996, f. & cert. ef. 10-10-96; HWY 10-1997(Temp), f. 10-21-97, cert. ef. 11-1-97; TO 8-1998, f. & cert. ef. 9-14-98 HWD 8-2009, f. & cert. ef. 9-29-09

734-017-0025

Signs

Signs to be used to post areas requiring “chains” or “chains or traction tires” are shown in detail in Exhibit 2-A, Signing for Post Mounted Signs and Exhibit 2-B, Signing for Variable Message Signs.

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

Stat. Auth.: ORS 184.616, 184.619 & 815.045

Stats. Implemented: ORS 815.045

Hist: 2 HD 15-1981, f. & ef. 11-20-81; HWY 4-1995, f. & cert. ef. 10-17-95; HWY 5-1996, f. & cert. ef. 10-10-96; HWY 10-1997(Temp), f. 10-21-97, cert. ef. 11-1-97; TO 8-1998, f. & cert. ef. 9-14-98; HWD 8-2009, f. & cert. ef. 9-29-09

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: Adoption, amendment and repeal of rules governing motor carrier transportation of household goods.

Adm. Order No.: MCTD 2-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09

Notice Publication Date: 8-1-2009

Rules Adopted: 740-035-0145, 740-035-0165, 740-060-0045

Rules Amended: 740-035-0020, 740-035-0110, 740-035-0150, 740-035-0160, 740-060-0100, 740-300-0035

Rules Repealed: 740-060-0050

Subject: These rules describe permits and certificates of authority issued to motor carriers, applications for authority and operations of such motor carriers. HB 2817 (Chapter 433, Or. Laws 2009), revised entry standards required to obtain a certificate of authority to provide for-hire intrastate transportation of household goods. Previously, household goods applicants and applicants for authority to provide regular scheduled transportation of passengers were held to the same application standards. HB 2817 revised entry standards for applicants for household goods authority by removing the provision for existing authorized household goods carriers to protest an application and require the applicant to prove at a hearing that the proposed service meets a public need. The bill contained rulemaking authority to establish new requirements related to a criminal background check for an applicant for household goods authority and for employees of household goods motor carriers. In addition, the bill repealed regulation of persons providing a pack or load service, increased the penalty for unauthorized transportation of household goods from \$500 to \$1,000 per violation, and requires authorized household goods carriers to include their certificate number in internet advertising. These amendments implement Chapter 433, Or. Laws 2009, update existing application requirements and update a list of cities

in which household goods transportation is exempt from economic regulation. A rule regarding pack or load registration was repealed because the bill removed the registration requirement.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-035-0020

Applicants for Certificates or Permits — Capacity — Status

(1) All individual and partner applicants for for-hire carrier operating authority must have reached the age of majority as it is then defined by Oregon law.

(2) If the applicant is other than an individual or partnership and is not a corporation, limited liability partnership, or limited liability company registered with the Corporation Division, and has not previously satisfied this rule, there must be submitted with the application documentary evidence of applicant's legal status; copies of Articles of Incorporation or Certificate of Corporate Status, Articles of Organization, Order of Appointment or other such document as the Department may require.

(3) An applicant for household goods authority must provide a Business Identification Number if it has employees. A Business Identification Number is obtained from the Oregon Department of Revenue by completing and submitting a Combined Employer's Registration form (form DOR 150-211-055). The form is available from the Oregon Department of Revenue by calling 503-945-8091 EXT. 1;

(4) An applicant for household goods authority that intends to use temporary workers obtained from an employment agency must certify that it will maintain records for three years that describe the date(s) worked, names of temporary workers and name of the employment agency where the temporary workers were obtained.

Stat. Auth.: ORS 823.011, 825.125, Ch. 433, OL 2009

Stats. Implemented: ORS 825.102, 825.104, 825.106, 825.110 & 825.240

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); Renumbered from 860-032-0010; MCT 2-1996, f. & cert. ef. 2-16-96; MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0010; MCTD 2-2009, f. & cert. ef. 9-29-09

740-035-0110

Classification of Motor Carriers

The issuance of certificates or permits to for-hire and private carriers will be classified as follows:

- (1)(a) 1A Intrastate Carrier — Property, except Household Goods;
- (b) 1G Intrastate For-Hire Carrier — Other than Local Cartage Household Goods;
- (c) 1C Intrastate For-Hire Carrier — Local Cartage Household Goods;
- (d) 1B Intrastate For-Hire Carrier — Local Cartage Household Goods under ORS 825.240;
- (e) 1P Intrastate For-Hire, Regular Route Full-Service Scheduled Carrier — Passengers; and
- (f) 1R Intrastate, For-Hire, Other Than Regular Route Full-Service Scheduled Carrier — Passengers.

(2)(a) 4A Interstate For-Hire Carrier — Regulated Commodities; and

(b) 4E Interstate For-Hire Carrier — Exempt Commodities.

(3)(a) 3A Oregon-Based Private Carrier; and

(b) 6A Foreign-Based Private Carrier.

(4) 7W Carriers Operating Under ORS 825.020.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.230 & 825.234

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-80, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-80, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 4-1980, f. & ef. 10-13-80 (Order No. 80-759); Renumbered from 860-032-0060; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 15-1984, f. & ef. 8-8-84 (Order No. 84-602); PUC 8-1993, f. & cert. ef. 3-19-93 (Order No. 93-286); PUC 16-1994(Temp), f. 12-28-94, cert. ef. 1-1-95 (Order No. 94-2077); PUC 5-1995, f. & cert. ef. 6-23-95 (Order No. 95-561); MCT 2-1996, f. & cert. ef. 2-16-96; MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0060; MCT 8-1997, f. & cert. ef. 11-17-97; MCTD 2-2009, f. & cert. ef. 9-29-09

740-035-0145

Application for New Permit Authority

(1) Applications for new Class 1A intrastate permit authority must be accompanied by the following:

(a) A filing fee in the amount provided in ORS 825.180;

(b) An “Oregon Class 1A Permit Application,” ODOT Form Number 735-9745, indicating the applicant's choice regarding optional regulations — uniform cargo liability law, uniform cargo credit rule, uniform bill of lading rule, joint line rates, mileage guides, and commodity classification guide;

(c) An “Application For Motor Carrier Account,” ODOT Form Number 735-9075;

ADMINISTRATIVE RULES

(d) Certification of liability and cargo insurance coverage as required by OAR 740-040-0010, 740-040-0020, and 740-040-0030; and

(e) Documentation of the form of business organization for the motor carrier that shows the business and any assumed business name is properly registered in the Business Registry maintained by the Oregon Secretary of State.

(2) Applications for new Class 1B intrastate permit authority to transport household goods in local cartage service under ORS 825.240 must be accompanied by the following:

(a) A filing fee in the amount provided in ORS 825.180;

(b) An "Application for Motor Carrier Account," ODOT Form Number 735-9075;

(c) Certification of liability and cargo insurance coverage as required by OAR 740-040-0010, 740-040-0020, and 740-040-0030; and

(d) Documentation of the form of business organization for the motor carrier and that the business and any assumed business name is properly registered in the Business Registry maintained by the Oregon Secretary of State.

(3) Applications for new Class 1R intrastate permit authority to transport passengers for-hire in other than as a regular route, full-service, scheduled carrier, must be accompanied by the following:

(a) A filing fee in the amount provided in ORS 825.180;

(b) An "Application For An Oregon Intrastate Permit To Transport Persons (In Other than Regular Route, Full-Service Scheduled Transportation)," ODOT Form Number 735-9751;

(c) An "Application For Motor Carrier Account," ODOT Form Number 735-9075;

(d) Certification of liability insurance coverage as required by OAR 740-040-0010, and 740-040-0020; and

(e) Documentation of the form of business organization for the motor carrier and that the business and any assumed business name is properly registered in the Business Registry maintained by the Oregon Secretary of State.

(4) Applications for new, Class 4A, 4E, 3A, 6A, or 7W permits must be accompanied by the following:

(a) An "Application For Motor Carrier Account," ODOT Form Number 735-9075.

(b) Verification of all applicable insurance coverage required by ORS chapter 825.

(5) Permits are non-transferable.

Stat. Auth.: ORS 823.011, 825.200

Stats. Implemented: ORS 825.102, 825.104, 825.106 & 825.108

Hist.: MCTD 2-2009, f. & cert. ef. 9-29-09

740-035-0150

Application for New Authority, Extension or Transfer of Certificate, Intrastate

(1) Applications for new intrastate authority and applications for extension of existing intrastate authority must be accompanied by the following:

(a) Exhibits describing the requested territory, if the application is for household goods or regular route full-service scheduled passenger authority;

(b) Proposed Tariff of Rates and Operating or Time Schedule, if required by ORS Chapter 825, in the form prescribed by OAR 740-050-0400, 740-050-0410 and 740-050-0500;

(c) A filing fee in the amount provided in ORS 825.180;

(d) Certification that the applicant can or will provide proof of liability and cargo insurance coverage, or acceptable surety, as required by ORS 825.166, OAR 740-040-0010, 740-040-0020, and 740-040-0030. No certificate will be issued until the Department has received proof that the required coverage is in effect;

(e) A current financial statement consisting of the following:

(A) A balance sheet showing the value of assets owned, the amount of liabilities owed and net worth; and

(B) An income statement for the most recently completed year immediately preceding the date of the application showing revenues, expenses and profits or losses; or

(C) A pro-forma, or projected, income statement for the first year of operations if a new business.

(f) The results of a criminal background check for each applicant for authority, except for an applicant seeking an extension of existing authority. For the purpose of criminal background checks, "applicant" has the meaning ascribed to it in ORS 825.135, and includes each sole proprietor, all partners of a partnership, all officers and majority stockholders of a corporation, and all members of a limited liability company. The Department may obtain, or require an applicant to provide, a fingerprint based criminal background check if the Department is not satisfied that the criminal background check provided with the application is current or accurate.

(g) Any other information or documents pertaining to the above requirements that the Department may deem appropriate.

(2) Authority granted for extension of geographic area shall not be broader in terms of types of services offered than that granted in the original application. An application to remove a service restriction from an existing authority must be made as an application for new authority.

(3) Authority sought by application for transfer must be limited to that authority contained in the certificate subject to transfer.

(4) An application for transfer of a certificate must be accompanied by the following:

(a) All items listed in subsections (1)(a) through (g) of this rule;

(b) A written consent of transfer signed by the certificate holder or the certificate holder's personal representative; and

(c) Evidence under ORS 825.129 of authority to transfer the certificate or license, if the individual certificate holder is deceased, and the operation is to be continued for purpose of transfer.

(5) When a certificate holder is granted additional authority by transfer or extension, the two authorities will be merged and a single authority will be issued.

(6) Any application, petition or other filing that contains false information, is incomplete, or does not comply with all the Department's rules and regulations may be rejected.

(7) No certificate holder shall hold more than one certificate authorizing the same service.

Stat. Auth.: ORS 181.534, 823.011, 825.125 & Ch. 433, OL 2009

Stats. Implemented: ORS 825.102, 825.110 & 825.240

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); Renumbered from 860-032-0070; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 7-1983(Temp), f. & ef. 7-11-83 (Order No. 83-389); PUC 15-1984, f. & ef. 8-8-84 (Order No. 84-602); PUC 1-1986, f. & ef. 2-5-86 (Order No. 86-100); PUC 14-1986, f. & ef. 10-31-86 (Order No. 86-1116); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 14-1992, f. & cert. ef. 11-9-92 (Order No. 92-1560); MCT 2-1996, f. & cert. ef. 2-16-96; MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0070; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 8-1997, f. & cert. ef. 11-17-97; MCTB 1-2002, f. 6-21-02, cert. ef. 7-1-02; MCTD 2-2009, f. & cert. ef. 9-29-09

740-035-0160

Applications for Temporary Authority to Transport Passengers

Any person requesting temporary operating authority to transport passengers in regular route full-service scheduled operations must comply with the following requirements, if applicable:

(1) Applications for temporary authority under ORS 825.115 must be accompanied by the following completed documents and must be on forms approved by the Department:

(a) Exhibits describing the type of service and requested routes if application is for regular route service;

(b) Written statements of request for service for the applicant's proposed operation. Statements should specifically explain why the applicant's service is needed, including a description of the deficiencies or absence of service provided by existing carriers;

(c) Proposed tariff of rates and operating or time schedule, if required by ORS Chapter 825, in the form prescribed by OAR 740-050-0400, 740-050-0410 and 740-050-0500;

(d) Proof of liability insurance and proof of cargo insurance if required by OAR 740-040-0030 coverage as required by 740-040-0010, 740-040-0020, and 740-040-0030.

(2) Temporary authority shall be issued only to applicants that have demonstrated a legitimate need, as determined after investigation by the Department's staff, for service.

(3) Applications which are approved shall be published in the monthly notice of applications filed with the Oregon Department of Transportation. Formal protests to the granting of the temporary authority can be filed by motor carriers having existing authority to provide the proposed service or by persons who have an application pending to provide the proposed service. The protest must be received by the Department within 15 days of the date of service of the notice.

(4) If a protest is received pursuant to section (3) of this rule, a public hearing shall be held within 90 days of issuance of the temporary authority certificate to determine if the authority should remain in effect.

Stat. Auth.: ORS 823.011, 825.115 & 825.125

Stats. Implemented: ORS 825.115

Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); Renumbered from 860-032-0071; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 17-1985, f. & ef. 10-22-85 (Order No. 85-1007); MCT 2-1996, f. & cert. ef. 2-16-96; MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0071; MCTD 2-2009, f. & cert. ef. 9-29-09

740-035-0165

Applications for Authority to Transport Household Goods or Passengers in Regular Route Service

The application of any person requesting operating authority to transport household goods or passengers in regular route, full-service scheduled operations will be evaluated by the department to determine if it complies with provisions of law set out in ORS 825.110, 825.115 and 825.135. The

ADMINISTRATIVE RULES

application will be approved if the department finds that it meets the requirements of OAR 740-035-0150(1)(a)-(g), and the applicant demonstrates to the department's satisfaction that it is fit, willing and able to perform the service proposed. For the purpose of this rule:

(1) "Fit" means that the applicant has not, during the five years preceding the application, been convicted of a crime punishable by imprisonment for a period of time in excess of one year under the law under which he or she was convicted, or a crime regardless of punishment involving:

- (a) Theft;
- (b) Burglary;
- (c) Sexual conduct;
- (d) Manufacture, sale or distribution of a controlled substance;
- (e) Identity theft; or
- (f) False statements.

(2) "Willing" means the applicant is prepared to provide all service sought in the application in compliance with ORS Chapter 825 and Department rules; and

(3) "Able" means:

(a) The applicant has or can provide adequate facilities, vehicles and equipment to perform the service proposed;

(b) The applicant certifies that these vehicles comply with all Oregon laws and rules covering vehicle safety and operations, and will be so maintained; and

(c) There is no significant evidence concerning the proposed service submitted by the applicant, by members of the public, or in the department's files that suggests a compelling reason to deny the application. Examples of evidence of a compelling reason to deny an application may include:

(A) A record of a pattern of violations of laws or rules administered by the Department.

(B) Two or more complaints from customers regarding applicant's unsatisfactory resolution of loss or damage claims.

(4) Application approval and disapproval decisions will be documented by issuance of notices of intent and final orders of the agency.

(a) Approval of applications will be documented by issuance of a final order approving the application for authority and issuance of a new or amended certificate of authority.

(b) Proposed disapproval of applications will be documented by issuance of a notice of intent to issue a final order disapproving application.

(A) The notice will cite the reason or reasons for disapproval and provide an opportunity for the applicant to request a contested case hearing. Contested case hearings will be conducted in accordance with ORS Chapter 183;

(B) Judicial review of final orders of the department issued after a contested case hearing may be obtained by filing a petition with the Oregon Court of Appeals within sixty (60) days of service of the final order under the provisions of ORS 183.482.

Stat. Auth.: ORS 823.011, 825.110, 825.125, Ch. 433, OL 2009
Stats. Implemented: ORS 183.482, 825.110, Ch. 433, OL 2009
Hist.: MCTD 2-2009, f. & cert. ef. 9-29-09

740-060-0045

Criminal Background Checks

(1) Each authorized, intrastate, for-hire carrier of household goods must obtain a criminal background check for each employee or any agent representing the carrier whose duties may require contact with the public or entry into a private residence or storage facility for the purpose of providing or facilitating the transportation of household goods. For the purpose of this rule:

(a) Authorized, intrastate, for-hire carriers of household goods subject to these requirements are referred to as "Subject Employers".

(b) Employees or agents whose duties are described in this rule are referred to as "Subject Individuals."

(2) The deadline to comply with this requirement by each Subject Employer is January 1, 2010 for Subject Individuals employed on or before the effective date of this rule, and prior to employment for all Subject Individuals hired after the effective date of this rule.

(3) Criminal Background Check means a public record of court actions regarding the Subject Individual.

(a) Subject Employers must require each Subject Individual, as a condition of employment, to sign a release authorizing the Subject Employer to obtain the criminal background check required by this rule.

(b) The Department may require Subject Employers to obtain additional criminal background information from law enforcement on Subject Individuals.

(c) Criminal background checks will produce a list of offenses for which the Subject Employee has been convicted in a court of law, and the date of each conviction.

(4) Subject Employers must certify in their annual report due April 1st of each year that they are in compliance with all rules of this department

and provide the following information about criminal history check activities:

(a) The number of Subject Individuals on whom criminal history checks were done during the preceding calendar year;

(b) The number of criminal history checks resulting in evidence of a criminal history including:

(A) Information about what was found without identifying the individual by name; and

(B) The Subject Employer's decision as to whether the Subject Individual was hired, or continued in employment, and if so, an explanation as to why.

(5) Subject Individuals may not perform duties which may require contact with the public or entry into a private residence or storage facility for the purpose of providing or facilitating the transportation of household goods if they have been convicted within the five years preceding the criminal background check of any felony or a misdemeanor involving:

- (a) Theft;
- (b) Burglary;
- (c) Sexual conduct;
- (d) Manufacture, sale or distribution of a controlled substance;
- (e) Identity theft or
- (f) False statements.

(6) Criminal background checks required by this rule must be retained for at least three years from the date obtained.

Stat. Auth.: Ch. 433, OL 2009
Stats. Implemented: Ch. 433, OL 2009
Hist.: MCTD 2-2009, f. & cert. ef. 9-29-09

740-060-0100

Cartage Areas Exempt from Economic Regulation

Carriers engaged in the transportation of household goods moving wholly within the incorporated city limits of each of the cities as set out in **Exhibit 1** are exempt from economic regulation, pursuant to ORS 825.240.

[ED. NOTE: Exhibits referenced are available from the agency
Stat. Auth.: ORS 823.011 & 825.240
Stats. Implemented: ORS 825.240
Hist.: PUC 5-1978, f. & ef. 12-20-78 (Order No. 78-924); Renumbered from 860-039-0050; PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-069-0050; MCT 3-1996, f. & cert. ef. 3-14-96; MCTD 2-2009, f. & cert. ef. 9-29-09

740-300-0035

Providing Unauthorized Household Goods Transportation

Except as otherwise ordered by the Department in a particular case, any person who violates ORS 825.100 by providing an unauthorized household goods moving service, is subject to civil monetary penalties in an amount of up to \$1,000 per violation, in addition to any other penalties authorized by law.

Stat. Auth.: ORS 825.950 & Ch. 433 OL 2009
Stats. Implemented: ORS 825.100 & 825.950
Hist.: MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04; MCTD 3-2004, f. 6-24-04, cert. ef. 6-29-04; MCTD 4-2006, f. & cert. ef. 8-28-06; MCTD 2-2009, f. & cert. ef. 9-29-09

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**Department of Transportation,
Transportation Safety Division
Chapter 737**

Rule Caption: Adopts Minimum Safety Standards for Low-Speed Vehicles and for Medium Speed Electric Vehicles.

Adm. Order No.: TSD 1-2009(Temp)

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09 thru 3-20-10

Notice Publication Date:

Rules Adopted: 737-010-0000, 737-010-0010, 737-010-0020

Subject: Section 14, Chapter 865, Oregon Laws 2009 requires the Oregon Department of Transportation to adopt rules establishing minimum safety standards for low-speed vehicles and medium-speed electric vehicles. Minimum safety standards adopted by the department must be consistent with, but may exceed safety standards adopted by the federal government. The department is prohibited from issuing registration to a low-speed vehicle or medium-speed vehicle if the department has reason to believe the vehicle does not meet the safety standards adopted by the department.

OAR 737-010-0010 adopts by reference the federal motor vehicle safety standards (FMVSS) for low-speed vehicles, as set forth under Title 49 CFR Part 571.500 (October 1, 2008), as the minimum vehicle safety standards for low-speed vehicles.

OAR 737-010-0020 adopts by reference the FMVSS, as set forth in Title 49 CFR Part 571 (October 1, 2008), applicable to light vehi-

ADMINISTRATIVE RULES

cles and FMVSS Standard no. 305 relating to electrolyte spillage and electrical shock protection as the minimum vehicle safety standards for medium speed electric vehicles.

OAR 737-010-0000 defines terms.

Rules Coordinator: Lauri Kunze—(503) 986-3171

737-010-0000

Definitions Relating to Low-Speed Vehicles and Medium-Speed Electric Vehicles

As used in Division 10 rules and Chapter 865, Oregon Laws 2009, the following definitions apply:

(1) “CFR” means Code of Federal Regulations and, unless otherwise expressly identified, refers to revision 63 FR 33216, June 17, 1998, as amended at 68 FR 43972, July 25, 2003;

(2) “Crushproof body design” means the vehicle has been certified by the National Highway Traffic Safety Administration that the vehicle is in compliance with FMVSS No. 216 Roof crush resistance;

(3) “TSD” means the Transportation Safety Division of the Oregon Department of Transportation;

(4) “Enclosed” means a complete shell comprised of a top, bottom and sides meant to protect the vehicle and occupants;

(5) “FMVSS” means Federal Motor Vehicle Safety Standards and Regulations as specified by NHTSA under 49 CFR, Part 571;

(6) “Low-speed vehicle” means a four wheeled motor vehicle with a top speed of more than 20 miles per hour but not more than 25 miles per hour;

(7) “Medium-speed electric vehicle” means an electric motor vehicle with four wheels that is equipped with a roll cage or a crushproof body design, can attain a maximum speed of 35 miles per hour on a paved, level surface, is fully enclosed and has at least one door for entry;

(8) “NHTSA” means the U.S. Department of Transportation, National Highway Traffic Safety Administration;

(9) “Open-body type vehicle” means a vehicle having no occupant compartment doors and/or top or a vehicle having readily detachable occupant compartment doors and/or top; and

(10) “Roll cage” is an enclosure that will support the vehicle’s weight and be so designed as to protect the occupants when the vehicle is resting on this enclosure.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010, 815.010, 815.030 & Ch 865 OL 2009
Stats. Implemented: ORS 815.010, 815.030 & Ch 865 OL 2009
Hist.: TSD 1-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10

737-010-0010

Minimum Safety Standards for Low-Speed Vehicles

(1) As the minimum vehicle safety standards for low-speed vehicles, TSD adopts the Federal Motor Vehicle Safety Standards (FMVSS) applicable to low-speed vehicles as set forth in 49 CFR, Part 571.500 (October 1, 2008).

(2) The vehicle safety equipment requirements for low-speed vehicles described under this rule apply to original and replacement equipment.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 815.010, 815.030 & Ch 865 OL 2009
Stats. Implemented: ORS 815.010, 815.030 & Ch 865 OL 2009
Hist.: TSD 1-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10

737-010-0020

Minimum Safety Standards for Medium-Speed Electric Vehicles

(1) As the minimum vehicle safety standards for medium-speed electric vehicles, TSD adopts the Federal Motor Vehicle Safety Standards (FMVSS) applicable to light vehicles as set forth in 49 CFR, Part 571 (October 1, 2008). In addition, TSD adopts FMVSS Standard no. 305, Electric-powered vehicles: electrolyte spillage and electrical shock protection, as set forth in 49 CFR 571.305 (October 1, 2008).

(2) A medium-speed electric vehicle must be fully enclosed and may not be an open-body type vehicle.

(3) The vehicle safety equipment requirements for medium-speed electric vehicles described under this rule apply to original and replacement equipment.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 815.010, 815.030 & Ch 865 OL 2009
Stats. Implemented: ORS 815.010, 815.030 & Ch 865 OL 2009
Hist.: TSD 1-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10

Landscape Contractors Board Chapter 808

Rule Caption: Clarifies uniforms are not required to include the landscape contracting business license number.

Adm. Order No.: LCB 6-2009(Temp)

Filed with Sec. of State: 10-14-2009

Certified to be Effective: 10-14-09 thru 4-11-10

Notice Publication Date:

Rules Amended: 808-003-0010

Subject: This rule amendment clarifies that uniforms are not required to include the landscape contracting business license number.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-003-0010

Advertising

(1) All written advertising, except telephone and internet directory line listings and uniforms, shall include the landscape contracting business license number.

(2) Advertising shall include, but not be limited to:

(a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671.510 through 671.710;

(b) Telephone or internet directory space ads, display ads and line listings;

(c) Business cards;

(d) Business flyers;

(e) Business letterhead;

(f) Business signs at construction sites; and

(g) Websites.

(3) No person shall advertise under the heading of “landscape contractor” or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds an active landscape contracting business license.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.530

Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0012; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 6-2009(Temp), f. & cert. ef. 10-14-09 thru 4-11-10

Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Adoption of Safety Net Capacity Grant Program Criteria for Awarding Grants.

Adm. Order No.: OHP 2-2009

Filed with Sec. of State: 9-30-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Adopted: 409-110-0000, 409-110-0005, 409-110-0010, 409-110-0015, 409-110-0020

Subject: These rules establish criteria for awarding grants under the Health Care for all Oregon’s Children, Safety Net Capacity Grant Program (SNCGP), which was enacted by the 75th Legislative Assembly. The SNCGP ensures that safety net providers have the capacity to serve vulnerable and underserved children in Oregon with needed health care services to include physical, oral, mental, behavioral and vision health services.

Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-110-0000

Scope

These rules (OAR 409-110-0000 to 409-110-0020) establish criteria for awarding grants under the Health Care for All Oregon’s Children, Safety Net Capacity Grant Program, which was established to ensure that safety net providers have capacity to serve vulnerable and underserved children in Oregon.

Stat. Auth.: 2009 HB 2116

Stats. Implemented: 2009 HB 2116

Hist.: OHP 2-2009, 9-30-09 cert. ef. 10-1-09

409-110-0005

Definitions

The following definitions apply to OAR 409-110-0000 to 409-110-0020:

(1) “Community-sponsored Clinic” means a non-profit, community-based clinic that does not receive state or federal funding and is sponsored by the local community in the form of grants and donations, including in-kind donations of goods and services.

(2) “Culturally and Linguistically Appropriate Services” means health care services that are respectful of and responsive to cultural and linguistic needs. Please refer to the “National Standards on Culturally and Linguistically Appropriate Services” (CLAS), United States Department of Health and Human Services, Office of Minority Health.

(3) “OHPR” means the Office for Oregon Health Policy and Research.

ADMINISTRATIVE RULES

(4) "Primary Healthcare Service" means physical, oral, mental, behavioral, and vision health services that are delivered in a manner that reflects the state's emphasis on patient-centered primary care medical homes.

(5) "Program" means the Safety Net Capacity Grant Program, as part of the Health Care for All Oregon's Children Program.

(6) "Safety Net Advisory Council" means the entity responsible for supporting vulnerable populations who experience barriers to care and providing specific policy recommendations to the Governor and policy makers to ensure a safety net of health services.

(7) "Safety Net Provider" means a public or non-profit federally qualified health center, school-based health center, tribal health clinic, rural health clinic, or community-sponsored clinic that provides primary care physical, oral, mental, behavioral and vision health services to low-income patients without charge or using a sliding scale.

(8) "Target Population" refers to children who meet the criteria for Health Care for All Oregon's Children Program (2009 House Bill 2116, sections 27 and 28), except for immigration status.

[ED.NOTE: Publications referenced are available from the agency]
Stat. Auth.: 2009 HB 2116
Stats. Implemented: 2009 HB 2116
Hist.: OHP 2-2009, 9-30-09 cert. ef. 10-1-09

409-110-0010

Program Administration

(1) The program is intended to ensure that the target population has access to primary physical, oral, mental, behavioral, and vision health services.

(2) OHPR shall award grants to safety net providers through the program.

(3) Services covered through the program are limited to primary care, oral, mental, behavioral, and vision health services.

(4) Children in the target population through the age of 18 are eligible to receive services through the program.

(5) The grant amount awarded shall take into consideration the distribution and concentration of the target population in the proposed service area.

(6) The program is competitive and proposals that include collaboration with community partners may be given preference.

(7) OHPR shall administer the program including soliciting, reviewing, evaluating, and selecting successful grant proposals. OHPR shall also provide project monitoring, technical assistance and submit periodic status reports to interested parties.

(8) The Safety Net Advisory Council shall provide advisory recommendations to program staff.

(9) Grant funding shall be awarded for up to a two-year period. Fund awards may be renewable.

(10) OHPR shall distribute safety net grant funds to successful applicants on an incremental basis.

(11) All funds provided separately for the planning, development, establishment, and certification of new school-based health centers shall be awarded to local public health authorities in accordance with the current competitive grant process in use and funding formula as established and administered by the Office of Family Health, Public Health Division.

Stat. Auth.: 2009 HB 2116
Stats. Implemented: 2009 HB 2116
Hist.: OHP 2-2009, 9-30-09 cert. ef. 10-1-09

409-110-0015

Grant Award Process

(1) OHPR shall advertise grant proposals through publication on its website and through communication to eligible entities.

(2) All proposals must be submitted in a form specified by the program and by the date specified in the solicitation document.

(3) OHPR shall document receipt of all proposals.

(4) To qualify for a grant through the Program, applicants must be able to credibly estimate the number of new and existing children in the target population they will serve, as well as the number of estimated visits for the target population.

(5) OHPR shall evaluate all proposals based upon but not limited to the following evaluation elements:

(a) Demonstrated capacity to provide primary health care services.

(b) Demonstrated capacity or description of a credible plan to serve the target population.

(c) Demonstrated capacity or description of a credible plan to assure that services are culturally and linguistically competent.

(d) Demonstrated capacity or description of a credible plan to identify, contact, and provide primary care to the target population.

(e) Demonstrated readiness to be operational within 90 days of grant award.

(f) Maintenance of operating hours and locations to ensure accessibility.

(g) Demonstrated ability to partner with community-based and other community organizations and to leverage funds, where possible.

(h) Submission of a proposed work plan, including timeline, discrete programs and products, evaluation outcomes, and budget.

(i) Demonstrated capacity or description of a credible plan for implementing data systems that can report on delivery of services and health outcomes, preferably through the utilization of electronic health records that are Certification Commission for Health Information Technology certified. Responses that indicate participation in or willingness to participate in efforts to assure interoperability of electronic health records may be scored more highly.

(j) A commitment to continuous quality improvement demonstrated by the inclusion of an annual quality improvement plan, identification of quality improvement activities with reporting of outcomes and the incorporation of evidence based practices. Responses that incorporate meaningful elements of a primary care medical home may be scored more highly.

(6) OHPR shall form a committee consisting of at least four qualified individuals who have no direct personal or organizational interest, to consider and make recommendations on the submitted proposals.

(7) OPHR shall notify applicants, in writing, whether their proposal was selected for funding, within eight weeks of the submission deadline. OHPR shall provide a question and answer opportunity through electronic and telephone communication both before and after the selection of proposals.

Stat. Auth.: 2009 HB 2116
Stats. Implemented: 2009 HB 2116
Hist.: OHP 2-2009, 9-30-09 cert. ef. 10-1-09

409-110-0020

Monitoring and Reporting Requirements

(1) A grantee shall:

(a) Submit grant reports to OHPR on a periodic basis. Grant reports will indicate progress to achieve grant benchmarks and goals and report on the expenditure of grant dollars. Failure to comply with reporting requirements may result in grant suspension or termination; and

(b) Report specific data or information, to be determined by OHPR.

(2) Grant disbursements are contingent on grantee achieving proposed service delivery levels. Failure to achieve proposed service levels or benchmarks may result in grant reduction or termination.

(3) Periodically grantee and OHPR staff shall jointly review progress.

Stat. Auth.: 2009 HB 2116
Stats. Implemented: 2009 HB 2116
Hist.: OHP 2-2009, 9-30-09 cert. ef. 10-1-09

Rule Caption: Amendments to Oregon Prescription Drug Program Definitions and General Administration of Program Functions.

Adm. Order No.: OHP 3-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 409-030-0000, 409-030-0005, 409-030-0010, 409-030-0020, 409-030-0030, 409-030-0050, 409-030-0065

Rules Repealed: 409-030-0040

Subject: The Oregon Prescription Drug Program rules are being amended to include definitions for critical access pharmacy, designated entity, and group purchasing organization. These amendments also clarify the Administrator's authority to enter into contracts to perform program functions. Other administrative changes are proposed to align the rules with Department and statutory guidelines and language.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

409-030-0000

Definitions

(1) "340B" means Section 340B of the Public Health Service Act, "Limitation on Prices of Drugs Purchased by Covered Entities," and any and all related rules, guidance, interpretations, and operational directives adopted by the federal Health Resources and Services Administration (HRSA) or any other governmental agency with jurisdiction over the enforcement of Section 340B.

(2) "Administrator" means the Administrator of the Oregon Prescription Drug Program (OPDP).

(3) "Critical Access Pharmacy (CAP)" means a sole Oregon pharmacy in a community within a ten-mile radius from other pharmacies. If a pharmacy's ten-mile radius intersects with another sole pharmacy's ten-mile radius, both shall be considered a CAP if either pharmacy's closure could result in impaired access for rural communities.

(4) "Department" means the Department of Human Services.

ADMINISTRATIVE RULES

(5) "Designated Entity" means an entity contracted by the Department to perform administrative duties of the program including but not limited to determining program prices, processing and paying claims, issuing identification cards, maintaining eligibility files, and performing replenishment administration. Designated entities may include but are not limited to pharmacy benefits managers, third party administrators, insurance carriers, health maintenance organizations (HMOs), mail order and specialty drug suppliers, replenishment administrators, group purchasing organizations, and wholesalers.

(6) "Group Enrollee" means any individual who is issued an OPDP identification card through a participating group.

(7) "Group Purchasing Organization (GPO)" means any organization purchasing on a group basis for purchasers whose drug purchasing is exempt from the federal price discrimination law known as the Robinson Patman Act, 15 USC 13 and satisfies the Nonprofit Institutions Act, 15 USC 13c, or is that of a governmental entity performing traditional government functions.

(8) "Enrollee" means an individual who meets the eligibility requirements of the OPDP according to ORS 414.312(e), pays the applicable enrollment fee, and is issued an enrollment card.

(9) "Participating Group" means agencies or institutions eligible to participate in the OPDP according to ORS 414.312(4).

(10) "Pharmacy Benefit Manager (PBM)" means an entity that negotiates and executes contracts with pharmacies, manages preferred drug lists (PDL), negotiates rebates with prescription drug manufacturers, and serves as an intermediary between the Administrator, prescription drug manufacturers, and pharmacies.

(11) "Pharmacy Provider" means retail drug outlets that volunteer to participate in the OPDP and that contract with the Department or a designated entity as a pharmacy provider.

(12) "Prescription Drug" means drugs whose sale without a prescription is prohibited by law.

(13) "Prescription Drug Claims Processor" means an entity that processes and pays prescription drug claims, transmits prescription drug prices and claims data between pharmacies and the OPDP, and processes payments to pharmacies.

(14) "Program Price" means the reimbursement rates and prescription drug prices established by the OPDP Administrator directly or through a contract with a designated entity, including program cost, dispensing fee, and all applicable manufacturers discounts and rebates.

(15) "Rebate" means promotional or volume related refunds pre-arranged with manufacturers on certain prescription drugs used to reduce the cost to the purchaser.

(16) "Replenishment Administration" means tracking GPO or 340B program usage by pharmacy and ordering replacement inventory including associated reporting; GPO and 340B retail and mail order pharmacy contracting; GPO and 340B contracting; or as otherwise defined by contract.

(17) "Third Party Administrator (TPA)" means an entity that, in addition to being a prescription drug claims processor, facilitates program management including processing and paying prescription drug claims; transmitting prescription drug prices and claims and enrollment data between pharmacies and the OPDP and its groups; maintaining enrollment and issuing identification cards; and processing payments to pharmacies. The TPA may be contracted through the Department or PBMs, or other designated entities.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07; OHP 2-2007(Temp), f. & cert. ef. 5-16-07 thru 11-6-07; OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09

409-030-0005

General Administration

(1) The Administrator, or designee, may:

(a) Negotiate price discounts and rebates on prescription drugs with prescription drug manufacturers;

(b) Purchase prescription drugs on behalf of enrollees and participating groups;

(c) Contract with a prescription drug claims processor or PBM to adjudicate pharmacy claims and transmit program prices to pharmacies;

(d) Determine program prices and reimburse pharmacies for prescription drugs;

(e) Adopt and implement a preferred drug list for the program;

(f) Develop a system for allocating and distributing the operational costs of the program and any rebates obtained to participants of the program; and

(g) Cooperate with any state or regional consortia in bulk purchasing of prescription drugs.

(2) The Administrator shall oversee the implementation of the OPDP, including review of enrollee eligibility information, participating group information, and pharmacy provider compliance with program require-

ments. The Administrator, or designated entity, shall review records or other information, including health information, necessary to perform oversight responsibilities.

(3) The Administrator shall establish processes, terms, and conditions describing how the entities identified in ORS 414.312(4) may participate in the OPDP as a participating group, including entities otherwise subject to ORS 731.036(6).

(4) The Administrator may contract with a pharmacy benefit manager directly or indirectly for pharmacy networks that provide statewide access for OPDP members including consideration for CAP providers.

(5) The Administrator may contract with replenishment administrators, GPO's or 340B providers as necessary to utilize discount purchasing programs.

(6) Annually, no later than November 1, the Office of Rural Health shall determine any Oregon pharmacies that meet CAP status and report them to the OPDP for CAP designation. OPDP shall send the current list of all Oregon retail pharmacies to the Office of Rural Health no later than October 1 each year.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07; Administrative Correction, 6-16-07; OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09

409-030-0010

Pharmacy Providers

(1) The pharmacy shall contract with the Department, or its designated entity, and must be licensed with their state Board of Pharmacy to be a pharmacy provider under the OPDP.

(2) The pharmacy provider shall sign a pharmacy provider contract and comply with all applicable state and federal laws, regulations, rules, and the terms and conditions of the contract. The contract authorizes the pharmacy to serve enrollees in the OPDP and outlines program compliance requirements.

(3) A contract may be issued to a qualified pharmacy provider upon:

(a) Completion and signature of the contract by the pharmacy provider or a person authorized by the pharmacy provider to bind the organization;

(b) Verification of pharmacy licensing with the Oregon Board of Pharmacy; and

(c) Approval of the contract by the Department or its designated entity.

(4) To contract for the OPDP, the pharmacy provider must:

(a) Accept the program price in effect on the date of the transaction as established by the Administrator including but not limited to dispensing fees which may be charged to the enrollee;

(b) Maintain sufficient documentation of transactions to resolve disagreements with the enrollee about the amount charged for the prescription drugs;

(c) Reimburse the enrollee or participating group directly for overcharges as determined by program price in effect on the date of the transaction;

(d) Provide access to records and data required by the designated entity to administer claims, reimbursement, and other tasks as necessary for OPDP claims processing; and

(e) Not charge enrollees for costs incurred by the pharmacy provider for the electronic transmittal of the program price from the Department to the pharmacy.

(5) Pharmacy providers may advertise participation in the OPDP;

(a) Advertising or marketing materials must be accurate and not misleading or confusing to enrollees or the public about participation in the OPDP or the savings offered by the pharmacy provider.

(b) The pharmacy provider must cease all advertisements pertaining to participation in the program if the Department suspends or terminates the contract.

(6) The Administrator shall, at its discretion, suspend or remove a pharmacy provider from the OPDP if the pharmacy provider loses licensure or fails to comply with applicable state and federal laws, rules, and regulations, and the terms and conditions of the contract.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2007(Temp), f. & cert. ef. 5-16-07 thru 11-6-07; OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09

409-030-0020

Program Price

(1) The price for a prescription drug a pharmacy provider may charge an enrollee under the OPDP is the lesser of the following on the date of the transaction:

(a) The program price, or

(b) The pharmacy provider's usual and customary price, including program cost and dispensing fee.

ADMINISTRATIVE RULES

(2) The designated entity shall transmit the price of the prescription drugs to the pharmacy providers electronically.

(3) The OPDP is limited to prescription drugs prescribed in the name of and for the use by the enrollee, except as otherwise provided in section (7) of this rule.

(4) Prescription drug benefits shall be outlined on enrollee and group enrollee identification cards.

(5) The OPDP does not include prescriptions for over-the-counter drugs.

(6) The Administrator, or designated entity, may establish different program prices for CAP providers in rural areas to maintain statewide access to the OPDP.

(7) Certain participating groups may receive the program price based on other reimbursement arrangements with the OPDP, where the prescription drug is not being dispensed by a pharmacy provider to a group enrollee. The designated entity shall approve and arrange such reimbursement.

Stat. Auth.: ORS 414.320
Stats. Implemented: ORS 414.312 - 414.320
Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07; OHP 2-2007(Temp), f. & cert. ef. 5-16-07 thru 11-6-07; OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09

409-030-0030

Preferred Drug List

(1) The Office for Oregon Health Policy and Research shall develop and recommend to the Administrator a PDL that identifies preferred choices of prescription drugs within therapeutic classes for particular diseases and conditions, including generic alternatives, for use in the OPDP by participating groups.

(2) The OPDP shall develop a PDL that participating groups may choose to adopt for beneficiaries of their prescription drug benefit program. The PDL shall include the most effective prescription drugs at the lowest possible prices, taking into account negotiated price discounts and rebates available to the OPDP, while allocating and distributing the operational costs of the OPDP.

(3) If a participating group uses the PDL developed by the OPDP, it must be used in conjunction with that group's benefit plan including all pharmacy management programs the group has or adopts.

(4) The PDL shall also be made available to individuals enrolled in the OPDP.

Stat. Auth.: ORS 414.320
Stats. Implemented: ORS 414.312 - 414.320
Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 3-2009, f. & cert. ef. 10-1-09

409-030-0050

Enrollment

(1) Participating groups shall enroll for participation through the designated entity chosen by the OPDP to administer the participating group's enrollment and claims processing.

(a) Eligibility for group enrollees of a participating group shall be maintained electronically between the group and designated entity.

(b) Participating groups shall issue identification cards to group enrollees at initial enrollment and renewal, and to group enrollees between those times as needed.

(2) Residents of Oregon who do not have prescription drug coverage or who are underinsured for prescription drug coverage may be individually enrolled by the designated entity.

(a) The designated entity shall issue Identification cards to enrollees.

(b) Individuals who are eligible for Medicare Part D prescription drug coverage may participate in the program.

(3) The OPDP may charge a nominal fee to participate in the program.

Stat. Auth.: ORS 414.320
Stats. Implemented: ORS 414.312 - 414.320
Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07; OHP 2-2007(Temp), f. & cert. ef. 5-16-07 thru 11-6-07; OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09

409-030-0065

Contracted Services

(1) The Administrator may procure goods and services to perform any of the functions of OPDP.

(2) OPDP adopts the DOJ model public contract rules in OAR 137, division 46 (General Provisions Related to Public Contracting) and division 47 (Public Procurements for Goods or Services), effective July 1, 2009, as the contracting rules that shall apply to its procurements.

(3) The Administrator shall delegate procurement authority to the Department's Designated Procurement Officer for OPDP goods and services, except as the Administrator determines to retain such authority in a particular case and as otherwise provided in section (5) of this rule.

(4) The Administrator shall act as the Department's representative for each contract. The Administrator may delegate in writing the representative's responsibilities to a designee. The agency's representative may par-

ticipate with the Department's Designated Procurement Officer in all aspects of procurement.

(5) OPDP's mechanism for and administration of the enrollment of participating groups shall not constitute procurements subject to this rule.

Stat. Auth.: ORS 414.312 - 414.320
Stats. Implemented: ORS 414.312 - 414.318, OL 2007 (SB 362)
Hist.: OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09

Oregon Business Development Department Chapter 123

Rule Caption: The department's procedural rules have been revised for clarity and compliance.

Adm. Order No.: EDD 8-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 123-001-0050, 123-001-0520, 123-001-0725

Subject: These rules have been revised to include new definitions brought from the 2009 Legislative session through HB 2152 and have been revised for clarity.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-001-0050

Definitions

For purposes of this division of administrative rules, and generally throughout this chapter of administrative rules, unless the context demands otherwise:

(1) Administrator means the Administrator of the Infrastructure Finance Authority.

(2) Authority means the Infrastructure Finance Authority within the Oregon Business Development Department.

(3) Board means the Oregon Infrastructure Finance Authority Board.

(4) Brownfield means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1).

(5) Collateral means property subject to a security interest or security agreement, as defined in ORS 79.1050.

(6) Commission means the State of Oregon Business Development Commission appointed under ORS 285A.040.

(7) Department means the State of Oregon Business Development Department as established under ORS 285A.070.

(8) Deputy Director means the deputy director of the Oregon Business Development Department.

(9) Director means the director of the Oregon Business Development Department as appointed under ORS 285A.070.

(10) Distressed Area means a geographic area within the state of Oregon that meets the criteria set forth under OAR 123-024-0031.

(11) Finance Committee means the financial committee formed by the Oregon Business Development Commission as defined in OAR 123-001-0520.

(12) Financial Institution means a financial institution as defined in ORS 706.008.

(13) First Source Hiring Agreements means the hiring agreements as described in OAR 123-070.

(14) Grant means an award of monies to an approved recipient for eligible purposes.

(15) Governor means the sitting Governor of the State of Oregon, pursuant to Article V of the Constitution of Oregon.

(16) Loan means dept financing provided to an approved recipient for eligible purposes.

(17) Port means a municipal corporation organized under ORS chapter 777 or 778, which may be known as a "port authority" or "port district."

(18) Small Business means a business having 100 or fewer employees in accordance with ORS 285A.010(9)

(19) State Revenue Bonds means bonds issued by the State of Oregon that are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A, 285B & 1999 OL Ch. 509
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09

123-001-0520

Finance Committee for the Commission

The Finance Committee is an Ad Hoc Committee that has been formed and empowered by the Commission in accordance with ORS 285A.060 such that:

ADMINISTRATIVE RULES

(1) The Commission charges the Finance Committee (pursuant to divisions of this chapter of administrative rules) with the following:

(a) Immediate oversight and the approval of projects and proposals under the following business finance programs:

- (A) Economic Development Revenue Bonds (division 011); and
- (B) Oregon Business Development Fund (division 017);

(b) Consideration on appeal of administrative denials of business loans under the following programs:

- (A) Entrepreneurial Development Loan Fund (division 019); and
 - (B) Credit Enhancement Fund (division 021); and
- (2) The Finance Committee's members:

(a) Are appointed by the chair of the Commission to include representation from among this state's banking and financial community, as well as at least one member possessing general experience with a traded-sector industry or industry association; and

(b) Serve indefinite terms at the pleasure of the Commission's chair, such that a newly appointed Commission chair assumes the makeup and organization of the current Finance Committee until the Commission chair initiates changes.

(3) The Commission's chair shall select a chairperson for the Finance Committee, such that:

(a) The chairperson shall call meetings and set agendas for the Finance Committee with the assistance of Department staff; and

(b) A member chosen by the chairperson (or otherwise, the longest-serving member present) shall preside over a Finance Committee meeting at which the chairperson is absent.

(4) The supervisor of the Department's business finance programs shall administer the operations of the Finance Committee, officially carry out its decisions, prepare business for its consideration with the chairperson's consent, and serve as an ex officio member on behalf of the Director.

(5) Nothing in this rule, or elsewhere in this chapter of administrative rules, interferes with the Commission's authority to dissolve the Finance Committee or to redirect its future procedures and purposes.

Stat. Auth.: ORS 285A.075, 285B.056, 285B.206(3) & 285B.743(2)
Stats. Implemented: ORS 285A.060, 285A.666 - 285A.732, 285B.050 - 285B.098, 285B.200 - 285B.285B.218, 285B.320 - 285B.371 & 285B.740 - 285B.758
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09

123-001-0725

Steps and Reservations of the Department

(1) As described in OAR 123-001-0700, the Department shall send notice to the applicant, such that:

(a) The Department sends notice by registered or certified mail;

(b) If a copy is sent also by regular, first-class mail, it must be so mailed at least five days prior to the notice as described in subsection (a) of this section; and

(c) The Department shall also furnish a copy to the Department of Revenue/county assessor as appropriate.

(2) The notice, on Department letterhead, shall include but is not limited to the following:

(a) The date and other pertinent facts of the Department's receipt of the application;

(b) Brief explanation of why the Department is unable to approve it;

(c) Reference to the specifically relevant statutory subsection(s) or administrative rule section(s), and further explanation, as warranted, regarding how these references support the Department's conclusion(s);

(d) Statement of the applicant's right to a contested case hearing on the matter before an administrative law judge and to be represented by legal counsel;

(e) Designation of the Department's current file on the application as the record for purposes of proving a prima facie case upon default; and

(f) Instruction on how the applicant must file a written request in order to receive the hearing, such that the request is received by the Department on or before a specified date not less than 30 calendar days after the Notice.

(3) The Department reserves the option (at its sole discretion) to withdraw the proposed denial and grant certification to the applicant for any reason, prior to a final order, including but not limited to the re-submission of a new application or the consideration of evidence that alters the Department's prior conclusion(s), as otherwise allowed under the applicable laws.

(4) Upon default by the applicant, including but not limited to failure to timely file a request for a hearing with the Department, the Department shall promptly issue a final order denying certification, furnishing a copy to the Department of Revenue/county assessor as appropriate.

(5) If the applicant files a timely request for a contested case hearing, the case shall be referred to the Office of Administrative Hearings and a copy of the referral furnished to the applicant, General Counsel and the Department of Revenue/county assessor as appropriate.

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

(7) A proposed order in section (6) of this rule shall not become final if:

(a) The Department gives timely written notification to the parties and the administrative law judge of its intent to alter the findings or effect of the order, subsequent to which it shall issue an amended proposed order and/or final order, as warranted.

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions with both the Department and the administrative law judge that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps. Such steps include, but are not limited to, an official response to the exceptions or the hearing of new or additional evidence.

Stat. Auth.: ORS 183.341(2), 183.464(2) & 285A.075 & 2007 OL Ch. 288 §4(2)
Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09

Rule Caption: These rules manage public record requests.

Adm. Order No.: EDD 9-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 123-005-0000, 123-005-0020

Subject: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business Development Department. In addition these rules have been revised for clarity.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-005-0000

Applicability of Rules and Definitions

This division of administrative rules applies to all public records for which the Department is custodian of. For the purposes of these rules definitions may be found in Procedural Rules, OAR 123-001.

Stat. Auth.: ORS 285A.075(A)
Stats Implemented: ORS 192.410 - 192.505, 285A & 285B
Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 9-2009, f. & cert. ef. 10-1-09

123-005-0020

Requests to Inspect or Obtain Copies of Public Records

(1) A request to inspect or obtain copies of a public record or information from public records shall be made in writing (Attention: Public Information Staff, Oregon Business Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, OR 97301-1280), and shall include:

(a) The name, address and telephone number of the requester;

(b) Identification of the needed public record, or of the type and format of needed public record information, if known to the requester;

(c) Time period records were produced and officials involved in producing records or other relevant information, if known to the requester; and

(d) The number of copies for each item requested of the record, if copies are requested.

(2) The Director may waive the requirement under section (1) of this rule for a request to be made in writing, if it is determined that the waiver contributes to effective administration.

Stat. Auth.: ORS 285A.075(A)
Stats. Implemented: ORS 192.410 - 192.505, 285A & 285B
Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 9-2009, f. & cert. ef. 10-1-09

Rule Caption: Definitions will be removed from these Rules.

Adm. Order No.: EDD 10-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Repealed: 123-006-0015

Subject: These rules have been revised to removed unnecessary definitions.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

ADMINISTRATIVE RULES

Rule Caption: These rules are being adopted due to changes in the 2009 Legislature through House Bill 2152.

Adm. Order No.: EDD 11-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 123-009-0050, 123-009-0060

Subject: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business Development Department. The name of the fund, Oregon Community Development Fund has changed to Business Innovation and trade fund. In addition these rules have been reviewed for clarity.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-009-0050

Purpose

The Oregon Business, Innovation and Trade Fund is established by ORS 285A.227 as a means to provide the Oregon Business Development Department with flexibility in funding and decision-making to respond to economic development needs on a statewide and regional basis.

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

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 11-2009, f. & cert. ef. 10-1-09

123-009-0060

Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Fund" means the Oregon Community Development Fund established in ORS 285A.227, which includes lottery funding for grant and loan programs and contracted services and all interest earnings that accrue to the Fund.

(2) "Commission" means the nine member Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(3) "Director" means the Director of the Oregon Economic and Community Development Department established in ORS 285A.070.

(4) "Allocation Plan" means the distribution plan of the legislatively authorized Community Development Fund biennial budget.

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

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08; EDD 11-2009, f. & cert. ef. 10-1-09

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Rule Caption: These rules have been edited for clarity.

Adm. Order No.: EDD 12-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 123-016-0010, 123-016-0020, 123-016-0030, 123-016-0040, 123-016-0050, 123-016-0060

Rules Repealed: 123-016-0070, 123-016-0080, 123-016-0090, 123-016-0100

Subject: The Business Retention rules have been revised to clean up old language and ensure compliance with statute. In addition, the name of the fund has been changed.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-016-0010

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) Business retention services means technical assistance provided by experts, as qualified by the department, focused on retaining the viable operation of an existing business in Oregon. The services include, but are not limited to the following types of assistance:

(a) Assessment — initial evaluation to determine the extent of issues experienced by the business and the likelihood of the business's viability.

(b) Management consulting — identifying and solving problems including, but not limited to, management improvements, marketing problems, financial problems, equipment needs, productivity improvements, production control, cost and pricing systems, and/or ownership.

(c) Feasibility study — a study conducted to analyze the feasibility of reopening, keeping open, or converting a business firm or a facility to another product, identify ownership possibilities, including employee ownership, and conduct an appraisal of the facility's assets to be purchased.

(d) Conversion plan — a plan to convert a facility to a new product or enter a new market or convert a company's ownership structure, including an employee buy out.

(e) Transition plan — strategic and business plans to grow or alter a business operation, including, but not limited to, mergers and transitions to local owners.

(f) Restructuring plan — plan for the acquisition of new equipment, technologies, management practices, sourcing solutions, and growth options focused on retaining the viable operation of an existing business in Oregon.

(g) Any other type of technical assistance necessary to retain a business in Oregon, maintain Oregon employees, or assist an Oregon business to manage growth that will lead to the creation of new jobs in Oregon.

(2) "Fund" means the Oregon Stabilization and Conversion Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 4-1998(Temp), f. & cert. ef. 3-6-98 thru 7-24-98; Administrative correction 8-5-99; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

123-016-0020

Eligibility

(1) Except as set forth in 123-016-0020(2), the following are eligible recipients of business retention services:

(a) A for-profit business firm, whose Oregon facility is:

(A) Engaged in:

(i) Technology manufacturing;

(ii) Wood and forest products processing;

(iii) Clean technologies;

(iv) Outdoor gear or active wear production;

(v) Agriculture or aquaculture development;

(vi) Food or seafood processing;

(vii) Other advanced manufacturing; or

(viii) Producing goods or services and competing in markets for which regional, national or international competition exists; and

(B) Experiencing at least one of the following issues: Declining employment, declining sales, declining profits, or an erosion of working capital, that is likely to lead to major employee layoffs or closure of the business, or an emerging industry or part of an industry cluster with high potential for market growth, job retention and job creation.

(b) A public or non-profit, private entity which:

(A) Has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in Oregon; and

(B) Is requesting business retention services for an industrial facility in Oregon which is actually closed or houses a business which has announced its closure.

(2) Business retention services shall not be used to relocate a business from one labor market in Oregon to another.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

123-016-0030

Awards of Grants and Loans; Match Requirements

(1) A business firm described in OAR 123-016-0020(1)(a) is eligible for a maximum award of \$15,000 from the Fund for business retention services.

(2) A public or non-profit, private entity described in OAR 123-016-0020(1)(b) is eligible for a maximum grant of \$30,000 from the Fund for business retention services. A public or non-profit, private entity recipient will be required to contribute a minimum of 25 percent of cost of the business retention services in cash.

(3) As provided in OAR 123-016-0050, an award from the Fund may be required to be repaid, in whole or in part, if certain conditions are met.

(4) In most instances, the department will first approve an award from the Fund to conduct an assessment to determine what, if any, additional business retention services are likely to result in retaining the viable operation of an existing business in Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

ADMINISTRATIVE RULES

123-016-0040

Application and Award Approval

(1) An eligible recipient, as listed in 123-016-0020(1), shall make application for business retention services to the department on a form prescribed and provided by the department.

(2) All applications shall be reviewed by the department. The department may also designate an advisory committee to review applications and make recommendations to the department.

(3) The department may request any additional information, such as an assessment or an appraisal, or may recommend a modification to the application in order to make a final determination on an award for business retention services from the Fund.

(4) Prior to making an award from the Fund for a for-profit business firm described in OAR 123-016-0020, the department will make a determination that business retention services are likely to result in retaining a viable operation.

(5) Prior to making an award from the Fund for a closed facility or for a facility that houses a business which has announced its closure, the department must determine:

(a) There is a reasonable probability of restarting or converting the facility; and

(b) The business retention services will include consideration of reemploying or continuing the employment of that facility's former or existing labor force.

(6) In making a determination on an award from the Fund, the department shall give preference to businesses, facilities that are closed, or facilities housing businesses which have announced their closure which are located in a distressed area as designated under OAR 123-024.

(7) The department shall either approve or deny an application.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

123-016-0050

Contracts for Awards

(1) Upon approval of an award from the Fund, the department will enter into a contract with the recipient. If the recipient is a for-profit business, the contract will require, among other items, repayment of the grant if the department has determined the business has the ability to repay the grant without jeopardizing the viability of the business. The department will make this determination based, in part, on a recommendation from the contracted expert.

(2) Upon approval of an award from the Fund, the department will determine the optimal method of delivering the business retention services to the recipient. In most instances, the department will identify an expert in the subject area in which the business is experiencing problems or an expert in the industry in which the business is engaged and enter into a contract with the expert for the provision of the business retention services.

(3) The department must ensure that costs for contractors are consistent with usual and customary rates and that contractors are certified, licensed, or otherwise experienced and qualified in their field.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

123-016-0060

Confidential Records

All records of applicants and recipients of business retention services that are covered by ORS 192.500 are subject to absolute confidentiality as provided in 192.500.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

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Rule Caption: These rules put the Formation of Ports under the Infrastructure Finance Authority.

Adm. Order No.: EDD 13-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Amended: 123-020-0100, 123-020-0105, 123-020-0110, 123-020-0115, 123-020-0120, 123-020-0125, 123-020-0130, 123-020-0140

Rules Repealed: 123-020-0135

Subject: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business Development Department and created the Infrastructure Finance Authority, a separate entity within the department. In addition, these rules have been revised for clarity

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-020-0100

Purpose and Scope

This division of administrative rules describes the steps and necessary elements for the Commission to approve the formation of a Port, as required under ORS 285A.627(2).

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0105

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise:

(1) "Applicant" means an entity that may legitimately seek and propose the formation of a new Port, and that submits a request for the Commission's approval.

(2) "Port" means a municipal corporation organized under ORS Chapter 777 or 778, which may be known as a "port authority" or "port district."

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0005, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0110

Application

An Applicant for the formation of a port must:

(1) Send the following, prior to any official filing with the appropriate county, to Attn: Port Formation Application, Oregon Business Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, OR 97301-1280:

(a) A sample of the petition or order to be used for purposes of ORS 198.705 to 198.955, as applicable;

(b) A letter formally requesting formation of the proposed Port;

(c) A legal description and map of the port boundaries; and

(2) Materials requested in OAR 123-020-0015 to 123-020-0035.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0010, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0115

Criteria

In carrying out its function as statewide coordinating, planning, and research agency for all Ports in the State of Oregon, and to insure the most orderly, efficient, and economical development of the state port system, the Authority will take into consideration and may request information from the Applicant regarding the following:

(1) The need for port services in the territory to be included within the proposed Port;

(2) The adequacy of funding for the proposed Port; and

(3) The orderly development of the proposed Port and its effects upon the development of a state port system.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0015, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0120

Need for Port Services

In evaluating the need for port services, the Authority will take the following into consideration:

(1) That reasonable alternatives to the formation of a Port have been considered;

(2) That significant adverse effects on other public or private agencies offering similar services within the proposed service area have been considered;

ADMINISTRATIVE RULES

(3) That economic benefits and opportunities such as increased employment, income, and cost savings have been considered; and

(4) That proposed Port boundaries are reasonable in terms of tax assessment and property ownership.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0020, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0125

Viability of Formation

In reviewing the viability and merits of a proposed Port, the Authority will consider the following, in addition to the latest draft copy of the economic feasibility statement for district formation, if applicable, under ORS 198.749:

(1) A proposed budget of the proposed Port showing, among other things, capital improvements, staffing, and other sums and expenses required to implement and operate the proposed Port for a reasonable period;

(2) Adequacy of the existing tax base and proposed tax rate and the source and amounts of any other revenues estimated to be required; and

(3) Other financial information requested.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0025, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0130

Orderly Development of Port and State Port System

The Authority encourages and seeks public views on the following issues as they relate to the formation of a specific port district:

(1) Relationship of the proposed Port activities to locally approved land use plans and the provision of other local public services or utilities;

(2) Coordination with affected environmental, economic, and social agencies, including the impact on affected taxing jurisdictions; and

(3) Effects of the proposed activities on transportation facilities and services.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0030, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

123-020-0140

Review and Commission Approval or Denial

(1) An applicant will not seek, nor will any agency of a county government do either of the following, until such time as the Authority approves the formation of the port:

(a) Conduct a deciding vote on port formation by the governing body of the county; or

(b) Place the question of the port's formation on the ballot of a special or general election.

(2) Upon receipt of a request under OAR 123-020-0010, the Authority will review the submitted materials and may request additional information.

(3) Following its review and receipt of any additional information, the Authority will assemble materials and information along with a summary of the proposed port's advantages and disadvantages relative to OAR 123-020-0015 to 123-020-0030 that may include a recommendation of action.

(4) The Authority will submit a proposal summary and recommendation to the board.

(5) The Authority shall schedule a meeting to consider final approval of the requested port formation. The agenda for this meeting must be publicly available and be sent to the applicant and other interested parties at least 21 days prior to such meeting. The meeting must afford an opportunity for public commentary.

(6) At the meeting described in this rule or a subsequent meeting, the board will formally approve or deny the proposed port's formation, as it deems appropriate.

(7) If the Authority denies a port formation request, it will indicate in writing the reasons and the remedies, if any, that would allow the applicant to be reconsidered.

(8) If formation of the port is approved by the authority.

(a) The Authority will issue a formal declaration of its approval that the Authority will provide to the applicant and to the Chair of the Board of County Commissioners for the respective county or counties; and

(b) The applicant will proceed with and abide by all applicable procedures and requirements under ORS Chapters 198 and 777.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0040, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

Rule Caption: These rules govern Oregon Ports Representation Groups.

Adm. Order No.: EDD 14-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Repealed: 123-035-0000, 123-035-0005, 123-035-0010

Subject: These rules are being repealed because there is not statutory authority for these rules.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

Rule Caption: Rules define regional boards, partnerships and investment plans and need to be repealed.

Adm. Order No.: EDD 15-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Repealed: 123-055-0100, 123-055-0120, 123-055-0200, 123-055-0220, 123-055-0240, 123-055-0300, 123-055-0340, 123-055-0400, 123-055-0420, 123-055-0440, 123-055-0460, 123-055-0501, 123-055-0525, 123-055-0600, 123-055-0620, 123-055-0900

Subject: This rule set needs to be repealed because the 2009 Legislative session through HB 2152 has changed the regional based funding to local economic development. In addition, regional boards and regional investment has been both removed and altered to make these rules noncompliant with statute.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

Rule Caption: Rules define regionally based funds.

Adm. Order No.: EDD 16-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 8-1-2009

Rules Repealed: 123-057-0110, 123-057-0130, 123-057-0150, 123-057-0170, 123-057-0190, 123-057-0210, 123-057-0230, 123-057-0330, 123-057-0350, 123-057-0410, 123-057-0430, 123-057-0450, 123-057-0470

Subject: This rule set needs to be repealed because the 2009 Legislative session through HB 2152 has changed the regional based funding to local economic development. In addition regional boards and regional investment has been both removed and altered to make these rule noncompliant with statute.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

Oregon Criminal Justice Commission Chapter 213

Rule Caption: Amends Oregon sentencing guidelines in light of Oregon Laws 2009, Chapter 660 (House Bill 3508).

Adm. Order No.: CJC 4-2009(Temp)

Filed with Sec. of State: 9-16-2009

Certified to be Effective: 9-16-09 thru 3-14-10

Notice Publication Date:

Rules Adopted: 213-018-0022

Rules Amended: 213-017-0004, 213-017-0006

Subject: HB 3508 (2009) became effective on July 1, 2009. Section 39 of HB 3508 reclassifies the crime of Assault in the Third Degree if that crime resulted from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving while under the influence of intoxicants to a Class B felony. Under Section 40 of HB 3508, the crime seriousness category under the sentencing guidelines for that crime is changed to a level 8. The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to

ADMINISTRATIVE RULES

adopt by rule necessary changes to the crime seriousness scale. Additionally, Section 40 of HB 3508 (2009) requires CJC to classify Assault in the Third Degree that is committed from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving under the influence of intoxicants to a crime category 8 on the sentencing guidelines grid. The rule amendments and adoption classifies ORS 163.165(2)(b) as a Crime Category 8 on the Crime Seriousness Scale. The rule changes also include numbering changes necessitated by adding to the list of numerically ordered crimes, and updated statutory citations.

Rules Coordinator: Craig Prins—(503) 378-4830

213-017-0004

Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.125 — MANSLAUGHTER II — (B). (If not categorized at CC 9.)
- (3) ORS 163.145 — NEGLIGENT HOMICIDE — (B). (If not categorized at CC 9.)
- (4) ORS 163.165 — ASSAULT III — (B). (If not categorized at CC6.)
- (5) ORS 163.207 — FEMALE GENITAL MUTILATION — (B).
- (6) ORS 163.365 — RAPE II — (B).
- (7) ORS 163.395 — SODOMY II — (B).
- (8) ORS 163.408 — SEXUAL PENETRATION II — (B).
- (9) ORS 163.427 — SEXUAL ABUSE I — (B).
- (10) ORS 163.537 — BUYING/SELLING THE CUSTODY OF A MINOR — (B). (If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5.)
- (11) ORS 163.670 — USING CHILD IN DISPLAY OF SEXUAL CONDUCT — (A).
- (12) ORS 163.684 — ENCOURAGING CHILD SEX ABUSE I — (B).
- (13) ORS 163.732 — STALKING — (C).
- (14) ORS 163.750 — VIOLATE COURT STALKING ORDER — (C).
- (15) ORS 164.225 — BURGLARY I — (A). (If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)
- (16) ORS 164.325 — ARSON I — (A). (If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.)
- (17) ORS 164.877(3) — TREE SPIKING-INJURY — (B).
- (18) ORS 166.275 — INMATE POSSESSION OF WEAPON — (A). (if firearm, otherwise CC 7.)
- (19) ORS 167.012 — PROMOTING PROSTITUTION — (C).
- (20) ORS 167.017 — COMPELLING PROSTITUTION — (B).
- (21) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A). (CC 4 if minor less than 3 yrs. younger than offender.)
- (22) ORS 811.705 — HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) — (B).
- (23) 2007 Oregon Laws Ch 876 — ONLINE SEXUAL CORRUPTION OF A CHILD I — (B).
Stat. Auth.: ORS 137.667, 811.707, & 2003 OL Ch. 453, & 2009 OL Ch. 660
Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, & 2007 OL Ch. 876, & 2009 OL Ch. 660
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10

213-017-0006

Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)
- (3) ORS 162.015 — BRIBERY — (B).
- (4) ORS 162.025 — BRIBE RECEIVING — (B).
- (5) ORS 162.065 — PERJURY — (C).
- (6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).
- (7) ORS 162.155 — ESCAPE II — (C).

- (8) ORS 162.185 — SUPPLYING CONTRABAND — (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 — BRIBING A WITNESS — (C).
- (10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).
- (11) ORS 162.285 — TAMPERING W/ WITNESS — (C).
- (12) ORS 162.325 — HINDERING PROSECUTION — (C).
- (13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).
- (14) ORS 163.165 — ASSAULT III — (C). (If the offense cannot be ranked at CC 8.)
- (15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).
- (16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).
- (17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).
- (18) ORS 163.264 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)
- (19) ORS 163.275 — COERCION — (C). (No threat of physical injury; otherwise CC 7.)
- (20) ORS 163.355 — RAPE III — (C).
- (21) ORS 163.385 — SODOMY III — (C).
- (22) ORS 163.432 — ONLINE SEXUAL CORRUPTION OF A CHILD II — (C).
- (23) ORS 163.465 — FELONY PUBLIC INDECENCY — (C).
- (24) ORS 163.525 — INCEST — (C). (If one of the participants is under the age of 18; otherwise CC 1.)
- (25) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).
- (26) ORS 163.688 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).
- (27) ORS 164.055 — THEFT I* — (C).
- (28) ORS 164.057 — AGGRAVATED THEFT — (B). (Economic loss was greater than \$50,000; otherwise CC 5.)
- (29) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY * — (C).
- (30) ORS 164.075 — THEFT BY EXTORTION* — (B).
- (31) ORS 164.085 — THEFT BY DECEPTION* — (C).
- (32) ORS 164.125 — THEFT OF SERVICES* — (C).
- (33) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).
- (34) ORS 164.138 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).
- (35) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY* — (C).
- (36) ORS 164.162 — MAIL THEFT OR RECEIPT OF STOLEN MAIL — (C).
- (37) ORS 164.215 — BURGLARY II* — (C).
- (38) ORS 164.315 — ARSON II* — (C).
- (39) ORS 164.365 — CRIMINAL MISCHIEF I* — (C).
- (40) ORS 164.377 — COMPUTER FRAUD (LOTTERY)* — (C).
- (41) ORS 164.377(3) — COMPUTER CRIME* — (C).
- (42) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).
- (43) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).
- (44) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).
- (45) ORS 164.877(1) — TREE-SPIKING — (C).
- (46) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH* — (C).
- (47) ORS 165.013 — FORGERY I* — (C).
- (48) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).
- (49) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).
- (50) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).
- (51) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD* v (C).
- (52) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).
- (53) ORS 165.800 — IDENTITY THEFT* — (C).
- (54) ORS 166.015 — RIOT — (C).
- (55) ORS 166.165 — INTIMIDATION I — (C).
- (56) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).
- (57) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).
- (58) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).
- (59) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) — PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL — (C).

ADMINISTRATIVE RULES

- (60) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).
- (61) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).
- (62) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).
- (63) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
- (64) ORS 167.057 — LURING A MINOR — (C).
- (65) ORS 167.339 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).
- (66) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).
- (67) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).
- (68) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).
- (69) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED — (C).
- (70) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).
- (71) ORS 813.010 — FELONY DRIVING UNDER THE INFLUENCE — (C).
- (72) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).
- (73) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C). (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
- (74) ORS 830.475 — HIT AND RUN BOAT — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.
Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 2009 OL Ch. 660
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10

213-018-0022 Assault III (ORS 163.165)

(1) CRIME CATEGORY 8: Assault III shall be ranked at Crime Category 8 if the assault resulted from the operation of a motor vehicle and the driver of the motor vehicle was driving while under the influence of intoxicants.

(2) CRIME CATEGORY 6: Assault III shall be ranked at Crime Category 6 if it cannot be ranked at Crime Category 8.

Stat. Auth.: ORS 137.667 & 2009 OL Ch. 660
Stats. Implemented: ORS 137.667 - 137.669 & 2009 OL Ch. 660
Hist.: CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10

Oregon State Lottery Chapter 177

Rule Caption: Change “On-Line” to “Draw Game”, repeal Minimum Sales, authorize alternative agreements; clarify terms.

Adm. Order No.: LOTT 6-2009

Filed with Sec. of State: 9-28-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 177-010-0003, 177-040-0025, 177-040-0050, 177-045-0000, 177-046-0015, 177-046-0020, 177-046-0080, 177-069-0000, 177-069-0010, 177-070-0005, 177-070-0025, 177-070-0035, 177-070-0080, 177-075-0000, 177-075-0010, 177-081-0000, 177-081-0010, 177-081-0030, 177-083-0000, 177-083-0010, 177-083-0030, 177-085-0005, 177-085-0015, 177-085-0040, 177-090-0005, 177-090-0025, 177-090-0045, 177-091-0010, 177-091-0020, 177-091-0050, 177-094-0000, 177-094-0030, 177-099-0000, 177-099-0030, 177-099-0050, 177-100-0010

Rules Repealed: 177-040-0040

Subject: The amendments removed the term “On-Line” or replaced it with the term “Draw Game”.

The Lottery repealed the Minimum Sales Rule contained in OAR 177-040-0040.

The Director is authorized to enter into alternative compensation agreements with new or existing Lottery retailers who offer a dif-

ferent sales style and new business model for the sale of Lottery games.

Other amendments included clarifying the meaning of “Traditional Games,” “Video LotterySM Games,” and “Video LotterySM Game Terminal.”

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-010-0003

Definitions

(1) “**Business day**” means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.

(2) “**Business week**” means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.

(3) “**Business year**” means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the business day of the last Saturday of the following June.

(4) “**Commissioner**” has that definition as defined in ORS 461.010(2).

(5) “**Director**” has that definition as defined in ORS 461.010(3).

(6) “**Drawing coordinator**” means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(7) “**Immediate family**” and “**family member**” mean a natural person’s spouse, child, brother, sister, or parent by blood or adoption.

(8) “**Lottery**” or “**State Lottery**” has that definition as defined in ORS 461.010(1).

(9) “**Lottery Commission**” or “**Commission**” has that definition as defined in ORS 461.010(4).

(10) “**Lottery contract**” means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(11) “**Lottery contractor**” or “**contractor**” has that definition as defined in ORS 461.010(9).

(12) “**Lottery game**” or “**game**” has that definition as defined in ORS 461.010(5).

(13) “**Lottery game retailer**” or “**retailer**” has that definition as defined in ORS 461.010(7).

(14) “**Lottery Headquarters**” means the Debbs Potts Oregon State Lottery Commission building located at 500 Airport Road, Salem, Oregon.

(15) “**Lottery Kiosk**” means a location, other than Lottery Headquarters, where Lottery tickets or shares are sold directly to the public by Lottery employees.

(16) “**Lottery sales location**” means a Lottery Kiosk, Lottery Headquarters, or sales by the Lottery through electronic means.

(17) “**Lottery vendor**” or “**vendor**” has that definition as defined in ORS 461.010(8).

(18) “**Person**” has that definition as defined in ORS 461.010(6).

(19) “**Prize**” means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(20) “**Retailer contract**” means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(21) “**Share**” means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in Video LotterySM games.

(22) “**Ticket**” means a certificate or token of the opportunity to win a prize in a Lottery game.

(23) “**Traditional Lottery games**” means the following lottery games offered by the Oregon State Lottery:

- (a) Scratch-itsSM;
- (b) Lottery Raffle Game;
- (c) MegabucksSM;
- (d) Pick 4SM;
- (e) Lucky LinesSM;
- (f) Powerball®;
- (g) Sports ActionSM;
- (h) ScoreboardSM;
- (i) Win for LifeSM;
- (j) Keno; and

(k) Any other Lottery game designated by the Oregon State Lottery Commission as a Traditional Lottery game.

(24) “**Unclaimed prize**” means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(25) “**Video LotterySM game retailer**” or “**Video LotterySM retailer**” has that definition as defined in ORS 461.217.

(26) “**Video LotterySM game terminal**” means a type of video device for the playing of Video LotterySM games which is in a console that contains a game platform with a video display and a random number gen-

ADMINISTRATIVE RULES

erator, is connected to and monitored by a central system, and accepts cash payments to permit a person to play the Video LotterySM games offered on the terminal for the opportunity to win a prize. Unless the context or a specially applicable definition indicates otherwise, any reference to a "Video LotterySM terminal", "video lottery terminal", or "video terminal" in OAR Chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a "Video LotterySM game terminal" as defined in this section. Video LotterySM Game Terminal does not include any device determined by the Oregon State Lottery Commission not to be a Video LotterySM game terminal.

(27) "Winner claim form" means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, § 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.215, 461.217, 461.220 & 461.250
Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 7-2008, f. 10-31-08, cert. ef. 11-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-040-0025

Retailer Compensation — Traditional Lottery Games

(1)(a) **Traditional Sales Compensation:** The Lottery shall pay a retailer the following compensation rates for the weekly sales of traditional lottery game tickets or shares offered by the Lottery and sold by the retailer as set forth below:

| Amount Sold Per Week | Compensation - % of Gross Sales |
|-----------------------|---------------------------------|
| Below \$1,000 | — 5.00% |
| \$1,000 to \$1,999.99 | — 7.00% |
| \$2,000 to \$2,999.99 | — 7.50% |
| \$3,000 to \$3,999.99 | — 8.00% |
| \$4,000 to \$4,999.99 | — 8.50% |
| \$5,000 to \$5,999.99 | — 9.00% |
| \$6,000 to \$6,999.99 | — 9.50% |
| \$7,000 and up | — 10.00% |

(b) **Calculation of Sales:** A retailer's weekly sales shall be calculated on the combined weekly gross sales of Draw game tickets and Scratch-itSM tickets made from the retailer's premises during a business week, less Scratch-itSM ticket returns recorded by the Lottery and other sales related adjustments made during the week. For the purpose of calculating weekly sales, Scratch-itSM tickets are sold when the tickets are activated by the retailer, and Draw game tickets are sold when the request for the Draw game ticket is electronically received and verified by the Lottery's central computer system.

(2)(a) **One Percent Selling Bonus:** For selling any winning and validated Scratch-itSM or Draw game ticket with a prize of \$10,000 or more, a Lottery retailer shall receive a bonus equal to one percent (1.00%) of the offered or advertised prize won by the player up to a maximum bonus of \$100,000 rounded to the nearest dollar. For example: For selling a winning and validated annuitized prize of \$8,000,000, the selling Lottery retailer shall receive a bonus of \$80,000 regardless of the payment option chosen by the winner; for selling a winning and validated Scratch-itSM prize of \$25,000, the selling Lottery retailer shall receive \$250.

(b) **Bonus for Variable Prizes:** Prior to the implementation of a traditional lottery game that includes one or more prizes with a value that is, in the opinion of the Director, variable or in some other way ambiguous including, but not limited to, circumstances such as non-monetary prizes or annuities of unspecified duration, the Director shall assign a prize value to any such prize for the purposes of determining the retailer selling bonus pursuant to subsection (a) of this section. The Director's determination of the prize value is final.

(3) **One Percent Prize Payment Bonus:** For paying a winning and validated Scratch-itSM or Draw game ticket with a prize of \$600 or less, a Lottery retailer shall receive a bonus from the Lottery equal to one percent of the prize won by the player.

(4) **Alternative Compensation Agreements:** Upon approval of the Commission, the Director may enter into an alternative compensation agreement with certain Lottery retailers to accommodate new business models aimed at the retention and recruitment of Lottery retailers offering different sales styles. Under such alternative compensation agreements, the Lottery retailer may receive a compensation rate, selling bonuses, and prize payment bonuses that are less, or more, than the rates or bonuses established in sections (1), (2), and (3) of this rule. The compensation rate and bonuses shall be determined by the Director for each agreement.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.010
Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 12-1996, f. & cert. ef. 12-27-96; LOTT 9-1999, f. 5-27-99, cert. ef. 6-27-99; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04

177-040-0050

Retailer Duties

(1) **General:** This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and require-

ments for retailers may be contained elsewhere in OAR Division 177, ORS Chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) **All Retailers:** All Lottery retailers shall:

(a) **Stock Equipment:** Keep all Lottery equipment on the retailer's premises stocked with a variety of Scratch-itSM tickets, play slips, computer-generated tickets, and any other Oregon Lottery[®] product required to be sold. Unless exempted by the Lottery, if a Lottery retailer fails to stock or replenish these items as they are made available for sale by the Lottery, or as they are depleted because of purchase or use, the Lottery may remove the equipment.

(b) **Perform Minor Maintenance:** Replace ribbons, ticket stock, and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(c) **Maintain Paper Stock:** Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(d) **Obtain Permits:** Be required to arrange for and obtain all necessary permits required by federal, state, and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(e) **Pay Amounts Due:** Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) **Traditional Lottery Game Retailers:** A Lottery retailer authorized to sell traditional Lottery games shall:

(a) **Scratch-ItSM Validation:** Validate a Scratch-ItSM ticket prize through the Instant Ticket System (ITS) and destroy it after validation and payment of the prize. Any Lottery retailer who does not destroy the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) **Draw Game Validation:** Validate Draw game prizes through the Draw game terminal before paying a Draw game prize.

(c) **Underage Play:** Monitor player-operated vending machines, as defined in OAR 177-045-0000, to prevent underage play.

(4) **Video Retailers:** A Video LotterySM game retailer shall:

(a) **Cash Slip Validation:** Validate Video LotterySM cash slips through the Video Site Controller (VSC) before paying a Video LotterySM prize.

(b) **Restrict Visibility:** Restrict Video LotterySM game terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) **Age-Posted Area:** Maintain Video LotterySM game terminals in an area of the business that is prohibited to minors. The area must be posted as such by the Oregon State Lottery or the Oregon Liquor Control Commission. This restriction against minors does not apply to minors who qualify under the exceptions permitted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(5) **Sanctions:** The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share. This includes, but is not limited to: Imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions for failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR Chapter 177.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461
Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99, Administrative correction 11-17-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-045-0000

Definitions

For purposes of OAR chapter 177, division 45, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **"Equipment"** means all equipment placed by the Lottery or a Lottery vendor on a retailer's premises including, but not limited to, Video LotterySM game terminals and all equipment necessary for their operation, player-operated vending machines, validation terminals, Lottery sales terminals, display equipment, and interior and exterior signage.

(2) **"Player-operated vending machine"** means an electrical, electronic, or electro-mechanical device that dispenses Scratch-itSM or other

ADMINISTRATIVE RULES

Oregon Lottery® tickets directly to a consumer upon payment of the appropriate purchase price.

(3) **“Occurrence”** means an accident, incident, or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant losses. Each loss by earthquake, flood, freeze, or windstorm will constitute a single occurrence. If more than one earthquake or flood occurs within any 72-hour period, the State of Oregon will determine the moment when the time period began.

(4) **“Premises”** has that definition as used in OAR 177-040-0000(6).

(5) **“Smoking environment”** means that portion of a retailer’s business where smoking of tobacco is occurring or tobacco smoke is present.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.200

Hist.: LOTT 16-2001(Temp), f. & cert. ef. 12-3-01 thru 5-24-02; LOTT 5-2002, f. & cert. ef. 3-25-02; LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 9-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-046-0015

Definitions

For the purposes of Division 46, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **“Drawing”** means the procedure whereby the Lottery selects the winner or the winning combination in accordance with the rules of the game.

(2) **“Electronic drawing”** means any drawing that involves the use of a random number generator or other computer-driven or computer-assisted device to determine winners or winning combinations, and manual interaction is incidental to the selection process.

(3) **“Electronic drawing equipment”** includes any computer-driven or computer-assisted device used by the Lottery for the purpose of determining winners or winning combinations, including, but not limited to, devices used by the Lottery’s central gaming system for Lottery’s Draw games, or for the Lottery’s periodic internet entry, raffle, or promotional games.

(4) **“Manual drawing”** means any drawing that does not involve the use of a random number generator or any other computer-driven or computer-assisted device to determine winners or winning combinations, and manual interaction is primary to the selection process.

(5) **“Manual equipment”** includes any mechanical equipment or non-electronic method used by the Lottery for the purpose of determining winners or winning combinations, including, but not limited to, Lottery’s periodic raffle games.

(6) **“Random number generator”** means a computer-driven electronic device capable of producing numbers at random.

Stat. Auth.: ORS 461

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-046-0020

Sale of Lottery Tickets and Shares

(1) **General:** The Director may contract with retailers for the sale of Lottery tickets and shares. Except as provided in section (3) of this rule, only a retailer under contract with the Lottery may sell Lottery tickets or shares. Nothing in this section shall be construed to prevent a person who lawfully purchases or possesses a Lottery ticket or share from making a gift of such ticket or share to another.

(2) **Retailer Sales Locations:** Unless authorized by the Lottery, Lottery tickets or shares may only be sold by a Lottery retailer at the location listed in the retailer contract.

(3) **Lottery Sales:** The Lottery may designate its agents or employees to sell Lottery tickets or shares directly to the public, either in person at Lottery Headquarters, at a Lottery kiosk, or through electronic means. For purposes of Lottery’s traditional lottery game rules, reference to a “retailer,” “Lottery retailer,” or “Lottery On-line retailer” includes Lottery sales unless the context or a specially applicable provision indicates otherwise.

(4) **Future Drawings:** A player may purchase a ticket or tickets for future consecutive drawings to the extent permitted by the Lottery for each Lottery game. The player must specify at the time of purchase that the ticket or tickets include future consecutive drawings.

(5) **Sales Are Final:** Unless otherwise provided in OAR Chapter 177, the sale of all Lottery tickets and shares is final. A player may not return a Lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. The Lottery is not liable for Lottery tickets or shares that are purchased in error.

(6) **Distribution:** The Director is authorized to arrange for the direct distribution of Lottery equipment, ticket stock, and supplies shipped directly from the manufacturer or supplier to an authorized retailer.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f.

12-21-05, cert. ef. 12-31-05; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 8-2008(Temp), f. 11-21-08, cert. ef. 11-23-08 thru 5-16-09; LOTT 2-2009, f. 2-27-09, cert. ef. 3-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-046-0080

Drawings

(1) **Drawing Coordinator and Procedures:** Subject to the approval of the Director, the Lottery’s Assistant Director for Security shall designate a Drawing Coordinator. Lottery drawings shall be conducted pursuant to the procedures developed by the Drawing Coordinator in consultation with the Assistant Director for Security and as approved by the Director. Drawing procedures shall include provisions for the substitution of back up drawing equipment or methods in the event primary drawing equipment malfunctions or fails for any reason and procedures for completing a drawing that is interrupted due to equipment malfunction or operator error.

(2) **Drawing Equipment:** The Lottery may use any type of equipment or method, including electronic or manual equipment and any variety of existing or future methods or equipment, for determining the winner or winning combination in any Lottery game that involves a drawing.

(3) **Electronic Drawing Equipment:** The Lottery shall ensure the security and integrity of any electronic drawing equipment used to determine a winner or winning combinations. Any electronic connections to this equipment must be made by a secure method. The Lottery shall test the equipment periodically or as needed to ensure proper operation and lack of tampering or fraud. The Lottery shall have its random number generators, or any other computer-driven or computer-assisted device used for a drawing, statistically analyzed, tested, and certified by an independent, qualified statistician for integrity.

(4) **Manual Equipment:** The Lottery shall ensure the security and integrity of any manual equipment used to determine a winner or winning combinations. Any manual equipment used by the Lottery to determine a winner or winning combinations must be inspected by an independent certified public accountant or the professional representative of an independent certified public accountancy organization and an employee or agent of the Lottery before and after the drawing. The drawing and such inspections must be recorded on video and audio tape. Any drawing using manual equipment must be witnessed by an independent certified public accountant or a professional representative of an independent certified public accountancy organization.

(5) **Random Number Generators:** The Lottery may use random number generators to determine winning numbers for Lottery games.

(6) **Security:** Subject to the approval of the Director, the Lottery’s Assistant Director for Security shall establish procedures to ensure the physical security of the Lottery’s drawing equipment and shall specify the individuals who shall have physical access to that equipment. Any random number generator, or any other computer-driven or computer-assisted device, used by the Lottery to determine winners or winning combinations shall be kept in a sealed enclosure within a secure area. Any person who enters the sealed enclosure must have permission from Lottery Security and be escorted by a Lottery Security Section officer or employee.

(7) **Drawing Errors:** If, during a game drawing, an equipment failure or operator error causes an interruption in the selection of numbers or symbols, the Drawing Coordinator will declare a technical difficulty. Any number drawn prior to the declaration of a technical difficulty will stand and be deemed official when verified by the Drawing Coordinator. The drawing will be completed as set forth in the Drawing Coordinator procedures.

(8) **Delay in Payment and Resolution:** The Director will delay payment of all prizes if any evidence exists or there are grounds for suspicion of equipment malfunction, tampering, or fraud. In such event, the Lottery will not pay any prize until the Lottery completes an investigation and the Director approves the drawing and authorizes payment. If the Director does not approve the drawing, it will be void and the Lottery will conduct another drawing to determine the winner or the winning combinations.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-069-0000

Game Description

(1) **General:** A Lottery raffle is a lottery game in which a specified number of Lottery raffle game tickets, as determined by the Lottery, are available for purchase. A unique sequential identifying number(s) is printed on each Lottery raffle ticket. Each unique number represents a chance for a prize in a particular Lottery raffle drawing. Players win prizes by matching the number(s) on the player’s Lottery raffle ticket to the numbers drawn by the Lottery during the Lottery raffle drawing.

(2) **Prizes:** The prizes and the prize structure for each Lottery raffle are determined by the Lottery and will be posted on the Lottery’s Website at www.oregonlottery.org while the Lottery raffle tickets for a particular Lottery raffle are being sold. The odds of winning a prize will vary depend-

ADMINISTRATIVE RULES

ing on the number of Lottery raffle tickets sold for the particular Lottery raffle. The Lottery may advertise the prize structure by any reasonable means. All prizes will be awarded regardless of the number of Lottery raffle tickets sold unless the Lottery raffle drawing is suspended by the Lottery Director in accordance with OAR 177-046-0140.

(3) **Determination of Winners:** A player wins a prize in a Lottery raffle game when during a raffle drawing the Lottery selects the unique sequential identifying number on the player's Lottery raffle ticket as a winning number for a prize.

(4) **Sales Location:** A Lottery raffle ticket may only be sold by and purchased from a Lottery retailer authorized to sell Lottery raffle tickets, or a Lottery sales location.

(5) **Ticket Price:** The price of a Lottery raffle ticket will be set by the Lottery for each Lottery raffle drawing held by the Lottery. A player may purchase more than one Lottery raffle ticket. A Lottery raffle ticket may represent a single play or multiple plays at the Lottery's discretion. If the Lottery raffle ticket represents multiple plays, each play will have a unique sequential identifying number printed on the Lottery raffle ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.210, 461.220, 461.240, 461.250, 461.260
Hist.: LOTT 10-2008, f. 11-21-08, cert. ef. 12-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-069-0010

Ticket Purchase, Characteristics, and Restrictions

(1) **Availability of Lottery Raffle Tickets:** The Lottery may periodically announce the availability of Lottery raffle tickets which will be available for limited sales periods. A Lottery raffle ticket may then be purchased during the hours of operation of the Lottery's central computer system and a Lottery retailer's business hours of operation. When all the Lottery raffle tickets are sold for a particular Lottery raffle game, no more tickets will be available for purchase for that Lottery raffle game. The Lottery will close sales of Lottery raffle tickets at a date and time determined by the Lottery. The Lottery may extend this date at its discretion. If the Lottery extends the sales date, it may advertise that fact by any reasonable means.

(2) **Ticket Purchase:** A Lottery raffle ticket may be purchased either from a clerk-operated Draw game terminal or from a player-operated Draw game terminal.

(a) **Clerk-Operated Terminal:** A player may purchase a Lottery raffle ticket from a clerk-operated terminal by requesting that the clerk use the clerk-operated terminal to issue a Lottery raffle ticket(s). Upon payment of the price of the ticket(s) to the clerk, the clerk will use the terminal to issue the requested number of Lottery raffle tickets purchased by the player.

(b) **Player-Operated Terminal:** A player may purchase a Lottery raffle ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal and inserting payment for the ticket(s). Upon payment for the ticket(s), the terminal will issue the number of Lottery raffle tickets purchased by the player.

(3) **Ticket Sales:** Lottery raffle tickets are sold in numerical order. A player does not select the unique identifying number(s) on the Lottery raffle ticket. A player purchasing a Lottery raffle ticket through a Draw game terminal will be issued the next sequentially available number determined by the Lottery's central computer system.

(4) **Player's Risk:** The purchase of a Lottery raffle ticket is done at the player's own risk either through the Lottery retailer who is acting on behalf of the player in entering the player's request to purchase a Lottery raffle ticket, or the player's purchase of a Lottery raffle ticket by operation of a player-operated terminal.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.210, 461.220, 461.240, 461.250, 461.260
Hist.: LOTT 10-2008, f. 11-21-08, cert. ef. 12-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-070-0005

Definitions

For the purposes of Division 70, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **"Drawing"** means the procedure whereby the Lottery selects the winning combination in accordance with the rules of the game.

(2) **"Draw game"** means a lottery game, other than Video LotterySM games, in which through a Draw game terminal, the player or the Draw game terminal selects a combination of numbers, events or symbols, the player selects the type of game and amount of play, and the drawing date(s), or the player purchases a Lottery Raffle ticket. Draw games are those Lottery games specified in OAR 177-010-0003(20)(b) through (j) and any other Lottery game designated by the Lottery Commission as a Draw game. Unless the context or a specially applicable definition indicates otherwise, any reference to an "On Line game" in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a "Draw game" as defined in this section.

(3) **"Draw game retailer"** means a person or business authorized by the Lottery to sell Draw game tickets.

(4) **"Draw game terminal (DGT)"** means the computer hardware by which:

(a) A Draw game retailer or player enters the combination of numbers, events, or symbols selected by the player, or

(b) A combination of numbers, events, or symbols is randomly selected for the player, or

(c) A Lottery Raffle ticket is issued; and

(d) Draw game tickets are generated and claims are validated.

(5) **"Draw game ticket"** means a computer-generated ticket issued by a Draw game terminal to a player as a receipt for the combination a player or the terminal has selected, or a Lottery Raffle ticket. This ticket is the only acceptable evidence of the combination of numbers, events, or symbols selected, or of the unique sequential numbers on a Lottery Raffle game ticket.

(6) **"Play slip"** means a card used in selecting and marking a player's game plays which may then be inserted into a terminal's play slip reader.

(7) **"Validation"** means the process of determining whether a Draw game ticket presented for payment is a winning ticket.

(8) **"Winning combination"** means the one or more numbers or symbols randomly selected by the Lottery in a drawing.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 3-1992, f. & cert. ef. 4-27-92; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-070-0025

Payment of Prizes

(1) **Prizes of \$600 or Less:** To claim a Draw game prize of \$600 or less, the claimant may present the winning Draw game ticket to any Draw game retailer, a Lottery kiosk, or to the Lottery Headquarters in Salem, Oregon:

(a) **Retailer Payment:** If the claim is presented to a Draw game retailer, the retailer shall validate the claim and, if determined to be a winning ticket, shall make payment of the amount due the claimant during the prize redemption hours agreed upon between the retailer and the Lottery. The retailer may pay prizes in cash or check, or any combination thereof. If the retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person.

(b) **Lottery Payment:** The claimant may submit a winning ticket, either by mail or in person to the Lottery for payment at the addresses listed in section (2)(a) below or to a Lottery kiosk. Upon validation that the ticket is a winning ticket under OAR 177-070-0035, the Lottery shall pay the amount of the prize to the claimant. Payment may be made by check, cash card, or in cash, or any combination thereof. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the claimant notified.

(A) **Lottery Headquarters:** Cash prize payments are limited to \$50 per person per day. Any prize payment balance remaining above \$50 shall be paid by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(B) **Lottery Kiosk:** Cash prize payments made at Lottery kiosks are limited to \$100 per transaction. Any prize payment balance remaining above \$100 shall be paid by cash card.

(2) **Prizes Greater than \$600:**

(a) **Winner Claim Form:** To claim a Draw game prize of more than \$600, the claimant shall obtain and complete a "Winner Claim Form." The claimant may submit the Winner Claim Form with the winning ticket in person to Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon. A claimant may mail a winning ticket and Winner Claim Form to the Oregon State Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended).

(b) **Prize Payment:** Upon validation of a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable tax withholding. The amount due shall be calculated according to the rules adopted for the particular Draw game. If the ticket is determined to be a non-winning ticket or invalid, the claim shall be denied and the claimant notified. Non-winning or invalid tickets will not be returned to the claimant.

(c) **Prize Payment of Lost, Damaged, or Destroyed Tickets:**

(A) When a prize payment is authorized by the Director under OAR 177-070-0035(4), the prize payment shall be validated through the Lottery's central computer system on the last day of the eligible prize claim period. If the prize claim period expires on a weekend or on a holiday when the Lottery is closed, the expiration period will be extended to the end of the next working day. Following validation, the Lottery shall issue the prize payment in the usual course of Lottery business.

ADMINISTRATIVE RULES

(B) Prize payments made under this subsection shall be restricted to the prize amount under the prize structure for the Draw game in which the ticket was purchased.

(3) **General Time Limitation:** All prizes must be claimed within one year of the drawing in which the prize was won. In the event the final day of the one-year period falls on a weekend or a Lottery holiday, the claim period will be extended to end on the next business day. Any prize not claimed within the specified period shall be forfeited and thereafter placed into the Economic Development Fund established by ORS 461.540. The transfer shall take place at the same time the Lottery's next scheduled transfer of proceeds allocated for economic development is made.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.260

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 20-1987, f. 10-26-87, ef. 11-2-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 7-1995, f. & cert. ef. 7-7-95; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-070-0035

Validation Requirements

(1) **General:** To be a valid winning Draw game ticket, all of the following conditions must be met:

(a) The ticket data must have been recorded in the Lottery's central computer system prior to the drawing and the information appearing on the ticket must correspond with the computer record;

(b) The ticket must be intact to the extent that all information appearing on the ticket corresponds with the Lottery's computer records;

(c) The ticket must not be altered or tampered with in any manner;

(d) The ticket must not be counterfeit or a duplicate of another winning ticket;

(e) The ticket must have been issued by an authorized Draw game retailer or dispensed by a player-activated terminal in an authorized manner;

(f) The ticket must not have been stolen or canceled;

(g) The ticket must not have been previously paid;

(h) The ticket is subject to all other confidential security checks of the Lottery.

(2) **Ticket as Receipt:** Except as provided in section (4) of this rule, a ticket is the only valid receipt for claiming a prize. A copy of a ticket or a play slip has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

(3) **Validation Process:** A ticket shall be validated through the Lottery's computer system.

(4) **Validation of Lost, Damaged, or Destroyed Tickets Greater than \$600:** Notwithstanding the requirement that a winning Draw game ticket be submitted to the Oregon Lottery for validation and prize payment, in the event that a Lottery retailer attempted to validate a winning Draw game ticket with a prize of more than \$600 and in the course of the validation process the retailer or an employee of the retailer lost, damaged, or destroyed the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may be validated.

(a) The claimant shall obtain, complete, and sign an Oregon Lottery "Winner Claim Form" and Oregon Lottery "Claim Affidavit." The claimant shall submit the "Winner Claim Form" and "Claim Affidavit" along with any other evidence of the validation attempt in the claimant's possession including, but not limited to, the "Claim at Lottery" slip produced by the terminal at the time of the validation attempt, to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon by mail or in person.

(b) To be validated, the information supplied on the winner claim form, the claim affidavit, and other evidence submitted by the claimant must agree with the data recorded in the Lottery's central computer system including, but not limited to: Corroboration of the criteria set forth in section (1) of this rule except those specific criteria related to the physical properties of the lost, damaged, or destroyed game ticket; and corroboration of the validation attempt including, but not limited to, identification of the Lottery retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket serial number, the terminal number, and the prize amount.

(c) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) The Director shall, based on all the facts and information available, make a determination whether prize payment is warranted and authorized.

(e) The Director may assign sanctions to a Lottery retailer for the loss, damage, or destruction of a game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retail-

er's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(f) A retailer who is the subject of an investigation conducted under this section is required to complete an Oregon Lottery retailer affidavit form explaining the events in question.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1991, f. & cert. ef. 9-25-91; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-070-0080

Unauthorized Use of Play Slips

(1) **General:** A person shall not insert into a Draw game terminal's play slip reader any material that is not a play slip printed and approved for use by the Oregon Lottery, including but not limited to facsimiles or copies of play slips. No device shall be connected to a Lottery terminal to enter plays, except as may be approved by the Lottery.

(2) **Hand-Marked:** All plays made in the game shall be marked on the play slip by hand. No play slips with plays marked by an electric or mechanical device shall be used to enter plays.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 6-1992, f. & cert. ef. 6-23-92; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-075-0000

Definitions

For the purposes of Oregon Megabucks, a 6 of 48 lotto game, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **"Division 1 prize pool"** means the amount of money required to fund an advertised Division 1 prize.

(2) **"Exchange ticket"** means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Megabucks Lotto games and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(3) **"Game board"** or **"boards"** means that area of the play slip which contains 48 squares numbered 1 through 48.

(4) **"Game ticket"** or **"ticket"** means a ticket produced by a terminal, which contains the caption "Megabucks", two or more lettered game plays each of which has six numbers from 1 through 48 followed by the drawing date, the price of the ticket, a retailer number, and a serial number.

(5) **"Kicker"** means the play option whereby a player, by paying an additional one dollar for each dollar wagered on Megabucks, is entitled to receive larger prizes for matching three of six, four of six, or five of six numbers.

(6) **"Lotto"** means a lottery game wherein a player selects a group of numbers, usually six, out of a larger predetermined set of numbers.

(7) **"Play"** or **"game play"** means the six different numbers from 1 through 48 which appear on a ticket as a single lettered selection and are to be played by a player in a game.

(8) **"Privileged terminal"** means a terminal authorized to validate prizes over \$600.00.

(9) **"Quick pick"** means the random selection by a terminal of six different numbers from 1 through 48 which appear on a ticket and are to be played by a player in the game.

(10) **"Play slip"** or **"Game slip"** means a card used in marking a player's game plays. For this purpose, each play slip has ten game boards. Each game board is lettered with one letter from A through J and, when used to purchase a game play, corresponds to the numbers selected and printed on the ticket. An even number of boards, i.e., two, four, six, eight, or ten must be selected on each slip.

(11) **"Random number generator"** means a computer-driven electronic device capable of producing numbers at random.

(12) **"Draw game terminal"** or **"Terminal"** has the meaning set forth in OAR 177-070-0005(4).

(13) **"Winning numbers"** means the six numbers between 1 and 48, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: OR Const. Art. XV, Sec. 4(4) & ORS 461.250

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 3-1994, f. 2-24-94, cert. ef. 3-1-94; LC 3-1995, f. & cert. ef. 4-27-95; LOTT 8-1998(Temp), f. & cert. ef. 12-16-98 thru 6-11-99; LOTT 7-1999, f. 5-27-99, cert. ef. 5-30-99; LOTT 8-

ADMINISTRATIVE RULES

2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-075-0010

Ticket Purchase, Characteristics, and Restrictions

(1) **General:** Oregon MegabucksSM is a pari-mutuel lotto game. A player must select an even number set of six different numbers, between 1 and 48 for input into a terminal. Tickets can be purchased either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from a retailer, the player may select each set by marking six numbered squares in any one game board on a play slip and submitting the play slip to the retailer, or by requesting "Quick pick" from the retailer. The retailer will then issue a ticket, via the terminal, containing the selected even number set or sets of numbers, each of which constitutes a game play. Tickets can also be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine. A ticket can contain up to ten game plays lettered A through J. A player may purchase a ticket or tickets for future consecutive drawings up to the maximum permitted by the Lottery.

(2) **Kicker Option:** The player must also choose whether to play "Kicker". Kicker awards larger prizes for correctly selecting three of six, four of six, and five of six numbers.

(3) **Non-Cancellation:** A MegabucksSM ticket may not be voided or cancelled by returning the ticket to the retailer, including tickets that are printed in error or purchased for a future consecutive drawing. The placing of plays is done at the player's own risk. The Lottery retailer acts on behalf of the player in entering the player's plays.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 16-1988, f. & cert. ef. 6-2-88; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 2-1991, f. & cert. ef. 7-24-91; LC 6-1993, f. & cert. ef. 7-2-93; LC 3-1995, f. & cert. ef. 4-27-95; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02; LOTT 8-2008(Temp), f. 11-21-08, cert. ef. 11-23-08 thru 5-16-09; LOTT 2-2009, f. 2-27-09, cert. ef. 3-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-081-0000

Definitions

For the purposes of Division 81, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Pick 4 drawings and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) "Easy 4 combo" means a specific match choice option as described in OAR 177-081-0080(1) in which there are six possible ways to match two to four numbers in exact order.

(3) "Game play" means the number or group of numbers and the order in which they occur appearing on a ticket for a particular drawing which shall be compared to the winning numbers and the order of the winning numbers, selected at the drawing(s) appearing on the ticket, to determine any prize payment for which the ticket may be redeemed.

(4) "Match Choice" means one or more of the seven Pick 4 game play selections offered by the Lottery as described in OAR 177-081-0080(1). The Match Choice options include the following:

(a) Option A — All four game play numbers match the Lottery's numbers in the exact order;

(b) Option B — All four game play numbers match the Lottery's numbers in any order;

(c) Option C — Easy 4 Combo;

(d) Option D — First three game play numbers match the Lottery's numbers in the exact order;

(e) Option E — Last three game play numbers match the Lottery's numbers in exact order;

(f) Option F — First three game play numbers match the Lottery's numbers in any order; and

(g) Option G — Last three game play numbers match the Lottery's numbers in any order.

(5) "Quick Pick" means the random selection of numbers by a terminal which appear as the game play on a ticket.

(6) "Draw game terminal" or "Terminal" has the meaning set forth in OAR 177-070-0005(4).

(7) "Winning numbers" means the four single-digit numbers, each from zero to nine, and the order in which they occur, that are selected at

each drawing that is used to determine winning game plays contained on the game tickets.

Stat. Auth.: OR Const. Art. XV Sec. (4) & ORS 461

Stats. Implemented: ORS 461.210, 461.220, 461.240 & 461.250

Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-081-0010

Game Description

(1) **General:** Pick 4 is a game based on four-digit numbers in which a player selects:

(a) A single number from each of four columns of single-digit numbers from zero to nine. The player has the option of selecting a Quick Pick or choosing his or her own number selections;

(b) One or more Match Choices from the seven possible Match Choice options; and

(c) A wager of at least \$1.00.

(2) **Sequence of Numbers:** The player's four number selections form a specific four-digit number sequence from left to right. The player's number selections and subsequent Match Choices which match the winning numbers and the order of the winning numbers in accordance with OAR 177-081-0080(1) selected at the drawing(s) on the date(s) indicated on the player's ticket determine any prize amount won.

(3) **Place of Purchase:** A Pick 4 Ticket may only be sold by and purchased from a Lottery retailer authorized to sell Pick 4 tickets, or a Lottery sales location.

Stat. Auth.: OR Const. Art. XV Sec. (4) & ORS 461

Stats. Implemented: ORS 461.210, 461.220, 461.240 & 461.250

Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-081-0030

Ticket Purchase, Characteristics, and Restrictions

(1) **General:** Pick 4 tickets may be purchased everyday of the year during the hours of operation of the Lottery's central computer system and a Lottery retailer's business hours of operation.

(2) **Ticket Purchase:** Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Pick 4, a player must either:

(a) Complete a game slip for input into a clerk-operated terminal or player-operated terminal;

(b) Request a Quick Pick or manual numbers selection from a clerk; or

(c) Request a Quick Pick using a player-operated terminal.

(3) Completing a Game Slip:

(a) A player must choose a game play by one of two methods:

(A) A player must select four numbers, one each from four columns of numbers from zero to nine on the game slip; or

(B) The player may select the Quick Pick option.

(b) A player must also complete the selection of the Match Choice option(s) on the game slip.

(c) A player must indicate if the game play is for consecutive drawings.

(4) Purchasing a Ticket from a Clerk-Operated Terminal:

(a) After the player completes a game slip and submits it along with the price of the ticket to the clerk, the clerk shall use the terminal to issue a ticket to the player.

(b) Alternately, the player may request that a clerk, without using a game slip, electronically submit a player's game play request through the terminal for a Quick Pick number selection or manually enter the player's four numbers, and request game play for a single drawing or consecutive drawings. A wager submitted by a clerk through the terminal without a game slip can only be made on the Easy 4 Combo Match Choice.

(5) **Purchasing a Ticket from a Player-Operated Terminal:** A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal. Once the player has completed the game slip and inserted it and paid the price of the ticket into the terminal, the terminal will issue a ticket to the player. The player may also request a Quick Pick without using a game slip by using the player-operated terminal. A player requesting a Quick Pick from a player-operated terminal without using a game slip must play the Easy 4 Combo Match Choice and the number of consecutive drawings to be played.

(6) **Ticket Restrictions:** A player cannot place an "All 4 in Any Order" wager when all 4 numbers are the same, a "First 3 in Any Order" wager when all 3 numbers are the same, or a "Last 3 in Any Order" wager when all 3 numbers are the same. Any of the aforementioned shall be automatically rejected by the terminal.

Stat. Auth.: OR Const. Art. XV Sec. (4) & ORS 461

Stats. Implemented: ORS 461.210, 461.220, 461.240 & 461.250

ADMINISTRATIVE RULES

Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-083-0000

Definitions

For the purposes of Division 83, in addition to the definitions set forth in OAR 177-070-005, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **“Exchange ticket”** means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Lucky Lines drawings and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing dates appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) **“Play”** or **“Game play”** means the eight different numbers which appear on a grid on a Lucky Lines ticket and are to be played by a player in a drawing. These eight numbers are compared to the winning numbers selected for each of the drawings appearing on the ticket.

(3) **“Quick Pick”** means the random selection of numbers by a terminal, which appears as the game play on a Lucky Lines ticket.

(4) **“Draw game terminal”** or **“Terminal”** has the meaning set forth in OAR 177-070-0005(4).

(5) **“Winning numbers”** means the eight numbers that are randomly selected by the Lottery at each drawing and which are used to determine winning game plays contained on a Lucky Lines ticket.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)
Stats. Implemented: ORS 461.210

Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-083-0010

Game Description

(1) **General:** Lucky Lines is a game based on a grid consisting of nine fields. There are four numbers in eight of the nine fields. The center field is a free field. To play the game, one number is selected from each of the eight fields that contain numbers. The player may select the numbers from each of the eight fields or may select the numbers using the Quick Pick option. During each drawing, the Lottery randomly selects one number from each of the eight fields as the winning numbers.

(2) **Determination of Winners:** A player wins by matching the player's numbers on the grid in a straight line, either horizontally, vertically, or diagonally, to the winning numbers on the grid selected by the Lottery for that drawing. There are eight possible ways to match numbers in a straight line on each ticket.

(3) **Location:** A Lucky Lines ticket may only be sold by and purchased from a Lottery retailer authorized to sell Lucky Lines tickets, or a Lottery sales location.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)
Stats. Implemented: ORS 461.210

Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-083-0030

Ticket Purchase, Characteristics, and Restrictions (Lucky Lines)

(1) **Hours of Purchase:** Lucky LinesSM tickets may be purchased everyday of the year during the hours of operation of the Lottery's central computer system and a Lottery retailer's business hours of operation.

(2) **Ticket Purchase:** Tickets may be purchased either from a clerk-operated terminal or from a player-operated terminal. To play Lucky LinesSM, a player must:

(a) Complete a play slip for input into a clerk-operated terminal or player-operated terminal; or

(b) Request a Quick Pick from a clerk or by using a player-operated terminal; and

(c) Pay the ticket price.

(3) **Play Slip: Completing a play slip:**

(a) A player must choose a game play by one of two methods:

(A) A player must select one number out of a group of four numbers in each of the eight fields; or

(B) The player may select the numbers using the Quick Pick option.

(b) A player must indicate if the game play is for consecutive drawings.

(4) **Clerk-Operated Terminal: Purchasing a ticket from a clerk-operated terminal:**

(a) The player may complete a game slip and submit it with the price of the ticket to the clerk. The clerk will use the terminal to issue a ticket to the player with the player's game plays; or

(b) Without using a game slip, the player may request that a clerk electronically use the terminal's Quick Pick number selection. Upon pay-

ment of the price of the ticket to the clerk, the clerk will use the terminal to issue a ticket to the player with the player's Quick Pick game plays.

(c) The placing of game plays is done at the player's own risk. The Lottery retailer acts on behalf of the player in entering the player's plays.

(5) **Player-Operated Terminal:** A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal either by:

(a) Completing a game slip, inserting it into the terminal, and paying the price of the ticket into the terminal. The terminal will issue a ticket to the player with the player's game plays; or

(b) The player may use the terminal's Quick Pick number selection without using a game slip by following the instructions appearing on the terminal screen and paying the price of the ticket. The terminal will issue a ticket to the player with the player's Quick Pick game plays.

(c) The placing of game plays on a player-operated terminal is done at the player's own risk.

Stat. Auth.: ORS 461 & OR Const., Art. XV, § 4(4)
Stats. Implemented: ORS 461.210

Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06; LOTT 8-2008(Temp), f. 11-21-08, cert. ef. 11-23-08 thru 5-16-09; LOTT 2-2009, f. 2-27-09, cert. ef. 3-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-085-0005

Definitions

The following definitions apply unless the context requires a different meaning.

(1) **“Drawing”** means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) **“Game Board”** or **“Boards”** means that area of the play slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-nine squares, numbered one through fifty-nine, and the second set containing thirty-nine squares, numbered one through thirty-nine.

(3) **“Game Ticket”** or **“Ticket”** means a ticket produced by a terminal which contains the caption Powerball®, one or more lettered game plays followed by the drawing date, the price of the ticket, a six digit retailer number and a serial number that is compatible with the Lottery's central computer system.

(4) **“Lottery”** means the Oregon State Lottery.

(5) **“Match 5 Bonus Prize”** means the bonus money won when a Grand Prize has reached a new high level and bonus prize monies have been declared by the Product Group under these rules. The Match 5 Bonus Prize does not include the original amount declared for the Match 5 Prize. For the purposes of the Match 5 Bonus Prize, Match 5 means matching five of the numbers drawn from the first set containing fifty-nine numbers.

(6) **“MUSL”** means the Multi-State Lottery Association

(7) **“MUSL Board”** means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery.

(8) **“Party Lottery”** means a state lottery or lottery of a political subdivision or entity that participates in the Multi-State Lottery (MUSL) and, in the context of these Powerball® Product Group rules, which has joined in selling the Powerball® game.

(9) **“Play”** means the six numbers, the first five from a field of fifty-nine numbers and the last one from a field of thirty-nine numbers which appear on a ticket as a single lettered selection and are to be played by a player in the game.

(10) **“Play Slip”** or **“Game Slip”** means the paper used in marking a player's game plays and containing one or more boards.

(11) **“Product Group”** means a group of lotteries which has joined together to offer a product pursuant to the terms of the Multi-State Lottery Agreement and the Group's own rules.

(12) **“Quick Pick”** means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(13) **“Retailer”** means a person or entity authorized by the Lottery to sell lottery tickets.

(14) **“Set Prize”** means all prizes except the Grand Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(15) **“Draw game terminal”** or **“Terminal”** has the meaning set forth in OAR 177-070-0005(4).

(16) **“Winning Numbers”** means the six numbers, the first five from a field of fifty-nine numbers and the last one from a field of thirty-nine numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.200

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LC 9-1997(Temp), f. & cert. ef. 11-7-97; LOTT 2-1998, f. & cert. ef. 5-28-98;

ADMINISTRATIVE RULES

LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-085-0015

Game Description

(1) **General Information:** Powerball® is a five out of fifty-nine numbers plus one out of thirty-nine numbers lottery game, drawn every Wednesday and Saturday, which pays the Grand Prize, at the election of the player made in accordance with these rules or by a default election made in accordance with these rules, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total cash amount held for this prize pool on a pari-mutuel basis. Except as provided in the rules, all other prizes are paid as a single lump sum payment.

(2) **Selection of Numbers:** To play Powerball®, a player shall select five different numbers, from one through fifty-nine and one additional number from one through thirty-nine, for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player, as long as it is from one through thirty-nine.

(3) **Purchase of Tickets:** Tickets can be purchased either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from a retailer, the player may select a set of five numbers and one additional number by marking six numbered squares in any one game board on a play slip and submitting the play slip to the retailer, or by requesting "Quick Pick" from the retailer. The retailer will then issue a ticket, via the terminal, containing the selected set or sets of numbers, each of which constitutes a game play. Tickets can be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine. A player may purchase tickets for future consecutive drawings up to the maximum permitted by the Lottery.

(4) **Player's Responsibility:** It is the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. A ticket may not be voided or canceled by returning the ticket to the retailer or to the Lottery, including tickets that are printed in error. No ticket shall be returned to the Lottery for credit. The placing of plays is done at the player's own risk through the Lottery retailer, who when entering the play or plays is acting on behalf of the player.

(5) **Determination of Winning Numbers:** The winning numbers for the Powerball® game shall be determined at a drawing conducted under the supervision of the MUSL Board. The MUSL Board shall determine the frequency of Powerball® game drawings. Winning numbers shall be selected at random with the aid of mechanical drawing equipment or a random number generator. The Lottery Director shall designate a Drawing Manager who shall review and randomly observe the drawings conducted by the MUSL Board.

Stat. Auth.: ORS 461.250 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 6-1993, f. & cert. ef. 7-2-93; LC 1-1994, f. 1-27-94, cert. ef. 2-1-94; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 8-2008(Temp), f. 11-21-08, cert. ef. 11-23-08 thru 5-16-09; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 2-2009, f. 2-27-09, cert. ef. 3-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-085-0040

Ticket Validation

To be a valid ticket and eligible to receive a prize, a Powerball® ticket shall satisfy all the requirements established by the Lottery for validation of winning tickets sold through its central computer system and any other validation requirements adopted by the MUSL Board, the Product Group, and published as the Confidential MUSL Minimum Game Security Standards. The Lottery and MUSL shall not be responsible for tickets which are altered in any manner. When a winning ticket is submitted to the Lottery for validation along with the Lottery's completed claim form, and the Lottery has initiated the validation procedures, the Lottery retains possession of the winning ticket and claim form.

Stat. Auth.: ORS 461.250 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250

Hist.: LC 6-1988 (Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 1-1994, f. 1-27-94, cert. ef. 2-1-94; LC 10-1996, f. & cert. ef. 9-4-96; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-090-0005

Definitions

For the purposes of Division 90, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) **"Entry Form"** means a play slip used by a player to choose the dollar amount to be wagered, the number of events selected, and the player's chosen option for each event selected.

(2) **"Event"** means a game or a special play that a player may select.

(3) **"Favorite"** means the likely winning team of a game as indicated on the official program.

(4) **"Game"** means a professional football game between two teams.

(5) **"Game ticket"** or **"ticket"** means a computer-generated, printed paper issued by an Oregon Lottery terminal as a receipt for the events selected and the options chosen by a player and includes, but is not limited to, the following data: The name "Sports Action", the purchase date, events selected, the option chosen for each selected event, the cost of the ticket, the identifying number for the specific play week, a six-digit retailer number, a serial number, and a bar code.

(6) **"Official program"** means the Lottery's list of games with point spreads and special plays, including the options for each event a player may select for a particular play week.

(7) **"Official Sports Action results"** means the Lottery's list of the final outcomes of the events scheduled for a given play week, showing the winning option for each event.

(8) **"Option"** means one of two possible outcomes for an event.

(9) **"Parimutuel"** means a system of wagering in which the money allocated for prizes from the total amount of money wagered on an event is divided among prizewinners in proportion to each prizewinner's individual wager.

(10) **"Play week"** means a seven-day period:

(a) Beginning at 5:00 a.m. on Tuesday and ending at the scheduled start time of the last game on Monday during the pre-season and regular season; and

(b) Beginning at 5:00 a.m. on Monday and ending at the scheduled start time of the last game on Sunday during the post-season playoffs.

(11) **"Point spread"** means the number of points used to balance the possible outcome of an event, giving equal chance for each event's success.

(12) **"Prize category"** means a division of the prize pool identified by a specific number of events selected by a player.

(13) **"Prize pool"** means the amount of money allocated from total sales for prizes.

(14) **"Quick Pick"** means the random selection by a terminal of events played on a ticket and an option for each event selected.

(15) **"Special play"** means an activity that occurs within a game, including, but not limited to, fumbles, interceptions, and sacks.

(16) **"Draw game terminal"** or **"Terminal"** has the meaning set forth in OAR 177-070-0005(4).

(17) **"Underdog"** means the likely losing team of a game as indicated on the official program.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.010

Hist.: LC 14-1989, f. & cert. ef. 8-28-89; LC 18-1989, f. 11-7-89, cert. ef. 11-15-89; LOTT 10-1999, f. 6-30-99, cert. ef. 7-1-99; LOTT 12-2004, f. 7-28-04 cert. ef. 8-3-04; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-090-0025

Ticket Purchase, Characteristics, and Restrictions

(1) **General:** A Sports Action ticket may only be purchased from a Lottery retailer during the Sports Action season.

(2) **Age of Player:** A player must be at least 18 years of age to purchase a Sports Action ticket.

(3) **Ticket Purchase Options:** A ticket may be purchased from a clerk-operated terminal or from a player-operated terminal.

(a) **Purchasing a Ticket from a Clerk-Operated Terminal:** A player may purchase a ticket from a clerk-operated terminal by completing an entry form and submitting it with the amount of money to be wagered on the ticket to the clerk. The clerk will then issue a ticket to the player. Alternatively, a player may request a Quick Pick ticket from the clerk without using an entry form by informing the clerk of the number of events to be played and paying the amount of money to be wagered on the ticket.

(b) **Purchasing a Ticket from a Player-Operated Terminal:** A player may purchase a ticket from a player-operated terminal only by using an entry form and following the instructions appearing on the terminal screen. Once the entry form is completed, the player must insert into the terminal the entry form and the amount of money to be wagered on the ticket. The terminal will then issue a ticket to the player.

(4) **Ticket Characteristics:** A game ticket is the only proof of Sports Action game play, including the selections made by a player. The submission of a winning ticket to the Lottery or to an authorized retailer is the sole method for claiming a prize. An entry form or a copy of a game ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase, the selections made by a player, or otherwise represent an opportunity to win a prize.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.210

ADMINISTRATIVE RULES

Hist.: LC 14-1989, f. & cert. ef. 8-28-89; LC 18-1989, f. 11-7-89, cert. ef. 11-15-89; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 10-1999, f. 6-30-99, cert. ef. 7-1-99; LOTT 12-2004, f. 7-28-04, cert. ef. 8-3-04; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-090-0045

Payment of Prizes; Ticket Validation Requirements; Time

(1) **Payment:** Except as otherwise provided herein, prize payments must be claimed, and are made, in accordance with the provisions of OAR 177-070-0025.

(2) **Ticket Validation:** To be a valid ticket and eligible to receive a prize, a ticket must:

(a) Be validated in accordance with the provisions of OAR 177-070-0035; and

(b) Be a winner under OAR 177-090-0055.

(3) **Time:** A ticket with a winning event selection for the 3 of 3 and 4 of 4 prize categories may be validated and payable to a winner the day following the last event on the ticket. Other prizes are parimutuel and may be validated and payable on the day following the end of the play week when the Lottery's central computer system is activated for that day.

(4) **Limits:** All prizes must be claimed within one year from the end of the play week in which the winning event occurred.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.250(3) & 461.260

Hist.: LC 14-1989, f. & cert. ef. 8-28-89; LC 18-1989, f. 11-7-89, cert. ef. 11-15-89; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 10-1999, f. 6-30-99, cert. ef. 7-1-99; LOTT 12-2004, f. 7-28-04, cert. ef. 8-3-04; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-091-0010

Definitions

For the purposes of Division 91, the following definitions apply except as otherwise specifically provided in OAR Chapter 177, or unless the context requires otherwise:

(1) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the sporting-event and game-play selections made by a player and that contains, but is not limited to, the following data: The caption "Scoreboard", the dates of the sporting events for which the ticket is played, an identifying number, the price of the ticket, a six-digit retailer number, a serial number, and a bar code.

(2) "Official Scoreboard results" means the Lottery's list of the final sporting event scores.

(3) "Quick pick" means the random selection by a terminal of the numbers played on a ticket.

(4) "Draw game terminal" or "Terminal" has the meaning set forth in OAR 177-070-0005(4).

(5) "Ticket validation" or "validation" means the process of determining whether a ticket presented for payment is a winning ticket as set forth in OAR 177-070-0035.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-091-0020

Game Description

(1) **General:** Scoreboard is a Lottery game based on the outcome of sporting events in which a player must match quick pick numbers to the last digit of the final score for each team in each period of play, including, but not limited to, quarters, innings, rounds, and periods, in a sporting event selected by the Lottery. These scores may be commonly known as the "box score", but only the Lottery's official Scoreboard results are used to determine winners. The final score includes any overtime play.

(2) **Name of Game:** Lottery may from time to time use variations of the name Scoreboard including, but not limited to, such names as "Monday Scoreboard", "Monday Night Scoreboard."

(3) **Game Changes:** The Director reserves the right to suspend or cancel the Scoreboard game at any time. The Director's decisions are final.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-091-0050

Ticket Purchase, Restrictions, and Characteristics

(1) **General:** Scoreboard tickets must be purchased during the Oregon Lottery's Scoreboard season which will be determined by the Lottery and announced by reasonable means before or during the season.

(2) **Authorized Retailer:** Scoreboard tickets are sold at retailer locations that have a Lottery contract to sell Scoreboard tickets.

(3) **Age of Player:** A player must be at least 18 years of age to purchase a Scoreboard ticket.

(4) **Ticket Purchase:** A ticket may be purchased either from a clerk-operated terminal, or a player-operated terminal. All Scoreboard tickets are quick picks.

(a) Purchasing a Ticket from a Clerk-Operated Terminal: The player informs the clerk of the event, the number of tickets desired, and the amount of money to be played on each ticket. After the player submits the request and the money to the clerk, the clerk uses the terminal to issue the requested tickets to the player.

(b) Purchasing a Ticket from a Player-Operated Terminal: A player may purchase Scoreboard tickets from a player-operated terminal by following the instructions appearing on the touch screen of the terminal. Once the player has completed the player's selection and inserted the price of the tickets into the terminal, the terminal issues the tickets to the player.

(5) **Ticket Description:** On each ticket purchased by the player, four sets of two single-digit numbers for each of the specified event's periods of play will be printed. The single-digit numbers produced will range from zero through nine. No two sets of numbers in any period of play will be duplicated.

(6) **Ticket Characteristics:** A ticket is the only acceptable evidence of the selections made by a player and the only valid receipt for claiming a prize. A copy of a ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase or the selections made by a player.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.213

Hist.: LOTT 12-2003(Temp), f. 8-28-03, cert. ef. 9-2-03 thru 2-27-04; LOTT 16-2003, f. & cert. ef. 12-19-03; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-094-0000

Definitions

For the purposes of the Win for Life game, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) "Board" means that portion of the game slip through which a player, either manually or by indicating a Quick Pick, selects a set of four, two-digit numbers from one through seventy-seven which comprise a Win for Life prize category wager. There are five boards on each Win for Life game slip which, depending on the number of boards marked by the player, will produce up to five game plays per game slip.

(2) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Win for Life drawings and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(3) "Game play" means the player selection of one set of numbers as their Win for Life prize category selection. The Win for Life selection, once properly submitted as described in OAR 177-094-0030, then prompts the terminal to automatically and randomly select fourteen additional sets of numbers. The first two of the fourteen sets apply to the \$50,000 prize category, the next four sets apply to the \$20,000 prize category, and the last eight sets apply to the \$10,000 prize category. All fifteen sets of numbers appear on a ticket for a particular drawing each of which shall be compared to the winning numbers selected at the drawing(s) and appearing on the ticket to determine the prize or multiple prize payment that may be claimed.

(4) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the game play selected by a player and which contains the following: the caption "Win for Life," one game play, the date(s) of the drawing(s) in which the ticket shall be played, the number of consecutive drawings on which the ticket shall be played, the identifying number for each drawing, the price of the ticket, a six-digit retailer number, a serial number, and a bar code.

(5) "Prize category" means a subset of the prize structure described in OAR 177-094-0080 which describes the value of the Win for Life prizes.

(6) "Quick Pick" means the random selection of numbers by a terminal which appear as the game play on a ticket.

(7) "Set" means the four, two-digit numbers from one through seventy-seven which are selected by either the player or the terminal as Win for Life wagers.

(8) "Draw game terminal" or "Terminal" has the meaning set forth in OAR 177-070-0005(4).

(9) "Winning numbers" means the four numbers, from one to seventy-seven randomly selected at each drawing, as described in OAR 177-094-0050, which are used to determine whether the game ticket contains winning game plays.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

ADMINISTRATIVE RULES

177-094-0030

Ticket Purchase, Characteristics, and Restrictions

(1) General: Win for Life tickets may be purchased every day of the year during the hours of operation of the Lottery's central computer system and a Lottery retailer's business hours.

(2) Ticket Purchase: Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Win for Life, a player must:

(a) Complete a game slip for input into a clerk-operated terminal or player-operated terminal:

- (b) Request a Quick Pick from a clerk; or
 - (c) Request a Quick Pick using a player-operated terminal.
- (3) Completing a Game Slip:

(a) A player must choose a game play or game plays by one of two methods:

(A) A player may select four two-digit numbers from one to seventy-seven on a board on a game slip; or

(B) The player may select the Quick Pick option on a board on a game slip.

(b) A player may choose from one to five game plays per game slip by utilizing one or more of the five boards.

(c) A player must indicate if the game play is to be played in consecutive drawings.

(4) Purchasing a Ticket from a Clerk-Operated Terminal:

(a) After the player completes a game slip and submits it along with the price of the ticket(s) to the clerk, the clerk shall use the terminal to issue the ticket(s) to the player.

(b) Alternately, the player may submit the price of the ticket(s) to a clerk and request that a clerk, without using a game slip, electronically submit a player's Quick Pick game play selection through the terminal and request game play for a single drawing or consecutive drawings.

(5) Purchasing a Ticket from a Player-Operated Terminal:

(a) A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal.

(b) Once the player has completed the game slip, inserted it along with the purchase price of the ticket(s) into the terminal, the terminal will issue the ticket(s) to the player.

(c) Alternately, the player may request a Quick Pick game play selection without using a game slip through a player-operated terminal by selecting the Win for Life game option, indicating the number of consecutive drawings to be played, and inserting the purchase price of the ticket. The terminal will then issue a ticket to the player.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-099-0000

Definitions

For the purposes of Keno, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:

(1) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in multiple drawings and was validated before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing dates appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) "Game play" means the number or group of numbers appearing on a ticket for a particular spot which is compared to the winning numbers, selected at the drawings appearing on the ticket, to determine the prize payment for which the ticket may be redeemed.

(3) "Game slip" or "play slip" means a paper form used by a player to select a game play, that indicates the amount the player will play on the ticket containing the game play, the number of drawings in which the ticket will be played, the choice to play the Special Keno option, and the choice to select the Keno Multiplier option. Only one game play may be marked on each game slip.

(4) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the game play selected by a player and which contains the following: the caption "Keno", one game play, the dates of the drawings in which the ticket may be played, the number of consecutive drawings in which the ticket may be played, the identifying number for each such drawing, the price of the ticket, a six-digit retailer number, a serial number, a bar code, the phrase "Special Keno" if that option has been selected, and the phrase "Keno Multiplier" if that option has been selected.

(5) "Keno Multiplier" means the Keno and Special Keno play option whereby a player, by paying an additional one dollar for each dollar wagered on a Keno or Special Keno game play, may be entitled to receive a larger prize for correctly selecting winning numbers. Keno Multiplier multiplies the amount of certain prizes won in a game play. Keno Multiplier is an optional, limited extension of the Keno and Special Keno game and is effective beginning at 6:00 A.M., April 7, 2003.

(6) "Quick Pick" means the random selection of numbers by a terminal that appear as the game play on a ticket.

(7) "Special Keno" means an optional variation of the Keno prize payment and odds structure as defined in OAR 177-099-0090 which may be selected by the player.

(8) "Spot" means the amount of numbers a player may play for a game play. A player may play from one spot, i.e., one number, to ten spots, i.e., ten different numbers.

(9) "Draw game terminal" or "Terminal" has the meaning set forth in OAR 177-070-0005(4).

(10) "Winning numbers" means the twenty numbers, from one to eighty, that are selected at each drawing that are used to determine winning game plays contained on the game tickets.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-099-0030

Ticket Purchase, Characteristics, and Restrictions

(1)(a) General: Keno tickets may be purchased every day of the year during the hours of operation of the Lottery's central computer system and a Lottery retailer's business hours.

(b) Default: A player may purchase a ticket for play under either the Keno prize structure set forth in OAR 177-099-0080, or the Special Keno prize structure set forth in OAR 177-099-0090. If a player does not select the Special Keno option when purchasing a ticket, the ticket is played under the Keno prize structure.

(c) Multiplier Option: A player may purchase the Keno Multiplier option on any Keno or Special Keno game play as set forth in OAR 177-099-0020(6). If a player does not select the Keno Multiplier option when purchasing a ticket, the ticket is played under the Keno or Special Keno prize structure.

(2)(a) Ticket Purchase: Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Keno, a player must complete a game slip for input into a terminal, request a Quick Pick from a clerk, or request a Quick Pick using a player-operated terminal.

(b) Completing a Game Slip: A player must choose a game play by one of two methods. A player may select from one to ten numbers from the eighty number choices contained on the game slip. Alternatively, the player may select the Quick Pick option. A player must also complete the selections on the game slip regarding the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings in which to play the ticket and the price of the ticket. The player may select the Special Keno option or the Keno Multiplier option.

(c) Purchasing a Ticket from a Clerk-Operated Terminal: After the player completes a game slip and submits it along with the price of the ticket to the clerk, the clerk shall use the terminal to issue a ticket to the player. The player may also request that a clerk, without using a game slip, electronically submit a request for a Quick Pick through the terminal with the player informing the clerk of the number of spots to be played, the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings in which to play the ticket, and whether the player wants the Special Keno option or the Keno Multiplier option.

(d) Purchasing a Ticket from a Player-Operated Terminal: A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal. Once the player has completed the game slip and inserted it and paid the price of the ticket into the terminal, the terminal will issue a ticket to the player. The player may also request a Quick Pick without using a game slip by using the player-operated terminal. A player requesting a Quick Pick from a player-operated terminal without using a game slip must select either the Keno or Special Keno option, the number of spots to be played, the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings to be played, and whether the player wants the Keno Multiplier option.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

ADMINISTRATIVE RULES

177-099-0050

Drawings

(1) **General:** Drawings shall take place at such times and upon such intervals as determined by the Director. Drawings shall normally take place at four-minute intervals. The last drawing shall take place just prior to the deactivation of the Lottery's central computer system for the day.

(2) **Objective:** Each drawing randomly selects twenty numbers from a possible eighty numbers that are the winning numbers. The winning numbers selected at each drawing are generated through the use of a computer-driven random number generator.

(3) **Selection of the Keno Multiplier Number:** The Lottery will conduct a separate random Keno Multiplier drawing and announce the result prior to each of the regular Keno drawings by displaying the Keno Multiplier number on the Keno monitor immediately prior to each new Keno game drawn and after the previous game pool closes. During each random Keno Multiplier drawing, one number will be selected. The Keno Multiplier numbers available for selection are 1, 2, 3, 5, and 10. The Keno Multiplier number selected at each drawing is generated through the use of a computer-driven random number generator in accordance with the provisions of OAR 177-046-0080.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.200

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03; LOTT 2-2004(Temp), f. 2-20-04, cert. ef. 2-23-04 thru 8-20-04; LOTT 10-2004, f. & cert. ef. 5-26-04; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

177-100-0010

Definitions

For purposes of Division 100, the following definitions apply except as otherwise provided in OAR Chapter 177, or unless the context requires otherwise:

(1) **"Certification"** means the inspection process used by the Lottery to approve Video LotterySM game terminals and games.

(2) **"Decal"** means the stamp displayed by the Lottery upon a Video LotterySM game terminal to provide notice that the Video LotterySM game terminal is authorized by the Oregon Lottery®.

(3) **"Display"** means the visual presentation of Video LotterySM game features shown on the screen of a Video LotterySM game terminal.

(4) **"Gray machine"** means a gambling device as described in ORS 167.117(9).

(5) **"Manufacturer"** means any individual, partnership, corporation, trust, association, joint venture, limited liability company, or other business entity that manufactures, assembles, services, or produces Video LotterySM game terminals or gray machines in Oregon.

(6) **"Service"** means the activities of a manufacturer related to the maintenance, repair, testing, or quality assurance of gray machines.

(7) **"Video LotterySM"** or **"Video LotterySM game"** means the following games conducted through Video LotterySM game terminals that are monitored by a central computer system:

- (a) Video poker games;
- (b) Video line games; and
- (c) Any other lottery game designated by the Oregon Lottery Commission as a Video LotterySM game.

(8) **"Video LotterySM game terminal"** is a device operated under the authority of the Oregon State Lottery and has the meaning set forth in OAR 177-010-0003.

Stat. Auth.: OR Const. Art. XV, § 4(4) & ORS 461
Stats. Implemented: ORS 461.215 & 461.217

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 6-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 14-2003, f. & cert. ef. 9-29-03; LOTT 5-2005(Temp), f. & cert. ef. 5-20-05 thru 11-11-05; LOTT 8-2005, f. & cert. ef. 9-1-05; LOTT 7-2008, f. 10-31-08, cert. ef. 11-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09

Rule Caption: Amends rules to address operational issues associated with Lottery Kiosks.

Adm. Order No.: LOTT 7-2009

Filed with Sec. of State: 9-28-2009

Certified to be Effective: 10-1-09

Notice Publication Date: 9-1-2009

Rules Amended: 177-010-0003, 177-046-0020, 177-046-0110, 177-050-0025, 177-069-0000, 177-070-0025, 177-081-0010, 177-083-0010, 177-085-0010, 177-100-0010

Subject: The Oregon State Lottery has amended the above referenced administrative rules. The amendments address operational issues associated with the sale of Lottery tickets for traditional Lot-

tery games as well as the payment of prizes by Lottery employees at Lottery Kiosks.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-010-0003

Definitions

(1) **"Business day"** means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.

(2) **"Business week"** means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.

(3) **"Business year"** means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the business day of the last Saturday of the following June.

(4) **"Commissioner"** has that definition as defined in ORS 461.010(2).

(5) **"Director"** has that definition as defined in ORS 461.010(3).

(6) **"Drawing coordinator"** means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(7) **"Immediate family"** and **"family member"** mean a natural person's spouse, child, brother, sister, or parent by blood or adoption.

(8) **"Lottery"** or **"State Lottery"** has that definition as defined in ORS 461.010(1).

(9) **"Lottery Commission"** or **"Commission"** has that definition as defined in ORS 461.010(4).

(10) **"Lottery contract"** means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(11) **"Lottery contractor"** or **"contractor"** has that definition as defined in ORS 461.010(9).

(12) **"Lottery game"** or **"game"** has that definition as defined in ORS 461.010(5).

(13) **"Lottery game retailer"** or **"retailer"** has that definition as defined in ORS 461.010(7).

(14) **"Lottery Headquarters"** means the Debbs Potts Oregon State Lottery Commission building located at 500 Airport Road, Salem, Oregon.

(15) **"Lottery Kiosk"** means a location, other than Lottery Headquarters, where Lottery tickets or shares are sold directly to the public by Lottery employees.

(16) **"Lottery sales location"** means a Lottery kiosk, Lottery Headquarters, or sales by the Lottery through electronic means.

(17) **"Lottery vendor"** or **"vendor"** has that definition as defined in ORS 461.010(8).

(18) **"Person"** has that definition as defined in ORS 461.010(6).

(19) **"Prize"** means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(20) **"Retailer contract"** means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(21) **"Share"** means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in Video LotterySM games.

(22) **"Ticket"** means a certificate or token of the opportunity to win a prize in a Lottery game.

(23) **"Traditional lottery games"** means the following lottery games offered by the Oregon State Lottery:

- (a) Scratch-itsSM;
- (b) Lottery Raffle Game;
- (c) MegabucksSM;
- (d) Pick 4SM;
- (e) Lucky LinesSM;
- (f) Powerball®;
- (g) Sports ActionSM;
- (h) ScoreboardSM;
- (i) Win for LifeSM;
- (j) Keno; and
- (k) Any other Lottery game designated by the Oregon State Lottery Commission as a Traditional Lottery game.

(24) **"Unclaimed prize"** means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(25) **"Video LotterySM game retailer"** or **"Video LotterySM retailer"** has that definition as defined in ORS 461.217.

(26) **"Video LotterySM game terminal"** means a type of video device for the playing of Video LotterySM games which is in a console that contains a game platform with a video display and a random number generator, is connected to and monitored by a central system, and accepts cash payments to permit a person to play the Video LotterySM games offered on the terminal for the opportunity to win a prize. Unless the context or a specially applicable definition indicates otherwise, any reference to a "Video

ADMINISTRATIVE RULES

LotterySM terminal”, “video lottery terminal”, or “video terminal” in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a “Video LotterySM game terminal” as defined in this section. Video LotterySM Game Terminal does not include any device determined by the Oregon State Lottery Commission not to be a Video LotterySM game terminal.

(27) “**Winner claim form**” means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, § 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.215, 461.217, 461.220 & 461.250
Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 7-2008, f. 10-31-08, cert. ef. 11-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-046-0020

Sale of Lottery Tickets and Shares

(1) **General:** The Director may contract with retailers for the sale of Lottery tickets and shares. Except as provided in section (3) of this rule, only a retailer under contract with the Lottery may sell Lottery tickets or shares. Nothing in this section shall be construed to prevent a person who lawfully purchases or possesses a Lottery ticket or share from making a gift of such ticket or share to another.

(2) **Retailer Sales Locations:** Unless authorized by the Lottery, Lottery tickets or shares may only be sold by a Lottery retailer at the location listed in the retailer contract.

(3) **Lottery Sales:** The Lottery may designate its agents or employees to sell Lottery tickets or shares directly to the public, either in person at Lottery Headquarters, at a Lottery kiosk, or through electronic means. For purposes of Lottery’s traditional lottery game rules, reference to a “retailer,” “Lottery retailer,” or “Lottery On-line retailer” includes Lottery sales unless the context or a specially applicable provision indicates otherwise.

(4) **Future Drawings:** A player may purchase a ticket or tickets for future consecutive drawings to the extent permitted by the Lottery for each Lottery game. The player must specify at the time of purchase that the ticket or tickets include future consecutive drawings.

(5) **Sales Are Final:** Unless otherwise provided in OAR Chapter 177, the sale of all Lottery tickets and shares is final. A player may not return a Lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. The Lottery is not liable for Lottery tickets or shares that are purchased in error.

(6) **Distribution:** The Director is authorized to arrange for the direct distribution of Lottery equipment, ticket stock, and supplies shipped directly from the manufacturer or supplier to an authorized retailer.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 5-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 8-2008(Temp), f. 11-21-08, cert. ef. 11-23-08 thru 5-16-09; LOTT 2-2009, f. 2-27-09, cert. ef. 3-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-046-0110

Payment of Prizes

(1) **General:** All winning Lottery tickets or shares may be presented to the Oregon State Lottery for payment. Winning tickets or shares for prizes of \$600 or less may also be presented for payment to the appropriate Lottery retailer specified in the applicable game rule.

(2) **Mailing Address:** Winners who mail a winning Lottery ticket or share to the Lottery must sign the Lottery ticket or share in the designated area on the ticket or share, write the claimant’s mailing address in the place indicated on the ticket or share, and mail it to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended.

(3) **Lottery Headquarters Address:** Winners who present a claim in person at the Lottery may do so by bringing the winning Lottery ticket or share to the Lottery Headquarters, Player Services, 500 Airport Road SE, Salem, Oregon 97301 during Lottery business hours.

(4) **Retailer Validation and Payment of Prizes of \$600 or Less:** To determine whether a Lottery ticket or share presented for payment entitles the holder to a prize, a retailer must validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on each Lottery ticket or share into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(a) **Retailer Payment:** A retailer is authorized to pay a prize of \$600 or less and shall pay that prize in cash or check, or any combination thereof.

(b) **Lottery Payment:** If a retailer’s prize payment check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to

the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the prize is authorized, the retailer has not paid the prize, and it is unlikely that the retailer will pay the prize, the Lottery may then issue a check to the player in the amount of the prize due less any applicable tax withholding.

(c) **Retailer Sanction:** A retailer that pays a prize with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) **Lottery Validation and Prize Payment:** Upon validation of a winning Lottery ticket or share presented to the Lottery for payment, the Director may pay the amount of the prize to the player less any applicable tax withholding. If the ticket or share is determined to be invalid, or a non-winning ticket or share, or the claim is invalid, the Director shall deny the claim and inform the player.

(a) **Lottery Prize Payment of \$600 or Less:** Payment may be made by check, cash card, or in cash, or any combination thereof.

(A) **Lottery Headquarters:** Cash prize payments made at Lottery Headquarters are limited to \$50 per person per day. Any prize payment balance remaining above \$50 shall be paid by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(B) **Lottery Kiosk:** Cash prize payments made at a Lottery kiosk are limited to \$100 per transaction. Any prize payment balance remaining above \$100 shall be paid by cash card.

(C) **Prizes by Mail:** A winning ticket may be submitted to the Lottery by mail. If mailed, the player must sign the ticket in the designated area on the ticket, write the player’s mailing address in the place indicated on the ticket, and mail it to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended.

(b) **Lottery Prize Payment of Prizes Greater than \$600:** A player must claim a Lottery prize of more than \$600 by:

(A) **Claiming in Person:** Bringing the ticket to the Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket or share to the Lottery; or

(B) **Claiming by Mail:** Signing the ticket in the designated area on the ticket, writing the player’s mailing address on the ticket in the place indicated on the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended. The winner claim form may be obtained from any Lottery retailer offering traditional games, from a Lottery kiosk, or from the Lottery Headquarters at the addresses listed above.

(c) **High Tier Prize Payments:** The Lottery will pay a winning ticket or share by check, or subject to OAR 177-010-0050, may pay the prize in merchandise if the prize is merchandise.

(6) **Claiming Lottery Tickets or Shares Jointly:** If more than one name appears in the designated area on a Lottery ticket or share, or if a Lottery ticket or share is owned by two or more persons, the prize must be claimed in accordance with the following:

(a) **General:** All persons claiming ownership of the winning Lottery ticket or share must complete and sign the Lottery’s request and release form. Each of the persons signing the form must indicate each person’s proportionate share of the prize. Each person must receive at least \$1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person’s signature must also appear on the request and release form. If a winning ticket or share is mailed to the Lottery Headquarters with multiple signatures on it, the Director will mail the request and release form to the claimants.

(b) **Deceased Signatories:** A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may withhold payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling from a court.

(c) **Relinquishment of Interest:** When a person who has signed a Lottery ticket or share wishes to relinquish the person’s ownership interest in the Lottery ticket or share, that person must sign the Lottery’s release of ownership form relinquishing the person’s ownership interest. In no event will a person be permitted to relinquish ownership interest once it is determined that the person owes money for child support or other legal attachment has taken place. Once the Lottery receives the release of ownership form, it is irrevocable.

(d) **Issuance of Prize Checks to Multiple Owners:** If a validated winning Lottery ticket or share is claimed by multiple owners who are sharing a single prize, the Director will issue to each person claiming a share of the prize amount, a check for the portion of the prize amount claimed by each multiple owner, the total not to exceed the total prize amount. No cash payments will be made to multiple owners. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the value of each individual prize check would be less than

ADMINISTRATIVE RULES

\$50 or if the number of persons claiming a share of the prize exceeds 100 people. The Lottery shall pay multiple winners of a Lottery prize only at the Lottery Headquarters in Salem. Lottery retailers are not authorized to pay multiple winners who share a single prize.

(e) **Payment to Multiple Owners at Lottery Kiosk:** Notwithstanding subsection (6)(d) of this rule, the Lottery may pay multiple winners of a single Lottery prize at a Lottery kiosk if the total amount of the prize is \$600 or less. Payment shall be made as set forth in paragraph (5)(a)(B) of this rule.

(f) **Conflicting Information or Discrepancies:** If there is conflicting information or discrepancies between the names on a winning Lottery ticket or share and the names on a claim form, the Lottery may withhold prize payment until the owners resolve the conflicting information. Discrepancies include, but are not limited to: Names or addresses scratched out or erased, or unreadable or altered names or addresses.

(g) **Investigations:** At the discretion of the Director, the Lottery may conduct an investigation to aid in the determination of the rightful owners prior to payment of any prize.

(h) **Determinations:** The Director's decisions regarding the determination of a winning Lottery ticket or share, or the determination of the rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final and binding on all parties.

(7) Payment of Prizes Donated Anonymously to Non-Profit Groups and Others:

(a) **General:** The Director may pay a prize according to written anonymous instructions received with a winning Lottery ticket or share. The recipient must be a natural person or a non-profit group as described in Section 501(c)(3) of the Internal Revenue Code.

(b) **Adult Recipient:** If the intended recipient is a natural person of majority, the Director will contact the person and make payment to the person in accordance with the anonymous written instructions.

(c) **Minor Recipient:** If the intended donation benefits a natural person who is a minor, the Director will make payment in accordance with the Oregon Uniform Transfers to Minors Act, Oregon Revised Statutes (ORS) 126.805 to 126.886.

(d) **Non-Profit Group as Recipient:** If the intended recipient qualifies as a non-profit group as described in Section 501(c)(3) of the Internal Revenue Code, the Director will make payment only as follows:

(A) **Identification of Recipient:** The Director will attempt to identify and contact the intended recipient. The intended recipient shall designate in writing an agent, (a natural person) to act on its behalf and to receive the prize payment on behalf of the recipient. The Director shall confirm both the written authorization and the agent. An intended recipient is encouraged to select a bonded agent.

(B) **Appearance:** The agent shall appear in person at the Lottery Headquarters in Salem to claim the prize payment on behalf of the intended recipient. The Director may confirm to the Director's satisfaction that the agent is authorized to accept the donation in the agent's own name on behalf of the intended recipient.

(C) **Signature and Payment:** Subsequent to receipt of acceptable identification, along with a completed claim form from the agent, and the Director's review and approval, the agent, in the presence of a duly authorized Lottery official, shall sign the agent's own name on the winning Lottery ticket or share in the place indicated on the ticket or share and immediately return it to the Lottery. The Director shall then make payment to the agent less any applicable tax withholding.

(D) **Identification of Donor:** If the Director can reasonably identify the donor, the Director shall not make payment as specified above, but shall instead contact the donor and notify the donor to retrieve the Lottery ticket or share upon presenting acceptable proof of identification. The donor may retrieve the winning ticket or share in person at the Lottery Headquarters in Salem upon the presentation of acceptable proof of identification. The prize, less any applicable tax withholding, will be paid to the donor upon validation of the winning ticket or share.

(e) **Win for Life Prize:** If the winning Lottery ticket received is a Win for Life top prize of \$1,000 a week for life, the prize paid will be the lump sum guaranteed five year payment under the Win for Life game rules.

(f) **Forfeiture of Unclaimed Prize:** In the event that the Director is unable to locate the intended recipient or the anonymous donor, the winning Lottery ticket or share shall be retained until the end of the prize claim period. After the end of the prize claim period, the ticket or share shall constitute an unclaimed prize as described in OAR 177-010-0085 and shall be forfeited to the public purpose.

(g) **Discharge of Lottery from Liability:** The State of Oregon, its agents, officers, employees, and representatives, including but not limited to, the Oregon Lottery, its Director, agents, officers, employees, and representatives, are discharged of all liability upon payment of an anonymously donated prize in accordance with this rule and any applicable game rules to the extent that they do not conflict with this rule. The Lottery is not responsible in any way for the fulfillment or completion of the agreement between

the intended recipient and the agent. The Lottery's decisions regarding the determination that a Lottery ticket or share donated anonymously is, or is not, a winning ticket or share or any question or dispute arising from the payment of such a prize is final and binding on all parties. In the event a question or issue arises regarding payment of a prize donated anonymously, the Director may withhold payment until the question or issue is resolved. The Lottery, the intended recipient or custodian, if the intended recipient is a minor, or the designated agent if the intended recipient is a non-profit group, may petition a court of competent jurisdiction for judicial resolution of the matter.

(8) **Social Security Numbers:** Each United States resident who is to receive a payment of winnings greater than \$600 shall furnish to the Lottery the information required on the Internal Revenue Service Form W-2G (or any other form required by the IRS,) including but not limited to the winner's name, address, and social security number. This disclosure is mandatory and the authority for such disclosure is 42 USC 405(c)(2)(C), 26 CFR 31.3402(q)-1(e), and ORS 461.715(1)(a). A winner's social security number will be used for the purpose of identifying child support obligors and submitting required documents to state and federal tax authorities.

(9) **Payment Decisions:** The Director shall make the final decision on whether any prize is paid or any annual prize payment is made. All prizes shall be paid within a reasonable time after they are validated, unless the Director delays a prize payment. The Director may, at any time, delay any prize payment in order to review the validity of a prize claim, or review a change of circumstances relative to the prize awarded, the payee, or the claim, or review any other relevant matter that may come to the Director's attention. For any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. Any delayed annual payment will be brought up to date immediately when payment is authorized by the Director.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-050-0025

Payment of Prizes

(1) **Prizes of \$600 or Less:** Scratch-itSM ticket prizes of \$600 or less shall be claimed by one of the following methods:

(a) **Retailer Prize Payment:** The player may present the Scratch-itSM ticket to a Lottery retailer. The retailer shall determine whether a ticket entitles the holder to a prize, validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the ticket into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due. A retailer that is authorized to pay a prize of \$600 or less shall pay that prize in case or by check, or any combination thereof.

(b) **Lottery Prize Payment of \$600 or Less:** Upon validation of a winning ticket under OAR 177-050-0027, the Lottery will pay the amount of the prize to the player. Payment may be made by check, cash card, or in cash, or any combination thereof. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the claimant notified.

(A) **Lottery Headquarters:** Cash prize payments made at Lottery Headquarters are limited to \$50 per person per day. Any prize payment balance remaining above \$50 shall be paid by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(B) **Lottery Kiosk:** Cash prize payments made at a Lottery kiosk are limited to \$100 per transaction. Any prize payment balance remaining above \$100 shall be paid by cash card.

(C) **Prizes by Mail:** A winning ticket may be submitted to the Lottery by mail. If mailed, the player must sign the ticket in the designated area on the ticket, write the player's mailing address in the place indicated on the ticket, and mail it to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended.

(2) **Prizes Greater than \$600:** A player must claim a Scratch-itSM ticket prize of more than \$600 by:

(a) **Claiming in Person:** Bringing the ticket to the Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket to the Lottery; or

(b) **Claiming by Mail:** Signing the ticket in the designated area on the ticket, writing the player's mailing address on the ticket in the place indicated on the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended. The winner claim form may be obtained from any Lottery retailer offering traditional games, from a Lottery kiosk, or from the Lottery Headquarters at the addresses listed above.

ADMINISTRATIVE RULES

(c) **Lottery Prize Payment:** Upon validation of a winning ticket under OAR 177-050-0027, the Lottery will pay by check the amount of the prize to the player, less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the player notified.

(3) **Validation and Payment of Lost, Damaged, or Destroyed Tickets for Prizes Greater than \$600:** If a player of a Scratch-itSM prize of more than \$600 cannot submit an intact winning ticket because a Scratch-itSM game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-050-0100.

(a) **Player Form and Affidavit:** To claim a prize based on a lost, damaged, or destroyed ticket, the player must obtain, complete, and sign a winner claim form and a claim affidavit furnished by the Lottery. The player shall submit the two completed forms along with any other evidence of the validation attempt that is in the player's possession (including, but not limited to, the "This is not a Ticket" slip produced by the terminal at the time of the validation attempt) to the Lottery at the addresses listed in section (1)(b) of this rule, either by mail (registered mail recommended) or in person at the Lottery Headquarters in Salem during Lottery business hours.

(b) **Evidence:** The evidence submitted by the player must corroborate the validation attempt including, but not limited to, identification of the Lottery game retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket validation number, the terminal number, and the prize amount.

(c) **Investigation:** The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) **Retailer Affidavit:** A retailer who is the subject of an investigation conducted under this section must complete and provide to the Lottery a retailer affidavit form explaining the events in question.

(e) **Director's Determination:** Based upon all the facts and information available, the Director shall make a determination whether prize payment is warranted and authorized.

(f) **Payment of Prize:** Upon the Director's determination that the ticket submitted under this section is a valid, winning ticket, and that the player is the proper person to whom a prize is payable, the Lottery shall present or mail a check to the player in payment of the appropriate prize amount less any applicable tax withholding.

(g) **Restriction of Payment:** Payments of claims submitted under this section are restricted to the prize amount.

(h) **Retailer Sanctions:** The Director may sanction a Lottery game retailer for the loss, damage, or destruction of a winning Scratch-itSM game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(i) **Notification of Denial:** If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the player notified.

(4) **Time Limit:** A prize claim must be made under this rule within the time limit specified in OAR 177-050-0100.

(5) **Invalid Tickets:** Any ticket not passing all applicable validation checks is invalid and void for claims made under OAR 177-050-0025(3). A player submitting an invalid or void ticket is ineligible for any prize and no prize shall be paid for such a ticket.

Stat. Auth.: ORS 461, OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250, 461.260
Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; SLC 4-1986, f. & ef. 2-25-86; SLC 27-1986, f. & ef. 11-24-86; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & ef. 4-3-90; LC 8-1993, f. 9-22-93, cert. ef. 10-18-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08; LOTT 9-2008, f. 11-21-08, cert. ef. 12-1-08; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-069-0000 Game Description

(1) **General:** A Lottery raffle is a lottery game in which a specified number of Lottery raffle game tickets, as determined by the Lottery, are available for purchase. A unique sequential identifying number(s) is printed on each Lottery raffle ticket. Each unique number represents a chance for a prize in a particular Lottery raffle drawing. Players win prizes by matching the number(s) on the player's Lottery raffle ticket to the numbers drawn by the Lottery during the Lottery raffle drawing.

(2) **Prizes:** The prizes and the prize structure for each Lottery raffle are determined by the Lottery and will be posted on the Lottery's Website at www.oregonlottery.org while the Lottery raffle tickets for a particular Lottery raffle are being sold. The odds of winning a prize will vary depending on the number of Lottery raffle tickets sold for the particular Lottery

raffle. The Lottery may advertise the prize structure by any reasonable means. All prizes will be awarded regardless of the number of Lottery raffle tickets sold unless the Lottery raffle drawing is suspended by the Lottery Director in accordance with OAR 177-046-0140.

(3) **Determination of Winners:** A player wins a prize in a Lottery raffle game when during a raffle drawing the Lottery selects the unique sequential identifying number on the player's Lottery raffle ticket as a winning number for a prize.

(4) **Sales Location:** A Lottery raffle ticket may only be sold by and purchased from a Lottery retailer authorized to sell Lottery raffle tickets, or a Lottery sales location.

(5) **Ticket Price:** The price of a Lottery raffle ticket will be set by the Lottery for each Lottery raffle drawing held by the Lottery. A player may purchase more than one Lottery raffle ticket. A Lottery raffle ticket may represent a single play or multiple plays at the Lottery's discretion. If the Lottery raffle ticket represents multiple plays, each play will have a unique sequential identifying number printed on the Lottery raffle ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.210, 461.220, 461.240, 461.250, 461.260
Hist.: LOTT 10-2008, f. 11-21-08, cert. ef. 12-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-070-0025 Payment of Prizes

(1) **Prizes of \$600 or Less:** To claim a Draw game prize of \$600 or less, the claimant may present the winning Draw game ticket to any Draw game retailer, a Lottery kiosk, or to the Lottery Headquarters in Salem, Oregon:

(a) **Retailer Payment:** If the claim is presented to a Draw game retailer, the retailer shall validate the claim and, if determined to be a winning ticket, shall make payment of the amount due the claimant during the prize redemption hours agreed upon between the retailer and the Lottery. The retailer may pay prizes in cash or check, or any combination thereof. If the retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person.

(b) **Lottery Payment:** The claimant may submit a winning ticket, either by mail or in person to the Lottery for payment at the addresses listed in section (2)(a) below or to a Lottery kiosk. Upon validation that the ticket is a winning ticket under OAR 177-070-0035, the Lottery shall pay the amount of the prize to the claimant. Payment may be made by check, cash card, or in cash, or any combination thereof. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the claimant notified.

(A) **Lottery Headquarters:** Cash prize payments are limited to \$50 per person per day. Any prize payment balance remaining above \$50 shall be paid by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(B) **Lottery Kiosk:** Cash prize payments made at Lottery kiosks are limited to \$100 per transaction. Any prize payment balance remaining above \$100 shall be paid by cash card.

(2) Prizes Greater than \$600:

(a) **Winner Claim Form:** To claim a Draw game prize of more than \$600, the claimant shall obtain and complete a "Winner Claim Form." The claimant may submit the Winner Claim Form with the winning ticket in person to Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon. A claimant may mail a winning ticket and Winner Claim Form to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended).

(b) **Prize Payment:** Upon validation of a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable tax withholding. The amount due shall be calculated according to the rules adopted for the particular Draw game. If the ticket is determined to be a non-winning ticket or invalid, the claim shall be denied and the claimant notified. Non-winning or invalid tickets will not be returned to the claimant.

(c) Prize Payment of Lost, Damaged, or Destroyed Tickets:

(A) When a prize payment is authorized by the Director under OAR 177-070-0035(4), the prize payment shall be validated through the Lottery's central computer system on the last day of the eligible prize claim period. If the prize claim period expires on a weekend or on a holiday when the Lottery is closed, the expiration period will be extended to the end of the next working day. Following validation, the Lottery shall issue the prize payment in the usual course of Lottery business.

(B) Prize payments made under this subsection shall be restricted to the prize amount under the prize structure for the Draw game in which the ticket was purchased.

(3) **General Time Limitation:** All prizes must be claimed within one year of the drawing in which the prize was won. In the event the final day of the one-year period falls on a weekend or a Lottery holiday, the claim period will be extended to end on the next business day. Any prize not

ADMINISTRATIVE RULES

claimed within the specified period shall be forfeited and thereafter placed into the Economic Development Fund established by ORS 461.540. The transfer shall take place at the same time the Lottery's next scheduled transfer of proceeds allocated for economic development is made.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.260

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 20-1987, f. 10-26-87, ef. 11-2-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 7-1995, f. & cert. ef. 7-7-95; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-081-0010

Game Description

(1) **General:** Pick 4 is a game based on four-digit numbers in which a player selects:

(a) A single number from each of four columns of single-digit numbers from zero to nine. The player has the option of selecting a Quick Pick or choosing his or her own number selections;

(b) One or more Match Choices from the seven possible Match Choice options; and

(c) A wager of at least \$1.00.

(2) **Sequence of Numbers:** The player's four number selections form a specific four-digit number sequence from left to right. The player's number selections and subsequent Match Choices which match the winning numbers and the order of the winning numbers in accordance with OAR 177-081-0080(1) selected at the drawing(s) on the date(s) indicated on the player's ticket determine any prize amount won.

(3) **Place of Purchase:** A Pick 4 Ticket may only be sold by and purchased from a Lottery retailer authorized to sell Pick 4 tickets, or a Lottery sales location.

Stat. Auth.: OR Const. Art. XV Sec. (4) & ORS 461

Stats. Implemented: ORS 461.210, 461.220, 461.240 & 461.250

Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-083-0010

Game Description

(1) **General:** Lucky Lines is a game based on a grid consisting of nine fields. There are four numbers in eight of the nine fields. The center field is a free field. To play the game, one number is selected from each of the eight fields that contain numbers. The player may select the numbers from each of the eight fields or may select the numbers using the Quick Pick option. During each drawing, the Lottery randomly selects one number from each of the eight fields as the winning numbers.

(2) **Determination of Winners:** A player wins by matching the player's numbers on the grid in a straight line, either horizontally, vertically, or diagonally, to the winning numbers on the grid selected by the Lottery for that drawing. There are eight possible ways to match numbers in a straight line on each ticket.

(3) **Location:** A Lucky Lines ticket may only be sold by and purchased from a Lottery retailer authorized to sell Lucky Lines tickets, or a Lottery sales location.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)

Stats. Implemented: ORS 461.210

Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-085-0010

Ticket Price

(1) A Powerball® ticket shall cost one dollar (USA \$1) per play.

(2) A Powerball® ticket may only be sold by and purchased from a Lottery retailer authorized to sell Powerball® tickets, or a Lottery sales location, and only by a method which is approved by the Lottery.

(3) The Lottery shall not directly and knowingly sell a Powerball® ticket or combination of tickets to any person or entity which would guarantee said purchaser a Grand Prize win.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.240

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 2-1992(Temp), f. & cert. ef. 4-17-92; LC 6-1992, f. & cert. ef. 6-23-92; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 11-2008, f. 11-21-08, cert. ef. 1-4-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

177-100-0010

Definitions

For purposes of Division 100, the following definitions apply except as otherwise provided in OAR Chapter 177, or unless the context requires otherwise:

(1) **"Certification"** means the inspection process used by the Lottery to approve Video LotterySM game terminals and games.

(2) **"Decal"** means the stamp displayed by the Lottery upon a Video LotterySM game terminal to provide notice that the Video LotterySM game terminal is authorized by the Oregon Lottery®.

(3) **"Display"** means the visual presentation of Video LotterySM game features shown on the screen of a Video LotterySM game terminal.

(4) **"Gray machine"** means a gambling device as described in ORS 167.117(9).

(5) **"Manufacturer"** means any individual, partnership, corporation, trust, association, joint venture, limited liability company, or other business entity that manufactures, assembles, services, or produces Video LotterySM game terminals or gray machines in Oregon.

(6) **"Service"** means the activities of a manufacturer related to the maintenance, repair, testing, or quality assurance of gray machines.

(7) **"Video LotterySM"** or **"Video LotterySM game"** means the following games conducted through Video LotterySM game terminals that are monitored by a central computer system:

(a) Video poker games;

(b) Video line games; and

(c) Any other lottery game designated by the Oregon Lottery Commission as a Video LotterySM game.

(8) **"Video LotterySM game terminal"** is a device operated under the authority of the Oregon State Lottery and has the meaning set forth in OAR 177-010-0003.

Stat. Auth.: OR Const. Art. XV, § 4(4) & ORS 461

Stats. Implemented: ORS 461.215 & 461.217

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 6-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 14-2003, f. & cert. ef. 9-29-03; LOTT 5-2005(Temp), f. & cert. ef. 5-20-05 thru 11-11-05; LOTT 8-2005, f. & cert. ef. 9-1-05; LOTT 7-2008, f. 10-31-08, cert. ef. 11-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09

Oregon State Treasury Chapter 170

Rule Caption: Monthly Reporting Requirement for Bank Depositories at Increased Collateralization Level.

Adm. Order No.: OST 4-2009(Temp)

Filed with Sec. of State: 10-13-2009

Certified to be Effective: 10-13-09 thru 3-31-10

Notice Publication Date:

Rules Adopted: 170-040-0110

Subject: The temporary rule requires monthly Treasurer Reports when a bank depository is required to collateralize at an increased level, but less than 110%.

Rules Coordinator: Sally Wood—(503) 378-4990

170-040-0110

Monthly Reporting Requirement for Bank Depositories at Increased Collateralization Level

Bank depositories ordered to collateralize their public funds deposits at an increased level, but less than 110%, by the State Treasurer are required to submit a new Treasurer Report monthly. The monthly reporting requirement shall remain in effect until such time as the bank depository no longer holds public funds deposits over deposit insurance limits or the State Treasurer removes the increased collateralization requirement. The monthly report is in addition to the quarterly Treasurer Report that is statutorily required.

Stat. Auth.: ORS 295.018(1)(b) & 295.061(1)

Stats. Implemented: ORS 295

Hist.: OST 4-2009(Temp), f. & cert. ef. 10-13-09 thru 3-31-10

Oregon University System Chapter 580

Rule Caption: Second modification of 2008–09 Academic year Fee Book.

Adm. Order No.: OSSHE 6-2009(Temp)

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-1-09 thru 1-8-10

Notice Publication Date:

Rules Amended: 580-040-0040

Rules Suspended: 580-040-0040(T)

Subject: Amendment to OAR 580-040-0040 to temporarily update provisions of the 2008–2009 Academic Year Fee Book.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

ADMINISTRATIVE RULES

580-040-0040

Academic Year Fee Book

The document entitled "Academic Year Fee Book" dated September 25, 2009, amended as a temporary rule, is hereby amended to include the nonresident Veterans Fee Remission rates, a housing rate change at Eastern Oregon University, and a program fee change at the University of Oregon. The Chancellor or designated staff are permitted to make revisions as needed to comport with any subsequent legislative actions as well as to authorize minor adjustments to the final document, if necessary.

(1) Nonresident Veteran Fee Remission

(a) As required by Law, every Oregon University System (OUS) institution shall participate to the fullest extent allowed in the federal educational assistance programs under the Supplemental Appropriations Act of 2008 (e.g., Post 9/11 G.I. Bill and its component Yellow Ribbon Program), so as to reduce the overall tuition rate for students eligible under this policy.

(b) *Criteria:* The Nonresident Veteran Fee Remission is a tuition and fee reduction for qualified students who are not Oregon residents and who are attending classes as an admitted undergraduate at one of the seven OUS campuses. To qualify for the discount, the nonresident veteran must have served in the Armed Forces of the United States and was relieved or discharged from that service under honorable conditions as defined by ORS 408.225 and as shown on an original or certified copy of the student's DD-214.

(c) *Award:* Qualified students are charged tuition and fees no greater than the resident rate, plus 50 percent of the difference between the resident tuition and fee total and the nonresident tuition and fee total with the following qualifications:

(A) A student who served in the Armed Forces of the United States and who receives federal tuition benefits in excess of the tuition and fees charged under this policy shall pay tuition and fees equal to the federal tuition benefits received.

(B) Distance education and self-support courses as identified by each OUS institution are excluded from this discount.

(C) If a nonresident student is otherwise eligible for tuition benefits under this discount and receiving federal vocational rehabilitation education benefits, that student shall pay full nonresident tuition and fees charged by the enrolling OUS institution.

(2) Eastern Oregon University 2009–10 Academic Year Room and Board Rates:

Residence — Suites — Plan A (125/\$100) — Plan B (100/\$125) — Plan C (75/\$225)

— No meal plan

North/South — Suites — \$7,700.00 — \$7,650.00 — \$7,750.00 — N/A

Hunt — Single — \$7,050.00 — \$7,000.00 — \$7,100.00 — N/A

Hunt — Double — \$6,650.00 — \$6,600.00 — \$6,700.00 — N/A

Alikut — Suites — \$7,485.00 — \$7,435.00 — \$7,535.00 — \$4,335.00

NOTE: Charges include basic telephone service, Ethernet access in each resident room, cable TV in living rooms, and food service. These are estimated rates as regular room and board fees are established by the Oregon State Board of Higher Education and are subject to change without notice.

(a) *Cancellation Fees:* After August 15, \$250; after move-in \$8 per day for each day remaining in contract.

(b) *Proration of Annual Charges:* Fall term, 40% of annual amount due; Winter term, 35% of annual total due; Spring term, 25% of annual due.

(3) *University of Oregon 2009–10 Academic Year Programmatic Resource Fees, colleges, schools, and majors.*

Fees are per term unless otherwise specified— Undergraduate—Graduate—Law

AAA Studio-based fee ARCH, IARC, ARTD, ART, IARC, LA, PD — \$140.00 — NA — NA

AAA Non-Studio-based fee ARH, AMGT, HP, PPPM — \$85.00 — NA — NA

College of Arts & Sciences (including undeclared) — \$56.00 — NA — NA

CAS Additional Science fee (except computer science) — \$41.00 — NA — NA

CAS Additional Computer Science and math-CIS — \$129.00 — \$129.00 (Masters) — NA

Journalism (includes pre-majors) — \$140.00 — NA — NA

Honors College — See Below

Lundquist College of Business (majors) — \$179.00 — \$700.00 (Masters of

Accounting — NA

Lundquist College of Business (pre-majors) — \$67.00

School of Music — \$112.00 — \$117.00 — NA

College of Education (includes pre-majors) — \$56.00 — \$200.00 — NA

Honors College Fee Structure per term: first-year students \$1,000, second-year students \$400.00, third-year students \$250, and fourth-year students \$250.00

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & cf. 6-15-78; HEB 5-1979, f. & cf. 7-20-79; HEB 11-1979, f. & cf. 8-

22-79; HEB 1-1980, f. & cf. 4-18-80; HEB 7-1980, f. & cf. 6-18-80; HEB 11-1980, f. & cf.

8-20-80; HEB 4-1981(Temp), f. 6-30-81, cf. 7-1-81; HEB 5-1981, f. & cf. 8-18-81; HEB 15-

1981(Temp), f. & cf. 12-18-81; HEB 5-1982, f. & cf. 7-14-82; HEB 4-1983, f. & cf. 7-29-83;

HEB 4-1984, f. & cf. 6-20-84; HEB 5-1985, f. & cf. 8-12-85; HEB 12-1986, f. & cf. 7-30-

86; HEB 6-1987, f. & cf. 8-4-87; HEB 8-1988, f. & cf. 8-5-88; HEB 10-1988, f. & cf.

7-11-88; HEB 3-1989, f. & cf. 11-27-89; HEB 6-1989, f. & cf. 7-28-89; HEB

7-1990, f. & cf. 6-4-90; HEB 8-1990(Temp), f. & cf. 7-26-90; HEB 12-1990, f. & cf.

10-3-90; HEB 5-1991, f. & cf. 8-15-91; HEB 8-1992, f. & cf. 7-31-92; HEB

2-1993, f. & cf. 2-5-93; HEB 5-1993, f. & cf. 8-11-93; HEB 7-1994, f. & cf. 8-4-94;

HEB 3-1995, f. & cf. 8-1-95; HEB 3-1996, f. & cf. 8-8-96; HEB 5-1996, f. & cf.

8-12-96; HEB 3-1997, f. & cf. 7-24-97; OSSHE 4-1998, f. & cf. 7-22-

98; OSSHE 5-1998(Temp), f. & cf. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cf. 12-

23-98; OSSHE 3-1999(Temp), f. & cf. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cf.

9-16-99; OSSHE 3-2000, f. & cf. 7-26-00; OSSHE 4-2001, f. & cf. 7-27-

01; OSSHE 8-2002, f. & cf. 8-14-02; OSSHE 2-2003, f. & cf. 8-4-03; OSSHE 6-

2004, f. & cf. 6-15-04; OSSHE 2-2006, f. & cf. 6-8-06; OSSHE 3-2007, f. & cf. 6-21-07; OSSHE 6-2008(Temp), f. & cf. 3-20-08 thru 9-1-08; OSSHE 8-2008, f. & cf. 6-17-08; OSSHE 2-2009(Temp), f. & cf. 2-20-09 thru 6-30-09; OSSHE 4-2009(Temp), f. & cf. 3-13-09 thru 6-30-09; Administrative correction 7-21-09; OSSHE 5-2009(Temp), f. & cf. 7-20-09 thru 1-8-10; OSSHE 6-2009(Temp), f. & cf. 10-1-09 thru 1-8-10

Rule Caption: Implements guidelines permitting fingerprint-based criminal records checks for prospective OUS employees, contractors, and volunteers.

Adm. Order No.: OSSHE 7-2009

Filed with Sec. of State: 10-12-2009

Certified to be Effective: 10-12-09

Notice Publication Date: 9-1-2009

Rules Adopted: 580-023-0106, 580-023-0111, 580-023-0116, 580-023-0121, 580-023-0126, 580-023-0131, 580-023-0136, 580-023-0141, 580-023-0146, 580-023-0151

Rules Repealed: 580-023-0005, 580-023-0010, 580-023-0015, 580-023-0020, 580-023-0025, 580-023-0030, 580-023-0035, 580-023-0040, 580-023-0045, 580-023-0050, 580-023-0055, 580-023-0060, 580-023-0065

Subject: Authorizes the Chancellor's Office and OUS institutions to conduct criminal records checks on subject individuals who seek to provide services as an employee, contractor, vendor or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-023-0106

Purpose

(1) This rule applies retroactively to applications submitted on or after January 1, 2008. The Oregon University System is committed to protecting the security, safety, and health of faculty, staff, students, and others as well as safeguarding the assets and resources of OUS and each of its universities. To meet these objectives, the Board delegates to the Chancellor and president of each university electing to conduct criminal records checks responsibility for adopting rules governing the conduct of criminal records checks.

(2) Any rules adopted under subsection (1) must be consistent with OAR ch. 580, division 023, applicable Oregon state laws, and federal law.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cf. 10-12-09

580-023-0111

Definitions

(1) "Criminal records check" means a fingerprint-based criminal records check.

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere (no contest), or any determination of guilt.

(3) "Fingerprint-based criminal records check" means a criminal records check using a subject individual's fingerprints. Fingerprint-based criminal records checks may only be requested from the Oregon State Police for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the Chancellor's Office or OUS institutions may request that the Oregon State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(4) "OUS institution" means an institution of higher education in the state of Oregon under the authority of the Oregon State Board of Higher Education.

(5) "Subject individual" means a person from whom the Chancellor's Office or OUS institution may require criminal records checks as a condition to provide services as a contractor, employee, or volunteer. Subject individuals include persons currently serving as a contractor, employee, or volunteer, or persons who seek appointment as an employee, volunteer, or engagement as a contractor to a position that is designated as a critical or security-sensitive position. The categories of critical or security-sensitive positions for which the Chancellor's Office and OUS institutions may conduct criminal records checks include those in which the person:

(a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;

(b) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

ADMINISTRATIVE RULES

(c) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(d) Has access to property where chemicals, hazardous materials and other items controlled by state or federal laws or regulations are located;

(e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;

(f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or

(g) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0116

Criminal Records Check Process

(1) The Chancellor's Office or an OUS institution may require the subject individual to complete a criminal records request form and provide any additional information necessary to complete the criminal records check in a reasonable period of time.

(2) The Chancellor's Office of an OUS institution may conduct, or request that the Oregon State Police conduct, a criminal records check, when:

(a) an individual meets the definition of "subject individual"; or

(b) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement.

(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimum qualification of the position. The fact that a subject individual may be approved as fit on the basis of a criminal records check does not guarantee the individual a position as an employee, contractor, or vendor.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0121

Criminal Records Check Notice to Applicants

Application forms and solicitations for contract services must give notice to any prospective employee, contractor, or volunteer if the position requires a criminal records check as defined by these rules.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0126

Confidentiality of Criminal Records Checks

Any information obtained in the criminal records check is confidential. The Chancellor's Office or OUS institutions must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Chancellor's Office or OUS institution, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0131

Refusal to Consent to Criminal Records Check and Incomplete Fitness Determination

(1) The Chancellor's Office and OUS institutions will close a fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual";

(b) The subject individual does not provide materials or information under OAR 580-023-0215(1);

(c) The Chancellor's Office or OUS institution cannot locate or contact the subject individual;

(d) The Chancellor's Office or the OUS institution determine that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer for a reason unrelated to the fitness determination process; or

(e) The position is no longer open.

(2) A subject individual does not have the right to a hearing under OAR 580-023-0146 to challenge the closing of an incomplete fitness determination.

(3) If a subject individual refuses to consent to a criminal records check, the Chancellor's Office or OUS institution shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted serv-

ices. A subject individual may not appeal any determination made on the basis of a refusal to consent.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0136

Fitness to Hold Position Based on Criminal Records Check

(1) The Chancellor's Office and OUS institutions must use these rules, and any rules adopted at the institutional level, to determine whether the subject individual is fit to hold a position, provide a service, or be employed based on the criminal records check obtained, including any additional information provided under OAR 580-023-0215(1), and on any false statement made regarding the subject individual's criminal history. In making the fitness determination, the Chancellor's Office or OUS institution must consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment of that indicate the making of a false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services or employment; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include, but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(2) Crimes Relevant to a Fitness Determination

(a) All felonies;

(b) All Class A misdemeanors;

(c) Any United States Military crime or international crime;

(d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection (2) pursuant to ORS 161.405, 161.435, or 161.450; and

(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection (2).

(3) Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(4) Notwithstanding subsections (2) and (3) of this rule or OAR 580-023-0200(2), an OUS institution may adopt rules setting forth which crimes will be considered relevant to a fitness determination.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0141

Notice of Adverse Fitness Determination Based on Criminal Records Check

The Chancellor's Office or OUS institution shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0146

Challenging a Fitness Determination

If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a hearing.

(1) The subject individual may appeal a final fitness determination made on the basis of a criminal records check by submitting a written request for a hearing to the address specified in the notice provided under OAR 580-023-0260 within fourteen (14) calendar days of the date in the notice. The Chancellor's Office or OUS institution may extend the time to appeal if the Chancellor's Office of OUS institution determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) Challenging Criminal Offender Information. A subject individual may not use the hearing process established by this rule to challenge the accuracy, completeness or lawfulness of information provided by the

ADMINISTRATIVE RULES

Oregon State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon State Police or the Federal Bureau of Investigation.

(3) The Chancellor's Office or OUS institution is entitled to rely on the criminal offender information supplied by the Oregon State Police, the Federal Bureau of Investigation or other entities until the Chancellor's Office or OUS institution is notified that the information has been changed or corrected.

(4) Any hearing under this rule is not open to the public.

(5) Remedy. The only remedy that may be awarded under this hearing process is a determination that the subject individual is fit. Under no circumstance shall the Chancellor's Office or OUS institution be required to place a subject individual in any position, nor shall the Chancellor's Office or OUS institution be required to accept services or enter into a contractual agreement with a subject individual.

(6) Hearing Process. Upon receiving valid notice under subsection (1) of this rule, the Chancellor or president of the university shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the Chancellor or president or his/her designee.

(a) Prehearing Conferences. Prior to the hearing, the hearing officer may, in its discretion, conduct one or more prehearing conferences to facilitate the conduct of and resolution of the case. The hearing officer may convene the conference on its own initiative or at a party's request.

(b) The purposes of a prehearing conference may include, but are not limited to the following:

(A) To facilitate discovery and to resolve disagreements about discovery;

(B) To identify, simplify, and clarify issues;

(C) To eliminate irrelevant issues;

(D) To obtain stipulations of fact;

(E) To provide the hearing officer and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(F) To authenticate documents;

(G) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(H) To discuss settlement or other resolution or partial resolution of the case.

(c) Conducting the Hearing. The hearing shall be conducted, subject to the discretion of the hearing officer, so as to include the following:

(A) The statement and evidence of the Chancellor's Office or OUS institution to support its action;

(B) The statement and evidence of the subject individual determined to be unfit to support its position;

(C) Any rebuttal evidence; and

(D) Any closing arguments.

(d) The hearing officer shall have the authority to question witnesses and set reasonable time limits for oral presentation. The hearing officer may exclude cumulative, repetitious, or immaterial matter.

(e) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the hearing officer.

(g) The hearing officer shall draft a proposed order for the consideration of the Chancellor or institution president, to include the following:

(A) Findings of fact;

(B) Conclusions of law;

(C) Order.

(h) Within twenty-one (21) calendar days of receiving the proposed order from the hearing officer, the Chancellor or institution president must:

(A) Adopt the proposed order as the final order for the case; or

(B) Amend the proposed order as the final order for the case.

(i) The final order from the Chancellor or institution president is final. The final order shall be delivered to the subject individual in writing, via certified mail.

(j) Notwithstanding OAR 580-023-0265, an OUS institution may adopt rules outlining the hearing process required to challenge a fitness determination.

(7) Appealing a fitness determination under section (1) of this rule, or challenging criminal offender information with the agency that provided the information, will not delay or postpone the Chancellor's Office or OUS institution's hiring process or employment decisions.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

580-023-0151

Fees

The Chancellor's Office or OUS institution may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Chancellor's Office or OUS institution by the Oregon State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 7-2009, f. & cert. ef. 10-12-09

Rule Caption: To ensure fairness and simplify the administration of the voluntary FTE reduction program.

Adm. Order No.: OSSHE 8-2009

Filed with Sec. of State: 10-12-2009

Certified to be Effective: 10-12-09

Notice Publication Date: 10-1-2009

Rules Adopted: 580-021-0026

Subject: During the period that any employee participates in a voluntary FTE (full time equivalent) reduction program authorized by OUS, leave accruals and other benefits administered under this division will be calculated based upon the employee's FTE immediately prior to program participation and will not be reduced to reflect the reduction in FTE caused by the employee's participation in the program.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-021-0026

Participation in a Voluntary FTE Reduction Program

During the period that any employee participates in a voluntary FTE reduction program authorized by OUS, leave accruals and other benefits administered under this division will be calculated based upon the employee's FTE immediately prior to program participation and will not be reduced to reflect the reduction in FTE caused by the employee's participation in the program.

Stat. Auth.: ORS 351.070

Stat. Implemented: ORS 351.070

Hist.: OSSHE 8-2009, f. & cert. ef. 10-12-09

Oregon University System, Oregon State University Chapter 576

Rule Caption: Regulations Governing the Use of Motor Vehicles—expansion of towing authority.

Adm. Order No.: OSU 6-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 9-1-2009

Rules Amended: 576-030-0050

Subject: The proposed revisions to the Regulations Governing the Use of Motor Vehicles provide authorization to tow vehicles parked in reserved parking spaces without authorization. The purpose of this amendment is to facilitate the swift removal of vehicles parked in parking spaces reserved for persons with disabilities; however, the authority to tow vehicles parked in reserved parking spaces may also be exercised to remove vehicles parked in parking spaces reserved for other purposes.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-030-0050

Penalties for Offenses

(1) Fines in an amount set out in OSU's List of Fees and Charges, pursuant to OAR 576-010-0000 will be imposed for:

(a) Failure to display a Parking Permit on any Vehicle parked on campus in violation of these regulations or Signage.

(b) Counterfeiting, altering, defacing, or giving false information in an application or hearing or for misuse of any Parking Permit. Such a violation may result in the revocation of the Parking Permit or campus parking privileges in addition to a fine.

(c) Parking in a "No Parking" area.

(d) Parking in an area not authorized by the Parking Permit on display in the Vehicle.

(e) Unauthorized parking in a Disability space or van access area as designated by Signage.

ADMINISTRATIVE RULES

(f) Parking on a lawn, sidewalk, crosswalk, bike lane, driving lane or any other area on campus not designated by Signage as a parking area.

(g) Parking overtime at single or multi-space meters or posted timed parking areas.

(h) Living in Vehicles.

(i) Parking in posted fire lanes.

(2) Any other offenses not specified herein which are violations of the motor vehicle laws and ordinances of the State of Oregon, City of Corvallis or OSU, may be prosecuted in the appropriate state or municipal courts.

(3) A Vehicle may be booted or towed and impounded, and is subject to towing and storage fees at the Registered Owner's expense in addition to fines if the Vehicle is a traffic hazard, a hazard to pedestrians or to public safety, if it impedes University operations, or if it is parked without authorization in a reserved parking space.

(4) In the event three or more unpaid citations are associated with a Vehicle, TAPS may do any or a combination of the following:

(a) Terminate the Vehicle Parking Permit without a refund;

(b) Revoke campus parking privileges;

(c) Boot the Vehicle until all citation fines have been paid. Booted

Vehicles are subject to tow after seven business days.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1987, f. & ef. 6-11-87; OSU 2-1990, f. 6-15-90, cert. ef. 10-1-90; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 2-1994, f. & cert. ef. 6-8-94; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 5-1996, f. & cert. ef. 6-21-96; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09; OSU 6-2009, f. & cert. ef. 10-15-09

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**Oregon University System,
Southern Oregon University
Chapter 573**

Rule Caption: Parking Enforcement and Appeals.

Adm. Order No.: SOU 3-2009

Filed with Sec. of State: 10-1-2009

Certified to be Effective: 10-4-09

Notice Publication Date: 5-1-2008

Rules Amended: 573-050-0025, 573-050-0040, 573-050-0045

Subject: This amendment in division 50 removes/modifies outdated language in the rule and increases permit fees.

Rules Coordinator: Treasa Sprague—(541) 552-6319

573-050-0025

Vehicle Permits and Parking Areas

(1)(a) All vehicles operated on the University campus are required to display a permit when the posted signs require a permit. Faculty/Staff lots are posted yellow; Student Commuter lots are posted green; Resident Student lots are posted red. Parking Services can be contacted for the location where other types of permits may be obtained. Failure to display a permit may result in the issuance of a parking citation. Permits may be purchased during normal office hours at the Enrollment Services Center (ESC) located in Britt Hall. All permits are valid for the current academic year only, unless otherwise designated by Parking Services at the time of issuance; there are no open-ended permits.

(b) Permit is defined as any Parking Services sanctioned or issued permit. Examples include: decal, hangtag, guest, special, metered, temporary, courtesy*, media, or other placard or device issued or developed by Parking Services as needed to facilitate parking of vehicles on Southern Oregon University property. *(A courtesy permit refers to a Retiree, VIP, or a Volunteer.) Any misuse of these parking permits may cause them to be revoked.

(2) Parking permits and faculty/staff hangtags are serialized for use on specific vehicle(s) with a license plate designated by the purchaser at the time of purchase. Permits (decals) must be affixed outside to left-rear bumper, left-rear body, left-rear window, or rear-side window behind driver of the vehicle where visible. The adhesive on the back of the permit must be the attaching mechanism. Hangtags are to be hung from the rear-view mirror; serialized numbers facing out. Parking Services (at the Enrollment Services Center in Britt Hall) must be informed of changes in vehicles; re-registering the hangtags to the appropriate vehicle(s). If a vehicle is disposed of, the permit must be removed and returned to Parking Services.

(3) Parking permits may be purchased for the time period designated on the decals; generally the academic year. The academic year begins and ends in September. Parking permits purchased during the winter, spring, or summer terms are at a proportionately reduced rate.

(4) Faculty/Staff parking permits (or hangtags) will be sold to classified employees, graduate assistants, temporary employees who are half-time or more, and faculty. Faculty/staff employees working less than .50 FTE will be eligible for a permit at a reduced rate of one-half the cost of the permit. Hangtags are issued for a three-year period. Faculty/staff hangtags

are considered the first permit. They are not to be sold as a second permit. Vehicles displaying a Faculty/Staff permit (or hangtag) are authorized to park in designated Faculty/Staff (yellow) parking areas.

(5) Student Commuter parking permits will be sold to students who live off campus and wish to bring vehicles on campus. Vehicles displaying a Student Commuter permit are authorized to park in designated Student Commuter (green) parking areas only.

(6) Residence Hall parking permits will be sold to students living in campus residence halls. Vehicles displaying a Residence Hall permit are authorized to park in designated Residence Hall (red) parking areas only.

(7) Second parking permits may be purchased for an additional vehicle if more than one vehicle will be brought to campus. The purchaser must also be the registered owner of the vehicle. Only one permit (the original or second permit) is valid in permit-required lots at a time. If both first and second permits of one person are parked in permit-required lots at the same time, both vehicles will be cited for improper permits. A second permit may not be purchased for a car if the first permit is for a vehicle used in a Residence Hall Parking area, a motorcycle, moped, or scooter.

(8) A replacement permit may be obtained for a damaged, unreadable permit or for a replacement vehicle. The replacement vehicle must be registered to the same owner as the original vehicle. The permit which is being replaced will be considered void and should be returned to Parking Services (at the Enrollment Services Center in Britt Hall) upon purchase of a replacement permit.

(9) Guest permits are available at Parking Services and departmental offices. Guest permits are issued for one day only. Guest permits may not be used in timed or visitor pay meter lots. Guest permits will not be valid if issued to University employees, faculty, students, buses, or vehicles displaying a valid parking permit. Guest permits will not be valid and a citation may be issued for failure to display permit if any of the following information is illegible or omitted:

(a) Both license number and make or color of vehicle;

(b) Date that permit is valid;

(c) Name and telephone extension of departmental personnel issuing the permit.

(10) Carpool parking permits will be sold for the entire school year only if the carpool meets the following criteria:

(a) The carpool must contain at least two individuals with cars, but no more than six.

(b) No more than one vehicle from the carpool is allowed on campus at a particular time. They may not purchase a second permit. However, replacement permits are available if requirements as stated in the regulations for replacement permits are met.

(11) Temporary replacement vehicles for a vehicle with a permit may be brought on campus after obtaining a Substitute Vehicle parking permit from Parking Services. This permit is used for temporary situations of short duration (30 days or less).

(12) Special permits may be approved by Parking Services on an as-needed basis.

(13) Weekly or Daily permits, for those persons who use the campus parking facilities only intermittently, may be purchased at Parking Services (at the Enrollment Services Center in Britt Hall) or may be available in departments that have purchased them for use in special programs on campus.

(14) Courtesy (purple), parking permits are available to personnel retiring with ten years of service or more. Courtesy (purple), permits are valid for all retirees only, not to be used by family or friends. Any Courtesy (purple) permits may not be used while in an employed status. Volunteer board members, designated governmental officials, media representatives, and such others as deemed necessary by the President will have dated and numbered VIP hangtags to facilitate their interaction with the institution. Media representatives will receive dated and numbered hangtags.

(15) Vendor or Volunteer permits may be obtained through Parking Services.

(a) Commercial permits will be sold to commercial vendors, including vending machine, video game, outside maintenance, travel, office supply, and food vendor companies, and contractors' employees. Companies or departments can purchase a long-term permit for six months or a year. Short-term permits are available for one day or one month. Companies or departments will be billed for the permits by Parking Services.

(b) Volunteer parking permits will be sold to departments for use by volunteers. Departments can purchase long-term permits for one year, short-term permits for less than one month or term-by-term. These permits will be billed by Parking Services to the issuing department.

(16) Disabled parking is in accordance with ORS 811.602, 811.605, 811.606, 811.607, and 811.615. Only vehicles displaying a disabled placard or license plate issued and registered at the Motor Vehicles Division (as designated in Rule 573-050-0020) will be allowed to park in spaces posted for use by disabled persons. These vehicles must also display an SOU permit or meter permit unless otherwise posted.

ADMINISTRATIVE RULES

(a) Temporary placards are issued by the Motor Vehicle Division for persons with qualifying temporary disabilities (as provided by ORS 811.606 and 811.640). The requirements for parking on campus apply for all disabled parking listed above.

(b) Vehicles with an appropriate disabled placard or license plate and SOU permit may park in any lot or space without incurring citations, except where the lot or space is designated for parking limited to 60 minutes or less in a parking space reserved for other vehicles, or visitor-pay meter lots.

(17) Refunds will be given for student/staff parking permits for unused academic terms, except summer term. No refunds will be given for year permits that are not used summer term. Refunds will be given upon return of the permit or fragments thereof showing the permit numbers and expiration date. Refund schedules are on file at ESC.

(18) Vehicles displaying valid permits are not guaranteed a parking space on the campus.

(19) Vehicles displaying valid permits are not exempt from timed parking restrictions. Vehicles may park in a timed space or in a metered parking space but must comply with the time limits or metered fee payment of the specific space.

(20) Mopeds, scooters, & motorcycles must have a motorcycle permit and be parked in a motorcycle parking space. If a motorcycle has a full price vehicle parking permit they may park in a vehicle space that corresponds with the color of the permit. Motorcycles may park in timed spaces that are open to the public. Mopeds, scooters, and motorcycles parked in bicycle racks and on the campus grounds will be cited for improper parking. Vehicles parked inside University buildings will be towed at the owner's expense.

(21) If a faculty/staff hangtag is the first legal permit, and a motorcycle is the second vehicle, a decal may be purchased at second decal rate.

(22) If, during the process of issuing a parking citation, the driver of the violating vehicle drives away from the scene, thus preventing the issuing agent from placing the citation on the vehicle, the citation will be entered into the parking system as if it had been placed on the vehicle. When a driver leaves the scene during the issuing process, this will be considered "constructive notice" of the citation.

(23) Vehicles parked facing in the direction against one-way arrows will be cited for improper parking. Vehicles parked on the side of street opposing direction of usual traffic flow will be cited for improper parking.

(24) Vehicles using parking lots marked "Visitor Pay Parking" are required to display the serialized meter permit purchased at each lot of this type. Failure to display the meter permit in plain view on the left side of the vehicle's dashboard will result in a citation for failure to display a permit. There is no grace period to obtain change for the permit machine.

(25) Loading Zone spaces are provided for loading and unloading purposes not to exceed 30 minutes unless by prior approval through Parking Services.

(26) Buses may park where directed by Parking Services.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOCS 5, f. & ef. 9-2-76; SOCS 4-1979, f. 8-8-79, ef. 9-1-79; SOCS 5-1980, f. & ef. 8-19-80; SOCS 3-1981, f. & ef. 9-9-81; SOCS 4-1982, f. & ef. 7-28-82; SOCS 1-1983, f. & ef. 1-3-83; SOCS 6-1983, f. & ef. 8-23-83; SOCS 2-1984, f. & ef. 8-14-84; SOCS 8-1985, f. & ef. 8-12-85; SOCS 3-1986, f. & ef. 7-22-86; SOCS 5-1987, f. & ef. 9-8-87; SOCS 4-1989, f. & ef. 9-19-89; SOCS 3-1990, f. & ef. 5-31-90; SOCS 4-1991, f. & ef. 6-11-91; SOCS 2-1994, f. & ef. 6-10-94; SOCS 2-1996, f. & ef. 8-2-96; SOU 2-1997, f. & ef. 8-26-97; SOU 2-1998, f. & ef. 7-16-98; SOU 1-1999, f. & ef. 5-7-99; SOU 2-2000, f. & ef. 6-9-00; SOU 1-2001, f. & ef. 4-4-01; SOU 2-2002, f. & ef. 6-28-02; SOU 1-2004, f. & ef. 4-5-04; SOU 3-2006, f. & ef. 6-29-06; SOU 3-2007, f. & ef. 7-23-07; SOU 3-2009, f. 10-1-09, cert. ef. 10-4-09

573-050-0040

Penalties for Offenses

Multiple violations may be cited for a single incident:

- (1) Failure to display valid permit: Fine \$30.
- (2) Fraudulent display of permit: Fine \$85.
- (3) Permit not affixed: Fine \$25.
- (4) Improper permit: Fine \$20.
- (5) Parking in disabled space: Maximum fine \$300.
- (6) Overtime parking: Fine \$25.
- (7) Blocking wheel chair ramp: Fine \$100.
- (8) Improper parking: Fine \$30.
- (9) Parking in reserved space: Fine \$75.
- (10) Blocking traffic: Fine \$50.
- (11) Boot vehicle: Fine \$25.
- (12) Abandoning a vehicle: Fine \$100.

(13) A vehicle may be towed off campus property and impounded at the owner's expense (including additional fines) under the following circumstances:

(a) Any vehicle is causing imminent danger to people or University property;

(b) Any vehicle is without a valid yellow, green, or red parking permit and has records of \$100 or more in unpaid citations (may be towed or booted);

(c) Any vehicle is left parked or standing in an area not normally used for parking, including parking on a sidewalk or on grass;

(d) Any vehicle is improperly parked in a disabled space;

(e) Any vehicle is blocking traffic another vehicle, any door or fire exit, access to any trash container, fire lane, crosswalk, driveway, or it poses any other safety hazard (may also be cited for blocking traffic);

(f) Any vehicle is determined to be abandoned on University property.

(14) Vehicles in timed parking areas may be cited when their time parked exceeds the posted time limit. The vehicle may be cited again after double the posted time limit is exceeded.

EXAMPLE: In a 30-minute parking area, a vehicle may be cited after 30 minutes; again after a total of 90 minutes (including the first 30 minutes); again after 150 minutes and so forth. Timed parking is defined as "limited duration" meaning one time parking per timed lot during a 24 hour period. Re-parking in the same lot constitutes continuous parking and the vehicle will be cited.

(15) Vehicles parked in permit-required parking areas may be cited every eight hours, not to exceed three citations every 24 hours.

Stat. Auth.: ORS 351.070

Stat. Implemented: ORS 352.360

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOCS 5, f. & ef. 9-2-76; SOCS 4-1979, f. 8-8-79, ef. 9-1-79; SOCS 5-1980, f. & ef. 8-19-80; SOCS 4-1982, f. & ef. 7-28-82; SOCS 6-1983, f. & ef. 8-23-83; SOCS 2-1984, f. & ef. 8-14-84; SOCS 8-1985, f. & ef. 8-12-85; SOCS 3-1986, f. & ef. 7-22-86; SOCS 5-1987, f. & ef. 9-8-87; SOCS 4-1989, f. & ef. 9-19-89; SOCS 3-1990, f. & ef. 5-31-90; SOCS 4-1991, f. & ef. 6-11-91; SOCS 2-1994, f. & ef. 6-10-94; SOCS 2-1996, f. & ef. 8-2-96; SOU 2-1997, f. & ef. 8-26-97; SOU 2-1998, f. & ef. 7-16-98; SOU 1-1999, f. & ef. 5-7-99; SOU 1-2001, f. & ef. 4-4-01; SOU 2-2002, f. & ef. 6-28-02; SOU 1-2004, f. & ef. 4-5-04; SOU 3-2006, f. & ef. 6-29-06; SOU 3-2007, f. & ef. 7-23-07; SOU 3-2009, f. 10-1-09, cert. ef. 10-4-09

573-050-0045

Enforcement and Appeals

(1) Campus regulations are in effect 24 hours a day, seven days a week, except when parking permits are not required (as stated in OAR 573-050-0030).

(2) Tow-away zones will be enforced 24 hours a day, seven days a week.

(3) All penalties prescribed in OAR 573-050-0040 will be administratively enforced by Southern Oregon University. Violators will receive a parking citation of offense, together with the scheduled fine for said violation, in accordance with the penalties set forth in OAR 573-050-0040.

(4) After receipt of a parking citation, the individual must, within seven calendar days of the date of the citation, file a request for a hearing before the TAB or pay the appropriate fine.

(5) Any University personnel or students issuing a Guest permit may contact Parking Services (at the Enrollment Services Center in Britt Hall) to transfer responsibility for citations received by their guests to themselves. This in no way implies the fine will be suspended, only that the guest will not be billed or pursued to pay the fine. The University personnel or students will be responsible and have all avenues of appeal available as if the citation were issued to them personally.

(6) Any person wishing to take a case before the TAB must prepare a Petition for Appeal of Traffic Violation for a hearing indicating why the citation should be adjudicated. The petition form, available from Parking Services, must be completed and returned to the office within seven calendar days of the citation date.

(7) A person appealing the citation may appear before the TAB to present his/her case. If the appellant does not wish to appear in person for reasons he/she may specify, the written appeal will be reviewed by the TAB, which shall render judgment. The appellant shall be notified by mail or email of the decision of the TAB.

(8) The party appealing the citation may have legal counsel to present his/her case to the TAB.

(9) In adjudicating appeals, the TAB shall have full authority to do the following:

- (a) Dismiss the violations;
- (b) Find the individual not guilty of the charges of the citation;
- (c) Find the individual guilty of the violation and either imposes the fine stipulated in these rules or impose a lesser fine;
- (d) Enter a finding of guilty without imposing any fine; issue a reprimand or warning; or impose a fine.

(10) The decision of the TAB may be appealed in writing to the Transportation Planning and Parking Committee (TPPC) by obtaining, completing, and filing a second appeal form with Parking Services within ten calendar days following the decision of the TAB. Parking Services will also have an opportunity to submit a written statement concerning the issuance of the citation.

(11) Once the TAB makes the decision on an appeal for a parking citation, the appellant will have ten calendar days from the decision date to appeal the TAB's decision further via the TPPC. After a decision has been made on the second appeal, the appellant has ten calendar days to pay any amount owed before it is charged to his/her account.

ADMINISTRATIVE RULES

(12) The student's right to register for classes may be denied if any fines owing under these regulations remain unpaid.

(13) A student who fails to pay the University for any outstanding fine will have the fine charged to his/her account. Non-students who fail to pay any outstanding fines may be subjected to University collection policies and practices of up to and including assignment to an outside collection agency.

(14) Students leaving or graduating from the University will continue to be responsible for parking fines owed to the University, as long as such fines can be identified as belonging to the student(s) responsible.

(15) A faculty or staff member who fails to pay the University for any outstanding parking fines may have the fine deducted from his/her payroll check 30 days after written notice of the outstanding fines.

(16) Vehicles having outstanding parking fines may be denied issuance of a replacement or new parking decal.

(17) Fee Schedule:

(a) Carpool, sold for entire school year only: \$78 each pool.

(b) Faculty and staff decal for first-registered vehicle: Fall term through summer term: \$119.

(c) Faculty/staff hangtags are issued for a three-year period: \$357.

(A) This fee is for a one-time purchase.

(B) Payroll deduction is available, plus applicable increases in permit fees.

(d) Student Commuter and Residence Hall decal for first-registered vehicle for only: Fall term through summer term: \$112.

(e) Motorcycles, mopeds, and scooters, one vehicle only:

(A) Fall term through summer term: \$46

(B) If motorcycles park in auto spaces, the fee is commensurate with full fee for the area.

(f) Second Vehicle permit: \$24.

(A) Second permits will be sold only to Faculty/Staff and Commuter permit holders. Red permit holders may not purchase a second permit.

(B) One second permit is allowed for each full-price (first-registered vehicle) permit purchased.

(C) Replacement permits can be obtained only in accordance with OAR 573-050-0025(8).

(g) Replacement permits or hangtags: \$24.

(h) Lost/stolen permits: \$20.

(i) Departmental Reserved Parking spaces (nonrefundable): \$100 over and above price for regular parking permit and a \$50 fee for each subsequent sign-change after a sign is posted.

(j) Commercial permit, each vehicle:

(A) Long-term, twelve months: \$156.

(B) Long-term, six months: \$92.

(C) Short-term, one month: \$24.

(D) Short-term, daily: \$8.

(k) Weekly parking permits (for red and green lots only): \$24 per week (available at Housing, and Parking Services).

(l) Daily parking permits (for red and green lots only): \$8 per day (available at Housing, and Parking Services).

(m) Evening and weekend parking in designated lots: \$1.

(n) Visitor pay parking in specified lots: \$1 per hour (lot 12, and lot 29; in lot 1, pay \$0.25 per hour). Lots 27, 30, 32, are \$1.00 per visit after 6 PM and weekends.

(o) Volunteer permit:

(A) Volunteer, each vehicle, long-term, one year: \$5

(B) Volunteer, each vehicle, short-term, less than one month: \$1.

(p) Handling charges:

(A) Deducting fines from payroll check: \$5.

(B) Out-of-state Department of Motor Vehicles research fee: \$5.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 4-1982, f. & ef. 7-28-82; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 3-2006, f. & cert. ef. 6-29-06; SOU 3-2007, f. & cert. ef. 7-23-07; SOU 5-2008, f. 6-4-08, cert. ef. 6-5-08; SOU 3-2009, f. 10-1-09, cert. ef. 10-4-09

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Parks and Recreation Department Chapter 736

Rule Caption: Historic Preservation Officer rules being amended to incorporate changes for special assessment of historical properties.

Adm. Order No.: PRD 14-2009(Temp)

Filed with Sec. of State: 9-28-2009

Certified to be Effective: 9-28-09 thru 3-26-10

Notice Publication Date:

Rules Adopted: 736-050-0112

Rules Amended: 736-050-0001, 736-050-0100, 736-050-0105, 736-050-0120, 736-050-0125, 736-050-0135, 736-050-0140

Rules Suspended: 736-050-0002, 736-050-0005, 736-050-0110, 736-050-0115, 736-050-0130, 736-050-0150

Subject: The rules governing the process for applying for and being granted a special assessment of historic property are being amended to streamline the procedures in accordance with the new provision of Enrolled House Bill 192, 7th Legislative. Those who applied prior to September 28, 2009 will be processed and accountable for requirements under the prior rules. Those who applied on September 28, 2009 or after will be processed and accountable for new requirements as covered in the amended rules.

Rules Coordinator: Joyce Merritt—(503) 986-0756

736-050-0001

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the State Historic Preservation Officer in accordance with ORS 358.545.

(2) Purpose: These rules clarify the statutory requirement for participation in the Special Assessment of Historic Property program as provided in ORS 358.480 to 358.565.

(3) Policy: One of the goals of the State Historic Preservation Officer is to maintain, preserve and rehabilitate properties of Oregon historical significance through historic preservation incentive programs, thereby creating a positive partnership between the public good and private property that promotes economic development, tourism, energy and resource conservation, neighborhood, downtown, and rural revitalization, efficient use of public infrastructure, and civic pride in our shared historical and cultural foundations.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: HPO 2, f. & ef. 9-10-76; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0002

Notice of Proposed Rules

Prior to the adoption, amendment, or repeal of any permanent rule, the State Historic Preservation Officer shall give notice of the intended action:

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

(2) By mailing a copy of the notice to persons on the State Historic Preservation Officer's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule; and

(3) By mailing a copy of the notice to the legislators specified in ORS 133.335(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.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(4)

Hist.: HPO 2, f. & ef. 9-10-76; PR 2-1992, f. & cert. ef. 5-1-92; PR 13-1994, f. & cert. ef. 12-5-94; PRD 9-2008, f. & cert. ef. 10-15-08; Suspended by PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0005

Model Rules of Procedure

The State Historic Preservation Officer hereby adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective October 3, 2001.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or State Parks and Recreation Department.]

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 183.341(1)

Hist.: HPO 1-1978, f. & ef. 4-26-78; PR 1-1984, f. & ef. 1-6-84; PR 4-1986, f. & ef. 4-28-86; PR 4-1988, f. & cert. ef. 8-22-88; PR 2-1992, f. & cert. ef. 5-1-92; PR 13-1994, f. & cert. ef. 12-5-94; PR 1-1996, f. & cert. ef. 1-5-96; PRD 5-1998, f. & cert. ef. 4-15-98; PRD 2-2002, f. & cert. ef. 1-15-2002; Suspended by PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0100

Special Assessment of Historic Property

Oregon Revised Statutes 358.480 to 358.545 provide the process for applying for a special assessment of historic property.

Stat. Auth.: ORS 358

Stats. Implemented: ORS 358.545

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

ADMINISTRATIVE RULES

736-050-0105

Definitions

As used in OAR 736-050-0100 through 736-050-0150, unless the context requires otherwise:

(1) "Continuing Qualification Review" means a review of a property special assessment by SHPO in response to a request by a county assessor, local landmark commission or governing body to determine if the property continues to qualify for a special assessment.

(2) "National Register" means the National Register of Historic Places maintained by the United States Department of the Interior.

(3) "Preservation Plan" is defined in ORS 358.480 (16).

(4) "SHPO" means the State Historic Preservation Officer appointed by the Governor pursuant to ORS 358.565 or the State Historic Preservation Office, depending on the context.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.545

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0110

Application and Reapplication for Special Assessment

(1) An owner who desires a first term of Special Assessment shall submit a complete application on forms supplied by the State Historic Preservation Office (SHPO). An owner who desires an additional term of Special Assessment shall submit a complete reapplication on forms supplied by the SHPO. The application or reapplication must:

(a) Be received and acknowledged in writing as complete by the SHPO during the calendar year preceding the first tax year for which classification and special assessment as historic property is desired. Applications and reapplications are accepted and acknowledged in writing only.

(b) Include documentation from the applicable County Assessor of the subject property's current assessed and real market values. If an application is for only part of a property listed in the assessor's rolls, or if a total property value is to be divided upon approval of an application, an owner must request the county assessor to provide the assessed value of that part of the property that is subject to the application. In this case the assessor must initial the statement of assessed value on the application/affidavit form, or provide a letter that states the assessed value of the property that is subject to the application. In any case, an application must contain or be accompanied by written information or other documents that enable an owner, the assessor, the HARC and the SHPO to clearly understand the extent and current assessed value of the property that is subject to the application;

(c) Include an application fee of one-third of one percent (.0033) of the real market value of the property that is the subject to of the application. The value to be used when computing the fee is the current real market value of land and improvements combined, as determined by the County Assessor.

EXAMPLE: The fee for a property with a real market value of \$30,000 for land and \$70,000 for improvements would be: \$100,000 X .0033 = \$333.00. The fee must be paid by certified check or money order made payable to the Oregon Parks and Recreation Department;

(d) Include a reasonably accurate plan drawing of all floors, and labeled, archivally stable color print images (no Polaroid photographs) of each building or landscape that is a subject of the application. The images must clearly show the physical condition of each exterior elevation, and complete views of each historically significant interior spaces, rooms or features of each building or landscape that is a subject of the application. The SHPO shall make the final determination of a property's historic significance. If an owner has questions about historic significance, the SHPO should be consulted prior to application or reapplication.

(e) Include a Preservation Plan as described in OAR 736-050-0150 of these rules; Forms and instructions for completing Preservation Plans, and completed examples, are available from the SHPO or online at: www.hcd.state.or.us.

(f) For a reapplication of a commercial property, include a Renovation Plan as described under OAR 736-050-0150. Instructions for completing Renovation Plans and a completed example are available from the SHPO or online at: www.hcd.state.or.us.

(g) Include an affidavit on a form provided by the SHPO to be read and signed by the applicant testifying to the fact that applicant has read and understands the responsibilities and requirements of participation in the program, and consents to providing access to and viewing of the property, interior and exterior, by the SHPO or SHPO staff.

(h) If a reapplication for residential property, provide evidence that the local jurisdiction has adopted an ordinance or resolution supporting an additional period of special assessment for same within the jurisdiction.

(2) The special assessment applies to all of the property that is described in an application, including all significant historic buildings, landscape features, and outbuildings. The SHPO shall make the final deter-

mination of a property's historic significance. If an owner desires part of a property not to be designated historic and specially assessed, the owner must so state in the application. If approved by the SHPO, this consideration will be reflected in the county assessor's appraisal of the property.

(3) An owner whose property is not yet listed in the National Register but that has been recommended for listing by the State Advisory Committee on Historic Preservation may make an application for special assessment in the calendar year preceding the tax year the owner wishes the special assessment to begin. If the property is not listed in the National Register by September 15 of the year for which special assessment is first desired, the application shall be considered an application submitted and acknowledged for the tax year next beginning after the date the property is actually listed.

(4) An application or reapplication not denied on or before September 15 of the year for which special assessment is first desired shall be deemed approved, and the property that is the subject of the application shall be considered to be historic property that qualifies under ORS 358.480 to 358.545.

Stat. Auth.: ORS 358.485

Stats. Implemented: ORS 358.545

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; Suspended by PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0112

Requirement for Owner Expenditure

Under ORS 358.487(2)(a) the 10% expenditure requirement can include the value of donated materials, labor and/or services

Stat. Auth.: ORS 183, 358 & SB 192 (2009)

Stats. Implemented: ORS 183.341 & 358

Hist.: PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0115

Acceptance and Review of Special Assessment Applications

(1) Within 15 working days of receipt of an application or reapplication for special assessment, the SHPO shall determine if the subject property qualifies as "historic property" as described in OAR 736-050-0105(5) and if the application is complete. The SHPO staff shall return applications, including fees, for properties that do not qualify as historic property. The SHPO staff shall return incomplete or inaccurate applications, including fees, or may request additional or corrected information if the application is substantially accurate and complete. Upon determination that the subject property qualifies as historic property, and that the application is complete, the SHPO shall acknowledge its acceptance to the applicant in writing, and forward copies of the application to the applicable county assessor and governing body. The date of the SHPO acceptance letter shall be deemed the date of the application for purposes of this rule. No fees shall be returned once an application has been accepted by the SHPO.

(2) The SHPO shall consider recommendations of the county assessor relating to accuracy and completeness of property description and other matters within the county assessor's expertise in determining whether a property qualifies for special assessment.

(3) The SHPO shall consider the governing body's recommendations relating to public benefit when determining whether a property qualifies for special assessment. "Public benefit" recommendations should relate to the historic preservation element, if any, of the governing body's Comprehensive Plan and to the policy statement found in ORS 358.475.

(4) Following acceptance of an application in writing, the SHPO staff shall review it to determine whether it meets the criteria for approval in section (9) of this rule.

(5) If the SHPO does not receive a recommendation from the county assessor, or the governing body by the end of the business day on the 30th calendar day after the date of the SHPO's cover letter forwarding an application to them, the application shall be considered recommended for approval by those entities.

(6) Properties within the boundaries of an historic district may or may not have the potential to contribute to the historical character of the district. For example, "contributing" properties, as designated in the original nomination document, may have been so altered prior to an application for special assessment as to no longer convey historic character and with "non-contributing" rankings may nonetheless possess the potential to contribute to the district's historic character. Therefore, before accepting an application for a property located in an historic district, the SHPO shall determine whether or not the property contributes, or has the potential to contribute, to the character of the district. The burden of proof is on the applicant. Recommendations from the applicable Landmarks Commission, if one exists in the local jurisdiction, shall be requested and considered before a this determination is made. Properties that have been determined by the SHPO not to contribute, or that lack the potential to contribute to the historical character of an historic district, shall not be eligible for special assessment.

(7) The SHPO may approve all or only part of a property described in an application for special assessment. In an application an owner must iden-

ADMINISTRATIVE RULES

tify the specific parcel of land to be certified for special assessment by plot number, assessor's tax lot number, a dimensioned plot plan, a metes and bounds description, or other accurate means of description. In rural areas, the SHPO may approve about one acre per building. (For example, a farmhouse, barn, and smoke-house listed in the National Register might receive special assessment for a three-acre parcel on which these buildings are located.) Exceptions to this policy will be made by the SHPO only when a larger parcel is needed to contain significant historic buildings and landscapes, or if exceptional circumstances are demonstrated.

(8) An owner of historic property applying for special assessment is entitled to any other exemption or special assessment provided by law. If the property has an existing exemption(s) or multiple exemptions are being considered at time of application, an owner shall consult with the county assessor's office to establish the historic property's assessed value and/or boundaries for purposes of determining an application value pursuant to OAR 736-050-0110(1)(b).

(9) In order to approve an application, the SHPO must find that:

(a) The treatment proposed in the Preservation and/or Renovation Plan(s) meets the applicable Secretary of the Interior's Standards for the Treatment of Historic Property;

(b) The combined rehabilitation, maintenance, and preservation proposed will result in a property that substantially conveys its historic character; and, for a Commercial Property reapplication, that the proposal constitutes a significant investment that promotes compliance with ADA requirements, seismic improvements, or energy conservation improvements to the property;

(c) The combined rehabilitation, maintenance, and preservation work items proposed will be completed in a timely manner.

(10) The SHPO may impose conditions and timelines on the approval of an application in order to bring it into conformance with the criteria listed in section (9) of this rule.

(11) The SHPO may deny an application or reapplication that does not meet the criteria listed in section (9) of this rule.

(12) The applicant may appeal any matter relating to an application for special assessment under the terms established in OAR 736-050-0140.

Stat. Auth.: ORS 358.545
Stats. Implemented: ORS 358.490 & 358.495
Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; Suspended by PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0120

Owner and SHPO Responsibilities

(1) An owner of specially-assessed property is responsible for maintaining the property in good condition. Noticeable deterioration of a property, or a failure to complete rehabilitation or other work required in a Preservation Plan during the time period designated, unless otherwise amended, may be sufficient cause for the SHPO to seek mandatory remedial action and/or to initiate removal of the property's special assessment pursuant to OAR 736-050-0135.

(2) An owner of specially assessed property is responsible for providing the SHPO with a current mailing address and other contact information.

(3) The SHPO shall monitor owner compliance with program requirements by requesting such information from owners as is directly related to matters set forth in ORS 358.475 to 358.545 or in these rules. If an owner does not respond to the request by providing the required information within the specified time, the SHPO may seek mandatory remedial action and/or initiate removal of the property's special assessment pursuant to OAR 736-050-0135.

(4) Participants who entered the program prior to September 28, 2009:

(a) Must submit Preservation Plan updates to the SHPO in the 5th, 10th and 14th year of the 15-year benefit period in lieu of the reporting schedule in ORS 358.543(1); and

(b) Are exempt from the requirement to submit a report by the end of the fifth year demonstrating compliance with the expenditure commitment under the Preservation Plan as described in ORS 358.487(2)(a).

Stat. Auth.: ORS 358.545
Stats. Implemented: ORS 358.575, 358.480, 358.535 & 358.545(1)
Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 2-2007, f. & cert. ef. 2-8-07; PRD 3-2007, f. & cert. ef. 4-13-07; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0125

Changes and Alterations to Properties Approved for Special Assessment

(1) Pursuant to ORS 358.565, the SHPO delegates special assessment application and design review approval authority to the Deputy State Historic Preservation Officer (DSHPO). The DSHPO shall rely on the expertise of qualified staff in making program decisions.

(2) Owners shall apply in writing on forms provided by the SHPO or the governing body, whichever is appropriate, for review and written approval before undertaking any work on specially-assessed property.

(3) Additional material may include photos, drawings, as well as product and work descriptions.

(4) A change permissible in one circumstance does not necessarily constitute justification or a precedent for a similar change in another circumstance. The SHPO shall evaluate proposed changes on a case-by-case basis.

(5) Governing bodies approved by the SHPO for conducting historic reviews must have:

(a) A historic preservation ordinance or historic design guidelines based on the historic rehabilitation standards, as defined in ORS 358.480(12); and

(b) Demonstrated expertise interpreting and implementing the historic rehabilitation standards.

Stat. Auth.: ORS 358.545
Stats. Implemented: ORS 358.545(2)
Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0130

New Construction

(1) Additions to specially-assessed property, otherwise meeting the definition of "new construction" in OAR 736-050-0105(9), may be determined not to be new construction for purpose of special assessment by the SHPO pursuant to section (2) of this rule.

(2) In order to determine new construction eligible for Special Assessment the SHPO must find:

(a) That the new construction accurately meets the definition(s) of restoration, reconstruction, or both in OAR 736-050-0105(23) and (24) respectively;

(b) That the new construction is required by the fire marshal or building official, to meet fire, life, safety, accessibility code requirements, or any combination thereof, and that the requirement cannot reasonably be accommodated within the existing structure;

(c) That the new construction meets the Standards in OAR 736-050-0125(4), and is used primarily for residential purposes (ORS 358.543(4)(a)(A)); or

(d) That the new construction meets the Standards in OAR 736-050-0125(5), and is used primarily for nonresidential purposes, and that when added to the total net rentable area of the existing historic property, is less than or equal to the total net rentable area of the property that existed prior to the new construction.

(3) New construction that does not conform to all of the Standards, or that is undertaken without prior SHPO approval may be sufficient cause for the SHPO to seek mandatory remedial action; to initiate removal of the property's special assessment pursuant to OAR 736-050-0135; or both.

Stat. Auth.: ORS 358.545
Stats. Implemented: ORS 358.543
Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; Suspended by PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0135

Removal of Special Assessments

(1) The SHPO may investigate a property's continued qualification for special assessment by its own initiative or at the request of other parties as described in ORS 358.509. SHPO may contact the property owner informally to determine the basic merits of the concerns.

(2) If changes to the property have been approved by the local governing body in accordance with ORS 358.543(4) and are part of the approved Preservation Plan, then SHPO cannot disqualify the property, and no further investigation will be pursued.

(3) If, in SHPO's opinion, further investigation is warranted, SHPO shall contact the property owner in a timely manner by certified letter to request a report as authorized by ORS 358.535, and, if deemed appropriate, a site inspection. The letter shall include:

- Property identification;
- Reason for request of information;
- Request for a detailed response; and
- Information on appeal process.

(4) The property owner must submit a written report to SHPO within 30 days of receipt of the letter addressing all of the issues outlined in the letter. Failure to respond or to address all of the issues may be grounds for disqualification of the property from special assessment.

(5) SHPO shall respond to the property owner's report within 30 days from one of the following determinations:

- Continues to qualify;

ADMINISTRATIVE RULES

(b) Continues to qualify with conditions. If the conditions are not met within the specified time, SHPO may initiate disqualification without further notice; or

(c) No longer qualifies.

(6) The determination by SHPO shall be in writing and shall be sent to the property owner, the county assessor, and the governing body.

(7) A property owner may appeal the SHPO's determination to the HARC (ORS 358.522) in accordance with the appeal process described in OAR 736-050-0140.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.509, 358.515 & 358.525

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0140

Appeal Process

(1) The Historic Assessment Review Committee (HARC) is the appeals body for all decisions made by the SHPO. The HARC will establish procedures for an appeal.

(2) An owner may appeal a ruling by requesting a contested case hearing pursuant to the provisions of ORS 183.413 to 183.425 and 183.440 to 183.470. An appeal must be filed no later than 30 calendar days after the date a decision is made by the HARC.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.545

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

736-050-0150

Preservation and Renovation Plans

(1) A Preservation Plan submitted to the SHPO as part of the application or reapplication process for special assessment shall be on forms supplied by the SHPO and include:

(a) Property location and ownership information;

(b) A written narrative that briefly describes any significant people and events associated with the property, and states the property's period of historic significance;

(c) A chronology of the property's development, significant modification, and use, e.g. dates of physical construction and modifications over time, if any, including any known change in use prior to the date of application. The narrative should be based on the historical record, first-hand knowledge, physical evidence, or professional analysis;

(d) A written description of the property's exterior and interior architectural and landscape features, and their condition; and

(e) A prioritized treatment plan with general cost estimates, and approximate timelines for completion.

(2) A summary of documentation from a nomination of a National Register property may be substituted in the application for items (a) through (c) if the nomination contains all of the information required in those items.

(3) A Renovation Plan submitted for commercial property to the SHPO as part of the reapplication process for special assessment shall be on forms supplied by the SHPO and include:

(a) A narrative and graphic description of at least one of the three work items described below. This information shall include a cost estimate and timelines for completion of the work item(s) that falls within the period of the special assessment benefit:

(A) Accessibility improvements meeting the requirements of the Americans With Disabilities Act (ADA). These are work items to implement the removal of architectural barriers, based on professional analysis as referenced in subsection (c) of this section. They can include the addition of ramps or devices to facilitate entrance/-exit; changes to door widths, floor elevations, bathroom or shower facilities; or other appropriate treatments that eliminate or mitigate architectural barriers. The cost of eliminating architectural barriers is not required to exceed those values cited in ORS 447.241.

(B) Seismic safety structural improvements. These are work items to improve the seismic performance or structural stability of a property, based on professional analysis as referenced in subsection (c) of this section, and that reduce the potential for heavy structural damage to a property or improve life/safety performance in the event of an earthquake. Generally, they include the addition of floor stiffening materials; devices to tie floor systems to exterior walls; vertical frames or walls in various materials to reduce the potential for shear or to strengthen areas that have high risk of collapse; base isolation systems; parapet bracing devices, vibration dampening systems, or other appropriate treatments.

(C) Energy conservation improvement measures. These are work items that improve a property's energy performance based on professional analysis as referenced in subsection (c) of this section, and can include: installation of new HVAC systems; rehabilitation of existing historic win-

dows to increase thermal efficiency; installation of various types of insulation systems and other appropriate treatments.

(b) All accessibility, seismic, and energy conservation measures contained in the Renovation Plan must meet the appropriate standards for access, seismic, and energy improvements as prescribed in the Oregon Structural Specialty Codes (OSSC), or other applicable codes for existing buildings.

(c) All ADA, seismic and energy conservation measures contained in the Renovation Plan shall be prioritized based on a comprehensive professional analysis of the building. The building's site shall also be considered in all analyses.

(4) For commercial property, the SHPO may allow an application for the federal investment tax credit (National Park Service Form #10-168) for the rehabilitation of the property to be substituted for a Preservation Plan, a Renovation Plan, or both provided the application calls for significant investment in the property and otherwise meets the requirements of this rule and OAR 736-050-0150 relating to the content of Preservation and Renovation Plans.

(5) Forms for Preservation and Renovation Plans shall be provided by the SHPO, and are available online at www.hcd.state.or.us.

(6) SHPO staff may consult with property owners on the sufficiency of a Preservation and/or Renovation Plan prior to submittal of the application.

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

Stat. Auth.: ORS 358

Stats. Implemented: ORS 358.540

Hist.: PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; Suspended by PRD 14-2009(Temp), f. & cert. ef. 9-28-09 thru 3-26-10

Rule Caption: Administrative rules governing "Rates" being amended to increase overnight and day-use fees and make miscellaneous changes.

Adm. Order No.: PRD 15-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09

Notice Publication Date: 9-1-2009

Rules Adopted: 736-015-0043

Rules Amended: 736-015-0006, 736-015-0015, 736-015-0020, 736-015-0026, 736-015-0030, 736-015-0035, 736-015-0040

Subject: Amending OAR 736, division 15 to increase overnight and day-use fees; to clarify cancellation policies and rates; to make annual day-use permits transferrable; and to provide a fee waiver for adoptive foster families who have adopted foster children, those children being under 18 years of age at the time of camping.

Rules Coordinator: Joyce Merritt—(503) 986-0756

736-015-0006

Definitions

As used in this division, unless the context requires otherwise:

(1) "Adoptive Foster Families" means one or more persons who have adopted one or more foster children pursuant to ORS 418.285. At least one of the children must currently be under 18 years of age and living with the Adoptive Foster Family.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the director of the department.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(6) "Foster Families" means persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children with Developmental Disabilities, as described in ORS 418.625 and 443.830, with their foster children.

(7) "In Kind Services" means a group or person who provides, at the direction of park staff, materials or services whose value to the park area equals or is greater than the normal fees.

(8) "Marketing and Promotion" generally are agency-sponsored events that are of regional or statewide significance promoting tourism or partnerships with local communities, other agencies or economic development.

(9) "Motor Vehicle" as defined in ORS 801.360 means a vehicle that is self-propelled or designed for self-propulsion. ORS 801.590 further defines "vehicle" as "any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means."

ADMINISTRATIVE RULES

(10) "Non-Profit Entity" means a group having a 5012 exempt status filed with the US Department of Internal Revenue Service.

(11) "Park Area" means any state park, wayside, corridor, monument, historic, or recreation area, except portions of ocean shore recreation areas not abutting a state park or wayside, under the jurisdiction of the department.

(12) "Park Employee" means an employee of the department.

(13) "Park Facility" includes but is not limited to individual and group campsites, day use areas and shelters, cabins, yurts, tepees, camper wagons, meeting halls, lodges, pavilions, and other amenities of the department.

(14) "Park Manager" means the supervisor or designated park employee in charge of a park area.

(15) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(16) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(17) "Reduced Service Level" means a reduction in the normal level of service that a person may reasonably expect due to the department's action/inaction or park facility failure lasting longer than 24 hours.

(18) "Reservation Cancellation" means the person requests to end the reservation and not create a new one.

(19) "Reservation Change" means a modification to an existing reservation by a person that changes the arrival or departure dates, a complete change to reservation dates, or changes the type of site from the original request.

(20) "Special Events" may be an activity sponsored or co-sponsored by the department, an event that provides entertainment to park visitors, or other activities that promote the mission of the department or Oregon tourism.

(21) "Split Reservation" means a stay at a park area for one person for one continuous date range that requires a mid-stay move from one site to another.

(22) "Traditional Tribal Activities" generally means traditional, spiritual, natural and cultural resource practices that would have been or which still are conducted by a federally recognized tribe or its members.

Stat. Auth.: ORS 390.050, 390.111, 390.121 & 390.124

Stats. Implemented: ORS 390.124

Hist.: PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0015

Reservations

(1) Purpose: Based on the department's goal to promote outdoor recreation in Oregon, the department established a reservation program known as Reservations Northwest to increase use of park areas and facilities. The director may designate specific park facilities to offer for reservation through a centralized call center and through the Internet.

(2) General Regulations:

(a) Reservations will be accepted and processed for designated park facilities through Reservations Northwest.

(b) A person may make a reservation a minimum of two days and a maximum of nine months prior to the arrival date.

(c) A person must be 18 years of age or older to make a reservation.

(d) A person who qualifies under the Americans with Disabilities Act (ADA) may reserve accessible campsites.

(e) A person may not make reservations for multiple park areas for the same date range.

(f) A person reserving a boat slip (where available) must also reserve another facility at the same park area.

(g) Reservations and registrations for horse camping sites shall be made only for people camping with their horses or similar large animals unless otherwise specified by the park manager.

(h) Split reservations are allowed to accommodate persons. Only one split reservation shall be allowed per reservation.

(i) Only the person whose name appears on the original reservation or their designee (as documented in the original reservation) may change or cancel an existing reservation or access information associated with a reservation.

(j) Customer information may be made available upon written request in compliance with ORS Chapter 192 and department policy.

(k) Specific information regarding a confirmed reservation will not be released to the public as provided in ORS 192.501 and 192.502.

(3) Transaction Fees and Deposits:

(a) The department will charge a \$8 non-refundable transaction fee for each reservation made through the centralized call center or the Internet.

(b) Reservations require a facility deposit equal to the full amount charged for use of the facility during the reservation period.

(c) All fees are due at the time the person makes the reservation.

(4) Payment Methods:

(a) A person may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo.

(b) A person may pay by personal check, money order, certified check, or travelers check (in U.S. funds).

(c) The department must receive payment within five calendar days of the date the person makes the reservation. If payment is not received within this time frame, the department will cancel the reservation. The person remains responsible for the \$8 transaction fee for each reservation request.

(d) If a banking institution returns a check to the department for any reason or if a credit or debit card is declined, the department will attempt to contact the person. Inability to resolve the payment dispute will result in a reservation cancellation. The person will remain responsible for the \$8 transaction fee for each reservation.

(e) Government agencies and non-profit entities may request to be invoiced for services. Reservations should be made at least 30 days prior to arrival. The department must receive payment within 25 days of the date the reservation is made. If payment is not received the department will cancel the reservation. The department will bill for the \$8 transaction fee for each reservation.

(f) A person must pay all outstanding account balances prior to making future reservations.

(5) Reservation Cancellations:

(a) A person may cancel a reservation three calendar days or more prior to their arrival date by calling Reservations Northwest. An automated reservation cancellation voice mail system is available seven days a week, 24 hours a day.

(b) A person may also cancel a reservation three calendar days or more prior to their arrival date through E-mail by accessing the department's web site and following the posted cancellation procedures. The web site is available seven days a week, 24 hours a day.

(c) A person must contact the specific park to cancel reservations with an arrival date that is two calendar days or less from the current date.

(d) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(e) In order to receive a refund of the facility deposit, a person must cancel the reservation for individual campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more calendar days prior to arrival. If the cancellation is not received three or more days in advance of the arrival date, an amount of the facility deposit fee equal to one night rental for the facility will be forfeited.

(f) In order to receive a refund of the facility deposit for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas and other special facilities as designated by the department, a person must cancel the reservation at least one month prior to arrival. If the cancellation is not received one month or more in advance of the arrival date, an amount of facility deposit fee equal to one night rental for the facility will be forfeited.

(6) Reservation Changes:

(a) The department will charge an \$8 non-refundable transaction fee for each reservation change.

(b) A person may request to change a confirmed reservation by calling Reservations Northwest during normal business hours Monday through Friday.

(c) A person may also request to change a reservation through Email by accessing the department's web site and following the posted reservation change procedures. The web site is available seven days a week, 24 hours a day.

(d) A person may not make any changes to reservations more than eight months in advance of the arrival date.

(e) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(f) The department will assess a fee equal to the nightly rental fees for all nights cancelled for any reservation change resulting in a reduction in length of stay for reservation bookings greater than five nights.

(g) A person must request a reservation change for campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more days in advance of the arrival date. The department will treat reservation change requests with an arrival date of three days or less from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(h) A person requesting a reservation change for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as designated by the department must request the change at least one month prior to arrival date. The department will treat reservation change requests with an arrival date of less than one month from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

ADMINISTRATIVE RULES

(7) Reservations to Accommodate Organized Groups:

(a) General: To promote the use of facilities by groups and to bring efficiencies to the group reservation process, the director may offer group camping to persons reserving multiple tent, electrical or full hook-up campsites.

(b) The department will charge only one transaction fee for the group when the sites are reserved together. The department will require a facility deposit fee equal to the full amount of the site fee for each campsite at the time the reservation is made.

(c) A person must reserve a minimum of five individual campsites during Discovery Season (October 1 to April 30) or ten individual campsites during the Prime Season (May 1 to September 30) to qualify for group camping benefits.

(d) The department will charge a transaction fee of \$8 for each site cancellation or change made to the group reservation.

(e) Reservations made on the Internet for a group of sites are not eligible.

(f) A person may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The person may reserve the meeting hall for additional days at the normal rental rate.

(g) Special facilities such as deluxe cabins and yurts, rustic cabins and yurts, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, and other special facilities as designated by the department are not included in the group camping program.

(h) A person must make reservations at least 10 days prior to arrival date to qualify for group camping benefits.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979(Temp), f. & ef. 9-9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1994, f. & cert. ef. 2-9-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0099, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2009, f. 6-2-09, cert. ef. 8-1-09; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0020

Overnight Rentals

The director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized by the commission to include transient lodging taxes in the nightly rental rate and to increase the rental rate to the nearest whole dollar. The department shall retain the additional revenue. Campsite Rental rates (per night per site before tax):

(1) Full Hookup Campsite: Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(a) Type I: \$24.

(b) Type II: \$20.

(2) Electrical Hookup Campsite: Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(a) Type I: \$24.

(b) Type II: \$20.

(3) Tent Campsite: Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(a) Type I: \$19.

(b) Type II: \$17.

(4) Primitive Campsite: Provides campsite with table and stove; water and sanitary facilities may be some distance away. All primitive campsites: \$9.

(5) Yurt: Rustic units provide a temporary tent structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Deluxe units add kitchen facilities, bathrooms and showers.

(a) Rustic: \$36.

(b) Deluxe: \$75.

(6) Cabin: Rustic units provide a hard-walled wooden structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Totem units are primitive log units. Deluxe 1 units add kitchen facilities, bathrooms and showers. Deluxe 2 units add additional rooms.

(a) Totem: \$24.

(b) Rustic: \$39.

(c) Deluxe 1: \$75.

(d) Deluxe 2: \$85.

(7) Teepee: Teepee replica units vary in diameter from 18' to 26' and provide heat, lights and beds along with outdoor picnic facilities. All teepees: \$36.

(8) Wagon: Covered wagon replica units vary in size and provide heat, lights and beds along with outdoor picnic facilities. All wagons: \$36.

(9) Hikers/Bicyclist Campsite: Provides cleared area for camping; water and sanitary facilities may be some distance away. All hiker/bicyclist campsites: \$5 per camper per night.

(10) Extra Vehicle in Campground: An additional rental rate of \$5 per vehicle is charged when an extra vehicle is driven into the campground and remains overnight.

(11) Extra Motorcycle in Campground: If the initial campsite rental is to a person riding a motorcycle, and the first extra vehicle is a motorcycle, the second motorcycle will not be charged. Each additional motorcycle will be charged \$5 as an extra vehicle.

(12) Express Check-In (where available): The department allows a person with a reservation for individual tent, electrical or full hook-up campsites to expedite the check-in process upon arrival at the park area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124, 183.310 - 183.550

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979(Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, ef. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0100, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0026

Group Day Use

(1) At designated park areas, a person may reserve a group picnic area(s) by calling Reservations Northwest during normal business hours. The park manager will determine the maximum group size for each park facility.

(2) The department will charge group picnic rental rates to offset additional park administration and maintenance costs:

(a) Base rate (0-50 people) -- \$50;

(b) Charges for persons in excess of the 50 person base rate will be \$1 per person

(3) The park manager may make advance arrangements with the group leader for parking, supervision, cleanup, checkout time, and other pertinent details.

(4) Upon arrival, the group leader will check in with the park manager who will direct the group to the reserved area.

(5) The group must have adult supervision at all times.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 83(Temp), f. 5-19-77, ef. 6-1-77; 1 OTC 85, f. & ef. 7-20-77; 1 OTC 3-1979, f. & ef. 2-9-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1992, f. & cert. ef. 2-14-92; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0115, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0030

Day Use Parking Permit

(1) Purpose: Based on the department's goal to manage increased use of park areas, the director may require a motor vehicle day use parking permit at selected park areas.

(2) General Regulations:

(a) Parking permits are to be affixed and clearly displayed in the lower left corner of the windshield;

(b) Permits are not transferable.

(3) Day Use Parking Permit Fees:

(a) Daily Motor Vehicle — \$5;

(b) 12-month Permit — \$30;

(c) 24-month Permit — \$50;

(4) The department may enter into a written agreement with privately owned commercial vendors and non-profit cooperative associations affiliated with the department under ORS 390.143 to sell 12-month and 24-month permits:

(a) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits;

(b) Non-profit cooperative associations affiliated with the department may by agreement retain fees in excess of the minimum vendor fee for use in funding interpretive programs in park areas;

(c) The vendor's fee will be included in the price of the permit;

(d) Only a park employee may issue replacement permits in the event an original permit is lost, stolen, or mutilated.

(5) Daily Access Exceptions: The director may grant exceptions to the day-use permit requirement under the following circumstances:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

ADMINISTRATIVE RULES

- (d) A person who is currently a registered camper at a park area and clearly displays the overnight rental receipt;
 - (e) Park concessionaires and their employees;
 - (f) A person entering the park to engage in specially permitted non-recreation activities;
 - (g) Park volunteers on duty in the park;
 - (h) A person with a permit issued by another entity with which the department has a written agreement to honor their passes;
 - (i) Other persons as designated by the director.
- (6) Park Areas Subject to Day-Use Fees: Park areas at which a day use fee shall be charged include: Fort Stevens State Park, Cape Lookout State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), L.L. "Stub" Stewart Memorial State Park, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoeg State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & 390.121

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0035

Fee Waivers and Refunds

(1) The director, at the direction of the commission, may waive, reduce or exempt fees established in this division under the following conditions:

(a) A person or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the director;

(b) Marketing or promotional considerations, including but not limited to special events and commercial filming, that promote the use of park areas and Oregon tourism;

(c) Traditional tribal activities in accordance with policy adopted by the Commission;

(d) Reduced service levels at a park, campsite or other facility as determined by the Park Manager.

(2) Reservation Facility Deposit Fee Waivers for individual primitive, tent, electric, full hook-up or horse camp campsites only:

(a) The facility deposit fee is waived for all persons with reservations commencing on State Parks Day (first Saturday of June). All other fees apply.

(b) The facility deposit fee is waived for foster families and adoptive foster families as defined in OAR 736-015-0006. The fee waiver is limited to the first two campsites, and an adult care provider must be present with the foster children. All other fees apply.

(c) The facility deposit fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel as provided in ORS 390.124. All other fees apply.

(d) The person making the reservation must pay the \$8 non-refundable transaction fee at the time the reservation is made. This fee is not included in the fee waiver.

(e) Reservations made on the Internet are not eligible for fee waivers.

(3) Overnight Rental Fee Waivers for individual primitive, tent, electric, full hook-up or horse camp campsites only:

(a) The overnight rental fee is waived for all persons on the night of State Parks Day (first Saturday of June). All other fees apply.

(b) The overnight rental fee is waived for foster families as defined in OAR 736-015-0006. The fee waiver is limited to the first two campsites, and an adult care provider must be present. All other fees and rules apply.

(c) The overnight rental fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124. The waiver of individual campsite fees shall be limited to no more than five consecutive days per stay and no more than ten days total in a calendar month. All other fees and rules apply.

(d) The director may waive the overnight rental fee for volunteer hosts traveling to an assignment at a park area.

(4) Day Use Parking Fee Waivers:

(a) The day use parking fee is waived for all persons on State Parks Day (first Saturday of June).

(b) The day use parking fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124.

(c) The day use parking fee is waived for an adoptive foster family, as defined in OAR 736-015-0006, with an adopted foster child under 18 years of age or a foster family, as defined in OAR 736-015-0006, if the foster care provider has a valid Certificate of Approval to Provide Foster Care in Oregon issued by the Oregon Department of Human Services. The waiver shall be valid until the expiration date of the Certificate of Approval to Provide Foster Care or the adopted foster child turns 18 years of age.

(d) All other fees apply.

(5) A person may request a refund under the following circumstances.

(a) Reservations Northwest may refund a reservation fee when the department has made a reservation error.

(b) Reservations Northwest may refund a facility deposit and may waive the cancellation/change rules when requested by the person due to the following emergency situations:

(A) Emergency vehicle repair creates a late arrival or complete reservation cancellation;

(B) A medical emergency creates a late arrival or complete reservation cancellation;

(C) Acts of Nature create dangerous travel conditions;

(D) Deployment of military or emergency service personnel creates a late arrival or complete reservation cancellation.

(c) The director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to Reservations Northwest via email, fax or surface mail to be considered for a refund.

(e) The department will issue refunds for specific site or park area closures and no written request is required.

(f) The park manager may only issue a refund at the park due to the person leaving earlier than expected, and while the person is present and has signed for the refund. Once the person has left the park, refund requests must be sent to Reservations Northwest for processing.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0120, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 5-2005(Temp), f. 10-14-05, cert. ef. 11-11-05 thru 4-30-06; PRD 1-2006, f. & cert. ef. 2-14-06; PRD 8-2009, f. & cert. ef. 6-2-09; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0040

Miscellaneous Rentals and Products

(1) Firewood: Where conditions permit, firewood will be sold.

(2) Boat Moorage Facilities — \$10 per day per boat: Where boat moorage facilities are provided they may only be reserved with other campsite reservations.

(3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.

(4) Horse Camping Area:

(a) Type I non-hookup site: \$19 per night per camper unit;

(b) Type II non-hookup site: \$17 per night per camper unit;

(c) Type I hookup site: \$24 per night per camper unit;

(d) Type II hookup site: \$30 per night per camper unit;

(e) Type I group site (accommodates 3–5 units): \$57 per night;

(f) Type II group site (accommodates 3–5 units): \$51 per night;

(g) Type I double site: \$43 per night per two camper units;

(h) Type II double site: \$37 per night per two camper units;

(i) A camper unit consists of a motor home, trailer, tent or camper.

(5) Group Tent Camps: Small group tent areas available in some parks which are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

(a) Base rate (0–25 people): \$70 per night;

(b) Charges for persons in excess of the 25 person base rate will be \$3 per person per night.

(6) Group RV Camp: Special camp area designed to accommodate RV's requiring hookups in a group setting. The camp has electrical hookups available, water, table, stove, and access to a restroom.

(a) Base rate (up to 10 units): \$100 per night;

(b) Charges for units in excess of the 10-unit base rate: \$10 per unit per night.

(7) Pets Staying Overnight in Facilities (Yurts, Cabins, Tepees): Not more than two pets (cat or dog only) staying overnight in facilities: \$10 per night.

(8) Ranch/Bunkhouse: Large communal type bunkhouse facility which includes kitchen and restroom facilities. Minimum fee of \$200 per night for up to 25 persons and \$8 per person per night thereafter up to the maximum occupancy.

ADMINISTRATIVE RULES

(9) Youth Camp (Silver Falls): Large capacity group camp facility with cabins, commercial kitchen facilities, dining hall, showers, meeting halls and swimming facilities. Minimum fee of \$800 per night for up to 80 persons and \$10 per person per night thereafter up to a maximum occupancy of 250 persons.

(10) Lodge/Community Hall: Large meeting facility with kitchen and restroom facilities which may be reserved overnight: \$200 per night.

(11) Meeting Hall: Small meeting facility, generally associated with a campground, which may have limited kitchen facilities and restrooms: \$75 per day.

(12) Pavilion: A large, covered day-use facility for group use: Minimum fee of \$100 per event for up to 50 people, and \$1 per person thereafter up to the maximum occupancy of the facility.

(13) Shore Acres Garden: All facility prices, no matter which facility or combination of facilities are booked, start with a minimum of 50 persons per event. Additional people beyond the minimum of 50 are \$1 per person up to a maximum of 100 people per event.

(a) Event Site: A lawn area outside the formal garden or a section of the formal garden (NOTE: sites in the garden must be booked in conjunction with another facility): \$100 per event.

(b) Pavilion (inside the formal garden and must be booked with an event site or the garden house): \$100 per event.

(c) Garden House (inside the formal garden and must be booked with the Pavilion): \$200 per event.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0125, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09; PRD 15-2009, f. & cert. ef. 9-29-09

736-015-0043

Effective Dates

Amendments to this division adopted at the September 29, 2009 OPRD Commission meeting become effective upon filing except:

(1) OAR 736-015-0030 becomes effective January 1, 2010;

(2) OAR 736-015-0020 and 736-015-0040 become effective May 1, 2010.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: PRD 15-2009, f. & cert. ef. 9-29-09

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Permanently Amending OAR 860-022-0041 to be Consistent with ORS 757.268.

Adm. Order No.: PUC 11-2009

Filed with Sec. of State: 10-2-2009

Certified to be Effective: 10-2-09

Notice Publication Date: 8-1-2009

Rules Amended: 860-022-0041

Rules Repealed: 860-022-0041(T)

Subject: OAR 860-022-0041 was adopted to implement Senate Bill 408 (SB 408) from the 2005 Legislature. SB 408 requires certain public utilities to provide information concerning the amount of taxes paid by the utility and the amount of taxes authorized to be collected in rates during specified time periods. If the Commission determines that the amount of taxes assumed in rates differed by at least \$100,000 from the amount of taxes paid to units of government, the utility must implement a rate schedule with an automatic adjustment clause accounting for the difference. As originally adopted and as temporarily amended, OAR 860-022-0041 addressed claims by a utility that a SB 408-related rate change resulted in confiscatory, or unjust and unreasonable rates in violation of the United States Constitution or ORS 756.040. This permanent amendment to OAR 860-022-0041 deletes section 10 of the rule because it was determined to conflict with ORS 757.268. The temporary amendment to OAR 860-022-0041 is also repealed. In its order repealing the temporary amendment and adopting this permanent amendment to the rule, the Commission clarified that eliminating section 10 from the rule is not intended to affect a utility's right to raise a claim under ORS 756.040 or the United States Constitution.

Rules Coordinator: Diane Davis—(503) 378-4372

860-022-0041

Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) "Affiliated group" has the meaning given to "affiliated group" in ORS 757.268(13)(a);

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations that relate to the year being reported in the utility's results of operations report or tax returns, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment;

(c) "Income" means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility's regulated operations;

(d) "Income tax losses" means the negative taxable income of an entity in the federal taxpayer or unity group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property;

(e) "IRC" means Internal Revenue Code;

(f) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers;

(g) "Iterative tax effect" means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment;

(h) "Local taxes collected" means the total amount collected by the utility from customers under the local tax line-item of customers' bills calculated on a separate city or county basis;

(i) "Pre-tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding;

(j) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g) and (4)(h), of this rule;

(k) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10);

(l) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c);

(m) "Results of operations report" means the utility's annual results of operations report filed with the Commission;

(n) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule;

(o) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210;

(p) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense in the manner used by the Commission in establishing rates;

(q) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions, that are subject to rate regulation by any state commission;

(r) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d);

(s) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income;

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross rev-

ADMINISTRATIVE RULES

enues, net revenues or effective tax rate, the amount of taxes authorized to be collected in rates will be calculated using a weighted average of months in effect;

(t) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f);

(u) "Taxpayer" means the utility, the affiliated group or the unitary group that files income tax returns with units of government;

(v) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268;

(w) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return; and

(x) "Units of government" means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator;

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator;

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator;

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility;

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D), and (4)(d)(E), but no less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, except the deferred tax amount must be reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility:

(A) The items defined in subsection (2)(t) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS 469.206 and

ADMINISTRATIVE RULES

469.208, of the unitary group, excluding those credits covered by 757.268(13)(f)(B); and

(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(t) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:

(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;

(B) For each tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes;

(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities;

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all workpapers and documents supporting the calculations.

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order;

(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule;

(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:

(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;

(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and

(c) Any other finding or determination necessary to implement the automatic adjustment clause.

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006;

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment;

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule;

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission;

(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission;

(e) Each balancing account must accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year;

(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law;

(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268

Hist.: PUC 8-2006, f. & cert. ef. 9-18-06; PUC 11-2007, f. & cert. ef. 9-18-07; PUC 4-2009(Temp), f. & cert. ef. 4-15-09 thru 10-9-09; PUC 11-2009, f. & cert. ef. 10-2-09

**Secretary of State,
Archives Division
Chapter 166**

Rule Caption: Revisions to clarify and update Oregon University System General Records Retention Schedule.

Adm. Order No.: OSA 7-2009

Filed with Sec. of State: 9-22-2009

Certified to be Effective: 9-22-09

Notice Publication Date: 6-1-2009

Rules Amended: 166-475-0060

ADMINISTRATIVE RULES

Subject: Changes to OAR 166-475-0060(9), Human Subjects Records, to include a retention and disposition for non-funded project records. The proposed change was introduced and commented on during the open comment period but was not fully addressed by the impacted institutions until after the adoption of the rule.

Rules Coordinator: Julie Yamaka—(503) 378-5199

166-475-0060

Grants and Research Records

(1) **Commercial Companies Records** Records document cooperative relationships with commercial companies in sharing research materials and data. This series may include but is not limited to cash receipt acknowledgments; requests for sample products; acceptances of products; and related correspondence. **(Retention:** 5 years, destroy)

(2) **Conflict of Interest Forms** Records document potential conflicts of interest involving state employees. This series may include but is not limited to Conflict of Interest and Commitment Disclosure Forms and related documentation and correspondence. **(Retention:** 3 years, destroy)

(3) **Grant Direct Payment Records** Records document requests and justification for transfers of direct payment funds from federal grantors. This series may include but is not limited to federal cash position reports; spreadsheets of various federal sources and cash needs; requests for cash; credit advice from the U. S. Treasury; and related documentation and correspondence. **(Retention:** 5 years, destroy)

(4) **Grant Indirect Cost/Returned Overhead Records** Records document the analysis of grant indirect costs in order to prepare returned overhead figures for institutional departments and is used to submit notification for the budget to be adjusted. The returned overhead report is prepared twice during the year. Estimates are prepared and reviewed by departments and used in budget preparation. A final report is used for budget adjustment. This series may include but is not limited to spreadsheets; work sheets; and related documentation and correspondence. **(Retention:** 5 years after final financial report is submitted and account is closed, unless otherwise specified as longer by terms of contract for all other records, destroy)

(5) **Grant Funded Projects Research Records** Records document the research activity associated with grant-funded projects. This series may include but is not limited to research data; working papers; research/activity reports; summary reports; and related documentation and correspondence. **(Retention:** (a) Permanent for final research report (b) 5 years after final financial report is submitted and account is closed, unless otherwise specified as longer by terms of contract for all other records, destroy)

(6) **Grant Proposal Funded Records** Records document grant proposals developed and prepared by the institutional units that were funded. This series may include but is not limited to supporting statistics; demographic data; draft proposals; suggested revisions; final proposals; and related documentation and correspondence. **(Retention:** (a) Permanent for proposal, attachments, correspondence, final reports (b) 5 years after final financial report is submitted and account is closed for all other records, unless otherwise specified as longer by terms of contract for all other records, destroy)

(7) **Grant Proposal Unfunded Records** Records document grant proposals developed by institutional units which have not been funded. This series may include but is not limited to supporting statistics; demographic data; draft proposals; suggested revisions; final proposals; and related documentation and correspondence. **(Retention:** 18 months after submission, destroy)

(8) **Grants and Contracts Accounting Records** Records document the establishment and administration of individually sponsored grant and contract restricted funds accounts, documents compliance with fiscal reporting requirements, and includes billing information for accounts receivable from sponsoring agencies and from departments for gift account fees. Grants may be federal, state, corporate, or private. This series may include but is not limited to project summaries; grant authorizations; contract documents; project budget change and adjustment forms; invoices; receipts; cashier's receipts; equipment purchase orders; prior approval request forms; account request forms; vendor telephone contact logs; sub-contracts; grants and contracts monthly budget summary statements; institution billings balance sheets; SF272 reports for grants and contracts that are operating on direct payments; final financial reports; property reports; patent/invention reports; contractor's release report; assignment of refunds and rebates documents; equipment disposition reports; and related documentation and correspondence. **(Retention:** 5 years after annual or final financial report is submitted unless otherwise specified as longer by the terms of the contract, destroy)

(9) **Human Subjects Records** Records document the review of research proposals that involve any type of use of human subjects. Reviews may be made by the entire review board, selected members, or the board's chair. Records may include applications for approval by the review board; Protection of Human Subjects forms (OMB-0531-0009); Protection of

Human Subject — Assurance/Certification/Declaration forms (OMB-0925-0637); descriptions of protocol; signed consent forms; sample questionnaires or surveys; copies of grant proposals; review summaries; and related memoranda and correspondence. **(Retention:** (a) 5 years after completion of the project/contract or funded projects, destroy (b) 3 years for unfunded/withdrawn/denied project applications and documentation, destroy)

(10) **Institutional Animal Care and Use Records** Records document the care and proposed use of animals by the university for research purposes. Records include institutional animal care and use forms; research proposal check-off forms; and related correspondence. **(Retention:** (a) Records that relate directly to proposed activities and proposed significant changes in ongoing activities reviewed and approved by the IACUC 3 years after completion of the activity (b) All other records 3 years, destroy)

(11) **Institutionally Funded Research Records** Records document the activities of the institutional councils and boards, which review proposals and make recommendations for awards to faculty (especially new faculty) for research that is not otherwise supported by organized or directed programs but is designed to lead to other funding sources. Examples of projects funded are pilot research, emergency funding, emerging research opportunities, new research field or new research field for investigator, developing research laboratories, and centrally shared research resources. This series may include but is not limited to applicant case files; agendas; minutes; reports; notes; working papers; funding summaries; award letters; applications for research support; personal data; final research reports; and related documentation and correspondence. **(Retention:** (a) Permanent for minutes and final research reports (b) 5 years for funding summaries and funded applications, destroy; one year for all other records, destroy)

(12) **Laboratory Notebooks** Records document the routine research activities of non-grant funded research projects. This series may include but is not limited to notebooks; binders; notes; or any other type of journal format. **(Retention:** 6 years after completion of project, destroy)

(13) **Laboratory Reports** Records document the results of laboratory testing performed for clients. The reports may include but are not limited to case numbers; client names; details of tests and procedures performed; test results; evaluations; and related data. **(Retention:** 6 years, destroy)

(14) **Non-Grant Funded Research Project Records** Records document the research activity associated with non-grant funded projects. This series may include but is not limited to research data; working papers; research/activity reports; summary reports; and related documentation and correspondence. **(Retention:** (a) Permanent for final research report (b) 5 years for financial records, destroy (c) 1 year after close of project for all other records, destroy)

(15) **Other Payroll Expenses (OPE) Reports** Records document payroll overhead costs. Information in this series may include but is not limited to employee names; social security numbers; institutions; classifications of positions; units of employment; pay periods; gross pay amounts; various withholdings; overhead amounts; and the accounts used to pay employees. **(Retention:** 6 years, destroy)

(16) **Personnel Activity Report Forms (PAR)** Records document Classified and Academic employees' efforts involving indirect activities such as instruction and departmental research, and direct activities toward externally funded projects. The series is maintained in compliance with regulations of the Federal Office of Management and Budget (OMB) as set forth in OMB Circular A21 and in agreement with the U.S. Department of Health and Human Services. The PAR system is used to produce an equitable distribution and/or substantiation report of charges for employees' activities and to distinguish the employees' direct activities from their indirect activities. Information on the individual forms includes institution name; employee name; social security number; monthly salary rate; department code; account name and number; transaction codes; pay amounts for each account number; PAR codes; comments; authorizing signatures; and dates of authorization. **(Retention:** 6 years, destroy)

(17) **Scientific Misconduct Records** Records document accusations of misconduct brought forward by or against faculty or students and relating to research projects. These records include accusation statements; inquiry committee findings; and related correspondence. **(Retention:** (a) 6 years after the expiration of the grant: all records not in litigation, destroy (b) 1 year after end of litigation: all records in litigation, destroy)

(18) **Technology Transfer Records** Records document the transfer of technology from this institution to outside agencies as the result of research projects and grants carried out at the institution. This series may include but is not limited to: original patents; patent applications; international licensing agreements; agreements giving permission for institutional researchers to use other patented inventions in their research; and related documentation and correspondence. The series may also include invention disclosure forms that list the names of the inventors; descriptions and titles of inventions; sources of funding to create the inventions; details of the provenance of the inventions and their documentation; to whom the inventions have been disclosed; suggested manufacturers; reports issued concerning the

ADMINISTRATIVE RULES

inventions; and signatures of inventors and technically qualified witnesses. (Retention: (a) Permanent for original patents, formal invention assignment forms, license agreements, patent legal transactions, and invention disclosure forms (b) 6 years for all other records, destroy)

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005–192.170 & 357.805–357.895
Hist.: OSA 3-1999, f. & cert. ef. 10-11-99; OSA 2-2003, f. & cert. ef. 2-14-03; OSA 2-2004, f. & cert. ef. 3-31-04; OSA 4-2009, f. & cert. ef. 6-29-09; OSA 7-2009, f. & cert. ef. 9-22-09

Rule Caption: Pertaining to fees for Oregon Administrative Rules services and publications.

Adm. Order No.: OSA 8-2009

Filed with Sec. of State: 10-5-2009

Certified to be Effective: 10-5-09

Notice Publication Date: 9-1-2009

Rules Amended: 166-500-0015

Subject: Amending the fee rule of the Oregon Secretary of State, Administrative Rules Unit to update the Unit's fees for services and publications, and to match the unit's fees with those of the rest of the Archives Division.

Rules Coordinator: Julie Yamaka—(503) 378-5199

166-500-0015 Fees

Fees charged by the Administrative Rules Unit are set forth in the Archives Division Fees rule OAR 166-010-0016. Fees for goods and services unique to the Administrative Rules Unit are as follows:

- (1) Certifying administrative rule records — \$5 per certification plus any copying, labor or research fees incurred in filling the request;
- (2) CD Rom or other media — \$20, per file copied, plus any associated costs;
- (3) Oregon Administrative Rules Compilation bound set — \$550, per year;
- (4) Individual volumes of the OAR Compilation — \$45;
- (5) Oregon Bulletin: Per hard copy issue — \$20, Each;
- (6) Walk-in customers or customers with large requests will be assisted as workloads permit.

[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. & cert. 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; OSA 8-2009, f. & cert. ef. 10-5-09

Rule Caption: Regarding Archives Division storage, fees, microfilm and records Management procedures.

Adm. Order No.: OSA 9-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 9-1-2009

Rules Adopted: 166-010-0018, 166-010-0019, 166-025-0021, 166-025-0022, 166-025-0035

Rules Amended: 166-001-0005, 166-005-0000, 166-005-0005, 166-005-0010, 166-010-0000, 166-010-0006, 166-010-0015, 166-010-0016, 166-020-0005, 166-020-0007, 166-020-0010, 166-020-0015, 166-020-0045, 166-025-0005, 166-025-0010, 166-025-0015, 166-025-0020, 166-025-0025, 166-025-0030, 166-030-0005, 166-030-0016, 166-030-0021, 166-030-0026, 166-030-0027, 166-030-0041, 166-030-0045, 166-030-0060, 166-500-0005

Rules Repealed: 166-010-0010, 166-010-0025, 166-010-0031, 166-020-0011, 166-020-0030, 166-020-0035, 166-030-0070

Subject: This update of the Secretary of State, Archives public records storage policies, procedures and fee structures takes into account changes in records storage technology and the increased cost for the storage and maintenance of public records. Notice was originally published in the July 2009 Oregon Bulletin, and a hearing was held in July 20, 2009. A second hearing notice was published in the September 2009 Oregon Bulletin and a second hearing was held September 23, 2009.

Rules Coordinator: Julie Yamaka—(503) 378-5199

166-001-0005

Model Rules of Procedure

The State Archivist adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, dated January 1, 2008. [ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Archives Division.]

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183
Hist.: OSA 4, f. & cert. ef. 4-21-76; OSA 2-1986, f. & cert. ef. 8-10-88; OSA 1-1991, f. & cert. ef. 12-5-91; OSA 3-1994, f. & cert. ef. 7-15-94; OSA 4-2001, f. & cert. ef. 5-22-01; OSA 5-2004, f. & cert. ef. 11-1-04; OSA 4-2006, f. & cert. ef. 10-12-06; OSA 9-2009, f. & cert. ef. 10-15-09

166-005-0000

Policy

It is the policy of the State of Oregon to assure the preservation of records essential to meet the needs of the state, its political subdivisions and its citizens and to assure the prompt destruction of records without continuing value. Unlawful destruction of any public record, regardless of medium or physical format, is a crime punishable under the provisions of ORS 162.305. Public records may be created and retained in a variety of media and physical formats, including but not limited to paper, microfilm, sound recordings, video recordings, and electronic media, devices and record-keeping systems.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192 & 357
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-005-0005

Purpose

The purpose of these rules is to implement the provisions of ORS 192.005 to 192.170, and 357.825 to 357.895, by providing procedures for the orderly retention and disposition of public records, regardless of medium or physical format; specify standards for appropriate use of microforms and electronic records; specify standards for the protection and storage of public records; and specify rules for the use of the State Archives, State Records Center and Security Copy Depository. General Records Retention Schedules published as a part of these rules provide state and local agencies with the lawful authority to destroy or otherwise dispose of commonly occurring public records.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192 & 357
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-005-0010

Definitions for Divisions 5 through 475

As used in these rules, "photocopy", "political subdivision", "public record", "public writings", and "state agency" are defined by ORS 192. As used in these rules unless otherwise required by context:

- (1) "Accession" means to take into physical custody a group of records or other materials and to formally document their receipt.
- (2) "Agency" when used alone means either a state agency or a political subdivision.
- (3) "Exempt records" are public records that do not need to be disclosed under ORS 192.410.
- (4) "Excluded records" are records which are excluded from the definition of public records by ORS 192.005(5) or other state or federal laws or rules.
- (5) "Hard Copy" means a printout of data stored in a computer.
- (6) "Local agency" means any officer, department, board, commission or institution created by or under the jurisdiction of a political subdivision of this state.
- (7) "Official copy" is that version of a public record that has been designated by the agency as the record of a transaction or event, and which is subject to the requirements of laws, rules and the records retention schedule authorized by the State Archivist.
- (8) "Permanent" public records are those deemed worthy of permanent preservation by the State Archivist and the official copy of permanent records must be retained in paper or in microfilm.
- (9) "Records Management" means the planning, controlling, directing, organizing, training, promoting and other managerial activities involving the life cycle of information, including creation, maintenance (use, storage, retrieval) and disposal, regardless of physical form. Records management procedures are used to achieve adequate and proper documentation of state policies and transactions and effective and economical management of agency and organizational operations.
- (10) "Records Officer" refers to the person designated by a state agency or political subdivision in accordance with ORS 192.105(2)(a). Records Officers organize and coordinate the agency's Records Management Program. Records Officers also serve as their agency's primary liaison with the State Archivist and receive training from the State Archivist in performing their duties. Typical duties include planning,

ADMINISTRATIVE RULES

controlling, directing, organizing, training, promoting the program, and other activities involving the life cycle of information including records scheduling, retirement, storage and destruction.

(11) "Record series" is an itemized listing on a records retention schedule which identifies a single record or a group of records for purposes of retention and disposition.

(12) "Records Retention Schedule" means a document produced and approved by the State Archivist listing the length of time a record needs to be kept for administrative, legal, fiscal or historic purposes. For state agencies this time represents both the minimum and maximum length of time a record must be kept. A records retention schedule approved by the State Archivist is an agency's legal authorization to destroy public records. The State Archivist writes two types of records retention schedules. The first is a special schedule that is written for records unique to an agency, and the second is a general schedule representing those records that are common to most agencies.

(13) "Retention Period" means the length of time a public record must be retained as authorized by an applicable records retention schedule produced and approved by the State Archivist. Retention periods for state agency records are both a minimum and maximum retention meaning that the records must be destroyed when the retention has been met as long as there is no pending litigation and all audit requirements have been satisfied. Retention periods for local governments are required minimums only.

(14) "Security Copy Depository" is a storage and retrieval facility operated by the State Archivist for security copies of microfilm for state and local agencies. The depositing agency maintains custody of the records and all requests for access to the stored records are made through authorized persons of that agency.

(15) "State Archivist" is the public employee who serves under the Secretary of State and who administers the Archives Division which operates the State Archives, the State Records Center and the Security Copy Depository (ORS 192 and 357).

(16) "State Records Center" is a storage and retrieval facility operated by the State Archivist for inactive records of state agencies. The depositing agency maintains custody of the records and all requests for access to the stored records are made through authorized persons of that agency.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192 & 357
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 1-1986, f. & ef. 3-17-86; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-010-0000

General

The Archives Division, Office of the Secretary of State, is administered by the State Archivist. The State Archives accepts custody of permanently valuable public records and provides access to those public records in the official custody of the State Archivist. The State Records Center provides storage and retrieval services for inactive records of state agencies. The Archives Division also provides advice and assistance to state and local agencies, and operates the Security Copy Depository which is a storage and retrieval service for security copy microfilm from state or local agencies.

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895
Stats. Implemented: ORS 357.825, 357.835, 357.855 & 357.895
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-010-0006

Custody of Records

The Archives Division may accept custody of public records in accordance with ORS 357.825 or 357.835. The ownership of the records, transfers to the State Archivist upon acceptance into the State Archives. The State Archives accessions records in under the following conditions:

(1) Prior approval is required to deposit public records in the State Archives. These deposits will be done according to procedures, criteria and standards established by the State Archivist.

(2) Except as otherwise provided by ORS 357.835(2), official custody of all records of a state agency which is abolished or ceases to operate shall pass to the State Archivist.

(3) When the State Archivist has determined that public records, no longer required for the discharge of duties by the official custodian, are stored where they are no longer available for use or in conditions which endanger the public records, the State Archivist shall requisition them for transfer to the State Archivist's custody if they are determined by the State Archivist to be of value.

(4) Public records in the State Archives are available for use in the Archives Building Reference room. Records may not be removed from the Archives Building, except as otherwise provided by law. Patrons shall use public records in the Reference Room, observing its rules, OAR 166-010-0015.

(5) When the State Archivist has determined that records in the custody of the State Archivist cease to be of value, the State Archivist may destroy the records.

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895
Stats. Implemented: ORS 357.825 & 357.835
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-010-0015

State Archives Reference Room Rules

Patrons shall observe the following rules for the protection and control of records:

(1) Patrons shall register and shall furnish current and valid government-issued photo identification to use public records in the State Archives.

(2) Patrons shall only use a pencil when making notations, shall not mark public records, and shall maintain the original order of the public records consulted.

(3) No person shall smoke, drink or eat in the Reference Room.

(4) Patrons shall notify the staff when their work is completed.

(5) Patrons shall not remove from the Reference Room public records or other materials in the official custody of the State Archivist.

(6) Patrons shall not alter, mutilate or otherwise deface public records.

(7) Patrons may take paper and research materials into the Reference Room. Personal electronic devices such as laptop computers, cameras and scanners are allowed under the following conditions, but must be removed from any enclosed cases before entering the Reference Room:

(a) Patrons may bring cameras to photograph records, but may not use a flash.

(b) Patrons may use scanners with the following restrictions: the copying surface (platen) must be the same size or larger than the records they plan to scan; the scanner must not cause friction, abrasion, or otherwise damage records; light sources must not generate heat on the records; and equipment surfaces must be clean and dry before being used. Drum and automatic feeder scanners are prohibited.

Stat. Auth.: ORS 192.005-192.170 & 357.895
Stats. Implemented: ORS 357.895
Hist.: OSA 2, f. & ef. 11-21-75; OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1992, f. 4-3-92, cert. ef. 4-6-92; OSA 6-2001(Temp), f. & cert. ef. 10-23-01 thru 4-15-02; OSA 1-2002, f. & cert. ef. 1-25-02; OSA 9-2009, f. & cert. ef. 10-15-09

166-010-0016

Archives Division Fees

The following fees are collected for State Archives services:

(1) Ready Reference Requests — no charge. This includes requests for information that can be answered by staff without leaving their workstation or by consulting basic reference tools such as finding aids, tracing binders, or reference books.

(2) 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 from the death index, a record listed in the on-line index) in the custody of the Archives Division.

(3) 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.

(4) Requests — not defined above will include labor charges plus copying, supply and postage charges when incurred. In addition, requests received from out-of-state will be charged an additional \$5 fee.

(5) Labor Charges — \$40 per hour, charged in 15-minute increments. There is a maximum of four hours labor for any request.

(6) Expedited service fee: Rush requests will be assessed a thirty-dollar (\$30) fee in addition to all applicable research and copy fees. Rush requests are limited to single specific requests and are dependent on staff availability. Such requests may be subject to review and restrictions.

(7) Photocopies. Copies made by the customer — 25 cents per page. Copies made by Archives Division staff — 75 cents per page.

(8) Fax — 75 cents per page.

(9) PDF — 75 cents per page.

(10) Audio Tape duplication. Cassette to cassette duplicates — \$7 per cassette.

(11) Certification — \$5 per certification.

(12) Digital Images of existing files for electronic download or copied to CD-ROM:

(a) Case File — \$35

(b) Multipage image (10 pages or less) — \$10

(c) Single page image — \$5

(13) High Resolution (600 dpi) digital images of Historical Trademarks, oversized maps or photographs — \$20 per image.

(14) Reproduction by Outside Vendor — Vendor and travel costs, when applicable plus \$10 handling fee.

(15) The Secretary of State shall 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 representa-

ADMINISTRATIVE RULES

tive. Such requests must be made within three years of the date payment is received by the Division.

Stat. Auth.: ORS 177.130 & 357.885
Stats. Implemented: ORS 177.130 & 357.885
Hist.: OSA 4-2002, f. & cert. ef. 7-3-02; OSA 9-2009, f. & cert. ef. 10-15-09

166-010-0018

State Records Center

The State Records Center accepts records for storage under the following conditions:

(1) Only state agencies with approved records retention schedules can store records at the State Records Center.

(2) Official custody of the records transferred to the State Records Center remains with the state agency from which they were received or its legal successor.

(3) Prior approval is required for state agencies to transfer public records to the State Records Center. These transfers will be completed according to procedures, criteria and standards established by the State Archivist which are available on request.

(4) Requests from the depositing state agency for records or information stored at the state Records Center shall be made by mail or fax, and only by authorized personnel. Phone requests are not accepted.

(5) Deliveries to state agencies of public records as requested will be made as follows:

(a) Deliveries will be made through the Central Mail Service of the Department of Administrative Services to state agencies served by that Department.

(b) Postal service will be used for deliveries to state agencies which are not served by the Central Mail Service at the expense of the depositing agency.

(c) Under special circumstances, the agency may make prior arrangements with the staff of the State Records Center to go to the State Records Center to pick up their request.

(5) A state agency may request or authorize the loan or return of public records in its official custody from the State Records Center as follows:

(a) Loans of individual files or boxes may be made and a follow-up system for loaned public records will be observed.

(b) All requests for loan or return of public records in the State Records Center must originate from authorized personnel of the state agency which has official custody of the public records.

(c) A state agency must authorize in writing the State Records Center to loan or transfer public records in its official custody to another agency.

(6) Storage fees for the State Records Center are based on a biennial assessment and are listed in the State Price List.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 9-2009, f. & cert. ef. 10-15-09

166-010-0019

Security Copy Depository Deposits for Storage

The Security Copy Depository operates vault facilities, located in the State Archives Building, for the off-site storage of security microfilm of public records. The Security Copy Depository accepts deposits for storage under the following conditions:

(1) Public records transferred to the Security Copy Depository remain in the official custody of the agency from which they were received. All requests for access to the stored records are made only through that agency.

(2) Prior approval is required to transfer public records to the Security Copy Depository. Transfers will be completed according to procedures, criteria, and standards established by the State Archivist, which are available on request.

(3) Only records with an approved retention period of ten or more years shall be accepted for transfer.

(4) Minimum requirements for the depository are listed in OAR 166-025-0030.

(5) Storage fees for the Security Copy Depository are based on a biennial assessment. Please contact the State Archives, Security Copy Depository (503-378-5250) for current fees.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 9-2009, f. & cert. ef. 10-15-09

166-020-0005

Purpose

This Division defines storage and conditions that are acceptable for the use, storage, and protection of public records in Oregon, ensuring that the informational content is protected for the entire length of the authorized retention period of the public record.

Stat. Auth.: ORS 357
Stats. Implemented: ORS 357.825(2), 357.855 & 357.895
Hist.: OSA 2, f. & ef. 11-21-75; OSA 5, f. 12-30-77, ef. 1-1-78; OSA 9-2009, f. & cert. ef. 10-15-09

166-020-0007

Definitions

In addition to the definitions contained in OAR 166-005-0010 and 166-017-0011, the following definitions apply to this division:

(1) "Essential electronic records system" means a records system which requires a computer to process and contains records that are essential to the continued functioning or reconstitution of an agency during and after an emergency, and those records that are essential to protect the rights and interests of that agency and of the individuals directly affected by its actions. Essential records are sometimes called vital records.

(2) "Essential records" means records that are essential to the continued functioning or reconstitution of an agency during and after an emergency, and those records that are essential to protect the rights and interests of the agency and of the individuals directly affected by its actions. Essential records are sometimes called vital records.

(3) "Records system" means an organized collection of data captured, processed, maintained, transmitted or disseminated in accordance with defined procedures (automated or manual).

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192, 357.825(2), 357.855 & 357.895
Hist.: OSA 2-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-020-0010

Duties of Public Records Custodians

Public records custodians are charged with protecting and providing access to public records:

(1) The term "public records" as used in statutes and rules pertaining to disposition of public records means records which are the property of the public. Alienation of public records is prohibited by public policy and statute (ORS 192.001). Custodians of public records are specifically charged by statute with the responsibility of protecting them, and, except as expressly provided by statute, furnishing reasonable opportunities for inspection and examination of them by any person (ORS 192.430 (1)).

(2) State and local agencies are responsible for public records in their custody, wherever deposited, until the public records have been transferred to the custody of the State Archivist or otherwise disposed of as authorized by an approved records retention schedule produced by the State Archivist.

(3) Pursuant to ORS 357.875, no state agency or local government shall enter into or renew an agreement with any records storage entity that restricts the access or inspection of Oregon public records by the State Archivist.

(4) When a state agency is abolished or ceases to operate, its public records shall be deposited in the official custody of the State Archivist, except as otherwise provided by ORS 357.835(2).

(5) Public records deposited in the State Records Center or Security Copy Depository remain in the official custody of the agency which deposited them.

Stat. Auth.: ORS 357
Stats. Implemented: ORS 357.825(2), 357.835, 357.855 & 357.895
Hist.: OSA 2, f. & ef. 11-21-75; OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 9-2009, f. & cert. ef. 10-15-09

166-020-0015

Storage Area Standards

Safe storage of public records requires compliance with the following standards:

(1) Public records should be stored in secure, fire-resistant structures and in areas in which the temperature and humidity are maintained at the levels required to ensure optimum longevity of the paper, film or medium on which they are recorded. Adequate light and access should be provided to permit retrieval of public records. Adequate ventilation and protection against insect or mold invasion should be provided. Steam, water, and sewer pipes, other than fire-control sprinkler systems, pose extreme hazard to records. No public records of enduring value should be stored where heat, breaks, drips or condensation from pipes could damage them; where windows, doors, walls or roofs are likely to admit moisture; or where they will be exposed to sunlight or extreme temperature variations.

(2) Aisle space in public records storage areas should be kept free of obstruction and no public records should be stacked or piled directly on the floor of any storage area. All public records should be shelved above initial flood level of any bursting pipe, leaky roof, sprinkler system or other source of water.

(3) Additional storage area standards are specified in these rules for public records stored in electronic format (OAR 166, Division 17), and in microforms (OAR 166, Division 25).

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 357.825(2), 357.855 & 357.895
Hist.: OSA 2, f. & ef. 11-21-75; OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 9-2009, f. & cert. ef. 10-15-09

ADMINISTRATIVE RULES

166-020-0045

Essential Records Systems, Identification and Storage

(1) Agencies shall, with the advice and assistance of the State Archivist, identify their essential records, regardless of medium or physical format.

(2) Agencies shall store security copies of essential electronic records systems off the premises where the system is used, along with any system documentation necessary to enable recovery of the system in the event of an emergency.

(3) Agencies shall comply with the following storage requirements for security copies of essential electronic records systems:

(a) Off-site storage conditions shall have temperatures no less than 60 degrees or greater than 80 degrees Fahrenheit, and shall have a relative humidity no greater than 50 percent.

(b) Off-site storage shall be in secure facilities with fire suppression systems. Facilities must provide adequate ventilation and protection against insect and mold infestation. No essential records systems shall be stored where heat or moisture can damage them.

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192, 357.855 & 357.895

Hist.: OSA 2-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0005

Purpose and Application of Microfilm Standards Rules

The authority for these rules is found in ORS 192.070, 357.825(2), and 357.895. State agencies and political subdivisions shall comply with these rules for microfilming public records. These rules contain the measures necessary to insure that the informational content of public records is protected for the life of the record.

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895

Stats. Implemented: ORS 357.825(2), 357.855 & 357.895

Hist.: OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0010

Definitions

In addition to the definitions contained in OAR 166-005-0010, OAR 166-017-0011 and 166-020-0007, the following definitions apply to this division:

(1) "AIIM" refers to the Association for Information and Image Management.

(2) "ANSI" refers to the American National Standards Institute.

(3) "Aperture card" means a card with a rectangular opening into which microfilm may be inserted.

(4) "Certification (Certificate of Legality)" means the confirmation that images recorded on microfilm are accurate, complete, and unaltered reproductions of the original records. It is sometimes referred to as a "Camera Operator's Certificate."

(5) Computer Output Microfilm (COM) Computer Output Microfilm is a process for copying data from electronic media on computers onto microfilm or microfiche using a high-speed recorder which transfers machine-readable digital data onto human-readable microfilm/fiche using laser technology and a processor, which develops the microfilm after it is exposed to the light source. COM is most often used for large reports that do not need to be edited or manipulated.

(6) "Density" means the light-absorbing or light-reflecting characteristics of a photographic medium.

(7) "Generation" means one of the successive duplicates of a photographic master. The camera original is the first-generation film. A duplicate made from the master is a second-generation copy; a duplicate made from the second-generation copy is third-generation, and so on.

(8) "Hybrid system" means a system that combines a micrograph-ic/microfilm analog system with a electronic, digital technology)

(9) "Image" means any representation of a document or data produced by radiant energy.

(10) "Jacket" means a transparent plastic carrier with channels into which film may be inserted.

(11) "Light box" or "light table" means a back-lit translucent surface used for film inspection.

(12) "Loupe (lupe)" means a small, hand-held optical magnifying device used in conjunction with a light box for the inspection of microfilm.

(13) "Methylene blue test" is a test used to measure the amount of residual thiosulphate ion (hypo) remaining on the film following washing.

(14) "Microfiche" is a piece of film with images arranged in a grid pattern. Computer- Output-Microfilm is usually produced in this format.

(15) "Planetary camera" is a type of microfilm camera that photographs a document as it lies stationary as it is being photographed. The document lies on a plane surface and the camera itself is suspended above the document.

(16) "Processing" means the steps necessary to render a latent image visible, usable and permanent (fixed). These steps are development, fixing, washing and drying.

(17) "Reduction ratio" is the relationship between the dimensions of the original document and the dimensions of the microimage of that document.

(18) "Resolution" is the ability of microfilm or a photographic system to record fine detail.

(19) "Retakes" means refilming of documents.

(20) "Roll microfilm" means film that is wound on a reel, spool or core.

(21) "Rotary camera" is a type of microfilm camera that photographs the document as it is being moved by some sort of a transport mechanism. The document transport mechanism is connected to a film transport mechanism, and the film also moves during exposure.

(22) "Security copy" means a silver duplicate or first-generation microfilm which is stored under strictly controlled environmental conditions and used solely as a back-up or duplication master.

(23) "Security Copy Depository" means the section of the Archives Division which offers storage of security microfilm.

(24) "Source document microfilming" means the conversion of paper records to microfilm. It is differentiated from Computer Output Microfilm, which converts digitally encoded data to microfilm.

(25) "Splice" means the joining of two pieces of film so that they function as one piece.

(26) "Target, Informational" is a chart or document which is photographed in order to assist in identifying the content of the microfilm.

(27) "Target, Technical" is an aid to technical control of the photographic system which is photographed on the film preceding or following the body of documents.

(28) "Unitized microfilm" means film that is formatted in discreet units of information, e.g. microfiche, jackets, or aperture cards.

(29) "Working copy" is a copy of microfilm which is distributed for end user use and not for security purposes.

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895

Stats. Implemented: ORS 357.825(2), 357.855 & 357.895

Hist.: OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0015

Technical Specifications for First-Generation 16 mm, 35 mm, and 105 mm Silver-Gelatin Source Document Roll Microfilm for Permanent and Long-Term Oregon Public Records

(1) Microfilm Specifications: All security microfilm for long-term or permanent records shall be 16 mm, 35 mm, or 105 mm negative non-perforated silver gelatin type on a polyester base, as described in ANSI IT9.1-1996; Imaging Media (Film) — Silver Gelatin Type — Specifications for Stability. The film shall be at least 0.13 mm thick.

(2) Reels: Processed film shall be on storage reels which are chemically inert, in compliance with ANSI IT9.2-1998; For Imaging Media — Photographic Processed Films, Plates, and Papers — Filing Enclosures and Storage Containers, are sturdy, and have dimensions which conform to ANSI/AIIM MS34-1990; Dimensions for Reels Used for 16 mm and 35 mm Microfilm. The film shall be stored with the start target at the outer end in accordance with ANSI/AIIM MS23-2004P; Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver Gelatin Microfilm of Documents.

(3) Restrainers: Only acid-free, button tie paper bands in compliance with ANSI IT9.2-1998; For Imaging Media — Photographic Processed Films, Plates, and Papers — Filing Enclosures and Storage Containers shall be acceptable to restrain film on its reel.

(4) Enclosures: Film enclosures (containers) shall be inert black plastic.

(5) Quality Control-Inspection: Inspection and quality control data shall be recorded at the time the film is processed. A film inspection form is available from the Archives Division. First-generation (camera) film shall be inspected frame-by-frame for visible defects and missing documents. Inspection may be performed on a light table using an eye loupe for the frame-by-frame inspection and under a microscope for the inspection of resolution. The inspector shall wear clean, white, lint-free cotton gloves when handling the film. All inspection shall be performed in accordance with ANSI/AIIM MS23-2004P; Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver Gelatin Microfilm of Documents, Section 8. Security copies of film shall be free from scratches, gouges, blemishes, dust, dirt, or fingerprints.

(6) Residual Thiosulfate: All film shall meet the requirements for residual thiosulfate ion concentration as specified in ANSI IT9.1-1996; For Imaging Media (Film) — Silver-gelatin type- Specifications for Stability, Section 6.4. The maximum allowable thiosulfate ion concentration is .014 grams per square meter. Testing for residual thiosulfate ion concentration shall be done by using the Methylene Blue method in accordance with ANSI/ASC PH4.8-1985; For Photography (Chemicals)-Residual Thiosulfate and Other Chemicals in Films, Plates and Papers-Determination and Measurement, Section 5. This test shall be conducted within two weeks of film processing and may be performed at the process-

ADMINISTRATIVE RULES

ing site or by an independent laboratory. All test results shall be documented.

(7) Target Density: The aim point density shall be $1.00 \pm .10$. The acceptable density range on targets shall be .80 - 1.25. There shall not be more than a .20 density shift on targets in a single roll. Any roll which falls outside the acceptable .80 - 1.25 density range on targets shall be re-filmed. Density variation shall not be greater than .15 across a target. The plain white pages or acceptable density target photographed at the beginning and end of each roll of film shall be used as the primary density measurement targets.

(8) Reduction Ratio: The reduction ratio used shall approximately fill the image area across the width of the film as seen on the camera's projected image area; the ratio shall not be less than 8:1. All edges of the document shall be visible in the image area. (See ANSI/AIIM MS23-2004P; Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver-Gelatin Microfilm of Documents, Section 3.6.) Reduction ratio changes within the same record series shall be avoided. If they are necessary, however, the change in ratio shall be identified by an informational target filmed immediately before each change.

(9) Resolution: Each roll of first-generation film shall be evaluated for resolution by viewing the standard ISO Resolution test chart (see OAR 166-025-0020 on Targets and Certifications) at 100X magnification. The smallest distinguishable test pattern must correspond to the correct reduction ratio as seen in Figure 1:

Figure 1
Reduction Ratio — Smallest ISO Test Chart Pattern Read — Resolving Power

| | | | | |
|--------|---|------|---|-----|
| 8:1 | — | 10.0 | — | 80 |
| 12:1 | — | 9.0 | — | 108 |
| 15:1 | — | 7.1 | — | 106 |
| 16:1 | — | 7.1 | — | 114 |
| 17:1 | — | 6.3 | — | 107 |
| 20:1 | — | 5.6 | — | 112 |
| 21.2:1 | — | 5.6 | — | 119 |
| 24:1 | — | 5.0 | — | 120 |
| 28:1 | — | 4.5 | — | 126 |
| 30:1 | — | 4.5 | — | 135 |
| 33.9:1 | — | 4.0 | — | 136 |
| 36:1 | — | 4.0 | — | 144 |
| 42.4:1 | — | 3.2 | — | 136 |

(10) Splicing: There shall be no more than six splices on security copies of film. Retakes shall include at least two pages preceding and following the pages to be refilmed. There shall be no splices between the technical target and the text. All splices shall conform to ANSI/AIIM MS18-1992(R1998); Splices for Imaged Film — Dimensions and Operational Constraints.

(11) Targets and Certification: All microfilm shall conform to the standards for targets and certifications set forth separately in these rules.

[ED. NOTE: Publications referenced are available from the agency.]
Stat. Auth.: ORS 192.070, 357.825(2), 357.855 & 357.895
Stats. Implemented: ORS 357.825(2), 357.855 & 357.895
Hist.: OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0020 Targets and Certifications

The following informational and technical targeting and certification shall be included in all public records on roll microfilm. All targets are available from the Archives Division:

(1) At the beginning of each roll there shall appear:

(a) A minimum of 24 linear inches of exposed and, processed blank film;

(b) Followed immediately by three exposures of clean, blank white paper or the density target;

(c) Followed by a planetary camera or rotary camera technical target of the type specified by the American National Standards Institute and the Association for Information and Image Management (hereafter ANSI/AIIM) in standards ANSI/AIIM MS19-1993; Recommended Practice for the Identification of Microforms and ANSI/AIIM MS23-2004P; Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver Gelatin Microform of Documents for the laboratory measurement of resolution and reduction ratio;

(d) Followed immediately by a "Start" target;

(e) Followed by a target indicating roll number;

(f) Followed immediately by a title sheet containing name of agency creating the records, series title of the records, starting identification (first records number, etc.) and reduction ratio. All missing documents or records shall be so identified with an appropriate target.

(2) At the end of each roll there shall appear:

(a) A target sheet including series title of the records filmed, ending identification (last record number, etc.);

(b) A Certificate of Legality and Authenticity, including the name and signature of the camera operator;

(c) Followed by a target indicating roll number;

(d) Followed by an "End of Reel" target;

(e) Followed by three exposures of clean, blank white paper or the density target;

(f) Followed by 24 inches of exposed and processed blank film.

(3) See the Archives Division Micrographics Manual for instructions on use of these and other informational targets.

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

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895

Stats. Implemented: ORS 357.825(2), 357.855 & 357.895

Hist.: OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0021 Hybrid Systems

The use of hybrid systems (system that combines a micrographic/microfilm analog system with an electronic, digital technology) may be used provided the following conditions have been met:

(1) Electronic Imaging to Microfilm—for records with a retention period of 100 years or greater

(a) The microfilm copy produced is a silver halide microfilm that meets all of the requirements for microfilm outlined in OAR 166 Division 25.

(b) Each roll of film produced from an electronic imaging system carries the required targets for both electronic imaging systems (166-017-0031) and for microfilm (166-025).

(c) Each roll of film that will be deposited into the Security Copy Depository shall be polysulfide treated according to OAR 166-025.

(d) Documents shall be scanned using a resolution of not less than 200 dpi and can be transferred to either 16mm or 35mm rolls of microfilm. However, documents containing fonts smaller than six-point, architectural and engineering drawings, maps, and line art shall be scanned at a minimum density of 300 dpi. In addition, documents containing fonts smaller than six-point, architectural and engineering drawings, maps, and line art shall be recorded on 35 mm roll silver halide film only.

(e) One-hundred percent of the scanned images shall be verified for completeness and accuracy prior to the destruction of the original record. The verification of images shall include the inspection of images on the microfilm.

(2) For records with a retention period of less than 100 years, documents shall be scanned using a resolution of not less than 200 dpi; documents containing fonts smaller than six-point, architectural and engineering drawings, maps, and line art shall be scanned at a minimum density of 300 dpi, and one-hundred percent of the scanned images shall be verified for completeness and accuracy prior to the destruction of the original record.

(3) Microfilm to Electronic Imaging

(a) A duplicate of the microfilm shall be made prior to scanning the microform.

(b) One-hundred percent of the scanned images shall be verified for completeness and accuracy.

(c) Microfilm with a retention period of less than 100 years may be destroyed once one-hundred percent of the scanned images are verified for completeness and accuracy.

(d) Microfilm with a retention period of greater than 100 years may not be destroyed unless written permission has been obtained from the State Archivist.

(4) Targeting and certification shall be completed according to the requirements of 166-025-0022.

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895

Hist.: OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0022 Target and Certifications (Hybrid Systems)

The following informational and technical targeting and certification shall be included in all public records on hybrid systems. All targets are available from the Archives Division:

(1) At the beginning of each roll there shall appear:

(a) 24" of processed leader

(b) One blank sheet of white paper

(c) ANSI/AIIM Scanner Test Chart #2

(d) Title sheet that includes series title, roll number, agency name, reduction ratio and dpi

(2) At the end of each roll there shall appear:

(a) Certificate of legality and authenticity (required information: Name of record creating agency, series title, date(s) of filming, name of scanner operator, signature of scanner operator, date signed).

(b) One blank sheet of white paper

(c) 24" of processed trailer

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895

Hist.: OSA 9-2009, f. & cert. ef. 10-15-09

ADMINISTRATIVE RULES

166-025-0025

Storage of Security Microfilm

Custodians of microfilm which contains long-term or permanent records shall provide off-site storage for silver security microfilm. This storage shall be at the appropriate temperature and relative humidity as specified in ANSI IT9.11 — (1998) American National Standard for Imaging Media — Processed Safety Photographic Film — Storage. Security microfilm shall be stored in acceptable containers and on acceptable reels. (See OAR 166-025-0015; Technical Specifications for Roll Microfilm)

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

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895

Stats. Implemented: ORS 357.825(2), 357.855 & 357.895

Hist.: OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0030

Security Copy Depository

The Archives Division operates the Security Copy Depository. The following are requirements for deposit of microfilm in Depository:

(1) Microfilm with an approved retention period between 10 and 99 years:

(a) Microfilm will be inspected for evidence of deterioration only on request of the depositor. Depositors shall be charged for all inspections.

(b) Microfilm for deposit shall be silver gelatin film, but may be unitized formats (e.g., microfiche, aperture cards). Non-silver films will not be accepted.

(c) All microfilm must be accompanied by a valid transmittal at the time of transfer.

(2) Microfilm with an approved retention period of 100 years or greater:

(a) Microfilm must have received approved, polysulfide treatment prior to acceptance into the Depository.

(b) Use of the Depository satisfies the off-site storage requirements of OAR 166-025-0025, Storage of Security Microfilm;

(c) Film transferred to the Security Copy Depository with a retention of 100 years or more will be inspected upon receipt for compliance with OAR 166-025-0015.

(d) The Archives Division shall require remedial action and/or image stabilization treatment on microfilm in the Security Copy Depository with a retention of 100 years or more and accepted prior to 1999. Depositors shall be charged for image stabilization and/or remedial treatments. Depositors who do not wish to have their film treated, will have their film returned to them.

(e) All microfilm in the Security Copy Depository with a retention of 100 years or more shall be on 16 mm, 35 mm, or 105 mm polyester based wet-processed silver gelatin roll film only;

(f) All microfilm in the Security Copy Depository with a retention of 100 years or more shall be enclosed in inert plastic containers in accordance with ANSI IT9.2-1991; For Imaging Media — Photographic Processed Films, Plates, and Papers — Filing Enclosures and Storage Containers. Containers shall be labeled in compliance with the requirements in the Oregon State Archives Division Micrographics Manual.

(g) All microfilm in the Security Copy Depository with a retention of 100 years or more shall be accompanied by a valid transmittal at the time of transfer;

(h) Non-silver films will not be accepted.

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

Stat. Auth.: ORS 192.070, 357.825(2) & 357.895

Stats. Implemented: ORS 357.825(2), 357.855 & 357.895

Hist.: OSA 5-1992, f. 12-21-92, cert. ef. 1-1-93; OSA 9-2009, f. & cert. ef. 10-15-09

166-025-0035

Microfilm as Official Copy of Public Record

Microfilm may be substituted for any paper or machine readable record if it is made according to the following conditions:

(1) A security copy of microfilm of public records which has a required minimum retention period of 100 years or longer must be made and stored in accordance with OAR 166-025-0005 to 166-025-0030. A security copy must be reserved and used solely as a backup security copy or as a master for making working copy duplicate film when required.

(2) Working copies of microfilm, and microfilm of public records with a minimum retention period of less than 100 years, may be made in accordance with agency standards and requirements for the retention period of the public records, including the option of using any film, processing system, or storage containers the agency may select.

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895

Hist.: OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0005

Purpose

This Division specifies requirements for agency records management programs, and specifies the lawful authority and methods to destroy or otherwise dispose of public records. They apply to all public records, regardless of medium or physical format, created and stored by state and local agencies.

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192 & 357

Hist.: OSA 2, f. & ef. 11-21-75; OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0016

Appointment of Records Officer

To establish a records management program that ensures the orderly retention and disposition of all public records, and to ensure the preservation of public records of value, each state or local agency shall designate a Records Officer. Records Officers organize and coordinate the agency's Records Management Program, serve as their agency's primary liaison with the State. Typical duties include planning, controlling, directing, organizing, training, promoting the program, and other activities involving the life cycle of information including records scheduling, retirement, storage and destruction. The State Archivist will provide training and assistance for Records Officers.

Stat. Auth.: ORS 357.855 & 357.895

Stats. Implemented: ORS 357.855 & 357.895

Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 2-1987, f. & ef. 2-6-87; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0021

Inventory and Appraisal (State Agencies)

To ensure accurate identification and evaluation of its records, each state agency shall, cooperate with the State Archivist in preparation of an inventory of the records of each of its organizational units, including the records of any other agency in its custody. These inventories shall be used to prepare a Special Schedule (OAR 166-030-0026) for public records in agency custody, regardless of medium or physical format. Special Schedules will not include schedules for records already listed in the State Agency General Schedule (OAR 166-300).

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192, 357.855 & 357.895

Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 2-1987, f. & ef. 2-6-87; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1992, f. 4-3-92, cert. ef. 4-6-92; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0026

Public Records Retention and Disposition Authorization (State Agencies)

Authorization for destruction of public records by a state agency shall be obtained as follows:

(1) No authorization is required to destroy materials which are excluded or exempt by statute from the definition of public records. (ORS 192.005(5), 192.170)

(2) A Special Schedule approved by the State Archivist, or an applicable State Agency General Records Retention Schedule found in OAR Chapter 166, Division 300, establishes the appropriate retention and disposition for state agency records. A state agency shall destroy public records that have met the terms and conditions of their scheduled retention period, subject to the prior audit requirements of OAR 166-030-0041 and any suspension ordered under the provisions of OAR 166-030-0045. Special Schedules shall be created from inventories (OAR 166-030-0021). Unless otherwise stated, a retention period shall be calculated from the date the public record was created. Retention periods for state agency records are both a minimum retention and a maximum retention period.

(3) State agencies shall submit a record of all public records (paper only) destroyed on the authority of the approved records retention schedules. This record shall list schedule number, record series title, cubic feet destroyed, and date destroyed. For electronic records, only agencies using an electronic records management system, need to report the records destroyed. The destruction report generated by the system shall suffice and should include retention schedule number, record series title, and date destroyed. Both the destruction report for paper records and for electronic records (when applicable) shall be forwarded to the State Archivist on an annual basis.

(4) Notwithstanding any existing records retention schedule, any State Agency electronic records with a scheduled retention period of Permanent, and which are also scheduled to be transferred to the State Archives, shall be kept by the agency in both electronic form and hard copy or microfilm form until State Archives electronic records accession review is completed. The State Archives will notify the agency in writing which electronic records, if any, will be accessioned and will specify transfer procedures, required format, required metadata and a required timetable for the electronic records transfer.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192, 357.855 & 357.895
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 2-1987, f. & ef. 2-6-87; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1992, f. 4-3-92, cert. ef. 4-6-92; OSA 1-1995, f. & cert. ef. 5-31-95; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0027

Public Records Retention and Disposition Authorization (Local Agencies)

Authorization for destruction of public records by local agencies shall be obtained as follows:

(1) No authorization is required to destroy materials which are excluded or exempt by statute from the definition of public records. (ORS 192.005(5), 192.170)

(2) An applicable General Schedule published in OAR Chapter 166, or a Special Schedule approved by the State Archivist, establishes the appropriate retention and disposition for local agency records. A local agency may destroy public records which have met the terms and conditions of their scheduled retention period, subject to the prior audit requirements of OAR 166-030-0041 and any suspension ordered under the provisions of OAR 166-030-0045. Unless otherwise stated, a retention period shall be calculated from the date the public record was created. Retention periods for local government agency records are minimum retention period.

(3) Notwithstanding any retention period listed in a General Schedule, no public record created in or prior to 1920 shall be destroyed without the express written permission of the State Archivist.

(4) Specific approval from the State Archivist by means of a Special Schedule is required to dispose of public records which are not listed in an applicable General Schedule found in these rules. Instructions on creating Special Schedules are available from the State Archivist.

(5) Special schedules will not be written for records contained in applicable local government general schedules unless the State Archivist determines that is necessary to do so. General schedules for local government agencies will be developed and filed as Oregon Administrative Rule following the procedures defined in OAR Chapter 166, Division 500. General schedules for local government agencies will be reviewed at least every five years, or sooner as specified by the State Archivist

(6) Notwithstanding any retention period listed in a General Schedule or Special Schedule, no public records listed on the Oregon Historical Records Inventory shall be destroyed. Copies of lists of records on the Oregon Historical Records Inventory are available from the State Archivist.

(7) Local agencies shall submit a record of all public records (paper only) destroyed on the authority of the approved records retention schedules. This record shall list schedule number, record series title, cubic feet destroyed, and date destroyed. For electronic records, only agencies using an electronic records management system, need to report the records destroyed. The destruction report generated by the system shall suffice and should include retention schedule number, record series title, and date destroyed. Both the destruction report for paper records and for electronic records (when applicable) shall be forwarded to the State Archivist on an annual basis.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192, 357.855 & 357.895
Hist.: OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1992, f. 4-3-92, cert. ef. 4-6-92; OSA 6-1994, f. & cert. ef. 8-29-94; OSA 1-1995, f. & cert. ef. 5-31-95; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0041

Prior Audit of Fiscal Public Records Required

Public records of fiscal transactions, regardless of medium or physical format, may not be destroyed until the minimum retention period has passed and the person charged with their audit has released them for destruction. If federal funds are involved, requirements of the United States government shall be observed.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192, 357.855 & 357.895
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0045

Suspension of Scheduled Public Records Destruction

A scheduled destruction of records, regardless of medium or physical format, which are the subject of a public records request or pending litigation shall be suspended until the request or litigation has been resolved. Only those records which have been specifically requested need be retained.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192, 357.855 & 357.895
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 1-1990, f. & cert. ef. 2-13-90; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-030-0060

Public Records Disposition and Destruction (State and Local Agencies)

A Special Schedule approved by the State Archivist, or an applicable General Schedule published in OAR Chapter 166, authorizes disposition of public records. Disposition includes:

(1) Transfer to the custody of the State Archivist. When the scheduled retention period specifies transfer to the State Archives, an agency shall transfer its custody of the specified records to the custody of the State Archivist.

(2) Shredding, Pulping, or Incineration. Public Records which are confidential by law and negotiable instruments (even when cancelled or satisfied in writing) must be destroyed by shredding, pulping, or incineration. The destruction should be supervised and witnessed by a responsible employee of the agency. When using a contractor to destroy public records, the state or local agency must require posting of a bond or undertaking by the contractor to indemnify the state or local agency against any claims or actions resulting from his failure to protect the confidentiality of the public records, and must require a provision precluding sale, transfer, or delivery of the public records to a third party prior to data obliteration. The agreement shall also include provisions requiring secure transit to and handling by the contractor; and prompt processing of the public records by the contractor to fully obliterate the data they contain by shredding, pulping, or incineration.

(3) Recycling. Records which are not confidential by law may be sold or traded for recycling of the fiber or chemical they contain, provided that the sale or trade agreement includes provisions to ensure that the public records are promptly converted into a form which precludes use of the information they contain.

(4) Deposit in a Library, Museum, or Historical Society with the permission of the State Archivist. The originals of public records that have been microfilmed in compliance with ORS 192.040 to 192.070 and OAR 166-025, and other public records which have continuing local historical value although destruction is authorized, may be deposited in a Library, Museum, or Historical Society if disclosure of the record is not prohibited by law and the depository agrees to comply with ORS 162.305, 192.420, and 192.430. Agreements for such deposits must stipulate that the depository cannot sell or otherwise dispose of the records except by lawful and complete destruction or by returning them to the depositing agency. Permission of the State Archivist is required prior to transfer of records.

(5) Additional destruction requirements for electronic records are specified in OAR 166-017-0060.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192, 357.855 & 357.895
Hist.: OSA 5, f. 12-30-77, ef. 1-1-78; OSA 3-1988, f. & cert. ef. 10-20-88; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-2009, f. & cert. ef. 10-15-09

166-500-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, dated January 1, 2008, are adopted as the rules of procedure for the Administrative Rules Unit.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Archives Division.]

Stat. Auth.: ORS 183.360
Stats. Implemented: ORS 183.335
Hist.: PRD 2-1988, f. & cert. ef. 2-5-88; PRD 6-1988, f. & cert. ef. 8-10-88; SOS-AD 1-1990, f. & cert. ef. 5-9-90; SOS-AD 2-1991, f. & cert. ef. 12-3-91; OSA 4-1993, f. & cert. ef. 11-10-93, Renumbered from 164-001-0005; OSA 8-1997, f. & cert. ef. 10-6-97; OSA 5-2001, f. & cert. ef. 7-5-01; OSA 5-2004, f. & cert. ef. 11-1-04; OSA 4-2006, f. & cert. ef. 10-12-06; OSA 9-2009, f. & cert. ef. 10-15-09

Secretary of State, Elections Division Chapter 165

Rule Caption: Signature Verification Observation Process and Rules for Observers for State Petitions.

Adm. Order No.: ELECT 17-2009(Temp)

Filed with Sec. of State: 9-17-2009

Certified to be Effective: 9-17-09 thru 1-15-10

Notice Publication Date:

Rules Adopted: 165-014-0033

Subject: This rule adopts the process and rules for observing the signature verification of state petitions. The rule addresses the number of observers at any given time, which signature verification process an authorized observer is allowed to watch, and prohibited behavior by observers.

Rules Coordinator: Brenda Bayes—(503) 986-1518

ADMINISTRATIVE RULES

165-014-0033

Signature Verification Observation Process and Rules for Observers for State Petitions

This rule is adopted to implement ORS 250.150(8). ORS 250.105(8) requires the Secretary of State and the county clerk, if requested, to permit authorized persons to watch the verification of signatures on a state petition. The Secretary of State or county clerk shall permit only as many persons as watchers as will not interfere with an orderly procedure at the office of the secretary or county clerk.

(1) Authorized observers include:

- (a) Chief petitioner(s);
- (b) A representative of an interest group in support of the petition; and
- (c) A representative of an interest group in opposition of the petition.

(2) Reasonable accommodation will be made for other individuals to observe the process. The number of observers in any one observation area may be limited by available space but may not exceed 5 observers at any given time. If the area is too small to accommodate all interested observers, the Elections Division will create a rotation schedule, giving priority to the authorized observers listed in (1).

(3) Authorized observers are allowed to watch all steps in the verification process during the designated schedule set forth by the Elections Division:

- (a) Sorting;
- (b) Data entry;
- (c) Pulling of sampled signature sheets; and
- (d) Verification of sampled signatures using the Oregon Centralized Voter Registration System.

(4) Operations of the process for signature verification will start and continue as scheduled, whether or not an Observer is present.

(5) The Elections Division will assign a staff person to work with an authorized observer to allow the observer to review petition signature sheets once those sheets have been through the sorting process by the Elections Division.

(a) This review of sorted petition sheets may be limited to time constraints imposed by the Elections Division's designated schedule.

(b) An observer allowed to review sorted petition sheets is required to complete the review process upon the request of an Elections Division staff member.

(c) If the observer fails to comply with the request of the staff member the observer will be asked to leave the premises.

(6) The Elections Division will place in a binder a copy of all signature sheets selected to be sampled for public inspection.

(a) An observer may request to review these sheets and if requested may view the signers voter registration records at the public terminal.

(b) These binders may not be removed from the Elections Division.

(7) Authorized observers shall adhere to the following rules:

(a) All observers must sign-in on the Observer Agreement form upon arrival and sign-out upon leaving;

(b) A visitor badge will be provided to all observers, must be worn at all times, and must be returned upon leaving;

(c) Observers are responsible for maintaining a professional manner and for ensuring they do not interfere with any process of signature verification while observing;

(d) Observers may observe and take notes regarding the process and will be permitted access to a designated observation area to observe established procedures;

(e) Observers may not have pagers and cellular telephones turned on while the signature verification process is being conducted so as to not disrupt the process;

(f) Observers may not use cameras, including cellular telephone cameras, or video recording devices of any kind; while inside the designated area(s) of signature verification;

(g) Observers may not be in designated work areas when staff is not present;

(h) Observers must avoid disrupting the Elections staff and operations, addressing all questions and concerns, including any challenges, to the person assigned to assist them. The staff member may either answer the questions or direct them to the appropriate person. Depending on the complexity or nature of a question, staff may request that the observer submit the question, in writing, to be answered at a later time; and

(i) Observers who fail to adhere to the general rules provided by the Secretary of State Elections Division will be relieved from their duties as an observer and asked to leave the premises.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 250.105 & 2009 OL Ch 720

Hist.: ELECT 17-2009(Temp) f. & cert. ef. 9-17-09 thru 1-15-10

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Rule clarifications and updates, amends incorrect citations & expired language, and repeals redundant rule.

Adm. Order No.: TSPC 4-2009

Filed with Sec. of State: 9-22-2009

Certified to be Effective: 9-22-09

Notice Publication Date: 4-1-2009

Rules Amended: 584-017-0042, 584-023-0005, 584-023-0015, 584-036-0055, 584-036-0082, 584-060-0062, 584-060-0071

Rules Repealed: 584-023-0025

Subject: (a) Allows educator programs to shorten student teacher placement if districts shorten school year.

(b) Updates and clarifies licensure fees, late fees, reinstatement fees and Charter School teacher and administrator fees.

(c) Clarifies registry of Charter School teachers and administrators.

(d) Amends endorsements requiring special preparation.

(e) Amends requirements for adding endorsements to Initial I, Initial II and Continuing teaching licenses.

(f) Repeals redundant rule regarding Charter School Fees.

(g) Housekeeping amendments.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0042

Waivers for Student Teaching Requirements in the Event of School District Closures

(1) An institution may grant a waiver of the full student teaching requirements pursuant to OAR 584-017-0045(2) in the event a candidate for teacher licensure is unable to complete the student teaching timeline requirements contained within OAR 584-017-0180(3) due to an unforeseen disruption of school district operations resulting in a school or district early closure.

(2) In order to grant the waiver, the institution must submit the following in their next annual report to the Commission:

(a) A stipulation that the conditions contained within OAR 584-017-0045(2) for each candidate waiver have been met;

(b) Identity of the school district and school building where the student teacher was placed; and

(c) The number of candidates affected by the early school closures.

(3) Institutions who grant a waiver pursuant to this rule shall not be considered to have made a minor or major modification to their approved program.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147

Hist.: TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 4-2009, f. & cert. ef. 9-22-09

584-023-0005

Registry of Charter School Teachers and Administrators

(1) 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).

(2) TSPC shall create a Public Charter School Registry for all non-licensed persons who are employed as teachers or administrators in any charter school.

(3) 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:

(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 application;

(d) A description of the applicant's post-secondary education and other experience relevant to the teaching or administrator position the applicant is seeking; and

(e) A list of any professional licenses held.

(4) Successful completion of the background checks disclosing no disqualifying materials or information will 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.

ADMINISTRATIVE RULES

(5) The registration is not transferrable and 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.

(6) A charter school 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; TSPC 4-2009, f. & cert. ef. 9-22-09

584-023-0015

Standards of Competence and Ethics for Charter School Registrants

The provisions of ORS 342.120 to 342.430 and the administrative 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; TSPC 4-2009, f. & cert. ef. 9-22-09

584-036-0055

Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) If the applicant is eligible for the teaching license, registration, or certificate for which application is made and the license, registration or certificate is issued within 90 days of original application, the commission shall issue the license, without additional charge with the following exceptions:

(a) If the commission determines the application is incomplete and fails to notify the applicant in less than one calendar week, the commission will extend the 90 days by an amount equal to the number of days the commission delayed in notifying the applicant of incomplete items.

(b) For renewable licenses with a 120 day grace period, the original application fee remains good throughout the 120 days.

(c) If the commission fails to issue the license within 90 days due to commission backlog, the fee shall remain good until the license is issued or 120 days, whichever is less.

(3) The fee for evaluating an initial application:

(a) Initial I License (3 years): \$100.

(b) Initial I Teaching License (18 months): \$50

(c) Initial II License (3 years): \$100;

(d) Basic License (3 years): \$100;

(e) Continuing License (5 years): \$100;

(f) Standard License (5 years): \$100;

(g) Restricted Transitional License (3 years): \$100;

(h) Limited License (3 years): \$100;

(i) American Indian Language License (3 years): \$100;

(j) Substitute License (3 years): \$100;

(k) Restricted Substitute License (3 years, 60 days per year): \$100;

(l) Exceptional Administrator License (3 years): \$100;

(m) Three-Year Career and Technical Education License (3 years):

\$100;

(n) Five-Year Career and Technical Education License (5 years):

\$100;

(o) NCLB Alternative Route License (3 years): \$100;

(p) Emergency Teaching License (term at discretion of Executive Director): \$100;

(q) School Nurse Certification (3 years): \$100.

(4) The fee for evaluating all applications for a first Oregon license based on completion of an out-of-state educator preparation program or an out of state license is \$120 regardless of the license issued.

(5) The fee for registration of a charter school teacher or administrator is \$75 which includes the fee for required criminal records and fingerprinting costs.

(6) The fee for evaluating an application for renewal of any license or certification is \$100.

(7) The fee for each of the following circumstances is \$20:

(a) A duplicate license, registration, or certificate for any reason;

(b) An approved extension to a provisional license; and

(c) Adding a district to an existing Restricted Teaching or Substitute License.

(8) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is \$100. No additional fee is required to add an endorsement or authorization in conjunction with an application for renewal or reinstatement of a license.

(9) The fee to evaluate an application for reinstatement of an expired license or certificate is \$100 plus a late application fee of \$25 for each month or portion of a month that the license or certificate has been expired to a maximum of \$200 total.

(a) The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certification.

(b) Late fees may only be imposed one time following the expiration of a license or school nurse certificate. If the applicant does not initially qualify for the license or certificate the applicant is seeking to reinstate, no additional late fees will be imposed upon application for subsequent licenses so long as the applicant has a current active license, registration or certification in effect at the time of application.

(10) The fee for evaluating an application for reinstatement of a suspended license or certificate is \$100 in addition to the \$100 application fee for a total of \$200. The fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license or certificate.

(11) The fee for evaluating an application for reinstatement of a suspended charter school registration is \$50 and does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired registration.

(12) The fee for evaluating an application for reinstatement of a revoked license or certificate is \$150 in addition to the \$100 application fee for a total of \$250. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certificate.

(13) The fee for evaluating an application for reinstatement of a revoked charter school registration is \$150 in addition to the \$25 application fee for a total of \$175. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(14) Forfeiture for a check which the applicant's bank will not honor is \$25, unrelated to any evaluation fees. The total amount due shall be paid in cash, credit, or Money Order at the Commission's office.

(15) The fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries is \$100.

(16) The fee for alternative assessment in lieu of the test for licensure endorsement is \$100.

(17) The fee for expedited service for an emergency or other license, registration or certificate is \$99 plus the fee for the license registration or certificate application as defined in this administrative rule.

(18) The fee to evaluate an application for reinstatement of an expired charter school registration is \$25 plus a late application fee of \$25 for each month or portion of a month that the registration has been expired to a maximum of \$125 total. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(19) The fee for renewal of a charter school registration is \$25.

(20) The fee for a criminal records check including fingerprinting is \$62.

(21) The fee for a "highly qualified teacher" evaluation is \$50.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 1-2009(Temp), f. & cert. ef. 2-27-09 thru 8-25-09; Administrative correction 9-29-09; TSPC 4-2009, f. & cert. ef. 9-22-09

584-036-0082

Courses in Lieu of or in Preparation for Basic Skills Examinations

(1) *Courses in Lieu of Basic Skills Examinations:* If an applicant for Oregon licensure has failed any section of the basic skills tests in reading, writing or mathematics at least once; the applicant may substitute a sequence of three transfer level Oregon college courses as outlined in subsection (2) below in each section failed.

(a) The sequences of courses must be completed subsequent to failing the basic skills test and must be completed for credit with a grade of "B" or better to qualify for waiver of the test.

(b) Prior to registering for the courses, the applicant must contact the counseling center at the college and secure specific advice pertaining to enrollment and admission into the approved courses and sections. The courses may be challenged through the institution's course challenge or

ADMINISTRATIVE RULES

credit by examination procedure when the candidate possesses the skills and knowledge that the courses are designed to develop.

(c) All courses which are challenged or in which credit is earned shall be reported to TSPC only on official transcripts.

(2) Courses in satisfaction of the basic skills requirements may be taken at any Oregon accredited community, private, or public college or university. Examples of approved courses are listed below.

Please note that if a set of courses is NOT mentioned below: *Failure to obtain TSPC pre-approval prior to enrollment or admission to the coursework will nullify the credit.*

(a) **READING:** Nine (9) quarter or six (6) semester hours of any reading course with the prefix "RD" that is 100 level or above. Examples include but are not limited to: RD 115 Accelerated Reading Tactics I; RD 116 Accelerated Reading Tactics II; RD 120 Critical Thinking and Reading;

(b) **WRITING:** Nine (9) quarter or six (6) semester hours of any writing course with the prefix "WR" that is 100 level or above. Examples include but are not limited to: WR 115 Introduction to Composition; WR 121 English Composition; WR 122 English Composition; WR 123 English Composition;

(c) **MATHEMATICS:** Nine (9) quarter or six (6) semester hours of any math course with the prefix "MATH" that is 100 level or above. Examples include but are not limited to: MATH 191 Mathematics for Elementary Teachers; MATH 192 Mathematics for Elementary Teachers; MATH 193 Mathematics for Elementary Teachers; MATH 211 Foundations of Elementary Mathematics; MATH 212 Foundations of Elementary Mathematics; MATH 213 Foundations of Elementary Mathematics.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120-342.200, 342.400, 342.985
Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 4-2009, f. & cert. ef. 9-22-09

584-060-0062

Adding Endorsements to Initial I, Initial II or Continuing Teaching Licenses

(1) **Subject-Matter Competency:** A new endorsement will be added to a new or existing Initial I, Initial II or Continuing Teaching License upon documentation of one of the following: (For Middle-Level Endorsement exceptions see subsection (3) below.)

(a) For endorsements where subject-matter mastery tests are required by the commission:

(A) Documentation of a passing score on all Commission-approved tests required for the endorsement; or

(B) Documentation of successful completion of the commission-approved alternative assessment in lieu of the passing score on the subject-matter mastery test.

(b) For the endorsements where the commission has not approved subject-matter mastery tests including but not limited to: Drama, Japanese, Latin, Russian, and Adaptive Physical Education:

(A) Completion of a program or demonstrated completion of required coursework; or

(B) A nonprovisional out-of-state license showing endorsement in the subject-area.

(c) **Special Exception for Out-of-State Applicants:** For out-of-state applicants upon first licensure in Oregon: Proof of licensure and five years experience teaching the endorsed subject on an out-of-state non provisional license may allow for waiver of subject-matter tests in the endorsement area through a transcript review of completed coursework as it compares to endorsement requirements in subject-matter areas in Division 38.

(2) **Practicum Requirements:** In addition to the requirements in subsection (1)(a) and (b) above, one of the following practical experiences must be completed:

(a) A practicum of 2 semester hours or 3 quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement;

(b) Verification of 60 hours or more of experience teaching the new subject-area at least one hour each day or the equivalent on either an optional assignment of ten hours or less or an approved conditional assignment permit (CAP) as allowed by OAR 584-036-0181.

(3) **Adding Endorsements to the Middle-Level (ML) Authorization Level:**

(a) Teachers holding an Initial I, Initial II, or Continuing Teaching License with a middle-level authorization are not required to complete an additional subject-related practicum to add the endorsements specified in this subsection so long as they also hold a multiple-subjects endorsement at the middle-level (ML).

(b) To add a middle-level endorsement to a middle-level authorized license, only the Commission-approved subject-matter high school or middle-level test or tests are required in any of the following areas:

- (A) Language Arts;
- (B) Social Studies;

(C) Science; and

(D) Math.

(c) A multiple subjects endorsement is also required to add all general education endorsements at the middle-level authorization except the following specialty endorsements:

(A) Adaptive Physical Education

(B) Art;

(C) ESOL;

(D) ESOL/Bilingual;

(E) Library Media Specialist;

(F) Music;

(G) Physical Education;

(H) Reading; and

(I) Special Education;

(J) Vision Impaired;

(K) Hearing Impaired;

(L) Communications Disorders;

(M) Early Intervention/Special Education.

(4) **Grade Authorization Level:** Some endorsement areas may require the completion of a new authorization level prior to being added to the license. The applicant should obtain a check sheet of requirements from TSPC prior to pursuing adding a new endorsement to an existing license. See, OAR 584-060-0052.

(5) **When Programs are Required:** An approved program including content courses, methods courses, and practica is always required as preparation for added endorsement in the following areas:

(A) All Special Education endorsements, including:

(i) Early Intervention/Special Education;

(ii) Hearing Impairment;

(iii) Vision Impairment;

(iv) Special Education; and

(v) Communication disorders;

(B) English to Speakers of Other Languages (ESOL);

(C) Reading; or

(D) Subjects for which no subject mastery test has been required by the commission for endorsement including but not limited to:

(i) Drama;

(ii) Japanese;

(iii) Latin;

(iv) Russian; and

(v) Adaptive Physical Education.

(b) Program evaluations for waiver of the subject matter test for out-of-state applicants requesting these endorsements must align with the requirements in Division 38.

(c) **Adding a Multiple Subjects or other General Education Endorsement to a License with Only a Specialty Endorsement:** To add any general education endorsement to a license that hold a "specialty endorsement" only requires the following:

(A) Evidence of completion of a general education program at the grade levels at which the general education endorsement is sought; or

(B) A recommendation by C-2 form by an Oregon program approved to offer the endorsement.

(6) **Specialty Endorsements:** (a) Adding specialty endorsements such as art, music, ESOL/bilingual, physical education, and library media specialists may involve additional coursework. (See, OAR 584-060-0071.)

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 3-2005(Temp), f. & cert. ef. 4-15-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 4-2009, f. & cert. ef. 9-22-09

584-060-0071

Endorsements Requiring Special Preparation

(1) Passage of the commission-approved multiple subjects examination may be necessary in order for a newly hired teacher with a special education or an ESOL endorsement to meet the definition of highly qualified under the federal No Child Left Behind Act (NCLBA) or under the Individuals with Disabilities Education Improvement Act (IDEIA) in the position in which they are hired if placed in grades K-8.

(2)(a) Teachers of the following specialty endorsement must qualify, through approved academic preparation in the desired authorization levels and through supervised work experience or student teaching for any authorization:

(A) Art;

(B) Bilingual education with English for speakers of other languages (ESOL);

(C) ESOL;

(D) Music;

(E) Physical education;

(F) Adaptive physical education;

(G) Reading;

ADMINISTRATIVE RULES

- (H) Library Media Specialist;
- (I) Special education;
- (J) Vision Impaired;
- (K) Hearing Impaired;
- (L) Communications Disorders; or
- (M) Early Intervention/Special Education.

(b) Candidates for specialty endorsement completing a practica experience at either early childhood or elementary and at either middle or high school level may qualify for authorization for prekindergarten (pre k) through grade twelve (12).

(3) Teachers applying for the visual impairments endorsement must demonstrate proficiency in reading and writing Braille by obtaining a certificate of competency from the National Library Service for the Blind and Physically Handicapped or an equivalent certificate currently approved by the commission.

(4) Teachers applying for the communication disorders endorsement may obtain authorization at all four levels by earning a certificate of clinical competence from the American Speech and Hearing Association or successor approved by the commission.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 4-2009, f. & cert. ef. 9-22-09

Rule Caption: Amends rules regarding Definitions, Civil Rights, CAPs, CPD, Nurses, Counselors, Psychologists, Limited Service, and Administrators.

Adm. Order No.: TSPC 5-2009

Filed with Sec. of State: 10-5-2009

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Rules Amended: 584-005-0005, 584-019-0003, 584-021-0105, 584-021-0140, 584-021-0150, 584-021-0210, 584-036-0025, 584-036-0067, 584-040-0005, 584-060-0002, 584-060-0013, 584-060-0014, 584-060-0022, 584-060-0190, 584-060-0200, 584-065-0060, 584-070-0014, 584-070-0022, 584-070-0211, 584-070-0221, 584-080-0002, 584-080-0012, 584-080-0022, 584-080-0031, 584-090-0001, 584-090-0005

Rules Repealed: 584-048-0010, 584-048-015, 584-048-0020, 584-048-0090, 584-048-0105, 584-048-0115, 584-005-0005(T), 584-021-0105(T), 584-021-0140(T), 584-021-0150(T), 584-021-0210(T), 584-040-0005(T), 584-048-0006(T), 584-048-0025(T), 584-048-0030(T), 584-048-0035(T), 584-048-0067(T), 584-048-0070(T), 584-048-0085(T), 584-048-0095(T), 584-048-0110(T), 584-060-0002(T), 584-060-0013(T), 584-060-0014(T), 584-060-0022(T), 584-070-0014(T), 584-070-0022(T), 584-070-0211(T), 584-070-0221(T), 584-080-0002(T), 584-080-0012(T), 584-080-0022(T), 584-080-0031(T)

Rules Renumbered: 584-048-0040 to 584-042-0012, 584-048-0120 to 584-036-0125

Rules Ren. & Amend: 584-048-0006 to 584-038-0312, 584-048-0025 to 584-038-0315, 584-048-0030 to 584-038-0322, 584-048-0032 to 584-038-0325, 584-048-0035 to 584-040-0350, 584-048-0067 to 584-044-0050, 584-048-0070 to 584-044-0055, 584-048-0085 to 584-046-0050, 584-048-0095 to 584-046-0055, 584-048-0110 to 584-036-0120

Subject: (1) Removes 'recency' requirement for licensure.

(2) Clarifies 'required experience' for licensure renewal.

(3) Updates and clarifies Conditional Assignment Permit requirements (CAPs).

(4) Clarifies next steps and renewal requirements after first licensed with out-of-state preparation.

(5) Adds new definitions regarding Charter School Registration, CPD, and the ORELA.

(6) Removes definitions of recency, successful experience, and year of experience from rules.

(7) Amends Nurse Certificates to update renewal requirements, reinstatement, and the Civil Rights test.

(8) Adds Initial I & Initial II to rules and clarifies eligibility for Initial I, Initial II, and Continuing Teaching Licenses.

(9) Clarifies licensure requirement change from civil rights workshop to a civil rights and professional ethics test.

(10) Repeals outdated rules, renumbers rules to proper division, updates obsolete language, renumbers rules for clarity and other housekeeping amendments.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-005-0005

Definitions

These definitions apply to Divisions 001–100 unless otherwise indicated by the context:

(1) "Administrators:" Superintendents, assistant superintendents, principals, vice principals, and such other personnel, regardless of title, whose positions require them to evaluate other licensed personnel.

(2) "All Grade Levels:" Grades prekindergarten through 12 (prek–12).

(3) "Alternative Assessment:" Procedures established by the Commission for candidates seeking licensure who fail to achieve a passing score on required matter or specialty area licensure tests for endorsement or authorization.

(4) "Alternative Education Program or School:" A private alternative education program or school registered with the Oregon Department of Education or a public alternative education program or school operated by a school district, education service district, or community college, which is established to serve students identified under ORS 339.250(6) and other students whose academic or professional technical interests and needs are best served through participation in such programs. (See OAR 584-036-0015.)

(5) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license.

(6) "Appropriately Assigned:" Assignments for administrator, teacher, supervisor, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. (See OAR 584-036-0081.)

(7) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" below.

(8) "Approved Program:" An Oregon program of educator preparation approved by TSPC and offered by a regionally accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(9) "Assistant Superintendent:" A superintendent's immediate subordinate who evaluates licensed personnel. May also be designated Deputy or Associate Superintendent.

(10) "Athletic Coaches:" Licensed personnel employed full time or part time for purposes of participation in interscholastic athletics and whose duties include instruction of students, preprimary through grade twelve.

(11) "Authorization Level:" The grade levels in which a person may teach, i.e., early childhood, elementary, middle level and high school as defined in OAR 584-060-0051.

(12) "Charter School Registration:" The indicator that an unlicensed teacher or administrator has cleared the fingerprints and criminal background check by TSPC. The Charter School Registration is not an indicator of competency or preparation as an educator.

(13) "Commission:" Teacher Standards and Practices Commission (TSPC).

(14) "Competencies:" Ability to apply knowledge and skills appropriately and effectively in achieving the expected outcomes.

(15) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(16) "Conditional Assignment:" (Formerly "Missassignment") Assignment of a licensed educator to a position for which he or she does not hold the subject or specialty area endorsement or authorization level required by the rules for licensure. (See OAR 584-036-0081).

(17) "Consortium:" An advisory body to the institution in reviewing, evaluating, and making recommendations on the design, implementation, evaluation, and modification of the program.

(18) "Continuing Professional Development:" Professional development that meets the requirements of OAR 584, Division 90 and enables an educator to be eligible for renewal of a Basic; Standard; Initial or Continuing License.

(19) "Continuing Professional Development Advisor:" A person selected by an educator and approved by the educator's supervisor, such as

ADMINISTRATIVE RULES

a college or university advisor, a peer coach, or a qualified member of an agency or professional organization.

(20) "Distance Learning Teacher:" A teacher who meets the criteria in OAR 584-036-0017 and provides live interactive instruction transmitted from a remote location or who delivers online education either from within Oregon or from another state and who is employed by one or more Oregon public school districts to teach public school students.

(21) "Domain:" An area of professional competency under which a teacher may select coursework or other approved activities for continuing professional development. (See OAR 584-090-0010.)

(22) "Education Service District (ESD):" A district created under ORS 334.010 that provides regional educational services to component school districts.

(23) "Educator:" Any person who is authorized to be employed in the instructional program of the public schools, public charter schools and ESDs, and holds a license to teach, administer, supervise, counsel or provide school psychology services.

(24) "Endorsement:" The subject matter or specialty education field or grade authorization in which the individual is licensed to teach.

(25) "Executive Director:" The Executive Director of the Commission. (See ORS 342.410.)

(26) "Expired License:" A license for which an application for renewal was not received by TSPC prior to the date of expiration stated on the license.

(27) "Field Experience:" Learning activities designed to develop professional competence through observing, assisting, or teaching in a public or approved non-public school.

(28) "Instructional Assistant:" A non-licensed position of employment in a school district assigned to assist a licensed teacher in a support role in the classroom working directly with students.

(29) "Instructional Faculty:" Full-time and part-time faculty in an Oregon-approved educator preparation program who teach professional courses or supervise field-centered activities and student teachers.

(30) "Intern:" A student of an approved institution who serves as a teacher, personnel specialist, or administrator under the supervision of the institution and of the school district in order to acquire practical experience in lieu of student teaching or supervised practica. Interns may receive both academic credit from the institution and financial compensation from the school district. Interns may serve as assistant coaches.

(31) "Joint Application:" Submitted by the school district in cooperation with the applicant.

(32) "Liaison Officer:" The person designated by the unit to submit all program modifications for TSPC approval, issue all recommendations for licensure under the approved program, authorize all waivers of professional courses for students enrolled in the program, and handle all correspondence between TSPC and the unit.

(33) "Major Modifications:" Changes of program philosophy, curricula, practica, resources, personnel, or performance standards.

(34) "Major Traffic Violation:" Includes driving while under the influence of intoxicants (ORS 487.540); reckless driving (ORS 487.550); fleeing or attempting to elude a police officer (ORS 487.555); driving while license is suspended or revoked or beyond license restrictions (ORS 487.560); or failure to perform the duties of a driver or witness at an accident (ORS 483.602).

(35) "Mentor:" Educators who have demonstrated the appropriate subject matter knowledge and teaching and/or administrative skills, which when assisting beginning educators, should substantially improve the induction and professional growth of beginning educators in this state.

(36) "Misassignment:" See definition of "Conditional Assignment" above.

(37) "National Board For Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(38) "Oregon Schools:" Includes public school districts, education service districts, registered private schools preprimary through grade twelve, state and federal schools, special state-supported schools, and public charter schools in Oregon serving students ages three through twenty-one, private schools accredited by the Northwest Commission on College and Universities, and private proprietary career schools registered by the Oregon Department of Education.

(39) "Oregon Educator Licensure Assessments (ORELA):" Licensure tests adopted by the Commission in specified endorsement or licensure areas.

(40) "Out of State Licenses or Certificates:" A certificate or license valid for full-time employment, at least equivalent to the Oregon license being requested, issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(41) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(41) "Personnel Service:" A type of license issued to counselors, supervisors, and school psychologists.

(42) "Practicum or Practica:" All supervised field experiences other than student teaching or internships. A practicum may be part of the field experience necessary to add an endorsement.

(43) "PRAXIS:" A series of professional assessments for beginning educators produced and administered by Educational Testing Service (ETS) and adopted by TSPC as licensure examinations.

(44) "Principal:" The administrator of each school building or buildings as designated by the school district board.

(45) "Private Schools:" A private school, preprimary through grade twelve, registered with the Oregon Department of Education in compliance with provisions of ORS 345.525 and 345.535 or approved or registered by another U.S. jurisdiction or government.

(46) "Professional Development Plan:" A plan for personal professional growth during the next licensure renewal cycle.

(47) "Professional Development Units (PDU):" A unit of domain-related activity that equals one clock hour of professional development and contributes to completion of an educator's professional development plan. (See OAR 584-090-001 et seq.)

(48) "Program Administrator:" Managers of school programs and coordinators of district-wide programs that are accountable at the building level.

(49) "Program Review Committee:" Committee appointed by the Commission to conduct an on-site review for purposes of approval of an educator preparation program.

(50) "Public Funds:" All monies expended by public school districts and for which the school board has responsibility, including funds from local, state, federal, and private sources. (See ORS 342.120(9).)

(51) "Public Schools:" Public school districts, education service districts and public charter school created under ORS Ch. 338, which are supported by local and state public funds and for which the school board has responsibility, for the program of instruction carried out in that school.

(52) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(53) "Reinstatement:" Restoration of the validity of a license which has expired, been suspended, or been revoked. (See OAR 584-050-0015.)

(54) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license.

(55) "School:" A single school building or combination of buildings which the school board designates as a school.

(56) "School Administrator:" The principal, vice principals and assistant principals at each school.

(57) "School Board:" The board of directors of a local school district or an education service district, the governing board of a public charter school, a registered private school, or the directors of a state, federal, or special state-supported school.

(58) "School Counselor:" A licensed employee of the district assigned to assist students to: develop decision-making skills, obtain information about themselves, understand opportunities and alternatives available in educational programs, set tentative career and educational goals, accept increasing responsibilities for their own actions, develop skills in interpersonal relations, and utilize school and community resources.

(59) "School District:" Includes administrative school districts; common school districts; joint school districts; union high school districts; county units; education service districts; registered private schools; and state, federal, and special state-supported schools. May also include school districts from other states.

(60) "School Nurse:" A registered nurse who is licensed by the Teacher Standards and Practices Commission as qualified to conduct and coordinate the health service programs of a school. (See OAR 584 div. 21.)

(61) "School Psychologist:" A licensed employee of the district assigned to: assessment of students' mental aptitude, emotional development, motor skills, or educational progress; designing educational programs for students and conferring with licensed personnel regarding such programs; and consulting with parents and students regarding interpretation

ADMINISTRATIVE RULES

of assessments and the design of educational programs. (See OAR 584 div. 44 and 70.)

(62) "School Supervisor:" Educators who assist, supervise, and evaluate students enrolled in the field-centered activities, including but not limited to, practica, internships and student teaching. (See OAR 584 div. 17.)

(63) "Self-Contained Classroom:" An assignment for teaching in grades preprimary through nine in which the teacher has primary responsibility for the curriculum.

(64) "Skills:" Ability to use knowledge effectively in the performance of specific tasks typical of those required in an educational position.

(65) "State Board:" The Oregon State Board of Education.

(66) "Student Teacher:" A student of an approved teacher education institution who is assigned to a public or approved private school for professional practica under the supervision of qualified personnel. Student teachers may provide instruction or may serve as assistant coaches.

(67) "Superintendent:" The district's chief administrator who reports directly to the school board.

(68) "Supervisor of Licensed Personnel:" A person assigned to a position which includes the on-the-job supervision or evaluation of licensed personnel. Should not be confused with "School Supervisor" above.

(69) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

(70) "Teacher Education Programs:" Programs preparing teachers, personnel service specialists, or administrators. Oregon Revised Statutes use the term "teacher education" to refer to all programs preparing educational personnel for public elementary and secondary schools, not exclusive to those for classroom teachers.

(71) "Transcripts:" An institution-sealed official record of academic preparation which bears the signature of the registrar and the seal of the institution. Photocopies are not acceptable.

(72) "TSPC:" Teacher Standards and Practices Commission.

(73) "Unit:" The institution, college, school, department, or other administrative body with the responsibility for managing or coordinating all programs offered for the initial and continuing preparation of teachers and other school personnel, regardless of where these programs are administratively housed.

(74) "Vice Principal:" A principal's immediate subordinate assigned to coordination of instruction, discipline, student activities, or supervision or evaluation of staff.

(75) "Violation of Licensure:" Employment by a public school of a teacher or school nurse without a valid license or Conditional Assignment Permit above.

(76) "Work Samples:" A designed and implemented unit of study that demonstrates capacity to foster student learning.

(77) "Year of Experience:" A period of at least eight consecutive months of full-time work or two consecutive years of one-half time or more while holding a license valid for the assignment.

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430 & 342.455 - 342.495

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2000, f. & cert. ef. 9-20-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2002, f. & cert. ef. 3-15-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 3-2008(Temp), f. & cert. ef. 5-30-08 thru 11-25-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

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:

(a) The Executive Director denies the issuance, renewal or re-instatement of a license, school nurse certificate or a charter school registration under OAR 584-050-0006;

(b) When the Commission determines that there is sufficient cause to justify a hearing under ORS 342.176(5); or

(c) When the Executive Director has information that the educator has violated any term or condition of probation.

(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; TSPC 5-2009, f. & cert. ef. 10-5-09

584-021-0105

Definitions

As used in OAR chapter 584, division 021, unless otherwise indicated by the context, the following definitions apply:

(1) "Application:" A request for an Oregon certificate authorizing service in public schools or a request for reinstatement or renewal of such certificate. As used in these rules, "application" includes the Application Form N-1, the fee, and all supporting documents necessary for the evaluation for the certificate.

(2) "Approved Institutions:" Oregon colleges and universities regionally accredited for the preparation of nurses by the Oregon State Board of Nursing or for preparation of teachers by Teacher Standards and Practices Commission and other regionally accredited colleges or universities approved to prepare nurses or teachers by the state or governmental jurisdiction in which the institutions are located. All approved institutions must be accredited by the appropriate regional accrediting association.

(3) "Commission:" The Teacher Standards and Practices Commission (TSPC).

(4) "Executive Director:" The Executive Director for the Commission.

(5) "Expired Certificate:" A certificate for which an application for renewal was not received by TSPC prior to the date of expiration stated on the certificate.

(6) "Joint Application:" Submitted by the school board or school superintendent in cooperation with the applicant.

(7) "Nurse:" A registered nurse who holds a current license issued by the Oregon State Board of Nursing. See also School Nurse.

(8) "Personal Qualifications:" Personal qualifications for certification including possessing good moral character and mental and physical health necessary for employment as a school nurse.

(9) "Registered Private School:" A private school, prekindergarten through grade twelve, registered with the Oregon Department of Education.

(10) "Reinstatement:" Restoration of the validity of a certificate which has expired, been revoked, or been surrendered.

(11) "Renewal:" Extension of validity of a current certificate. An application for renewal must be submitted prior to the expiration date stated on the certificate.

(12) "School Nurse:" A registered nurse who is certified by the Teacher Standards and Practices Commission as qualified to conduct and coordinate the health service programs of a school.

(13) "Volunteer Nurse:" A registered nurse who serves without remuneration in a school health services program.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 183, 342.455 - 342.495

Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 1-1987, f. & ef. 3-3-87; TS 3-1988, f. & cert. ef. 4-7-88; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-021-0140

Requirements for Applying for Renewal or Reinstatement of Certification

An applicant for renewal or reinstatement of an Oregon School Nurse Certificate must:

(1) Provide the information requested on the Application, Form N-1, and sign in the space provided. The character questions pertaining to dismissal, revocation, and conviction must be answered and supporting materials attached to the application, if necessary;

(2) Present a statement verifying satisfactory completion of a Commission-approved workshop or course on the laws prohibiting discrimination, if not previously verified;

(3) Submit all required fees;

(4) Provide verification of professional upgrading satisfactory to the school district, if applicable;

(5) Provide evidence satisfactory to the Commission of fitness to serve as school nurse, if the application is for reinstatement of a surrendered or revoked certificate;

(6) Submit the employing school district's request for the certificate if the application is for renewal of an Emergency School Nurse Certificate;

(7) Submit a current registered nurse license issued by the Oregon State Board of Nursing. A photocopy is acceptable; and

(8) Submit official transcripts of nine quarter hours or six semester hours of additional preparation during the life of the current certificate or

ADMINISTRATIVE RULES

since expiration of the certificate, if unable to verify adequate or acceptable experience during the life of the certificate.

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 183, 342.455 – 342.495

Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-021-0150

Renewal for Professional School Nurse Certificate

(1) The Professional School Nurse Certificate may be renewed for five years upon verification that the applicant holds a current registered nurse license issued by the Oregon State Board of Nursing and that one of the following continuing professional development requirements has been met: 9 quarter hours, 6 semester hours or 125 clock hours of professional upgrading.

(2) Professional upgrading must be approved by the school district as part of the professional improvement program for the school nurse if the school nurse has been employed during the life of the license. Professional upgrading may include, but is not limited to: College and university courses, community college courses, established workshops, or planned experiences in nursing.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 183, 342.455 – 342.495

Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-021-0210

Reinstatement of Expired School Nurse Certificates

(1) For one year after expiration, a Professional Nurse Certificate may be reinstated upon payment of the required late application fee. Applicable renewal requirements must also be met. (See OAR 584-021-0150 for renewal requirements.)

(2) The applicant also must hold a current registered nurse license issued by the Oregon State Board of Nursing. The additional preparation must be completed within the three-year period prior to application for reinstatement.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 183, 342.175 – 342.190, 342.455 – 342.495

Hist.: TS 4-1982, f. & ef. 7-22-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-036-0025

Basic and Standard Personnel Service Licenses

(1) A Basic Personnel Service License is valid for three years.

(2) A Basic Personnel Service License is renewable, but personnel specialists must qualify for a Standard Personnel Service License upon expiration of the second basic license.

(3) A Standard Personnel Service License valid for five years is issued to an applicant who meets the requirements set forth in OAR 584-044-0015.

(4) A Standard Personnel Service License is renewable and is valid for the same assignments as a basic license with similar endorsements.

(5) Basic or Standard Personnel Service Licenses are valid for personnel service, substitute teaching, and athletic coaching from preprimary through grade twelve when endorsed as follows:

(a) A counselor endorsement is required for personnel assigned one-half time or more to assist students to:

(A) Develop decision-making skills;

(B) Obtain information about themselves;

(C) Understand opportunities and alternatives available in educational programs;

(D) Set tentative career and educational goals;

(E) Accept increasing responsibilities for their own actions;

(F) Develop skills in interpersonal relations; and

(G) Use school and community resources.

(b) A school psychologist endorsement issued by the Commission or a psychologist license issued by the Oregon Board of Psychologist Examiners is required for an employee of the district who is not providing instruction as a teacher or counselor, but who is assigned to:

(A) Assessment of student's mental aptitude;

(B) Emotional development, motor skills or educational progress;

(C) Designing educational programs for students and conferring with licensed personnel regarding such programs;

(D) Providing specially designed instruction in the area of social and behavioral skills; and

(E) Consulting with parents and students regarding interpretation of assessments and the design of educational programs. (See also OAR 584-036-0010 Requirements to "related services" for special education students.)

(d) Requirements for basic and standard school psychologist endorsements are set forth in OAR 584-044-0014 and 584-044-0023.

(6)(a) A supervisor endorsement is valid for a position which includes the evaluation of licensed personnel.

(b) An Administrative License may be used in place of a Personnel Service License with the supervisor endorsement.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.200, 342.400 & 342.985

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78, except section (1)(a)(b), (3)(d), ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1982, f. & ef. 12-9-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1992, f. & cert. ef. 1-15-92; TS 1-1995, f. & cert. ef. 7-18-95; TSPC 5-2009, f. & cert. ef. 10-5-09

584-036-0067

Temporary One-Year Extension of Initial Licenses

(1) Any licensed educator who possesses an Initial Teaching License, an Initial School Counselor License, an Initial School Psychologist License or an Initial Administrator License that was granted on or before October 3, 2003, is granted one extra year on the life of their license to complete Initial II or Continuing Licensure requirements.

(2) The TSPC will administer this extension internally by issuing a letter to the licensees who are entitled to the one year extension and altering the expiration date on their license within the TSPC database. Some license holders may receive the extra year upon renewal of their license.

(3) An educator can check on her or his expiration date by accessing their records on the TSPC Web site.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.136

Hist.: TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 5-2009, f. & cert. ef. 10-5-09

584-036-0120

Administrative License Renewal

An Administrative License originally issued prior to October 15, 1965 may be renewed on verification of continuing professional development pursuant to 584-090.

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 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0110, TSPC 5-2009, f. & cert. ef. 10-5-09

584-036-0125

Special Provisions for a One-Year Extension to Basic and Standard Licenses

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a one-year extension of a Basic or Standard License will be granted. The joint application shall be submitted by the prospective educator and the school district who is seeking to employ the applicant. The extension is valid for one year and is not renewable.

(2) The applicant must submit verification that either of the following conditions in have been met:

(a) The applicant is within 12 quarter or 8 semester hours of qualifying for either a Basic or a Standard License with the applicable endorsement(s); or

(b) The applicant has completed all academic requirements for either a Basic or a Standard License with the exception of passing scores on the specialty area test, if required.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.200 & 342.400

Hist.: TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 13-2006, f. & cert. ef. 11-22-06; Renumbered from 584-048-0120, TSPC 5-2009, f. & cert. ef. 10-5-09

584-038-0312

Renewal Generally

(1) Upon filing a timely, correct, and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted renewal of any license issued by Teacher Standards and Practices Commission as described in the following sections.

(2) Renewal requirements must be completed during the life of any active license held by the educator.

(3) Educators are required to renew only the licenses valid for their current assignments.

(4) An applicant who meets all requirements for the Standard Teaching License except teaching experience in Oregon schools will be granted a third Basic Teaching License without further preparation. Thereafter, if the experience requirement has not been met, the applicant

ADMINISTRATIVE RULES

may renew the Basic Teaching License upon verification continuing professional development pursuant to OAR 584, Division 90.

(5) An applicant for administrator license who stops out for service in the Peace Corps, VISTA, Armed Forces or other comparable service program is permitted one additional renewal of their administrative license before having to qualify for the Standard or Continuing Administrator license.

(6) An applicant who completes all requirements for the Standard Personnel Service License except the experience in Oregon schools will be granted a third Basic Personnel Service License without further preparation.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0006, TSPC 5-2009, f. & cert. ef. 10-5-09

584-038-0315

Renewal of Basic Teaching Licenses for General Education Elementary, Middle, and Junior High Schools Only

(1) The Basic Teaching License with a subject matter endorsement may be renewed for a period of three years for use in an elementary, middle, or junior high school only.

(2) Authorizations to teach are for preprimary through grade nine or for grades five through nine as appropriate for the endorsement.

(3) Continuing Professional Development is required for renewal pursuant to OAR 584 division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-82; TSPC 6-1983, f. & ef. 10-18-83; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0025, TSPC 5-2009, f. & cert. ef. 10-5-09

584-038-0322

Renewal of Basic Licenses for Special Education

(1) The Basic Teaching License with a special education endorsement may be renewed for three years if the teacher has completed 24 quarter hours of upper-division or graduate credit toward completion of a Standard Teaching License program.

(2) Basic special education endorsements are renewable only once; thereafter, the teacher must qualify for a Standard Teaching License with a standard special education endorsement.

(3) Notwithstanding subsection (1) above, a Basic Teaching License with a Severe Exceptional Needs Learner endorsement may be renewed upon verification of continuing professional development pursuant to OAR 584-90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 1-1996, f. & cert. ef. 1-29-96; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0030, TSPC 5-2009, f. & cert. ef. 10-5-09

584-038-0325

Renewal of Basic Licenses — Special Provisions

(1) The Basic Teaching License with a subject matter endorsement(s) may be renewed for a period of three years for use in grades five through twelve when the applicant has completed additional preparation applicable to a Standard Teaching License.

(2) Basic Teaching Licenses with endorsements in art, foreign language, health, home economics, technology education, library media, music, physical education or reading may also be renewed for use in preprimary through grade twelve under this rule.

(3) To retain authorization for teaching in a high school, holders of subject matter endorsements must complete 24 quarter or 16 semester hours toward standard licensure for renewal of the first Basic Teaching License and must qualify for a Standard Teaching License upon expiration of the second Basic Teaching License.

(4) Subject matter endorsements are valid only for teaching the subject in elementary, middle, or junior high schools through grade nine, if requirements leading to standard licensure are not met.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 3-1988, f. & cert. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; Renumbered from 584-048-0032, TSPC 5-2009, f. & cert. ef. 10-5-09

584-040-0005

Standard 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 a Standard Teaching License.

(2) The Standard Teaching License is issued for five years and is renewable repeatedly under conditions specified below. It 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.

(3) The applicant must provide verification of teaching experience in Oregon schools while holding a Basic Teaching License or a Five-Year Regular License valid for the assignment in one of the following ways:

(a) Three years of one-half time or more experience is required; or

(b) For persons holding a Basic Teaching License prior to January 1, 1990, two years of experience or three years of one-half time or more experience, whichever is less.

(4) Notwithstanding subsection (5) below, the applicant must provide evidence of one of the following:

(a) Completion of an approved Standard Teaching License program which culminates with forty-five quarter hours or thirty semester hours of upper-division or graduate study beyond the bachelor's degree and includes the following:

(A) Verification of completion of the professional preparation described in OAR 584-040-0008 unless the application is for a Standard Teaching License with a standard special education endorsement, in which case the professional preparation in OAR 584-040-0008 is not required; and

(B) Evidence of completion of the academic preparation for one of the standard endorsements outlined in OAR 584-040-0010 through 584-040-0300 in a field in which the basic endorsement is held, or completion of two of the basic subject matter endorsements outlined in OAR 584-038-0010 through 584-038-0280. Fifteen of the quarter hours or 12 semester hours that are required for the endorsement(s) must be at graduate level; or

(b) Completion of a master's or higher degree in the arts and sciences, or an advanced degree in the professions from a regionally accredited institution in the United States or the foreign equivalent of such a degree approved by the Commission;

(c) Completion of an inservice program offered by an approved teacher education program granting credit for the experience, culminating in either a master's degree or forty-five quarter hours or thirty semester hours of upper-division or graduate study beyond the bachelor's degree.

(5) The holder of a Basic Teaching License with a Basic Special Education endorsement must qualify for a Standard Teaching License in the following manner:

(a) Upon expiration of the second Basic Teaching License, the holder of a Basic Special Education endorsement must qualify for a Standard Teaching License with a Standard Special Education endorsement by verifying fifteen quarter hours or ten semester hours of graduate preparation in special education.

(b) The severe exceptional needs learner endorsement is an exception to this rule; it may be renewed without completion of a Standard Teaching License. (See OAR 584-048-0030 regarding renewal of the severe exceptional needs learner endorsement.)

(6) An applicant who does not complete the requirements of (4)(a)(B) above, will not be given a Standard Endorsement, but would retain any Basic Endorsement that the applicant holds.

(7) The applicant must have a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws.

(8) The Standard Teaching License may be renewed under the provisions of 584-048-0035 together with completion of the professional development requirements as described in 584-090-0005.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-040-0350

Standard Teaching License Renewal

A Standard Teaching License may be renewed upon verification of continuing professional development pursuant to OAR 584-90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TSPC 6-1983, f. & ef. 10-18-83; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 4-

ADMINISTRATIVE RULES

1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 1-1996, f. & cert. ef. 1-29-96; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0035, TSPC 5-2009, f. & cert. ef. 10-5-09

584-042-0012

Career and Technical Education Teaching License Renewal

(1)(a) The Three-Year Career and Technical Education Teaching License is not renewable. To obtain further career and technical education licensure, the applicant must qualify for the Five-Year Career and Technical Education Teaching License upon expiration of the Three-Year Career and Technical Education Teaching License. (See OAR 584-042-0008 for requirements for the Five-Year Career and Technical Education Teaching License.)

(b) In extenuating circumstances, an applicant may be eligible for a restricted extension to the Three-Year Career and Technical Education Teaching License. (See OAR 584-042-0006.)

(2)(a) The Five-Year Career and Technical Education Teaching License may be renewed upon joint application of the employing school district and the instructor and upon completion, during the life of the license, of 125 clock hours or the equivalent of continuing professional development (CPD).

(b) CPD may include, but is not limited to, college and university courses, community college courses, established workshops, or planned experiences in business and industry.

(c) If formal credit is granted, one quarter hour of credit equals 20 clock hours and one semester hour equals 30 clock hours of CPD.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78 except section (2)(a), ef. 1-1-80; 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 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 5-2007, f. & cert. ef. 8-15-07; Renumbered from 584-048-0040, TSPC 5-2009, f. & cert. ef. 10-5-09

584-044-0050

Renewal of Personnel Service Licenses — Special Provisions

(1) An applicant who completes all requirements for the Standard Personnel Service License except the experience in Oregon schools will be granted a third Basic Personnel Service License without further preparation.

(2) Thereafter, a Basic Personnel Service License may be renewed upon verification of continuing professional development pursuant to 584-90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-84; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 13-2006, f. & cert. ef. 11-22-06; Suspended by TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0067, TSPC 5-2009, f. & cert. ef. 10-5-09

584-044-0055

Standard Personnel Service License Renewal

A Standard Personnel Service License may be renewed upon verification of continuing professional development pursuant to 584-090.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0070, TSPC 5-2009, f. & cert. ef. 10-5-09

584-046-0050

Renewal of a Basic Administrative License

(1)(a) The Basic Administrative License with the administrator endorsement may be renewed twice for a period of two years each time, on the recommendation of an institution offering an approved program for preparation of administrators. The recommendation shall be contingent upon completion of nine quarter or six semester hours applicable to a Standard Administrative License.

(b) The additional preparation must be completed subsequent to issuance of the current license unless completion of the academic requirements for the Standard Administrative License has been verified prior to application for renewal of the Basic Administrative License.

(c) Use of the license is limited to serving as a vice principal.

(2) Upon assuming a principal position, the educator must hold a basic or standard administrator endorsement.

(3)(a) The Basic Administrative License with the superintendent endorsement may be renewed twice, for a period of two years each time, on the recommendation of an institution offering an approved preparation program for superintendents.

(b) The recommendation shall be contingent upon satisfactory completion of 12 quarter or 8 semester hours of the program applicable to a Standard Administrative or Continuing Administrator License. The additional preparation must be completed subsequent to issuance of the current license.

(4) A Basic Administrative License may be renewed upon verification of continuing professional development pursuant to 584-90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; 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 2-1986, f. 4-18-86, ef. 1-15-88; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0085, TSPC 5-2009, f. & cert. ef. 10-5-09

584-046-0055

Standard Administrative License Renewal

(1) An applicant who meets all requirements for the Standard Administrative License except the requirement of three years of experience in Oregon schools will be granted a fourth Basic Administrative License without further preparation.

(2) A Standard Administrative License may be renewed for five years upon verification of continuing professional development pursuant to 584-90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 2-1986, f. 4-18-86, ef. 1-15-88; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Renumbered from 584-048-0095, TSPC 5-2009, f. & cert. ef. 10-5-09

584-060-0002

Definitions for Division 060

(1) "Alternative Assessment:" Procedures established by the Commission for candidates seeking licensure who fail to achieve a passing score on required subject matter or specialty area licensure tests for endorsement or authorization.

(2) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license. A copy of the C-1 can be found on TSPC's Web page at: www.tspc.state.or.us.

(3) "Appropriately Assigned:" Assignments for administrator, teacher, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. See OAR 584-036-0081.

(4) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" at OAR 584-005-0005.

(5) "Approved Programs:" An Oregon program of educator preparation approved by TSPC and offered by a regionally accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(6) "Authorization Level:" The grade levels in which a person may teach, i.e., early childhood, elementary, middle level and high school as defined in OAR 584-060-0051.

(7) "Basic Skills Tests:" Tests of basic reading, writing and mathematics as approved by the commission. These tests may only be waived if the applicant possesses a regionally accredited doctor's degree or was licensed in Oregon prior to 1985.

(8) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(9) "Endorsement:" The subject matter or specialty education field and/or grade authorization in which the individual is licensed to teach.

(10) "National Board for Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(11) "Out of State Licenses or Certificates:" A certificate or license valid for full-time employment which is at least equivalent to the Oregon license being requested and is issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(12) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen years of age and possessing good

ADMINISTRATIVE RULES

moral character and mental and physical health necessary for employment as an educator.

(13) "Private Schools:" A private school, preprimary through grade twelve, registered with the Oregon Department of Education in compliance with provisions of ORS 345.525 and 345.535 or approved or registered by another U.S. jurisdiction or government.

(14) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(15) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license.

(16) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-060-0013

Initial II Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial II Teaching License for three years.

(2) To be eligible for an Initial II Teaching License, and if the Initial I Teaching License was granted on the basis of a completed teacher preparation program culminating in a bachelor's degree, the applicant must:

(a) Complete a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; or

(b) In lieu of a master's degree, a candidate must complete graduate level coursework germane to the license or directly germane to public school employment as follows:

(A) At least ten semester hours or fifteen quarter hours in subject-matter coursework; and

(B) At least ten semester hours or fifteen quarter hours in graduate-level education-related coursework; and

(C) At least ten semester hours or fifteen quarter hours in graduate-level electives.

(3) To be eligible for an Initial II Teaching License, and if the Initial I Teaching License was granted on the basis of a post-baccalaureate completed teacher preparation program whether the program culminates in a master's degree, the applicant must complete one of the following (a)-(c):

(a) Six semester hours or nine quarter hours of graduate level academic credit from a regionally accredited college or university, or the graduate level credit must:

(A) Be completed after the Initial I Teaching License has first been issued; and

(B) Be germane to the teaching license or directly germane to public school employment; and

(C) May include pedagogy, or content related to an existing endorsement or authorization, or content related to a new endorsement or authorization. (Completion of this required coursework does not guarantee completion of commission approved endorsement requirements offered by any Oregon college or university)

(b) A commission-approved school district program determined to be equivalent to (a) above; or

(c) Any commission-approved professional assessment.

(d) In all cases, the combination of a post-baccalaureate program and the additional hours required by this subsection must be equivalent to a master's degree or 45 quarter hours or 30 semester hours.

(4) The Initial II Teaching License may be renewed repeatedly for three years upon completion of:

(a) All the requirements in either (2) or (3) above; and

(b) A professional development plan in accordance with OAR 584-090.

(5) A teacher may choose to become eligible for the Continuing Teaching License in lieu of obtaining the Initial II Teaching License. (See OAR 584-060-0022.)

(6) Teachers issued Initial Teaching Licenses prior to July 1, 2005 must meet the requirements of this rule prior to the expiration of ten (10) years from the date the first Initial Teaching License was issued. The additional year granted to licensees holding an Initial Teaching License prior to October 13, 2003, will be included in the ten year calculation for meeting the requirements of this rule.

(7) This rule applies to all Initial Teaching Licenses issued after December 1998.

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 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-060-0014

Initial Teaching License for Out-of-State Candidate First Application

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant who is applying for licensure in Oregon for the first time and has completed an out-of-state approved teacher-education program may be granted an Initial Teaching License for eighteen (18) months.

(2) The Initial Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0051 for Teaching Authorization Levels.)

(3) To be eligible for an Initial Teaching License, an out-of-state applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program

(d) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(4) Upon expiration of the Initial Teaching License the applicant must apply for any of the following:

(a) An Initial I Teaching License: Qualified applicants will be issued an Initial I Teaching License for 18 months plus time to the applicant's next birthday. The fee for the Initial I granted pursuant to this rule is \$50.

(b) An Initial II Teaching License: Qualified applicants will be issued an Initial II Teaching License for three years plus time to the applicant's next birthday. The fee for the Initial II Teaching License is \$100.

(c) A Continuing Teaching License: Qualified applicants will be issued a Continuing Teaching License for five years plus time to the applicant's next birthday. The fee for the Continuing Teaching License is \$100.

(5) To be eligible for an Initial I Teaching License, an applicant must:

(a) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; and (See, 584-060-0002(7) for definition of Basic Skills Tests;)

(b) Receive a passing score as currently specified by the commission on each of one or more tests of subject-matter mastery for licensure endorsement or authorization;

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment; or

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 584-052-0033 regarding Alternative Assessment guidelines and regulations.)

(c) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws.

(d) See, OAR 584-060-0012(5) for Initial I Teaching License renewal requirements.

(6) To be eligible for an Initial II Teaching License, an applicant must:

(a) Meet all the requirements for the Initial I Teaching License; and

ADMINISTRATIVE RULES

(b) Meet the requirements for the Initial II Teaching License. (See, OAR 584-060-0013.)

(c) See OAR 584-060-0013(4) for Initial II Teaching License renewal requirements.

(7) To be eligible for a Continuing Teaching License, an applicant must:

(a) Meet all the requirements for the Initial I and the Initial II Teaching License; and

(b) Meet the requirements for a Continuing Teaching License. (See, OAR 584-060-022.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.136, 342.223 - 342.232

Hist.: TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-060-0022

Continuing Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Continuing Teaching License.

(2) This license is issued for five years and is renewable repeatedly under conditions specified below.

(3) This 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.

(4) To be eligible for a Continuing Teaching License an applicant must:

(a) Meet or complete all requirements of the Initial I and the Initial II Teaching Licenses; and

(b) Hold a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; and

(c) Have taught five years of at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0160 by completing one of the following:

(A) A TSPC approved Continuing Teaching License program offered by a college or university; or

(B) A doctorate degree in education from a regionally accredited institution; or the foreign equivalent of such degree approved by the commission; or

(C) Certification by the National Boards of Professional Teaching Standards; or

(D) Certificate of Clinical Competence awarded by the American Speech and Hearing Association for those holding a communication disorders endorsement; or

(E) A commission-approved school district program; or

(F) Any commission-approved professional assessment.

(G) A Professional Certificate issued by the State of Washington.

(5) The Continuing Teaching License may be renewed for five years upon completion of a professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.125 & 342.138

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-060-0190

Teaching Associate License

Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Teaching Associate License. This license, issued for two years and not renewable, is valid for regular teaching at one or more designated levels in one or more designated specialties but not for substitute teaching.

(1) The Teaching Associate License is issued only to an experienced teaching assistant engaged in an intensive professional development program for teaching assistants approved by the commission under institutional standards found in OAR 584-017.

(2) The Teaching Associate License is restricted to use within a district that has applied for it jointly with the teacher.

(3) To be eligible for a Teaching Associate License, an applicant must satisfy the following requirements:

(a) Be enrolled in a specified institutional program of undergraduate education and professional teacher preparation approved by the commission and have completed 75% of the program required to qualify for assignment as a full-time intern.

(b) Successfully complete one year as a full-time intern in an approved program under the supervision of a school-based supervisor and unit supervisor.

(c) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics approved by the commission.

(d) Have three academic years of half-time or more experience as a teaching assistant assigned primarily to direct instruction and related support.

(e) Furnish fingerprints in the manner prescribed by the commission.

(4) The unit and school district will provide supervision for the individual holding a Teaching Associate License. The unit and the district will provide a mentor for the teaching associate. The mentor will be designated the teacher of record.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147, 342.165 & 342.223 - 342.232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2001(Temp), f. & cert. ef. 1-17-01 thru 7-15-01; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2009, f. & cert. ef. 10-5-09

584-060-0200

American Indian Languages Teaching License

(1) Upon filing a correct and complete application in form and matter prescribed by the Commission, an applicant may be granted an American Indian Teaching License for one or more American Indian languages. The license shall be valid for three years and may be renewed upon application from the holder of the license.

(2) The initial application shall be a joint application from the prospective teacher and the tribe whose language will be taught. The tribe must certify that the applicant is qualified to teach the language of the tribe.

(3) The initial application shall include the submission of fingerprint cards with the appropriate fees and a completed affidavit attesting to the review of laws prohibiting discrimination as found in the booklet entitled *Discrimination and the Oregon Educator*.

(4) A holder of an American Indian languages teaching license who does not also have a teaching license or registration issued under ORS 342.125 may not teach any subject other than the American Indian language they are approved to teach by the sponsoring tribe.

(5) All first American Indian Language Teaching Licenses issued after September 1, 2009 may be renewed upon obtaining a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.144, 181.539 & 342.123

Hist.: TSPC 5-2002, f. & cert. ef. 8-9-02; TSPC 5-2009, f. & cert. ef. 10-5-09

584-065-0060

Knowledge, Skills and Abilities for Physical Education Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for physical education and completing the required practicum experience, the following requirements must be met to add a physical education endorsement onto any Initial or Continuing Teaching License. The requirements to add a physical education endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0230 and 584-040-0210.

(2) Demonstrated Content Knowledge. Candidates demonstrate an understanding of physical education content, disciplinary concepts, and tools of inquiry related to the development of a physically educated person. Candidates must:

(a) Identify critical elements of motor skill performance, and combine motor skills into appropriate sequences for the purpose of improving learning;

(b) Demonstrate competent motor skill performance in a variety of physical activities;

(c) Describe performance concepts and strategies related to a skillful movement and physical activity such as: fitness principles, game tactics, skill improvement principles;

(d) Describe and apply: anatomical, physiological and biomechanical bioscience and psychological concepts to skillful movement, physical activity and fitness;

(e) Understand and debate current physical education and activity issues and laws based on historical, philosophical and sociological concepts; and

(f) Demonstrate knowledge of national and state content standards and local programs goals.

(3) Demonstrated Knowledge of Growth and Development. Candidates demonstrate an understanding of how individuals learn and develop, and can provide opportunities that support their physical, cognitive, social and emotional development. Candidates must:

(a) Monitor individual and group performance in order to design safe instruction that meets student development needs in the physical, cognitive and social and emotional domains;

(b) Understand the biological, psychological, sociological, experiential and environmental factors such as: neurological development,

ADMINISTRATIVE RULES

physique, gender and socio-economic status that impact developmental readiness to learn and demonstrate the ability to refine movement skills accordingly; and

(c) Identify, select and implement appropriate learning and best practices opportunities based on understanding the student, the learning environment and the task.

(4) **Demonstrated Ability to Differentiate Instruction.** Candidates demonstrate competencies in differentiated instruction for diverse learners by demonstrating an understanding of how individuals differ in their approaches to learning and create appropriate instruction opportunities adapted to individual differences. Candidates must:

(a) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(b) Use appropriate services and resources in the delivery of differentiated instruction to ensure success for all students.

(5) **Demonstrated Competency in Classroom Management and Individual and Group Motivation.** Candidate demonstrates ability to understand individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning and self-motivation. Candidates must:

(a) Use managerial routines that create smoothly functioning learning experiences and environments;

(b) Organize, allocate, and manage resources such as students, time, space, equipment, activities and teacher attention;

(c) Use a variety of developmentally appropriate practices to motivate students to participate in physical activity inside and outside the school;

(d) Use strategies to help students demonstrate responsible personal and social behaviors such as mutual respect, support for others, safety and cooperation that promote positive relationships and a productive learning environment; and

(e) Develop effective behavior management plans when appropriate.

(6) **Demonstrate Competency in Communication.** Candidates demonstrate skill and knowledge in the use of effective verbal, nonverbal and media communication techniques to foster inquiry, collaboration and engagement in physical activity settings. Candidates must:

(a) Describe and demonstrate effective communication skills, such as: use of language, clarity, conciseness, pacing, giving and receiving, feedback, age appropriate language and non-verbal communication;

(b) Communicate managerial and instructional information in a variety of ways such as bulletin boards, music, task cards, posters, Internet and video;

(c) Communicate in ways that demonstrate sensitivity and consideration of ethnic, cultural, socio-economic, ability and gender differences; and

(d) Describe and implement strategies to enhance communication and collaboration among students in physical activity settings.

(7) **Demonstrate Competency in Planning and Instruction.** The candidate demonstrates skill in planning and implements a variety of developmentally appropriate instructional strategies to develop physically educated individuals. Candidates must:

(a) Identify, develop and implement appropriate program and instructional goals;

(b) Develop long and short-term plans that are linked to both programs, instructional goals and student needs;

(c) Select and implement instructional strategies, based on selected content, student needs and safety issues, to facilitate learning in the physical activity setting;

(d) Design and implement learning experiences that are safe, appropriate, relevant and based on principles of effective instruction;

(e) Apply disciplinary and pedagogical knowledge in developing and implementing effective learning environments and experiences;

(f) Provide learning experiences that allow students to integrate knowledge and skills from multiple subject areas;

(g) Select and implement appropriate, comprehensive, accurate, useful and safe teaching resources and curriculum materials;

(h) Use effective demonstrations and explanations to link physical activity concepts to appropriate learning experiences;

(i) Develop and use appropriate instructional cues and prompts to facilitate competent motor skills performance; and

(j) Develop a repertoire of direct and indirect instructional formats to facilitate student learning such as ask questions, pose scenarios, promote problem-solving and critical thinking; facilitate factual recall and promote literacy.

(8) **Demonstrate Competencies in Learner Assessment.** The candidate demonstrates an understanding and use of formal and informal assessment strategies to foster physical, cognitive, social and emotional development of learners in physical activity. Candidates must:

(a) Identify key component of various types of assessment, describe their appropriate and inappropriate use and address issues of validity, reliability and adverse impact;

(b) Use a variety of appropriate authentic and traditional assessment techniques, including both self and peer assessments, to assess student understanding and performance, provide feedback and communicate student progress for both formative and summative purposes; and

(c) Interpret and use learning and performance data to make informed curricular and instructional decisions.

(9) **Demonstrate Competency in the Ability to Reflect and Make Appropriate Adjustments in Teaching Quality.** Candidates demonstrate the ability to reflect and evaluate the effects of her or his actions on others. Candidates must:

(a) Use a reflective cycle involving description of teaching, justification of teaching performance, critique of the teaching performance, the setting of teaching goals and implementation of change;

(b) Use available resources such as colleagues, literature and professional associations to develop as a reflective physical educator; and

(c) Construct a plan for continued professional growth based on the assessment of personal teaching performance.

(10) **Demonstrate Competency in Technology.** Candidates use information technology to enhance learning and to enhance personal and professional productivity. Candidates must:

(a) Demonstrate knowledge of current technologies and their application in physical education;

(b) Design, develop and implement student learning activities that integrate information technology; and

(c) Use technologies to communicate, network, locate resources and enhance continuing professional development.

(11) **Demonstrate Competency to Foster Collaboration.** Candidates will foster relationships with colleagues, parents and guardians and community agencies to support learners' growth and well-being. Candidates will:

(a) Identify strategies to become an advocate in the school and community to promote a variety of physical activity opportunities;

(b) Actively participate in the local, state and national professional physical education community and within the broader education field;

(c) Identify and actively seek community resources to enhance physical activity opportunities; and

(d) Pursue productive relationships with parents, guardians and school colleagues to support student growth and well-being.

(12) Candidates for physical education endorsement must be authorized at one paired authorization level as defined in OAR 584-060-0071 in any one of the following combinations below. Candidates completing a practica experience at either early childhood or elementary and at either middle or high school levels shall qualify for authorization to teach preprimary through grade 12. Paired authorizations may be:

(a) Early Childhood and Elementary;

(b) Elementary and Middle Level; or

(c) Middle Level and High School.

(13) This endorsement is valid to teach:

(a) Games and sports skills;

(b) Gymnastics;

(c) Movement;

(d) Personal and Social Development;

(e) Physical Fitness and Body Development;

(f) Rhythms;

(g) Adaptive motor skills; and

(h) Athletic training.

(14) This endorsement is required for teaching any subject in subsection (13) above:

(a) More than 51% on a Basic or Standard Teaching License with an elementary endorsement; or

(b) More than 10 hours per week on:

(A) Any Basic or Standard Teaching License with other than an elementary endorsement; or

(B) An Initial or Continuing Teaching License at any grade authorization level.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.173

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 5-2009, f. & cert. ef. 10-5-09

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.

ADMINISTRATIVE RULES

- (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 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; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-070-0022

Continuing School Counselor License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Continuing School Counselor License.

(2) The Continuing School Counselor License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Continuing School Counselor License is valid for counseling at all age or grade levels in any school building and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing School Counselor License an applicant must:

(a) Meet or complete all requirements of the Initial I School Counselor License; and

(b) Hold a master's or higher degree in the behavioral sciences or their derivative therapeutic professions from a regionally accredited institution in the United States, or hold the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree.

(A) As part of the master's degree or separately, the applicant must have completed an initial graduate program in school counseling in any U.S. jurisdiction at an institution approved for school counselor licensure by the state in which the school counselor license was issued or in the alternative is approved by the commission; and

(c) Have five years of school counseling experience at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0451 by completing one of the following:

(A) An advanced program in counseling competencies in a TSPC-approved Continuing School Counselor Program consisting of at least six semester hours or nine quarter hours of graduate credit or the equivalent beyond the initial graduate program in school counseling. As part of the advanced program, the applicant must have had a practica in counseling school students.

(B) Validation of all advanced counseling competencies through assessment by a commission-approved professional development program offered by an institution, an employer, or the two working together; or

(C) An accredited doctor's degree in educational, vocational, or clinical counseling; or in clinical or counseling psychology.

(5) The Continuing School Counselor License may be renewed for five years upon completion of a professional development plan in accordance with OAR 584-090.

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 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-070-0211

Initial School Psychologist License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial School Psychologist License for three years.

(2) The Initial School Psychologist License is valid for:

(a) School psychology at all age or grade levels;

(b) Substitute counseling at any level; and

(c) Substitute teaching at any level in any specialty.

(3) To be eligible for an Initial School Psychologist License, an applicant must satisfy all of the following general preparation requirements:

(a) A master's or higher degree in the behavioral sciences or their derivative therapeutic professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree in any field;

(b) Completion in Oregon or another U.S. jurisdiction, as part of the master's degree or separately, of an initial graduate program in school psychology at an institution approved for psychologist education by the commission; or certification from the National Association of School Psychologists.

(c) A passing score as currently specified by the commission on a test of professional knowledge for school psychologists, or five years of experience practicing school psychology on a license valid for the assignment full time in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license;

(d) A passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree;

(e) A passing score on a commission adopted test of knowledge of U.S. and Oregon civil rights laws; and

(f) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(4) The Initial School Psychologist License may be renewed repeatedly for three years upon completion of a professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-070-0221

Continuing School Psychologist License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Continuing School Psychologist License.

(2) The Continuing School Psychologist License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Continuing School Psychologist License is valid for school psychology at all age or grade levels, for substitute counseling at any level, and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing School Psychologist License, an applicant must:

(a) Meet and complete all of the requirements for the Initial School Psychologist License;

(b) Hold a master's or higher degree in the behavioral sciences or their derivative therapeutic professions from a regionally accredited institution in the United States, or hold the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree;

(c) Have five years of school psychology experience at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0360 by completing one of the following:

(A) Complete an advanced program in psychologist competencies consisting of at least six semester hours or nine quarter hours of graduate credit or the equivalent; or

(B) Validation of all advanced psychology competencies through assessment by a commission-approved professional development program offered by an institution, an employer, or the two working together; or

(C) By obtaining a current National School Psychology Certificate awarded by the National Association of School Psychologists; or

(D) By having a regionally accredited doctor's degree in educational, clinical or counseling psychology.

(5) The Continuing School Psychologist License may be renewed for five years upon completion of a professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

ADMINISTRATIVE RULES

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-080-0002

Definitions for Division 80

(1) "All Grade Levels:" Grades prekindergarten through 12 (prek-12).
(2) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license. A copy of the C-1 can be found on TSPC's Web page at: www.tspc.state.or.us.

(3) "Appropriately Assigned:" Assignments for administrator, teacher, supervisor, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. See OAR 584-036-0081.

(4) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" at OAR 584-005-0005.

(5) "Approved Programs:" An Oregon program of educator preparation leading to licensure approved by TSPC and offered by a regionally accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(6) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(7) "Out of State Licenses or Certificates:" A license or certificate valid for full-time employment which is at least equivalent to the Oregon license being requested and is issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(8) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(9) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(10) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license.

(11) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-080-0012

Initial Administrator License (IAL)

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial Administrator License.

(2) The Initial Administrator License is valid for three (3) years and may be renewed under the conditions set forth in subsections below.

(3) The Initial Administrator License is valid for school administration at all age or grade levels in any administrative position. This license is also valid for substitute teaching at any level in any specialty. (See, OAR 584-060-0181 for explanation of Substitute Teaching.)

(4) To be eligible for an Initial Administrator License, an applicant must satisfy all of the following provisions within this subsection. The applicant must:

(a) Educator Fitness: Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing

good moral character and mental and physical health necessary for employment as an educator;

(b) Licensed Experience: Have three (3) academic years of experience as a full-time licensed educator on any license appropriate for the assignment in:

(A) A public school or regionally accredited private school in any state or other U.S. jurisdiction; or

(B) In one or more of the following schools in Oregon:

(i) An education service district school;

(ii) A state-operated or state-supported school;

(iii) A federal school;

(iv) A private elementary or secondary school registered by the state Department of Education; or

(v) A private proprietary career school licensed by the superintendent of public instruction.

(c) Master's Degree: Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree;

(d) Approved Administrator Program: Complete, as part of the master's degree or separately, an initial graduate program in school administration at an institution approved for administrator education;

(A) A candidate for initial licensure who has completed an administrator preparation program outside the state of Oregon must:

(i) Have completed at least eighteen (18) semester hours or twenty-seven (27) quarter hours of graduate credit in school administration or educational leadership; and

(ii) Receive a passing score on tests of knowledge of Oregon school law and finance at the conclusion of or in lieu of a course or courses approved by the commission.

(e) Civil Rights: Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics. An emergency license will be issued for ninety (90) days during which time the applicant must complete the civil rights requirement; and

(f) Fingerprints: Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) Renewal: The Initial Administrator License may be renewed up to two (2) times if the applicant makes progress toward completion of the Continuing Administrator License by completing at least six (6) semester hours or nine (9) quarter hours of academic credit in an approved Continuing Administrator License Program upon each renewal. A transcript of the completed coursework is required for renewal. (See OAR 584-048-0090 for additional "Special Provisions" which may apply to renewing an Initial Administrator License.)

(6) Reinstatement for Administrator Experience: An applicant may reinstate an expired Initial Administrator License for one (1) three-year period for the purposes of completing the administrative experience requirements for the Continuing Administrator License under the following conditions:

(a) The applicant has completed all requirements for the CAL except for the administrative experience required;

(b) The application includes a request from a district for reinstatement; and

(7) Incomplete CAL Programs: Initial Administrator License holders who are unable to complete the academic requirements for the Continuing Administrator License within nine (9) years after the Initial Administrator License was first granted may only take an administrator position upon joint application with an employing district requesting a Restricted Transitional Administrator License.

(8) Licenses issued prior to October 13, 2003: All Initial Administrator Licenses for positions other than a Superintendent issued after January 1, 1999 and prior to and including October 13, 2003 have ten (10) years to complete the requirements of the Continuing Administrator License. Initial Administrator Licenses issued after October 13, 2003, with the exception of Superintendents subject to subsection (9) below, have nine (9) years, or two (2) renewal cycles to complete the requirements of the Continuing Administrator License.

(9) Superintendency on the Initial Administrative License: The Continuing Administrator Licensure program must be completed within the three (3) years following the next renewal of the Initial Administrator License if the holder of an Initial Administrator License takes a position as a Superintendent at any time within the life of the Initial Administrator License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147, 342.165

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

ADMINISTRATIVE RULES

584-080-0022

Continuing Administrator License (CAL)

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Continuing Administrator License.

(2) The Continuing Administrator License is issued for five (5) years and is renewable repeatedly under conditions specified below.

(3) The Continuing Administrator License is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing Administrator License, an applicant must satisfy all of the following provisions within this subsection. The applicant must:

(a) Educator Fitness: Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Master's Degree: Hold a master's degree or higher;

(c) Program of Advanced Competency: Complete beyond both the master's degree and beyond the initial graduate program in school administration, an advanced program in administrative competencies consisting of at least eighteen (18) semester hours or twenty-seven (27) quarter hours of graduate credit or the equivalent.

(A) Advanced Program Waiver: Exceptionally, the applicant may qualify for waiver of the advanced institutional program or the assessment of advanced competencies by having a regionally accredited doctor's degree in school administration or educational leadership;

(B) Out-of-State Advanced Program:

(i) If the eighteen (18) semester hours or twenty-seven (27) quarter hours beyond the master's degree, required in subsection (c) above, was completed out-of-state, no additional validation will be required so long as the applicant also has five (5) years of administrative experience on any unrestricted out-of-state administrator license.

(ii) The out-of-state experience may be cumulative and need not be continuous in one state.

(iii) If the applicant does not have five (5) years of administrative experience, the advanced program will be evaluated by the Commission to determine equivalency. The evaluation will be based upon an established rubric representing the equivalent programs offered by Oregon approved administrator preparation programs.

(iv) After TSPC evaluation, additional coursework may be required to acquire the Continuing Administrator License.

(d) Fingerprints: Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.); and

(e) Civil Rights: A passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics. An emergency license will be issued for ninety (90) days during which time the applicant must complete the civil rights requirement;

(f) Professional Knowledge Test: A passing score on a test of professional administrator knowledge or completion of alternative assessment pursuant to OAR 584-052-0030 et seq. approved by the Commission; and

(g) Experience on an Administrative License: Have three (3) years of one-half time or more experience on any administrator license appropriate for the assignment in a public or accredited private school setting.

(5) The Continuing Administrator License may be renewed for five (5) years upon completion of professional development pursuant to OAR 584-90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147, 342.165

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-080-0031

Distinguished Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Distinguished Administrator License.

(2) The Distinguished Administrator License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Distinguished Administrator License is voluntary and is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Distinguished Administrator License, an applicant must have:

(a) Completed, beyond the advanced administrator program specified in OAR 584-080-0022 an advanced education leadership or school administration program consisting of at least 12 semester hours or 18 quarter hours of graduate credit or the equivalent; or in the alternative, hold a

regionally accredited doctor's degree in school administration or educational leadership.

(A) Completion of the advanced program must be verified by the institution offering the program or through official transcripts.

(B) Doctorates in programs other than school administration or educational leadership do not qualify for this license.

(b) Three years of half time or more experience on a transitional, initial, continuing, or out-of-state administrative license valid for the assignment functioning as a superintendent in a public school district, education service district, or regionally accredited private school system.

(5) The Distinguished Administrator License may be renewed for five years upon completion of continuing professional development pursuant to OAR 584-90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09

584-090-0001

Purpose and Standards for Professional Development Plan

These rules establish the framework for Continuing Professional Development (CPD) for all educators that hold Basic, Standard, Initial II or Continuing licenses. Each CPD plan shall have as a primary purpose improved student learning by improving professional skills of educators. Each plan shall be designed to assist the educator to:

(1) Achieve district, state and national standards;

(2) Keep current with the development and use of best practices; and

(3) Develop ways to enhance learning for a diverse student body.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 5-2009, f. & cert. ef. 10-5-09

584-090-0005

Continuing Professional Development Requirements

(1) Applicants for renewal of Basic, Standard, Initial II and Continuing Licenses must meet the requirements set forth in these rules. Applicants for the reinstatement of licensure must meet all renewal requirements as well as any requirements in OAR 584, Division 50 that apply to the applicant.

(2) Applicants for renewal of Basic Licenses must complete 75 Professional Development Units (PDUs) to renew their licenses. Applicants for Standard or Continuing Licenses must complete 125 Professional Development Units to renew their licenses. PDUs must be part of a CPD Plan completed during the life of the current license.

(3) The Continuing Professional Development requirements will be phased in as follows:

(a) Educators renewing Basic, Standard or Continuing Licenses after January 14, 2002, must complete 25 Professional Development Units;

(b) Educators renewing Basic, Standard or Continuing Licenses in 2003 must complete 50 Professional Development Units;

(c) Educators renewing Basic, Standard or Continuing Licenses in 2004 must complete 75 Professional Development Units;

(d) Educators renewing Basic Licenses in 2005 must complete 75 Professional Development Units. Educators renewing Standard or Continuing Licenses in 2005 must complete 100 Professional Development Units;

(e) Educators renewing Basic, Standard or Continuing Licenses in 2006 must meet the full requirement of Professional Development Units as stated in subsection (2) of this rule.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 5-2009, f. & cert. ef. 10-5-09

Travel Information Council

Chapter 733

Rule Caption: Amend FOOD Logo sign criteria to allow car-hop service.

Adm. Order No.: TIC 3-2009

Filed with Sec. of State: 9-29-2009

Certified to be Effective: 9-29-09

Notice Publication Date: 7-1-2009

Rules Amended: 733-030-0021

Subject: The Travel Information Council held a quarterly meeting on June 5, 2009. The Council proposed a rule change to amend highway sign rules to accommodate car-hop services by allowing a minimum of 10 drive-in service stalls. Having received no public

ADMINISTRATIVE RULES

comments or requests for additional hearings, the council voted to adopt the amended rule at the September 25, 2009 meeting.

Rules Coordinator: Diane Cheyne—(503) 378-4508

733-030-0021

Criteria for Specific Information Permitted

(1) Each business identified on a Logo Sign shall have given written assurance to the Council of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin, meet all applicable Federal and State Americans for Disabilities Act (ADA) guidelines, and shall not be in breach of that assurance. Each business will offer services to all citizens.

(2)(a) If the business is a GAS, FOOD, LODGING, or ATTRACTION facility, it must be located within one mile of the interchange or intersection measured by vehicle distance from the center point of the terminus of the exit ramp on an interchange and from the center of an intersection to the nearest point of the intersection of the driveway of the business and a public highway. However, any business set out in this section location within nine miles of an interchange or intersection, but more than one mile from the interchange or intersection may apply to the Council for a waiver under the provisions of rule 733-030-0060;

(b) Facilities requesting signing from an Interstate or Expressway interchange and located within a city with a population of 15,000 or more and where there are sufficient numbers of businesses within one mile of that interchange or intersection, are not eligible for a mileage waiver and shall be located within one mile of the interchange or intersection. If there is not a sufficient amount of businesses available at any given interchange or intersection in a city with a population of 15,000 or more, then any business set out in this section located within two miles of an interchange or intersection may apply to the Council for a waiver under the provisions of rule 733-030-0060. A maximum of two Supplemental Logo Signs per facility shall be allowed within urban areas. A facility has the right to appeal the conditions set forth in this paragraph through a waiver to the Council. A seven-year review will be conducted for those Logo or Supplemental Signs installed following the rule adoption.

(3) If the business is a CAMPING facility, it must be located within three miles of the interchange measured by vehicle distance from the center point of the terminus of the exit ramp of an interchange or the center of an intersection at an intersection to the nearest point of the intersection of the driveway of the business and a public highway. However, any business set out in this paragraph located within 15 miles of an interchange or intersection, but more than three miles from an interchange or intersection, may apply to the Council for a waiver under the provisions of rule 733-030-0060.

(4) The types of services permitted shall be limited to "GAS", "FOOD", "LODGING", "CAMPING" or "ATTRACTION". To qualify for displaying a logo plaque on a Logo or Supplemental Sign all businesses must display permanent on-premise signing which is visible from the roadway and sufficient to direct motorists to the appropriate entrance from the roadway. The on-premise signing shall display all or part of the Registered Business Name as stated on the logo plaques. Facilities that operate under and/or provide more than one type of service using more than one brand name shall be limited to displaying not more than two brand names per logo plaque:

(a) "GAS" shall include:

(A) Vehicle services, including gas and/or alternative fuels, oil, and water;

(B) Restroom facilities and drinking water;

(C) Continuous operation at least 16 hours per day, 7 days a week for businesses located on the interstate system and expressways and continuous operation at least 12 hours per day, 7 days a week on Conventional Highways; and

(D) Telephone service;

(E) FOOD businesses located within GAS facilities, that meet all requirements under 733-030-0021(4)(b) except for (E), may display their distinctive brand symbol on a dual logo plaque for the GAS facility in which they are located. Each GAS logo plaque shall be limited to the addition of only one FOOD business. Brand names that are reflected as part of the GAS facility's registered business name may be included on the logo plaque.

(b) "FOOD" shall include:

(A) Appropriate business & health department licensing for the providing of meals; facilities are required to maintain a valid health permit or license for the type of service operated;

(B) Continuous operation to serve at least two meals per day, at least 6 days per week;

(C) Telephone service and restroom facilities;

(D) The primary business operation is the providing of meals; and

(E) Indoor Seating for at least 20 people or 10 drive-in service stalls for car-hop service. FOOD facilities that have two distinct brand name

restaurants in one building may display the brand symbols of both FOOD businesses on one FOOD dual logo plaque. FOOD facilities located within GAS facilities, which do not meet FOOD seating requirements, may be displayed on a GAS dual logo plaque for that facility. See 733-030-0021(4)(a)(E).

(c) "LODGING" shall include:

(A) Licensing where required;

(B) Adequate sleeping accommodations;

(C) Telephone services and restroom facilities.

(D) Bed & Breakfast facilities provided they maintain valid food and lodging health department licenses.

(d) "CAMPING" shall include:

(A) Licensing where required;

(B) Adequate parking accommodations;

(C) Modern sanitary facilities and drinking water.

(e) "ATTRACTION" shall include:

(A) Adequate parking;

(B) Restrooms provided;

(C) Drinking water required;

(D) Facility reasonably close to a public telephone;

(E) Open at least six hours a day; six days a week of continuous operation during its normal business season.

(F) Licensing where required;

(G) Attendant/Docent/Guide on duty during all operating hours;

(H) ATTRACTIONS involving manufacturing or production, such as industrial facilities or wineries must meet all conditions under (e)(A)-(G) and must provide the opportunity for visitors to observe the production or manufacturing process or facilities;

(I) Historical facilities and visitor centers must meet all conditions under (e)(A)-(G) and must provide:

(i) Documentation showing that the facility meets the definition of the authorizing state agency that develops criteria for these types of services;

(ii) Historical tour routes may qualify with a waiver given by the Council if such a tour route is sufficiently signed to guide the motorist safely and conveniently through the tour;

(iii) Historical sites must be listed on the National Register of Historic Places.

(J) Like businesses creating a Cultural District must individually meet all conditions under (e)(A)-(G).

(5) Historical museum offerings must:

(a) Exist on a permanent basis for essentially aesthetic or educational purposes;

(b) Offerings must be the primary source of business of the requesting facility;

(c) Museum offerings must be exhibited to the public on a regular basis through buildings owned and operated by the museum.

(6) The number of Logo Signs permitted shall be limited to one for each type of service along an approach to an interchange or intersection. The number of logo plaques permitted on a Logo Sign is limited to six.

(7) A business, which fails to meet the requirements of section (4) of this rule, may request a waiver from the Council under the provision of 733-030-0060.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 1-1984, f. & ef. 1-13-84; TIC 3-1985, f. & ef. 6-4-85; TIC 1-1994, f. & cert. ef. 6-1-94; TIC 3-1995, f. & cert. ef. 11-8-95; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 1-2000, f. 4-14-00, cert. ef. 5-1-00; TIC 2-2000, f. 10-13-00, cert. ef. 11-1-00; TIC 1-2004(Temp), f. & cert. ef. 7-20-04 thru 1-15-05; TIC 2-2004, f. & cert. ef. 11-12-04; TIC 2-2006, f. & cert. ef. 6-21-06; TIC 1-2007, f. & cert. ef. 3-1-07; TIC 1-2009, f. & cert. ef. 4-3-09; TIC 3-2009, f. & cert. ef. 9-29-09

Veterinary Medical Examining Board Chapter 875

Rule Caption: Prohibits non-veterinary prescribing, use, theft or diversion of legend (prescription) drugs.

Adm. Order No.: VMEB 2-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 6-1-2009

Rules Amended: 875-011-0010

Subject: Establishes a violation for non-veterinary prescribing, use, theft or diversion of drugs that require a prescription.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-011-0010

Unprofessional or Dishonorable Conduct

The Board interprets "unprofessional or dishonorable conduct" to include, but is not limited to the following:

ADMINISTRATIVE RULES

(1) Gross negligence in the practice of veterinary medicine.
(2) A pattern, practice or continuous course of negligence, ignorance, incompetence or inefficiency in the practice of veterinary medicine. The incidents may be dissimilar.

(3) Performing surgery, taking a radiograph or attempting a treatment without first obtaining the client's permission, except in emergency circumstances. Permission may be reasonably implied under some circumstances.

(4) Failure without good cause to perform a specific surgery or treatment in a timely manner, after agreeing to perform the surgery or treatment.

(5) Failure to properly prepare an animal for surgery or treatment.

(6) Failure to use sterile instruments and equipment when performing surgery, when the circumstances require the use of sterile instruments and equipment.

(7) Failure to use generally accepted diagnostic procedures and treatments, without good cause.

(8) Failure to obtain the client's written permission before using unorthodox or non-standard methods of diagnosis or treatment. Acupuncture, chiropractic or herbal medicine is not considered unorthodox or non-standard.

(9) Failure to advise a client of home care or follow-up treatment required after a particular diagnosis or treatment.

(10) Handling animals in an inhumane manner or, except when the veterinarian reasonably believes it to be necessary, handling animals with great force.

(11) Charging for services not rendered.

(12) Failure to maintain records which show, at a minimum, the name of the client, identification of the patient, its condition upon presentation, the tentative diagnosis, treatment performed, drug administered, amount of drug, any prescription, and the date of treatment. For companion animals, identification of the patient should include species, breed, name, age, sex, color, and distinctive markings, where practical.

(13) Failure to provide to a client in a timely manner, upon request, an accurate copy or synopsis of the patient's medical records including a copy of radiographs, if requested. A reasonable copying fee may be charged.

(14) Failure to provide records or radiographs in a timely manner to another veterinarian retained by the client, upon request of the client or client's veterinarian.

(15) Failure to mark or label a container of prescription or legend drugs with the date, name of drug, dosage frequency, identification of animal (if appropriate), and withdrawal time (if appropriate). Excludes legend drugs dispensed or ordered in original, unopened manufacturer's packaging for herd use.

(16) Failure to comply with federal law concerning packaging and labeling of prescription or legend drugs.

(17) Violation of any state or federal law relating to controlled substances, as defined in ORS 475.005(6), which the veterinarian obtained under the authority of the veterinary license.

(18) Non-veterinary prescribing, use, theft or diversion of legend or controlled drugs.

(19) Failure to respond in writing to a written request from the Board within the time indicated in the request letter, without good cause; or failure to appear in person before the Board upon written request, without good cause.

(20) Failure to comply with any rule or Order of the Board or as required by OAR 875-005-0010.

(21) Making false or misleading representations to the Board or its representative or altering or providing altered medical records.

(22) Making a misrepresentation or omission on a license renewal application.

(23) Violations of veterinary laws in other states that would constitute violations of Oregon law.

(24) Violations of other laws that relate to the practice of veterinary medicine, including violations of the Oregon Racing Commission statutes and administrative rules.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.130

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 3-2008, f. & cert. ef. 3-19-08; VMEB 8-2008, f. & cert. ef. 7-22-08; VMEB 2-2009, f. & cert. ef. 10-15-09

Rule Caption: Clarifies requirements for on-the-job experience eligibility for VTNE, application process, and fees.

Adm. Order No.: VMEB 3-2009

Filed with Sec. of State: 10-15-2009

Certified to be Effective: 10-15-09

Notice Publication Date: 6-1-2009

Rules Amended: 875-030-0010, 875-030-0020, 875-030-0025

Subject: Requires employment W-2 forms as proof of experience for on-the-job applicants for the veterinary Technician National Exam.

Deletes references to Board administering the Veterinary Technician National Exam; adds reference to American Association of Veterinary State Board (AAVSB)'s administration of Veterinary technician National Exam. Deletes references to Interstate Reporting Service.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-030-0010

Criteria for Becoming a Certified Veterinary Technician

In order to become a certified veterinary technician, an individual must:

(1) Pass the examinations referred to in OAR 875-030-0020; and

(2)(a) Hold a certificate in veterinary technology (or a comparable certificate) from a college accredited by the American Veterinary Medical Association, or other program approved by the board; or

(b) Have received at least 6,000 hours of on-the-job training in the following technical procedures, verified by a veterinarian or veterinarians with valid Oregon veterinary licensure, and substantiated by employment W-2 forms:

(A) Medical Terminology;

(B) Basic Comparative Animal Anatomy and Physiology;

(C) Veterinary Office Procedures;

(D) Basic Pharmacology;

(E) Practical Animal Nutrition;

(F) Nursing Care and Handling of Animals;

(G) Animal Behavior;

(H) Applied Radiography;

(I) Applied Anesthesiology;

(J) Applied Clinical Laboratory Procedures;

(K) Principles and Practices of Medical and Surgical Assistance;

(L) Animal Diseases; or

(3)(a) Have at a minimum a Bachelor's degree in a field approved by the Board, e.g., Veterinary Technology, Animal Technology, Animal Husbandry, Zoology, etc., and a minimum of 1,500 hours of on-the-job training that meets the requirements of (2)(b); or

(b) Have at a minimum an Associate's degree in a field approved by the Board, e.g., Veterinary Technology, Animal Husbandry, Zoology, etc., and a minimum of 3,000 hours of on-the-job training and that meets the requirements of (2)(b); or

(c) Have acquired a minimum of 30 credit hours of training from a school or program approved by the Board in a field approved by the Board, e.g., Veterinary Technology, Animal Husbandry, Zoology, etc., and a minimum of 4,500 hours of on-the-job training that meets the requirements of (2)(b); or

(d) Any other combination of Board-approved education and experience. For purposes of this section, on-the-job experience must have been obtained in Oregon and must be verified by a licensed Oregon veterinarian.

(e) On-the-job applicants shall provide proof of on-the-job experience such as W2 forms or other proof approved by the Board.

(4) The Board may waive the requirement of passing the VTNE (875-030-0020(1)) for applicants who:

(a) Graduated from an accredited veterinary technology college program prior to 1990; and

(b) Hold an active certified veterinary technician license or animal health technician license in another state, province or territory of the United States; and

(c) Have a minimum of 7,500 hours of on-the-job training and experience as specified in subsection (b) of this section.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 2-2000, f. & cert. ef. 6-21-00; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 10-2008, f. & cert. ef. 7-22-08; VMEB 15-2008, f. & cert. ef. 12-15-08; VMEB 3-2009, f. & cert. ef. 10-15-09

875-030-0020

Examinations for Certified Veterinary Technicians

(1) Applicants for certification as veterinary technicians shall pass the Veterinary Technician National Examination (VTNE) with a criterion score of 425 or greater. The Board will accept VTNE scores transferred to Oregon through the Veterinary Information Verifying Agency (VIVA) if the examination was taken in another state.

(2) In addition to the VTNE, applicants must successfully complete an open book examination on the Oregon Veterinary Practice Act and Administrative Rules relating to veterinary medicine and veterinary technology, with a passing score of at least 95 percent, and the Regional Disease Test, with a passing score of 100 percent.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-

ADMINISTRATIVE RULES

1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VME 2-1996, f. & cert. ef. 11-6-96; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 3-2009, f. & cert. ef. 10-15-09

875-030-0025

Application for Certified Veterinary Technicians

(1) Complete applications for the VTNE and certification must be submitted no later than 60 days prior to the examination.

(2) In order to be considered complete, applications for certification shall include:

(a) An application form available from the Board office signed by the applicant;

(b) The application fee;

(c)(A) Copy of diploma or verification of impending graduation from school; or

(B) Proof of experience as required in OAR 875-030-0010(2)(b).

(d) The completed examination on Oregon veterinary medicine and technology laws; and

(e) The VTNE score report if the examination was taken in another state.

(3) The application screening fee for the VTNE is \$25, payable to the Board. Application for the test must be made directly to the American Association of Veterinary State Boards (AAVSB). The application fee for certification if the VTNE was taken in another state is \$25 payable to the Board.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.225 & 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 3-2009, f. & cert. ef. 10-15-09

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|-----------|-----------------|------------|----------|-----------|
| 101-001-0000 | 2-24-2009 | Amend(T) | 4-1-2009 | 111-030-0025 | 7-31-2009 | Adopt(T) | 9-1-2009 |
| 101-001-0000 | 8-1-2009 | Amend | 9-1-2009 | 111-030-0030 | 7-31-2009 | Adopt(T) | 9-1-2009 |
| 101-001-0000(T) | 8-1-2009 | Repeal | 9-1-2009 | 111-040-0001 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-001-0020 | 10-1-2009 | Repeal | 11-1-2009 | 111-040-0025 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-005-0030 | 2-24-2009 | Amend(T) | 4-1-2009 | 111-040-0030 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-005-0030 | 8-1-2009 | Amend | 9-1-2009 | 111-040-0035 | 5-5-2009 | Suspend | 6-1-2009 |
| 101-005-0030(T) | 8-1-2009 | Repeal | 9-1-2009 | 111-040-0035 | 7-31-2009 | Repeal | 9-1-2009 |
| 101-005-0040 | 2-24-2009 | Amend(T) | 4-1-2009 | 111-040-0040 | 5-5-2009 | Amend(T) | 6-1-2009 |
| 101-005-0040 | 8-1-2009 | Amend | 9-1-2009 | 111-040-0040 | 7-31-2009 | Amend | 9-1-2009 |
| 101-005-0040(T) | 8-1-2009 | Repeal | 9-1-2009 | 111-040-0040 | 10-7-2009 | Amend(T) | 11-1-2009 |
| 101-005-0070 | 2-24-2009 | Amend(T) | 4-1-2009 | 111-040-0040(T) | 7-31-2009 | Repeal | 9-1-2009 |
| 101-005-0070 | 8-1-2009 | Amend | 9-1-2009 | 111-040-0050 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-005-0070(T) | 8-1-2009 | Repeal | 9-1-2009 | 111-050-0001 | 1-30-2009 | Amend | 3-1-2009 |
| 101-005-0080 | 2-24-2009 | Amend(T) | 4-1-2009 | 111-050-0001(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-005-0080 | 8-1-2009 | Amend | 9-1-2009 | 111-050-0010 | 1-30-2009 | Amend | 3-1-2009 |
| 101-005-0080(T) | 8-1-2009 | Repeal | 9-1-2009 | 111-050-0010 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-010-0005 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0010(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-015-0011 | 10-1-2009 | Adopt | 11-1-2009 | 111-050-0015 | 1-30-2009 | Amend | 3-1-2009 |
| 101-015-0015 | 10-1-2009 | Repeal | 11-1-2009 | 111-050-0015 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-020-0005 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0015(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-020-0015 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0020 | 1-30-2009 | Adopt | 3-1-2009 |
| 101-020-0025 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0020 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-020-0037 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0020(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-020-0040 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0025 | 1-30-2009 | Adopt | 3-1-2009 |
| 101-020-0045 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0025 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 101-020-0060 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0025(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-020-0065 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0030 | 1-30-2009 | Adopt | 3-1-2009 |
| 101-030-0022 | 10-1-2009 | Amend | 11-1-2009 | 111-050-0030(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-030-0026 | 2-24-2009 | Adopt(T) | 4-1-2009 | 111-050-0035 | 1-30-2009 | Adopt | 3-1-2009 |
| 101-030-0026 | 8-1-2009 | Adopt | 9-1-2009 | 111-050-0035(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 101-030-0026(T) | 8-1-2009 | Repeal | 9-1-2009 | 111-050-0045 | 1-30-2009 | Adopt | 3-1-2009 |
| 104-050-0000 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0045(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 104-050-0010 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0050 | 1-30-2009 | Adopt | 3-1-2009 |
| 104-050-0020 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0050(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 104-050-0030 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0060 | 1-30-2009 | Adopt | 3-1-2009 |
| 104-050-0040 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0060(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 104-050-0050 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0065 | 1-30-2009 | Adopt | 3-1-2009 |
| 104-050-0060 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0065(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 104-050-0070 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0070 | 1-30-2009 | Adopt | 3-1-2009 |
| 104-050-0080 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0070(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 104-050-0090 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0075 | 1-30-2009 | Adopt | 3-1-2009 |
| 104-050-0100 | 4-22-2009 | Adopt | 6-1-2009 | 111-050-0075(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 105-050-0025 | 7-1-2009 | Adopt(T) | 8-1-2009 | 111-050-0080 | 1-30-2009 | Adopt | 3-1-2009 |
| 105-050-0030 | 7-1-2009 | Adopt(T) | 8-1-2009 | 111-050-0080 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 111-010-0015 | 1-30-2009 | Amend | 3-1-2009 | 111-050-0080(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 111-010-0015 | 3-10-2009 | Amend(T) | 4-1-2009 | 111-060-0001 | 7-31-2009 | Amend(T) | 9-1-2009 |
| 111-010-0015 | 5-1-2009 | Amend | 6-1-2009 | 111-080-0001 | 1-30-2009 | Adopt | 3-1-2009 |
| 111-010-0015 | 7-31-2009 | Amend(T) | 9-1-2009 | 111-080-0001(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 111-010-0015(T) | 1-30-2009 | Repeal | 3-1-2009 | 111-080-0005 | 1-30-2009 | Adopt | 3-1-2009 |
| 111-010-0015(T) | 5-1-2009 | Repeal | 6-1-2009 | 111-080-0005(T) | 1-30-2009 | Repeal | 3-1-2009 |
| 111-020-0001 | 1-30-2009 | Amend | 3-1-2009 | 111-080-0030 | 4-1-2009 | Adopt | 5-1-2009 |
| 111-020-0001 | 3-10-2009 | Amend(T) | 4-1-2009 | 111-080-0030(T) | 4-1-2009 | Repeal | 5-1-2009 |
| 111-020-0001 | 5-1-2009 | Amend | 6-1-2009 | 122-001-0036 | 6-30-2009 | Adopt(T) | 8-1-2009 |
| 111-020-0001(T) | 1-30-2009 | Repeal | 3-1-2009 | 122-060-0020 | 12-11-2008 | Adopt(T) | 1-1-2009 |
| 111-020-0001(T) | 5-1-2009 | Repeal | 6-1-2009 | 122-060-0020(T) | 3-6-2009 | Suspend | 4-1-2009 |
| 111-030-0001 | 7-31-2009 | Amend(T) | 9-1-2009 | 123-001-0050 | 10-1-2009 | Amend | 11-1-2009 |
| 111-030-0005 | 7-31-2009 | Amend(T) | 9-1-2009 | 123-001-0520 | 10-1-2009 | Amend | 11-1-2009 |
| 111-030-0020 | 7-31-2009 | Adopt(T) | 9-1-2009 | 123-001-0725 | 10-1-2009 | Amend | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|----------|-----------|--------------|-----------|----------|-----------|
| 123-005-0000 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0190 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-005-0020 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0210 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-006-0015 | 10-1-2009 | Repeal | 11-1-2009 | 123-057-0230 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-009-0050 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0330 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-009-0060 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0350 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-016-0010 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0410 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-016-0020 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0430 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-016-0030 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0450 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-016-0040 | 10-1-2009 | Amend | 11-1-2009 | 123-057-0470 | 10-1-2009 | Repeal | 11-1-2009 |
| 123-016-0050 | 10-1-2009 | Amend | 11-1-2009 | 123-062-0000 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-016-0060 | 10-1-2009 | Amend | 11-1-2009 | 123-062-0010 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-016-0070 | 10-1-2009 | Repeal | 11-1-2009 | 123-062-0020 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-016-0080 | 10-1-2009 | Repeal | 11-1-2009 | 123-062-0030 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-016-0090 | 10-1-2009 | Repeal | 11-1-2009 | 123-062-0040 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-016-0100 | 10-1-2009 | Repeal | 11-1-2009 | 123-062-0050 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-020-0100 | 10-1-2009 | Amend | 11-1-2009 | 123-062-0060 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-020-0105 | 10-1-2009 | Amend | 11-1-2009 | 123-062-0070 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-020-0110 | 10-1-2009 | Amend | 11-1-2009 | 123-062-0080 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-020-0115 | 10-1-2009 | Amend | 11-1-2009 | 123-070-1000 | 2-24-2009 | Amend | 4-1-2009 |
| 123-020-0120 | 10-1-2009 | Amend | 11-1-2009 | 123-070-1100 | 2-24-2009 | Amend | 4-1-2009 |
| 123-020-0125 | 10-1-2009 | Amend | 11-1-2009 | 123-070-1150 | 2-24-2009 | Amend | 4-1-2009 |
| 123-020-0130 | 10-1-2009 | Amend | 11-1-2009 | 123-075-0000 | 9-1-2009 | Repeal | 10-1-2009 |
| 123-020-0135 | 10-1-2009 | Repeal | 11-1-2009 | 123-106-0000 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-020-0140 | 10-1-2009 | Amend | 11-1-2009 | 123-106-0010 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-024-0031 | 5-7-2009 | Amend(T) | 6-1-2009 | 123-106-0020 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-024-0045 | 5-7-2009 | Adopt(T) | 6-1-2009 | 123-106-0030 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-035-0000 | 10-1-2009 | Repeal | 11-1-2009 | 123-106-0040 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-035-0005 | 10-1-2009 | Repeal | 11-1-2009 | 123-106-0050 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-035-0010 | 10-1-2009 | Repeal | 11-1-2009 | 123-106-0060 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-049-0005 | 3-6-2009 | Amend(T) | 4-1-2009 | 123-106-0070 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-049-0005 | 9-1-2009 | Amend | 10-1-2009 | 123-106-0080 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-049-0010 | 9-1-2009 | Amend | 10-1-2009 | 123-106-0090 | 2-24-2009 | Repeal | 4-1-2009 |
| 123-049-0020 | 9-1-2009 | Amend | 10-1-2009 | 123-155-0000 | 2-24-2009 | Amend | 4-1-2009 |
| 123-049-0030 | 3-6-2009 | Amend(T) | 4-1-2009 | 123-155-0175 | 2-24-2009 | Amend | 4-1-2009 |
| 123-049-0030 | 9-1-2009 | Amend | 10-1-2009 | 123-155-0350 | 2-24-2009 | Amend | 4-1-2009 |
| 123-049-0050 | 3-6-2009 | Amend(T) | 4-1-2009 | 123-500-0000 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-049-0050 | 9-1-2009 | Amend | 10-1-2009 | 123-500-0005 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-049-0060 | 9-1-2009 | Amend | 10-1-2009 | 123-500-0020 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-055-0100 | 10-1-2009 | Repeal | 11-1-2009 | 123-500-0030 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-055-0120 | 10-1-2009 | Repeal | 11-1-2009 | 123-500-0040 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-055-0200 | 10-1-2009 | Repeal | 11-1-2009 | 123-500-0050 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-055-0220 | 10-1-2009 | Repeal | 11-1-2009 | 123-500-0060 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-055-0240 | 10-1-2009 | Repeal | 11-1-2009 | 123-500-0070 | 5-1-2009 | Adopt | 6-1-2009 |
| 123-055-0300 | 10-1-2009 | Repeal | 11-1-2009 | 125-045-0205 | 7-21-2009 | Amend | 9-1-2009 |
| 123-055-0340 | 10-1-2009 | Repeal | 11-1-2009 | 125-045-0225 | 7-21-2009 | Amend | 9-1-2009 |
| 123-055-0400 | 10-1-2009 | Repeal | 11-1-2009 | 125-045-0235 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 123-055-0420 | 10-1-2009 | Repeal | 11-1-2009 | 125-045-0235 | 7-21-2009 | Amend | 9-1-2009 |
| 123-055-0440 | 10-1-2009 | Repeal | 11-1-2009 | 125-075-0015 | 1-6-2009 | Amend | 2-1-2009 |
| 123-055-0460 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0000 | 7-1-2009 | Amend | 8-1-2009 |
| 123-055-0501 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0002 | 7-1-2009 | Adopt | 8-1-2009 |
| 123-055-0525 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0005 | 7-1-2009 | Amend | 8-1-2009 |
| 123-055-0600 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0010 | 7-1-2009 | Amend | 8-1-2009 |
| 123-055-0620 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0020 | 7-1-2009 | Amend | 8-1-2009 |
| 123-055-0900 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0030 | 7-1-2009 | Amend | 8-1-2009 |
| 123-057-0110 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0040 | 7-1-2009 | Repeal | 8-1-2009 |
| 123-057-0130 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0050 | 7-1-2009 | Repeal | 8-1-2009 |
| 123-057-0150 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0060 | 7-1-2009 | Amend | 8-1-2009 |
| 123-057-0170 | 10-1-2009 | Repeal | 11-1-2009 | 125-090-0070 | 7-1-2009 | Amend | 8-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|-----------|-----------------|------------|--------|----------|
| 125-090-0080 | 7-1-2009 | Amend | 8-1-2009 | 137-055-6210 | 1-2-2009 | Amend | 2-1-2009 |
| 125-090-0090 | 7-1-2009 | Amend | 8-1-2009 | 137-055-6210(T) | 1-2-2009 | Repeal | 2-1-2009 |
| 125-090-0100 | 7-1-2009 | Amend | 8-1-2009 | 137-060-0150 | 7-24-2009 | Amend | 8-1-2009 |
| 125-090-0110 | 7-1-2009 | Amend | 8-1-2009 | 137-060-0160 | 7-24-2009 | Amend | 8-1-2009 |
| 125-090-0120 | 7-1-2009 | Amend | 8-1-2009 | 137-060-0350 | 7-24-2009 | Amend | 8-1-2009 |
| 125-090-0130 | 7-1-2009 | Amend | 8-1-2009 | 137-060-0360 | 7-24-2009 | Amend | 8-1-2009 |
| 125-090-0135 | 7-1-2009 | Adopt | 8-1-2009 | 141-001-0000 | 12-10-2008 | Amend | 1-1-2009 |
| 125-090-0140 | 7-1-2009 | Amend | 8-1-2009 | 141-001-0005 | 12-10-2008 | Amend | 1-1-2009 |
| 125-090-0150 | 7-1-2009 | Adopt | 8-1-2009 | 141-001-0010 | 12-10-2008 | Amend | 1-1-2009 |
| 125-090-0160 | 7-1-2009 | Adopt | 8-1-2009 | 141-001-0020 | 12-10-2008 | Amend | 1-1-2009 |
| 125-125-0540 | 5-11-2009 | Amend | 6-1-2009 | 141-040-0020 | 1-1-2009 | Amend | 1-1-2009 |
| 125-125-0700 | 1-26-2009 | Adopt | 3-1-2009 | 141-040-0030 | 1-1-2009 | Amend | 1-1-2009 |
| 125-160-0010 | 1-23-2009 | Amend | 3-1-2009 | 141-040-0035 | 1-1-2009 | Repeal | 1-1-2009 |
| 125-160-0010(T) | 1-23-2009 | Repeal | 3-1-2009 | 141-040-0040 | 1-1-2009 | Repeal | 1-1-2009 |
| 125-160-0020 | 1-23-2009 | Adopt | 3-1-2009 | 141-040-0211 | 1-1-2009 | Amend | 1-1-2009 |
| 125-160-0020(T) | 1-23-2009 | Repeal | 3-1-2009 | 141-040-0212 | 1-1-2009 | Amend | 1-1-2009 |
| 125-247-0280 | 2-13-2009 | Amend(T) | 3-1-2009 | 141-040-0213 | 1-1-2009 | Adopt | 1-1-2009 |
| 125-247-0280 | 8-11-2009 | Amend | 9-1-2009 | 141-040-0214 | 1-1-2009 | Amend | 1-1-2009 |
| 125-249-0150 | 2-13-2009 | Amend(T) | 3-1-2009 | 141-045-0010 | 1-1-2009 | Amend | 1-1-2009 |
| 125-249-0150 | 8-11-2009 | Amend | 9-1-2009 | 141-045-0021 | 1-1-2009 | Amend | 1-1-2009 |
| 137-008-0010 | 9-8-2009 | Amend | 10-1-2009 | 141-045-0031 | 1-1-2009 | Amend | 1-1-2009 |
| 137-008-0020 | 9-8-2009 | Amend | 10-1-2009 | 141-045-0041 | 1-1-2009 | Amend | 1-1-2009 |
| 137-045-0050 | 2-26-2009 | Amend(T) | 4-1-2009 | 141-045-0061 | 1-1-2009 | Amend | 1-1-2009 |
| 137-045-0050 | 7-6-2009 | Amend | 8-1-2009 | 141-045-0100 | 1-1-2009 | Amend | 1-1-2009 |
| 137-045-0050(T) | 7-6-2009 | Repeal | 8-1-2009 | 141-045-0115 | 1-1-2009 | Amend | 1-1-2009 |
| 137-045-0052 | 7-6-2009 | Adopt | 8-1-2009 | 141-045-0126 | 1-1-2009 | Amend | 1-1-2009 |
| 137-050-0320 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-045-0130 | 1-1-2009 | Amend | 1-1-2009 |
| 137-050-0330 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-050-0500 | 12-10-2008 | Amend | 1-1-2009 |
| 137-050-0340 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-050-0530 | 12-10-2008 | Repeal | 1-1-2009 |
| 137-050-0360 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-050-0535 | 12-10-2008 | Repeal | 1-1-2009 |
| 137-050-0360 | 5-12-2009 | Amend(T) | 6-1-2009 | 141-050-0890 | 12-10-2008 | Repeal | 1-1-2009 |
| 137-050-0360(T) | 5-12-2009 | Suspend | 6-1-2009 | 141-050-0900 | 12-10-2008 | Amend | 1-1-2009 |
| 137-050-0420 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-050-0905 | 12-10-2008 | Amend | 1-1-2009 |
| 137-050-0430 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-050-0910 | 12-10-2008 | Repeal | 1-1-2009 |
| 137-050-0475 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-050-0920 | 12-10-2008 | Amend | 1-1-2009 |
| 137-050-0485 | 5-7-2009 | Adopt(T) | 6-1-2009 | 141-050-0940 | 12-10-2008 | Amend | 1-1-2009 |
| 137-055-1090 | 10-1-2009 | Amend | 11-1-2009 | 141-050-0945 | 12-10-2008 | Repeal | 1-1-2009 |
| 137-055-1100 | 10-1-2009 | Amend | 11-1-2009 | 141-050-0965 | 12-10-2008 | Amend | 1-1-2009 |
| 137-055-1160 | 8-1-2009 | Amend | 8-1-2009 | 141-050-0972 | 12-10-2008 | Amend | 1-1-2009 |
| 137-055-1180 | 8-1-2009 | Repeal | 8-1-2009 | 141-050-0976 | 12-10-2008 | Amend | 1-1-2009 |
| 137-055-1320 | 4-1-2009 | Amend | 5-1-2009 | 141-050-0982 | 12-10-2008 | Amend | 1-1-2009 |
| 137-055-2020 | 7-1-2009 | Amend | 8-1-2009 | 141-067-0130 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-2040 | 7-1-2009 | Repeal | 8-1-2009 | 141-067-0140 | 7-1-2009 | Repeal | 8-1-2009 |
| 137-055-2140 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-067-0150 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-2165 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-067-0155 | 7-1-2009 | Adopt | 8-1-2009 |
| 137-055-3020 | 4-1-2009 | Amend | 5-1-2009 | 141-067-0160 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-3080 | 4-1-2009 | Amend | 5-1-2009 | 141-067-0165 | 7-1-2009 | Adopt | 8-1-2009 |
| 137-055-3100 | 4-1-2009 | Amend | 5-1-2009 | 141-067-0170 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-3420 | 1-2-2009 | Amend | 2-1-2009 | 141-067-0180 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-3420 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-067-0190 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-3420(T) | 1-2-2009 | Repeal | 2-1-2009 | 141-067-0195 | 7-1-2009 | Adopt | 8-1-2009 |
| 137-055-3430 | 5-7-2009 | Amend(T) | 6-1-2009 | 141-067-0200 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-3430 | 5-14-2009 | Amend(T) | 6-1-2009 | 141-067-0210 | 7-1-2009 | Repeal | 8-1-2009 |
| 137-055-3430(T) | 5-14-2009 | Suspend | 6-1-2009 | 141-067-0215 | 7-1-2009 | Adopt | 8-1-2009 |
| 137-055-3460 | 4-1-2009 | Amend | 5-1-2009 | 141-067-0220 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-5520 | 7-1-2009 | Amend | 8-1-2009 | 141-067-0230 | 7-1-2009 | Amend | 8-1-2009 |
| 137-055-6010 | 10-1-2009 | Amend | 11-1-2009 | 141-067-0240 | 7-1-2009 | Repeal | 8-1-2009 |
| 137-055-6200 | 10-1-2009 | Amend | 11-1-2009 | 141-067-0250 | 7-1-2009 | Amend | 8-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|--------|----------|--------------------|------------|------------|-----------|
| 141-085-0760 | 3-1-2009 | Adopt | 3-1-2009 | 141-089-0350 | 3-1-2009 | Amend | 3-1-2009 |
| 141-085-0765 | 3-1-2009 | Adopt | 3-1-2009 | 141-089-0355 | 3-1-2009 | Amend | 3-1-2009 |
| 141-085-0770 | 3-1-2009 | Adopt | 3-1-2009 | 141-089-0370 | 3-1-2009 | Amend | 3-1-2009 |
| 141-085-0775 | 3-1-2009 | Adopt | 3-1-2009 | 141-089-0390 | 3-1-2009 | Amend | 3-1-2009 |
| 141-085-0780 | 3-1-2009 | Adopt | 3-1-2009 | 141-089-0400 | 3-1-2009 | Amend | 3-1-2009 |
| 141-085-0785 | 3-1-2009 | Adopt | 3-1-2009 | 141-089-0405 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0185 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0415 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0190 | 1-1-2009 | Repeal | 1-1-2009 | 141-089-0420 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0200 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0430 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0210 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0500 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0220 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0505 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0222 | 1-1-2009 | Adopt | 1-1-2009 | 141-089-0515 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0225 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0520 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0228 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0530 | 3-1-2009 | Amend | 3-1-2009 |
| 141-086-0230 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0550 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-086-0240 | 1-1-2009 | Amend | 1-1-2009 | 141-089-0555 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0000 | 6-23-2009 | Amend | 8-1-2009 | 141-089-0560 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0002 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0565 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0004 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0570 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0005 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0572 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0006 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0575 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0007 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0580 | 3-1-2009 | Repeal | 3-1-2009 |
| 141-088-0008 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0585 | 3-1-2009 | Amend | 3-1-2009 |
| 141-088-0009 | 6-23-2009 | Adopt | 8-1-2009 | 141-089-0600 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0100 | 3-1-2009 | Amend | 3-1-2009 | 141-089-0605 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0105 | 3-1-2009 | Amend | 3-1-2009 | 141-089-0615 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0110 | 3-1-2009 | Amend | 3-1-2009 | 141-091-0005 | 12-10-2008 | Amend | 1-1-2009 |
| 141-089-0115 | 3-1-2009 | Amend | 3-1-2009 | 141-091-0015 | 12-10-2008 | Amend | 1-1-2009 |
| 141-089-0120 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0000 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0130 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0020 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0135 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0030 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0145 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0040 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0150 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0050 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0155 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0055 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0157 | 3-1-2009 | Repeal | 3-1-2009 | 141-100-0060 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0165 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0070 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0170 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0080 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0175 | 3-1-2009 | Amend | 3-1-2009 | 141-100-0090 | 3-1-2009 | Amend | 3-1-2009 |
| 141-089-0185 | 3-1-2009 | Amend | 3-1-2009 | 150-267.385(5) | 7-31-2009 | Repeal | 9-1-2009 |
| 141-089-0190 | 3-1-2009 | Amend | 3-1-2009 | 150-280.075 | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0200 | 3-1-2009 | Amend | 3-1-2009 | 150-294.435(1)-(A) | 1-1-2009 | Amend | 2-1-2009 |
| 141-089-0205 | 3-1-2009 | Amend | 3-1-2009 | 150-294.435(1)-(B) | 1-1-2009 | Repeal | 2-1-2009 |
| 141-089-0210 | 3-1-2009 | Amend | 3-1-2009 | 150-294.480 | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0215 | 3-1-2009 | Amend | 3-1-2009 | 150-305.100-(C) | 10-15-2009 | Adopt(T) | 11-1-2009 |
| 141-089-0220 | 3-1-2009 | Amend | 3-1-2009 | 150-305.220(1) | 1-1-2009 | Amend | 2-1-2009 |
| 141-089-0225 | 3-1-2009 | Amend | 3-1-2009 | 150-305.220(2) | 1-1-2009 | Amend | 2-1-2009 |
| 141-089-0230 | 3-1-2009 | Amend | 3-1-2009 | 150-306.132 | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0240 | 3-1-2009 | Amend | 3-1-2009 | 150-307.140 | 1-1-2009 | Amend | 2-1-2009 |
| 141-089-0245 | 3-1-2009 | Amend | 3-1-2009 | 150-307.250(1)(c) | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0250 | 3-1-2009 | Amend | 3-1-2009 | 150-307.455 | 1-1-2009 | Adopt | 2-1-2009 |
| 141-089-0255 | 3-1-2009 | Amend | 3-1-2009 | 150-308.146(5)(a) | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0260 | 3-1-2009 | Amend | 3-1-2009 | 150-308.156(5)-(C) | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0265 | 3-1-2009 | Amend | 3-1-2009 | 150-308.515(1)(h) | 1-1-2009 | Adopt | 2-1-2009 |
| 141-089-0275 | 3-1-2009 | Amend | 3-1-2009 | 150-308.550(2)-(G) | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0280 | 3-1-2009 | Amend | 3-1-2009 | 150-308A.056 | 1-1-2009 | Amend | 2-1-2009 |
| 141-089-0295 | 3-1-2009 | Amend | 3-1-2009 | 150-308A.059 | 1-1-2009 | Repeal | 2-1-2009 |
| 141-089-0300 | 3-1-2009 | Amend | 3-1-2009 | 150-309.026(2)-(A) | 7-31-2009 | Amend | 9-1-2009 |
| 141-089-0310 | 3-1-2009 | Amend | 3-1-2009 | 150-309.110(1)-(B) | 1-1-2009 | Am. & Ren. | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------------|-----------|------------|-----------|--------------|------------|----------|-----------|
| 150-309.110(1)-(E) | 1-1-2009 | Am. & Ren. | 2-1-2009 | 165-012-0005 | 7-30-2009 | Amend | 9-1-2009 |
| 150-310.630(8)(a)-(O) | 7-31-2009 | Amend | 9-1-2009 | 165-013-0020 | 5-4-2009 | Amend | 6-1-2009 |
| 150-311.670(1) | 1-1-2009 | Adopt | 2-1-2009 | 165-014-0031 | 5-4-2009 | Repeal | 6-1-2009 |
| 150-311.706(1) | 1-1-2009 | Adopt | 2-1-2009 | 165-014-0032 | 5-4-2009 | Amend | 6-1-2009 |
| 150-314.295 | 7-31-2009 | Amend | 9-1-2009 | 165-014-0033 | 9-17-2009 | Adopt(T) | 11-1-2009 |
| 150-314.402(1) | 1-1-2009 | Amend | 2-1-2009 | 165-020-0050 | 6-30-2009 | Amend | 8-1-2009 |
| 150-314.402(4)(b) | 1-1-2009 | Amend | 2-1-2009 | 165-020-0055 | 6-30-2009 | Amend | 8-1-2009 |
| 150-314.515(2) | 1-1-2009 | Amend | 2-1-2009 | 165-020-0060 | 6-30-2009 | Amend | 8-1-2009 |
| 150-314.752 | 1-1-2009 | Amend | 2-1-2009 | 165-020-0430 | 5-4-2009 | Repeal | 6-1-2009 |
| 150-315.104(1) | 7-31-2009 | Amend | 9-1-2009 | 165-020-2022 | 2-18-2009 | Adopt(T) | 4-1-2009 |
| 150-315.104(10) | 7-31-2009 | Amend | 9-1-2009 | 165-020-2023 | 3-3-2009 | Adopt(T) | 4-1-2009 |
| 150-315.104(9) | 7-31-2009 | Repeal | 9-1-2009 | 165-020-2024 | 3-5-2009 | Adopt(T) | 4-1-2009 |
| 150-316.007-(B) | 1-1-2009 | Amend | 2-1-2009 | 165-020-2025 | 3-16-2009 | Adopt(T) | 5-1-2009 |
| 150-316.007-(B) | 1-5-2009 | Amend | 2-1-2009 | 165-020-2026 | 3-19-2009 | Adopt(T) | 5-1-2009 |
| 150-316.082(1)-(B) | 1-1-2009 | Amend | 2-1-2009 | 166-001-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 150-316.127-(9) | 1-1-2009 | Amend | 2-1-2009 | 166-005-0000 | 10-15-2009 | Amend | 11-1-2009 |
| 150-316.127-(A) | 7-31-2009 | Amend | 9-1-2009 | 166-005-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 150-316.202(3) | 1-1-2009 | Amend | 2-1-2009 | 166-005-0010 | 10-15-2009 | Amend | 11-1-2009 |
| 150-316.587(5)(d) | 7-31-2009 | Amend | 9-1-2009 | 166-010-0000 | 10-15-2009 | Amend | 11-1-2009 |
| 150-316.587(8)-(B) | 7-31-2009 | Amend | 9-1-2009 | 166-010-0006 | 10-15-2009 | Amend | 11-1-2009 |
| 150-316.791 | 1-1-2009 | Adopt | 2-1-2009 | 166-010-0010 | 10-15-2009 | Repeal | 11-1-2009 |
| 150-317.705(3)(a) | 7-31-2009 | Amend | 9-1-2009 | 166-010-0015 | 10-15-2009 | Amend | 11-1-2009 |
| 150-321.005(9) | 7-31-2009 | Amend | 9-1-2009 | 166-010-0016 | 10-15-2009 | Amend | 11-1-2009 |
| 150-323.500(9) | 10-7-2009 | Adopt(T) | 11-1-2009 | 166-010-0018 | 10-15-2009 | Adopt | 11-1-2009 |
| 150-465.200(1) | 7-31-2009 | Repeal | 9-1-2009 | 166-010-0019 | 10-15-2009 | Adopt | 11-1-2009 |
| 150-465.517(2) | 7-31-2009 | Repeal | 9-1-2009 | 166-010-0025 | 10-15-2009 | Repeal | 11-1-2009 |
| 150-465.517(3) | 7-31-2009 | Repeal | 9-1-2009 | 166-010-0031 | 10-15-2009 | Repeal | 11-1-2009 |
| 150-465.517(5) | 7-31-2009 | Repeal | 9-1-2009 | 166-020-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 150-465.992 | 7-31-2009 | Repeal | 9-1-2009 | 166-020-0007 | 10-15-2009 | Amend | 11-1-2009 |
| 150-90.650 | 7-31-2009 | Adopt | 9-1-2009 | 166-020-0010 | 10-15-2009 | Amend | 11-1-2009 |
| 150.309.067(1)(b) | 1-1-2009 | Am. & Ren. | 2-1-2009 | 166-020-0011 | 10-15-2009 | Repeal | 11-1-2009 |
| 151-020-0020 | 9-8-2009 | Repeal | 10-1-2009 | 166-020-0015 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0030 | 2-5-2009 | Amend(T) | 3-1-2009 | 166-020-0030 | 10-15-2009 | Repeal | 11-1-2009 |
| 151-020-0030 | 9-8-2009 | Repeal | 10-1-2009 | 166-020-0035 | 10-15-2009 | Repeal | 11-1-2009 |
| 151-020-0042 | 9-8-2009 | Repeal | 10-1-2009 | 166-020-0045 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0045 | 8-31-2009 | Am. & Ren. | 10-1-2009 | 166-025-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0060 | 8-31-2009 | Am. & Ren. | 10-1-2009 | 166-025-0010 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0065 | 8-31-2009 | Am. & Ren. | 10-1-2009 | 166-025-0015 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0075 | 8-31-2009 | Am. & Ren. | 10-1-2009 | 166-025-0020 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0090 | 9-8-2009 | Repeal | 10-1-2009 | 166-025-0021 | 10-15-2009 | Adopt | 11-1-2009 |
| 151-020-0100 | 8-31-2009 | Am. & Ren. | 10-1-2009 | 166-025-0022 | 10-15-2009 | Adopt | 11-1-2009 |
| 151-020-0110 | 8-31-2009 | Am. & Ren. | 10-1-2009 | 166-025-0025 | 10-15-2009 | Amend | 11-1-2009 |
| 151-020-0120 | 9-8-2009 | Repeal | 10-1-2009 | 166-025-0030 | 10-15-2009 | Amend | 11-1-2009 |
| 160-010-0310 | 9-3-2009 | Adopt | 10-1-2009 | 166-025-0035 | 10-15-2009 | Adopt | 11-1-2009 |
| 161-002-0000 | 1-30-2009 | Amend(T) | 3-1-2009 | 166-030-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 161-006-0025 | 7-1-2009 | Amend(T) | 6-1-2009 | 166-030-0016 | 10-15-2009 | Amend | 11-1-2009 |
| 161-010-0035 | 1-30-2009 | Amend(T) | 3-1-2009 | 166-030-0021 | 10-15-2009 | Amend | 11-1-2009 |
| 161-010-0045 | 1-30-2009 | Amend(T) | 3-1-2009 | 166-030-0026 | 10-15-2009 | Amend | 11-1-2009 |
| 161-010-0085 | 1-30-2009 | Amend | 3-1-2009 | 166-030-0027 | 10-15-2009 | Amend | 11-1-2009 |
| 161-020-0045 | 1-30-2009 | Amend | 3-1-2009 | 166-030-0041 | 10-15-2009 | Amend | 11-1-2009 |
| 161-020-0140 | 1-30-2009 | Amend | 3-1-2009 | 166-030-0045 | 10-15-2009 | Amend | 11-1-2009 |
| 161-020-0150 | 1-30-2009 | Amend | 3-1-2009 | 166-030-0060 | 10-15-2009 | Amend | 11-1-2009 |
| 161-025-0060 | 1-30-2009 | Amend | 3-1-2009 | 166-030-0070 | 10-15-2009 | Repeal | 11-1-2009 |
| 165-001-0005 | 5-22-2009 | Amend | 7-1-2009 | 166-200-0005 | 12-10-2008 | Amend | 1-1-2009 |
| 165-005-0050 | 5-4-2009 | Amend | 6-1-2009 | 166-200-0010 | 12-10-2008 | Amend | 1-1-2009 |
| 165-007-0130 | 5-4-2009 | Amend | 6-1-2009 | 166-200-0010 | 6-24-2009 | Amend | 8-1-2009 |
| 165-007-2010 | 7-30-2009 | Adopt(T) | 9-1-2009 | 166-200-0010 | 8-26-2009 | Amend | 10-1-2009 |
| 165-012-0005 | 5-4-2009 | Amend | 6-1-2009 | 166-200-0015 | 12-10-2008 | Amend | 1-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|--------|-----------|-----------------|------------|----------|-----------|
| 166-200-0020 | 12-10-2008 | Amend | 1-1-2009 | 166-475-0085 | 6-29-2009 | Amend | 8-1-2009 |
| 166-200-0025 | 12-10-2008 | Amend | 1-1-2009 | 166-475-0090 | 6-29-2009 | Amend | 8-1-2009 |
| 166-200-0030 | 12-10-2008 | Amend | 1-1-2009 | 166-475-0095 | 6-29-2009 | Amend | 8-1-2009 |
| 166-200-0030 | 8-26-2009 | Amend | 10-1-2009 | 166-475-0100 | 6-29-2009 | Amend | 8-1-2009 |
| 166-200-0035 | 12-10-2008 | Amend | 1-1-2009 | 166-475-0105 | 6-29-2009 | Amend | 8-1-2009 |
| 166-200-0035 | 8-26-2009 | Amend | 10-1-2009 | 166-475-0110 | 6-29-2009 | Amend | 8-1-2009 |
| 166-200-0040 | 12-10-2008 | Amend | 1-1-2009 | 166-500-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 166-200-0045 | 12-10-2008 | Amend | 1-1-2009 | 166-500-0015 | 10-5-2009 | Amend | 11-1-2009 |
| 166-200-0050 | 12-10-2008 | Amend | 1-1-2009 | 166-500-0040 | 7-1-2009 | Amend | 8-1-2009 |
| 166-200-0050 | 8-26-2009 | Amend | 10-1-2009 | 166-500-0050 | 7-1-2009 | Amend | 8-1-2009 |
| 166-200-0055 | 12-10-2008 | Amend | 1-1-2009 | 166-500-0055 | 7-1-2009 | Amend | 8-1-2009 |
| 166-200-0055 | 8-26-2009 | Amend | 10-1-2009 | 170-040-0110 | 10-13-2009 | Adopt(T) | 11-1-2009 |
| 166-200-0060 | 12-10-2008 | Amend | 1-1-2009 | 170-040-0020 | 4-10-2009 | Amend | 5-1-2009 |
| 166-200-0065 | 12-10-2008 | Amend | 1-1-2009 | 170-040-0090 | 11-28-2008 | Adopt | 1-1-2009 |
| 166-200-0070 | 12-10-2008 | Amend | 1-1-2009 | 170-040-0100 | 11-28-2008 | Adopt | 1-1-2009 |
| 166-200-0075 | 12-10-2008 | Amend | 1-1-2009 | 170-055-0001 | 12-29-2008 | Adopt | 2-1-2009 |
| 166-200-0075 | 8-26-2009 | Amend | 10-1-2009 | 170-055-0005 | 12-29-2008 | Repeal | 2-1-2009 |
| 166-200-0080 | 12-10-2008 | Amend | 1-1-2009 | 170-060-0001 | 12-29-2008 | Adopt | 2-1-2009 |
| 166-200-0085 | 12-10-2008 | Amend | 1-1-2009 | 170-060-0005 | 12-29-2008 | Adopt | 2-1-2009 |
| 166-200-0090 | 12-10-2008 | Amend | 1-1-2009 | 170-060-1010 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0090 | 8-26-2009 | Amend | 10-1-2009 | 170-061-0000 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0095 | 12-10-2008 | Amend | 1-1-2009 | 170-061-0005 | 12-29-2008 | Repeal | 2-1-2009 |
| 166-200-0100 | 12-10-2008 | Amend | 1-1-2009 | 170-061-0015 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0100 | 8-26-2009 | Amend | 10-1-2009 | 170-061-0015 | 4-22-2009 | Amend | 6-1-2009 |
| 166-200-0105 | 12-10-2008 | Amend | 1-1-2009 | 170-061-0015 | 7-21-2009 | Amend | 9-1-2009 |
| 166-200-0110 | 12-10-2008 | Amend | 1-1-2009 | 170-061-0020 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0110 | 8-26-2009 | Amend | 10-1-2009 | 170-061-0100 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0115 | 12-10-2008 | Amend | 1-1-2009 | 170-061-0200 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0115 | 8-26-2009 | Amend | 10-1-2009 | 170-061-0300 | 12-29-2008 | Adopt | 2-1-2009 |
| 166-200-0120 | 12-10-2008 | Amend | 1-1-2009 | 170-061-0400 | 12-29-2008 | Adopt | 2-1-2009 |
| 166-200-0120 | 8-26-2009 | Amend | 10-1-2009 | 170-062-0000 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0125 | 12-10-2008 | Amend | 1-1-2009 | 170-063-0000 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0125 | 8-26-2009 | Amend | 10-1-2009 | 170-071-0005 | 12-29-2008 | Amend | 2-1-2009 |
| 166-200-0130 | 12-10-2008 | Amend | 1-1-2009 | 171-010-0000 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-200-0130 | 8-26-2009 | Amend | 10-1-2009 | 171-010-0005 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-200-0135 | 12-10-2008 | Amend | 1-1-2009 | 171-010-0010 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-200-0135 | 8-26-2009 | Amend | 10-1-2009 | 171-010-0015 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-200-0140 | 12-10-2008 | Amend | 1-1-2009 | 171-010-0020 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-200-0145 | 12-10-2008 | Amend | 1-1-2009 | 171-010-0025 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-200-0145 | 8-26-2009 | Amend | 10-1-2009 | 171-010-0030 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-300-0025 | 2-19-2009 | Amend | 4-1-2009 | 171-010-0035 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-400-0060 | 6-24-2009 | Amend | 8-1-2009 | 171-010-0040 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-475-0010 | 6-29-2009 | Amend | 8-1-2009 | 171-010-0045 | 6-10-2009 | Repeal | 8-1-2009 |
| 166-475-0015 | 6-29-2009 | Amend | 8-1-2009 | 177-010-0003 | 10-1-2009 | Amend | 11-1-2009 |
| 166-475-0020 | 6-29-2009 | Amend | 8-1-2009 | 177-010-0003 | 10-1-2009 | Amend | 11-1-2009 |
| 166-475-0025 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0001 | 1-1-2009 | Amend | 2-1-2009 |
| 166-475-0030 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0005 | 1-1-2009 | Amend | 2-1-2009 |
| 166-475-0035 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0017 | 2-1-2009 | Amend | 3-1-2009 |
| 166-475-0040 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0017(T) | 2-1-2009 | Repeal | 3-1-2009 |
| 166-475-0045 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0025 | 10-1-2009 | Amend | 11-1-2009 |
| 166-475-0050 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0030 | 1-1-2009 | Amend | 2-1-2009 |
| 166-475-0055 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0040 | 10-1-2009 | Repeal | 11-1-2009 |
| 166-475-0060 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0050 | 1-1-2009 | Amend | 2-1-2009 |
| 166-475-0060 | 9-22-2009 | Amend | 11-1-2009 | 177-040-0050 | 10-1-2009 | Amend | 11-1-2009 |
| 166-475-0065 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0052 | 1-1-2009 | Amend | 2-1-2009 |
| 166-475-0070 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0061 | 2-1-2009 | Amend | 3-1-2009 |
| 166-475-0075 | 6-29-2009 | Amend | 8-1-2009 | 177-040-0061(T) | 2-1-2009 | Repeal | 3-1-2009 |
| 166-475-0080 | 6-29-2009 | Amend | 8-1-2009 | 177-045-0000 | 1-1-2009 | Amend | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 177-045-0000 | 10-1-2009 | Amend | 11-1-2009 | 177-083-0040 | 3-1-2009 | Amend | 4-1-2009 |
| 177-045-0010 | 1-1-2009 | Amend | 2-1-2009 | 177-083-0040(T) | 3-1-2009 | Repeal | 4-1-2009 |
| 177-045-0030 | 1-1-2009 | Amend | 2-1-2009 | 177-085-0000 | 1-4-2009 | Amend | 1-1-2009 |
| 177-045-0040 | 1-1-2009 | Repeal | 2-1-2009 | 177-085-0005 | 1-4-2009 | Amend | 1-1-2009 |
| 177-046-0015 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0005 | 10-1-2009 | Amend | 11-1-2009 |
| 177-046-0020 | 11-23-2008 | Amend(T) | 1-1-2009 | 177-085-0010 | 1-4-2009 | Amend | 1-1-2009 |
| 177-046-0020 | 3-1-2009 | Amend | 4-1-2009 | 177-085-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 177-046-0020 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0015 | 11-23-2008 | Amend(T) | 1-1-2009 |
| 177-046-0020 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0015 | 1-4-2009 | Amend | 1-1-2009 |
| 177-046-0020(T) | 3-1-2009 | Repeal | 4-1-2009 | 177-085-0015 | 3-1-2009 | Amend | 4-1-2009 |
| 177-046-0080 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0015 | 10-1-2009 | Amend | 11-1-2009 |
| 177-046-0110 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0015(T) | 3-1-2009 | Repeal | 4-1-2009 |
| 177-046-0150 | 12-1-2008 | Repeal | 1-1-2009 | 177-085-0020 | 1-4-2009 | Amend | 1-1-2009 |
| 177-050-0025 | 12-1-2008 | Amend | 1-1-2009 | 177-085-0025 | 1-4-2009 | Amend | 1-1-2009 |
| 177-050-0025 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0030 | 1-4-2009 | Amend | 1-1-2009 |
| 177-050-0027 | 12-1-2008 | Amend | 1-1-2009 | 177-085-0035 | 1-4-2009 | Amend | 1-1-2009 |
| 177-050-0100 | 12-1-2008 | Adopt | 1-1-2009 | 177-085-0040 | 1-4-2009 | Amend | 1-1-2009 |
| 177-050-0100 | 3-1-2009 | Amend | 4-1-2009 | 177-085-0040 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0000 | 12-1-2008 | Adopt | 1-1-2009 | 177-085-0045 | 1-4-2009 | Amend | 1-1-2009 |
| 177-069-0000 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0050 | 1-4-2009 | Amend | 1-1-2009 |
| 177-069-0000 | 10-1-2009 | Amend | 11-1-2009 | 177-085-0065 | 1-4-2009 | Amend | 1-1-2009 |
| 177-069-0010 | 12-1-2008 | Adopt | 1-1-2009 | 177-090-0005 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0010 | 10-1-2009 | Amend | 11-1-2009 | 177-090-0025 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0020 | 12-1-2008 | Adopt | 1-1-2009 | 177-090-0045 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0030 | 12-1-2008 | Adopt | 1-1-2009 | 177-091-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0030 | 9-1-2009 | Amend | 10-1-2009 | 177-091-0020 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0040 | 12-1-2008 | Adopt | 1-1-2009 | 177-091-0050 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0040 | 9-1-2009 | Amend | 10-1-2009 | 177-094-0000 | 10-1-2009 | Amend | 11-1-2009 |
| 177-069-0050 | 12-1-2008 | Adopt | 1-1-2009 | 177-094-0020 | 11-23-2008 | Amend(T) | 1-1-2009 |
| 177-069-0050 | 9-1-2009 | Amend | 10-1-2009 | 177-094-0020 | 3-1-2009 | Amend | 4-1-2009 |
| 177-070-0005 | 10-1-2009 | Amend | 11-1-2009 | 177-094-0020(T) | 3-1-2009 | Repeal | 4-1-2009 |
| 177-070-0025 | 10-1-2009 | Amend | 11-1-2009 | 177-094-0030 | 10-1-2009 | Amend | 11-1-2009 |
| 177-070-0025 | 10-1-2009 | Amend | 11-1-2009 | 177-099-0000 | 10-1-2009 | Amend | 11-1-2009 |
| 177-070-0035 | 10-1-2009 | Amend | 11-1-2009 | 177-099-0030 | 10-1-2009 | Amend | 11-1-2009 |
| 177-070-0080 | 10-1-2009 | Amend | 11-1-2009 | 177-099-0050 | 10-1-2009 | Amend | 11-1-2009 |
| 177-075-0000 | 10-1-2009 | Amend | 11-1-2009 | 177-099-0100 | 8-26-2009 | Amend(T) | 10-1-2009 |
| 177-075-0010 | 11-23-2008 | Amend(T) | 1-1-2009 | 177-100-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 177-075-0010 | 3-1-2009 | Amend | 4-1-2009 | 177-100-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 177-075-0010 | 10-1-2009 | Amend | 11-1-2009 | 213-003-0001 | 1-1-2010 | Amend(T) | 5-1-2009 |
| 177-075-0010(T) | 3-1-2009 | Repeal | 4-1-2009 | 213-003-0001 | 1-1-2010 | Amend(T) | 5-1-2009 |
| 177-081-0000 | 10-1-2009 | Amend | 11-1-2009 | 213-017-0004 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 177-081-0010 | 10-1-2009 | Amend | 11-1-2009 | 213-017-0004 | 9-16-2009 | Amend(T) | 11-1-2009 |
| 177-081-0010 | 10-1-2009 | Amend | 11-1-2009 | 213-017-0004 | 1-1-2010 | Amend(T) | 5-1-2009 |
| 177-081-0020 | 11-23-2008 | Amend(T) | 1-1-2009 | 213-017-0006 | 1-1-2009 | Amend(T) | 2-1-2009 |
| 177-081-0020 | 3-1-2009 | Amend | 4-1-2009 | 213-017-0006 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 177-081-0020(T) | 3-1-2009 | Repeal | 4-1-2009 | 213-017-0006 | 9-16-2009 | Amend(T) | 11-1-2009 |
| 177-081-0030 | 10-1-2009 | Amend | 11-1-2009 | 213-017-0006 | 1-1-2010 | Amend(T) | 5-1-2009 |
| 177-083-0000 | 10-1-2009 | Amend | 11-1-2009 | 213-017-0009 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 177-083-0010 | 10-1-2009 | Amend | 11-1-2009 | 213-017-0009 | 1-1-2010 | Amend(T) | 5-1-2009 |
| 177-083-0010 | 10-1-2009 | Amend | 11-1-2009 | 213-018-0022 | 9-16-2009 | Adopt(T) | 11-1-2009 |
| 177-083-0020 | 11-23-2008 | Amend(T) | 1-1-2009 | 250-018-0060 | 7-1-2009 | Amend | 8-1-2009 |
| 177-083-0020 | 3-1-2009 | Amend | 4-1-2009 | 250-018-0090 | 7-1-2009 | Amend | 8-1-2009 |
| 177-083-0020(T) | 3-1-2009 | Repeal | 4-1-2009 | 250-018-0110 | 7-1-2009 | Amend | 8-1-2009 |
| 177-083-0030 | 11-23-2008 | Amend(T) | 1-1-2009 | 250-020-0261 | 5-1-2009 | Amend | 5-1-2009 |
| 177-083-0030 | 3-1-2009 | Amend | 4-1-2009 | 250-020-0290 | 5-1-2009 | Repeal | 5-1-2009 |
| 177-083-0030 | 10-1-2009 | Amend | 11-1-2009 | 255-032-0005 | 9-29-2009 | Amend(T) | 11-1-2009 |
| 177-083-0030(T) | 3-1-2009 | Repeal | 4-1-2009 | 255-032-0007 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 177-083-0040 | 11-23-2008 | Amend(T) | 1-1-2009 | 255-032-0011 | 9-29-2009 | Amend(T) | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|---------------|-----------|-----------------|------------|----------|-----------|
| 255-032-0015 | 9-29-2009 | Amend(T) | 11-1-2009 | 257-050-0157 | 8-6-2009 | Amend(T) | 9-1-2009 |
| 255-032-0025 | 9-29-2009 | Amend(T) | 11-1-2009 | 257-050-0157 | 1-1-2010 | Amend | 11-1-2009 |
| 255-032-0026 | 9-29-2009 | Suspend | 11-1-2009 | 257-050-0157(T) | 1-1-2010 | Repeal | 11-1-2009 |
| 255-032-0029 | 9-29-2009 | Amend(T) | 11-1-2009 | 257-050-0170 | 8-6-2009 | Amend(T) | 9-1-2009 |
| 255-070-0001 | 4-10-2009 | Amend(T) | 5-1-2009 | 257-050-0170 | 1-1-2010 | Amend | 11-1-2009 |
| 255-094-0000 | 8-21-2009 | Am. & Ren.(T) | 10-1-2009 | 257-050-0170(T) | 1-1-2010 | Repeal | 11-1-2009 |
| 255-094-0001 | 8-21-2009 | Adopt(T) | 10-1-2009 | 257-050-0180 | 8-6-2009 | Amend(T) | 9-1-2009 |
| 255-094-0010 | 8-21-2009 | Amend(T) | 10-1-2009 | 257-050-0180 | 1-1-2010 | Amend | 11-1-2009 |
| 255-094-0015 | 8-21-2009 | Amend(T) | 10-1-2009 | 257-050-0180(T) | 1-1-2010 | Repeal | 11-1-2009 |
| 255-094-0020 | 8-21-2009 | Amend(T) | 10-1-2009 | 257-050-0200 | 8-6-2009 | Amend(T) | 9-1-2009 |
| 257-050-0020 | 8-6-2009 | Amend(T) | 9-1-2009 | 257-050-0200 | 1-1-2010 | Amend | 11-1-2009 |
| 257-050-0020 | 1-1-2010 | Amend | 11-1-2009 | 257-050-0200(T) | 1-1-2010 | Repeal | 11-1-2009 |
| 257-050-0020(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-001-0005 | 4-8-2009 | Amend | 5-1-2009 |
| 257-050-0040 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-001-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 257-050-0040 | 1-1-2010 | Amend | 11-1-2009 | 259-008-0010 | 1-1-2009 | Amend | 1-1-2009 |
| 257-050-0040(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-008-0010 | 9-21-2009 | Amend | 11-1-2009 |
| 257-050-0050 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-008-0011 | 1-1-2009 | Amend | 1-1-2009 |
| 257-050-0050 | 1-1-2010 | Amend | 11-1-2009 | 259-008-0011 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0050(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-008-0020 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0060 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-008-0025 | 4-8-2009 | Amend | 5-1-2009 |
| 257-050-0060 | 1-1-2010 | Amend | 11-1-2009 | 259-008-0025 | 9-15-2009 | Amend(T) | 10-1-2009 |
| 257-050-0060(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-008-0060 | 12-29-2008 | Amend | 2-1-2009 |
| 257-050-0070 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-008-0060 | 4-8-2009 | Amend | 5-1-2009 |
| 257-050-0070 | 1-1-2010 | Amend | 11-1-2009 | 259-008-0065 | 4-8-2009 | Amend | 5-1-2009 |
| 257-050-0070(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-008-0068 | 6-26-2009 | Amend(T) | 8-1-2009 |
| 257-050-0090 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-008-0068 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0090 | 1-1-2010 | Amend | 11-1-2009 | 259-008-0068(T) | 7-13-2009 | Repeal | 8-1-2009 |
| 257-050-0090(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-008-0070 | 1-1-2009 | Amend | 1-1-2009 |
| 257-050-0095 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-009-0005 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0095 | 1-1-2010 | Amend | 11-1-2009 | 259-009-0005 | 10-15-2009 | Amend | 11-1-2009 |
| 257-050-0095(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-009-0059 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0100 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-009-0062 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0100 | 1-1-2010 | Amend | 11-1-2009 | 259-009-0062 | 10-15-2009 | Amend | 11-1-2009 |
| 257-050-0100(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-009-0070 | 7-13-2009 | Amend | 8-1-2009 |
| 257-050-0110 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-020-0010 | 12-29-2008 | Amend(T) | 2-1-2009 |
| 257-050-0110 | 1-1-2010 | Amend | 11-1-2009 | 259-020-0010 | 2-2-2009 | Amend | 3-1-2009 |
| 257-050-0110(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-020-0010(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 257-050-0115 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-020-0015 | 2-2-2009 | Amend | 3-1-2009 |
| 257-050-0115 | 1-1-2010 | Amend | 11-1-2009 | 259-020-0020 | 2-2-2009 | Amend | 3-1-2009 |
| 257-050-0115(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-020-0025 | 2-2-2009 | Amend | 3-1-2009 |
| 257-050-0125 | 8-6-2009 | Amend(T) | 9-1-2009 | 259-020-0025 | 9-15-2009 | Amend | 10-1-2009 |
| 257-050-0125 | 1-1-2010 | Amend | 11-1-2009 | 259-060-0065 | 10-15-2009 | Amend | 11-1-2009 |
| 257-050-0125(T) | 1-1-2010 | Repeal | 11-1-2009 | 259-060-0075 | 10-15-2009 | Amend | 11-1-2009 |
| 257-050-0130 | 8-6-2009 | Amend(T) | 9-1-2009 | 291-019-0130 | 5-22-2009 | Amend | 7-1-2009 |
| 257-050-0130 | 1-1-2010 | Amend | 11-1-2009 | 291-022-0115 | 11-25-2008 | Amend(T) | 1-1-2009 |
| 257-050-0130(T) | 1-1-2010 | Repeal | 11-1-2009 | 291-022-0115 | 5-23-2009 | Amend | 7-1-2009 |
| 257-050-0140 | 8-6-2009 | Amend(T) | 9-1-2009 | 291-022-0160 | 11-25-2008 | Amend(T) | 1-1-2009 |
| 257-050-0140 | 1-1-2010 | Amend | 11-1-2009 | 291-022-0160 | 5-23-2009 | Amend | 7-1-2009 |
| 257-050-0140(T) | 1-1-2010 | Repeal | 11-1-2009 | 291-022-0161 | 11-25-2008 | Adopt(T) | 1-1-2009 |
| 257-050-0145 | 8-6-2009 | Amend(T) | 9-1-2009 | 291-022-0161 | 5-23-2009 | Adopt | 7-1-2009 |
| 257-050-0145 | 1-1-2010 | Amend | 11-1-2009 | 291-022-0162 | 11-25-2008 | Adopt(T) | 1-1-2009 |
| 257-050-0145(T) | 1-1-2010 | Repeal | 11-1-2009 | 291-022-0162 | 5-23-2009 | Adopt | 7-1-2009 |
| 257-050-0150 | 8-6-2009 | Amend(T) | 9-1-2009 | 291-039-0010 | 12-16-2008 | Amend(T) | 2-1-2009 |
| 257-050-0150 | 1-1-2010 | Amend | 11-1-2009 | 291-039-0010 | 7-14-2009 | Amend | 8-1-2009 |
| 257-050-0150(T) | 1-1-2010 | Repeal | 11-1-2009 | 291-039-0015 | 12-16-2008 | Amend(T) | 2-1-2009 |
| 257-050-0155 | 8-6-2009 | Amend(T) | 9-1-2009 | 291-039-0015 | 7-14-2009 | Amend | 8-1-2009 |
| 257-050-0155 | 1-1-2010 | Amend | 11-1-2009 | 291-042-0005 | 1-22-2009 | Amend | 3-1-2009 |
| 257-050-0155(T) | 1-1-2010 | Repeal | 11-1-2009 | 291-042-0010 | 1-22-2009 | Amend | 3-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|------------|-----------|
| 291-042-0011 | 1-22-2009 | Amend | 3-1-2009 | 291-097-0040 | 8-31-2009 | Amend(T) | 10-1-2009 |
| 291-042-0015 | 1-22-2009 | Amend | 3-1-2009 | 291-097-0050 | 3-10-2009 | Amend | 4-1-2009 |
| 291-042-0025 | 1-22-2009 | Amend | 3-1-2009 | 291-097-0060 | 3-10-2009 | Amend | 4-1-2009 |
| 291-042-0035 | 1-22-2009 | Amend | 3-1-2009 | 291-097-0070 | 3-10-2009 | Amend | 4-1-2009 |
| 291-042-0045 | 1-22-2009 | Repeal | 3-1-2009 | 291-097-0080 | 3-10-2009 | Amend | 4-1-2009 |
| 291-058-0010 | 5-29-2009 | Amend | 7-1-2009 | 291-097-0080 | 8-31-2009 | Amend(T) | 10-1-2009 |
| 291-058-0020 | 5-29-2009 | Amend | 7-1-2009 | 291-097-0100 | 3-10-2009 | Amend | 4-1-2009 |
| 291-058-0030 | 5-29-2009 | Amend | 7-1-2009 | 291-097-0100 | 8-31-2009 | Amend(T) | 10-1-2009 |
| 291-058-0040 | 5-29-2009 | Amend | 7-1-2009 | 291-097-0110 | 3-10-2009 | Am. & Ren. | 4-1-2009 |
| 291-058-0045 | 5-29-2009 | Amend | 7-1-2009 | 291-097-0120 | 3-10-2009 | Amend | 4-1-2009 |
| 291-058-0046 | 5-29-2009 | Adopt | 7-1-2009 | 291-105-0015 | 7-1-2009 | Amend | 8-1-2009 |
| 291-058-0046 | 10-1-2009 | Amend(T) | 11-1-2009 | 291-127-0240 | 5-15-2009 | Amend | 6-1-2009 |
| 291-058-0050 | 5-29-2009 | Amend | 7-1-2009 | 291-127-0260 | 12-16-2008 | Amend(T) | 2-1-2009 |
| 291-058-0060 | 5-29-2009 | Amend | 7-1-2009 | 291-127-0260 | 5-15-2009 | Amend | 6-1-2009 |
| 291-058-0065 | 5-29-2009 | Adopt | 7-1-2009 | 291-127-0260(T) | 5-15-2009 | Repeal | 6-1-2009 |
| 291-062-0100 | 3-20-2009 | Amend(T) | 5-1-2009 | 291-158-0005 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0100 | 7-13-2009 | Amend | 8-1-2009 | 291-158-0010 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0100(T) | 7-13-2009 | Repeal | 8-1-2009 | 291-158-0015 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0110 | 3-20-2009 | Amend(T) | 5-1-2009 | 291-158-0025 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0110 | 7-13-2009 | Amend | 8-1-2009 | 291-158-0035 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0110(T) | 7-13-2009 | Repeal | 8-1-2009 | 291-158-0045 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0120 | 3-20-2009 | Amend(T) | 5-1-2009 | 291-158-0055 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0120 | 7-13-2009 | Amend | 8-1-2009 | 291-158-0065 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0120(T) | 7-13-2009 | Repeal | 8-1-2009 | 291-158-0075 | 12-26-2008 | Amend | 2-1-2009 |
| 291-062-0130 | 3-20-2009 | Amend(T) | 5-1-2009 | 291-203-0020 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 291-062-0130 | 7-13-2009 | Amend | 8-1-2009 | 291-203-0040 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 291-062-0130(T) | 7-13-2009 | Repeal | 8-1-2009 | 291-203-0050 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 291-062-0140 | 3-20-2009 | Amend(T) | 5-1-2009 | 309-040-0410 | 8-6-2009 | Amend(T) | 9-1-2009 |
| 291-062-0140 | 7-13-2009 | Amend | 8-1-2009 | 309-114-0005 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 291-062-0140(T) | 7-13-2009 | Repeal | 8-1-2009 | 309-114-0005 | 4-2-2009 | Amend(T) | 5-1-2009 |
| 291-062-0150 | 3-20-2009 | Amend(T) | 5-1-2009 | 309-114-0005 | 6-26-2009 | Suspend | 8-1-2009 |
| 291-062-0150 | 7-13-2009 | Amend | 8-1-2009 | 309-114-0005(T) | 4-2-2009 | Repeal | 5-1-2009 |
| 291-062-0150(T) | 7-13-2009 | Repeal | 8-1-2009 | 309-114-0005(T) | 6-26-2009 | Repeal | 8-1-2009 |
| 291-062-0160 | 3-20-2009 | Amend(T) | 5-1-2009 | 309-114-0010 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 291-062-0160 | 7-13-2009 | Amend | 8-1-2009 | 309-114-0010 | 6-26-2009 | Amend | 8-1-2009 |
| 291-062-0160(T) | 7-13-2009 | Repeal | 8-1-2009 | 309-114-0010(T) | 6-26-2009 | Repeal | 8-1-2009 |
| 291-062-0170 | 3-20-2009 | Adopt(T) | 5-1-2009 | 309-114-0020 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 291-062-0170 | 7-13-2009 | Adopt | 8-1-2009 | 309-114-0020 | 6-26-2009 | Amend | 8-1-2009 |
| 291-062-0170(T) | 7-13-2009 | Repeal | 8-1-2009 | 309-114-0020(T) | 6-26-2009 | Repeal | 8-1-2009 |
| 291-070-0120 | 12-16-2008 | Amend(T) | 2-1-2009 | 309-114-0025 | 6-26-2009 | Amend | 8-1-2009 |
| 291-070-0120 | 7-14-2009 | Amend | 8-1-2009 | 325-005-0015 | 6-26-2009 | Amend | 8-1-2009 |
| 291-077-0033 | 7-1-2009 | Amend | 8-1-2009 | 330-001-0020 | 7-27-2009 | Adopt(T) | 9-1-2009 |
| 291-084-0010 | 7-2-2009 | Suspend | 8-1-2009 | 330-061-0005 | 12-5-2008 | Amend | 1-1-2009 |
| 291-084-0020 | 7-2-2009 | Suspend | 8-1-2009 | 330-061-0025 | 12-5-2008 | Amend | 1-1-2009 |
| 291-084-0030 | 7-2-2009 | Suspend | 8-1-2009 | 330-061-0030 | 12-5-2008 | Amend | 1-1-2009 |
| 291-084-0040 | 7-2-2009 | Suspend | 8-1-2009 | 331-001-0000 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0005 | 3-10-2009 | Amend | 4-1-2009 | 331-001-0010 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0005 | 8-31-2009 | Amend(T) | 10-1-2009 | 331-010-0000 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0010 | 3-10-2009 | Amend | 4-1-2009 | 331-010-0020 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0010 | 8-31-2009 | Amend(T) | 10-1-2009 | 331-010-0030 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0015 | 3-10-2009 | Amend | 4-1-2009 | 331-010-0040 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0015 | 8-31-2009 | Amend(T) | 10-1-2009 | 331-020-0030 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0020 | 3-10-2009 | Amend | 4-1-2009 | 331-020-0040 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0020 | 8-31-2009 | Amend(T) | 10-1-2009 | 331-020-0060 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0023 | 8-31-2009 | Adopt(T) | 10-1-2009 | 331-020-0070 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0025 | 3-10-2009 | Amend | 4-1-2009 | 331-030-0000 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 291-097-0025 | 8-31-2009 | Amend(T) | 10-1-2009 | 331-030-0000 | 6-1-2009 | Amend | 7-1-2009 |
| 291-097-0040 | 3-10-2009 | Amend | 4-1-2009 | 331-030-0004 | 6-1-2009 | Adopt | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|------------|-----------|--------------|-----------|----------|-----------|
| 331-030-0005 | 12-1-2008 | Adopt(T) | 1-1-2009 | 333-054-0040 | 6-1-2009 | Amend | 7-1-2009 |
| 331-030-0010 | 12-1-2008 | Amend(T) | 1-1-2009 | 333-054-0050 | 6-1-2009 | Amend | 7-1-2009 |
| 331-030-0010 | 6-1-2009 | Amend | 7-1-2009 | 333-054-0055 | 6-1-2009 | Adopt | 7-1-2009 |
| 331-030-0020 | 6-1-2009 | Amend | 7-1-2009 | 333-054-0060 | 6-1-2009 | Amend | 7-1-2009 |
| 331-030-0025 | 6-1-2009 | Adopt | 7-1-2009 | 333-054-0065 | 6-1-2009 | Adopt | 7-1-2009 |
| 331-030-0030 | 6-1-2009 | Am. & Ren. | 7-1-2009 | 333-054-0070 | 6-1-2009 | Amend | 7-1-2009 |
| 331-030-0040 | 6-1-2009 | Adopt | 7-1-2009 | 333-060-0125 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 331-810-0038 | 12-1-2008 | Adopt | 1-1-2009 | 333-060-0127 | 6-17-2009 | Adopt(T) | 8-1-2009 |
| 332-015-0070 | 4-1-2009 | Amend | 5-1-2009 | 333-060-0505 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 332-020-0010 | 4-1-2009 | Amend | 5-1-2009 | 333-060-0510 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 333-004-0010 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0020 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0020 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0025 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0030 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0030 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0040 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0031 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0050 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0032 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0060 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0034 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0070 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0036 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0080 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0040 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0090 | 3-2-2009 | Repeal | 4-1-2009 | 333-061-0042 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0100 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0043 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0110 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0045 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0120 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0050 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0140 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0058 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0150 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0060 | 5-18-2009 | Amend | 7-1-2009 |
| 333-004-0160 | 3-2-2009 | Amend | 4-1-2009 | 333-061-0064 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0200 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0065 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0205 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0070 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0210 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0071 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0215 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0076 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0220 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0077 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0225 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0090 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0230 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0097 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0235 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0220 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0240 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0225 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0245 | 2-13-2009 | Adopt | 3-1-2009 | 333-061-0270 | 5-18-2009 | Amend | 7-1-2009 |
| 333-010-0250 | 2-13-2009 | Adopt | 3-1-2009 | 333-062-0100 | 6-17-2009 | Amend(T) | 8-1-2009 |
| 333-010-0255 | 2-13-2009 | Adopt | 3-1-2009 | 333-062-0102 | 6-17-2009 | Adopt(T) | 8-1-2009 |
| 333-010-0260 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0005 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-010-0265 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 333-010-0270 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0020 | 10-1-2009 | Amend | 11-1-2009 |
| 333-010-0275 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0025 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-010-0280 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0030 | 10-1-2009 | Amend | 11-1-2009 |
| 333-010-0285 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0032 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-010-0290 | 2-13-2009 | Adopt | 3-1-2009 | 333-500-0034 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-012-0500 | 7-20-2009 | Amend(T) | 9-1-2009 | 333-500-0036 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-018-0015 | 9-1-2009 | Amend(T) | 10-1-2009 | 333-500-0038 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-019-0041 | 9-22-2009 | Amend | 11-1-2009 | 333-500-0040 | 10-1-2009 | Amend | 11-1-2009 |
| 333-026-0005 | 9-22-2009 | Repeal | 11-1-2009 | 333-500-0045 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-026-0010 | 9-22-2009 | Repeal | 11-1-2009 | 333-500-0050 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-026-0015 | 9-22-2009 | Repeal | 11-1-2009 | 333-500-0055 | 10-1-2009 | Amend | 11-1-2009 |
| 333-026-0020 | 9-22-2009 | Repeal | 11-1-2009 | 333-500-0056 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-026-0025 | 9-22-2009 | Repeal | 11-1-2009 | 333-500-0057 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-054-0010 | 6-1-2009 | Amend | 7-1-2009 | 333-500-0060 | 10-1-2009 | Amend | 11-1-2009 |
| 333-054-0020 | 6-1-2009 | Amend | 7-1-2009 | 333-500-0065 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-054-0025 | 6-1-2009 | Amend | 7-1-2009 | 333-500-0070 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-054-0027 | 6-1-2009 | Adopt | 7-1-2009 | 333-500-0080 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-054-0030 | 6-1-2009 | Amend | 7-1-2009 | 333-500-0090 | 10-1-2009 | Amend | 11-1-2009 |
| 333-054-0035 | 6-1-2009 | Adopt | 7-1-2009 | 333-500-0100 | 10-1-2009 | Repeal | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|--------|-----------|--------------|-----------|--------|-----------|
| 333-501-0005 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0073 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-501-0010 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0075 | 10-1-2009 | Amend | 11-1-2009 |
| 333-501-0015 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0080 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-501-0020 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0090 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-501-0025 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0100 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-501-0030 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0110 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-501-0035 | 10-1-2009 | Adopt | 11-1-2009 | 333-520-0120 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-501-0040 | 10-1-2009 | Adopt | 11-1-2009 | 333-525-0000 | 10-1-2009 | Amend | 11-1-2009 |
| 333-501-0045 | 10-1-2009 | Adopt | 11-1-2009 | 333-525-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 333-501-0050 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0000 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-501-0055 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0010 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0001 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0020 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0005 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0030 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0007 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0040 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0010 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0050 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0020 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0060 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0030 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0070 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0033 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0080 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0040 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0090 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0050 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0100 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0060 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0110 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0070 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0120 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0080 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0130 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0090 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0140 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0100 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0150 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0110 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0160 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-505-0120 | 10-1-2009 | Adopt | 11-1-2009 | 333-530-0170 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-510-0001 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0180 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-510-0002 | 10-1-2009 | Amend | 11-1-2009 | 333-530-0190 | 10-1-2009 | Repeal | 11-1-2009 |
| 333-510-0005 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0000 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0010 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0001 | 10-1-2009 | Adopt | 11-1-2009 |
| 333-510-0020 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0030 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0025 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0040 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0035 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0045 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0041 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0046 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0050 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0047 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0061 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0050 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0065 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0060 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0070 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0070 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0080 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0080 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0085 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0090 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0086 | 10-1-2009 | Amend | 11-1-2009 |
| 333-510-0100 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0090 | 10-1-2009 | Amend | 11-1-2009 |
| 333-515-0001 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0100 | 10-1-2009 | Amend | 11-1-2009 |
| 333-515-0005 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0105 | 10-1-2009 | Amend | 11-1-2009 |
| 333-515-0020 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0110 | 10-1-2009 | Amend | 11-1-2009 |
| 333-515-0030 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0115 | 10-1-2009 | Amend | 11-1-2009 |
| 333-515-0040 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0120 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0000 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0130 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0010 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0140 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0020 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0150 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0030 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0160 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0035 | 10-1-2009 | Adopt | 11-1-2009 | 333-535-0170 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0040 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0180 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0050 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0190 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0055 | 10-1-2009 | Repeal | 11-1-2009 | 333-535-0200 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0060 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0205 | 10-1-2009 | Amend | 11-1-2009 |
| 333-520-0070 | 10-1-2009 | Amend | 11-1-2009 | 333-535-0210 | 10-1-2009 | Amend | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|------------|-----------|--------------|-----------|------------|-----------|
| 333-535-0220 | 10-1-2009 | Amend | 11-1-2009 | 334-030-0002 | 3-1-2009 | Repeal | 3-1-2009 |
| 333-535-0230 | 10-1-2009 | Amend | 11-1-2009 | 334-030-0005 | 3-1-2009 | Amend | 3-1-2009 |
| 333-535-0240 | 10-1-2009 | Repeal | 11-1-2009 | 334-030-0010 | 3-1-2009 | Repeal | 3-1-2009 |
| 333-535-0250 | 10-1-2009 | Amend | 11-1-2009 | 334-030-0025 | 3-1-2009 | Am. & Ren. | 3-1-2009 |
| 333-535-0260 | 10-1-2009 | Amend | 11-1-2009 | 334-040-0001 | 3-1-2009 | Adopt | 3-1-2009 |
| 333-535-0270 | 10-1-2009 | Amend | 11-1-2009 | 335-005-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 333-535-0280 | 10-1-2009 | Amend | 11-1-2009 | 335-005-0020 | 7-1-2009 | Amend | 7-1-2009 |
| 333-535-0290 | 10-1-2009 | Amend | 11-1-2009 | 335-005-0025 | 7-1-2009 | Amend | 7-1-2009 |
| 333-535-0300 | 10-1-2009 | Amend | 11-1-2009 | 335-060-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 333-535-0310 | 10-1-2009 | Amend | 11-1-2009 | 335-060-0020 | 7-1-2009 | Amend | 7-1-2009 |
| 333-565-0000 | 1-1-2009 | Amend | 2-1-2009 | 335-070-0055 | 7-1-2009 | Amend | 7-1-2009 |
| 333-565-0010 | 4-20-2009 | Adopt | 6-1-2009 | 335-070-0060 | 7-1-2009 | Amend | 7-1-2009 |
| 333-675-0050 | 1-1-2009 | Amend | 2-1-2009 | 335-070-0075 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0000 | 3-1-2009 | Amend | 3-1-2009 | 335-070-0080 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0012 | 7-2-2009 | Amend | 8-1-2009 | 335-070-0085 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0035 | 3-1-2009 | Amend | 3-1-2009 | 335-095-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0045 | 3-1-2009 | Amend | 3-1-2009 | 335-095-0030 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0051 | 6-26-2009 | Adopt(T) | 8-1-2009 | 335-095-0050 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0060 | 3-1-2009 | Amend | 3-1-2009 | 335-095-0060 | 7-1-2009 | Amend | 7-1-2009 |
| 334-001-0060 | 7-2-2009 | Amend | 8-1-2009 | 339-010-0023 | 1-1-2009 | Amend | 1-1-2009 |
| 334-010-0005 | 3-1-2009 | Amend | 3-1-2009 | 339-010-0035 | 1-1-2009 | Amend | 1-1-2009 |
| 334-010-0005 | 7-2-2009 | Amend | 8-1-2009 | 339-010-0050 | 1-1-2009 | Amend | 1-1-2009 |
| 334-010-0010 | 3-1-2009 | Amend | 3-1-2009 | 339-020-0015 | 1-1-2009 | Adopt | 1-1-2009 |
| 334-010-0010 | 7-2-2009 | Amend | 8-1-2009 | 340-012-0065 | 9-14-2009 | Amend | 10-1-2009 |
| 334-010-0012 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0024 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 334-010-0015 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0025 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 334-010-0016 | 3-1-2009 | Repeal | 3-1-2009 | 340-054-0035 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 334-010-0017 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0098 | 5-1-2009 | Adopt(T) | 6-1-2009 |
| 334-010-0017 | 7-2-2009 | Amend | 8-1-2009 | 340-054-0100 | 5-1-2009 | Adopt(T) | 6-1-2009 |
| 334-010-0025 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0102 | 5-1-2009 | Adopt(T) | 6-1-2009 |
| 334-010-0031 | 3-1-2009 | Repeal | 3-1-2009 | 340-054-0104 | 5-1-2009 | Adopt(T) | 6-1-2009 |
| 334-010-0033 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0106 | 5-1-2009 | Adopt(T) | 6-1-2009 |
| 334-010-0033 | 7-2-2009 | Amend | 8-1-2009 | 340-054-0108 | 5-1-2009 | Adopt(T) | 6-1-2009 |
| 334-010-0041 | 3-1-2009 | Am. & Ren. | 3-1-2009 | 340-054-0110 | 9-4-2009 | Adopt(T) | 10-1-2009 |
| 334-010-0046 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0112 | 9-4-2009 | Adopt(T) | 10-1-2009 |
| 334-010-0046 | 7-2-2009 | Amend | 8-1-2009 | 340-054-0114 | 9-4-2009 | Adopt(T) | 10-1-2009 |
| 334-010-0047 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0116 | 9-4-2009 | Adopt(T) | 10-1-2009 |
| 334-010-0050 | 3-1-2009 | Amend | 3-1-2009 | 340-054-0118 | 9-4-2009 | Adopt(T) | 10-1-2009 |
| 334-010-0050 | 7-2-2009 | Amend | 8-1-2009 | 340-093-0030 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0005 | 3-1-2009 | Amend | 3-1-2009 | 340-093-0050 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0015 | 3-1-2009 | Amend | 3-1-2009 | 340-093-0070 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0020 | 3-1-2009 | Repeal | 3-1-2009 | 340-093-0100 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0025 | 3-1-2009 | Repeal | 3-1-2009 | 340-093-0105 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0030 | 3-1-2009 | Repeal | 3-1-2009 | 340-093-0130 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0035 | 3-1-2009 | Repeal | 3-1-2009 | 340-093-0140 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0040 | 3-1-2009 | Repeal | 3-1-2009 | 340-093-0150 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0045 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0001 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0050 | 3-1-2009 | Amend | 3-1-2009 | 340-096-0010 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0050 | 7-2-2009 | Amend | 8-1-2009 | 340-096-0020 | 9-14-2009 | Repeal | 10-1-2009 |
| 334-020-0055 | 3-1-2009 | Amend | 3-1-2009 | 340-096-0024 | 9-14-2009 | Repeal | 10-1-2009 |
| 334-020-0060 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0028 | 9-14-2009 | Repeal | 10-1-2009 |
| 334-020-0065 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0050 | 9-14-2009 | Amend | 10-1-2009 |
| 334-020-0070 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0060 | 9-14-2009 | Adopt | 10-1-2009 |
| 334-020-0075 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0070 | 9-14-2009 | Adopt | 10-1-2009 |
| 334-020-0080 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0080 | 9-14-2009 | Adopt | 10-1-2009 |
| 334-020-0085 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0090 | 9-14-2009 | Adopt | 10-1-2009 |
| 334-020-0090 | 3-1-2009 | Repeal | 3-1-2009 | 340-096-0100 | 9-14-2009 | Adopt | 10-1-2009 |
| 334-030-0001 | 3-1-2009 | Amend | 3-1-2009 | 340-096-0110 | 9-14-2009 | Adopt | 10-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|----------|-----------|--------------|------------|--------|----------|
| 340-096-0120 | 9-14-2009 | Adopt | 10-1-2009 | 340-228-0635 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-096-0130 | 9-14-2009 | Adopt | 10-1-2009 | 340-228-0636 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-096-0140 | 9-14-2009 | Adopt | 10-1-2009 | 340-228-0637 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-096-0150 | 9-14-2009 | Adopt | 10-1-2009 | 340-228-0638 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-097-0110 | 9-14-2009 | Amend | 10-1-2009 | 340-228-0640 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-097-0120 | 9-14-2009 | Amend | 10-1-2009 | 340-228-0642 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-100-0002 | 6-25-2009 | Amend | 8-1-2009 | 340-228-0644 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-102-0060 | 6-25-2009 | Repeal | 8-1-2009 | 340-228-0646 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-102-0065 | 6-25-2009 | Amend | 8-1-2009 | 340-228-0648 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-104-0021 | 6-25-2009 | Adopt | 8-1-2009 | 340-228-0650 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-105-0140 | 6-25-2009 | Adopt | 8-1-2009 | 340-228-0652 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-200-0040 | 12-31-2008 | Amend | 2-1-2009 | 340-228-0654 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-200-0040 | 6-30-2009 | Amend | 8-1-2009 | 340-228-0656 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-216-0020 | 12-31-2008 | Amend | 2-1-2009 | 340-228-0658 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-216-0060 | 12-31-2008 | Amend | 2-1-2009 | 340-228-0660 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-220-0030 | 8-27-2009 | Amend(T) | 10-1-2009 | 340-228-0662 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-220-0040 | 8-27-2009 | Amend(T) | 10-1-2009 | 340-228-0664 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-220-0050 | 8-27-2009 | Amend(T) | 10-1-2009 | 340-228-0666 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-223-0010 | 6-30-2009 | Adopt | 8-1-2009 | 340-228-0668 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-223-0020 | 6-30-2009 | Adopt | 8-1-2009 | 340-228-0670 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-223-0030 | 6-30-2009 | Adopt | 8-1-2009 | 340-228-0671 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-223-0040 | 6-30-2009 | Adopt | 8-1-2009 | 340-228-0672 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-223-0050 | 6-30-2009 | Adopt | 8-1-2009 | 340-228-0673 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0600 | 12-31-2008 | Amend | 2-1-2009 | 340-228-0674 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0601 | 12-31-2008 | Adopt | 2-1-2009 | 340-228-0676 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0602 | 12-31-2008 | Amend | 2-1-2009 | 340-228-0678 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0603 | 12-31-2008 | Amend | 2-1-2009 | 340-230-0300 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0604 | 12-31-2008 | Repeal | 2-1-2009 | 340-230-0310 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0605 | 12-31-2008 | Repeal | 2-1-2009 | 340-230-0320 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0606 | 12-31-2008 | Amend | 2-1-2009 | 340-230-0330 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0606 | 6-30-2009 | Amend | 8-1-2009 | 340-230-0335 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-228-0608 | 12-31-2008 | Repeal | 2-1-2009 | 340-230-0340 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0609 | 12-31-2008 | Adopt | 2-1-2009 | 340-230-0350 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0610 | 12-31-2008 | Repeal | 2-1-2009 | 340-230-0359 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-228-0611 | 12-31-2008 | Adopt | 2-1-2009 | 340-232-0070 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0612 | 12-31-2008 | Repeal | 2-1-2009 | 340-238-0040 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0613 | 12-31-2008 | Adopt | 2-1-2009 | 340-238-0050 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0614 | 12-31-2008 | Repeal | 2-1-2009 | 340-238-0060 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0615 | 12-31-2008 | Adopt | 2-1-2009 | 340-238-0090 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0616 | 12-31-2008 | Repeal | 2-1-2009 | 340-242-0520 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0617 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0020 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0618 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0030 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0619 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0100 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0620 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0110 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0621 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0120 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0622 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0130 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0623 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0140 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0624 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0150 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0625 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0160 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0626 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0170 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0627 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0180 | 12-31-2008 | Repeal | 2-1-2009 |
| 340-228-0628 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0210 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0629 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0220 | 12-31-2008 | Amend | 2-1-2009 |
| 340-228-0630 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0232 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-228-0631 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0234 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-228-0632 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0236 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-228-0633 | 12-31-2008 | Adopt | 2-1-2009 | 340-244-0238 | 12-31-2008 | Adopt | 2-1-2009 |
| 340-228-0634 | 12-31-2008 | Repeal | 2-1-2009 | 340-244-0240 | 12-31-2008 | Adopt | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 340-244-0242 | 12-31-2008 | Adopt | 2-1-2009 | 407-007-0355 | 1-1-2009 | Adopt | 2-1-2009 |
| 340-244-0244 | 12-31-2008 | Adopt | 2-1-2009 | 407-007-0355 | 4-1-2009 | Amend | 5-1-2009 |
| 340-244-0246 | 12-31-2008 | Adopt | 2-1-2009 | 407-007-0355 | 10-1-2009 | Amend | 11-1-2009 |
| 340-244-0248 | 12-31-2008 | Adopt | 2-1-2009 | 407-007-0360 | 1-1-2009 | Repeal | 2-1-2009 |
| 340-244-0250 | 12-31-2008 | Adopt | 2-1-2009 | 407-007-0370 | 1-1-2009 | Amend | 2-1-2009 |
| 340-244-0252 | 12-31-2008 | Adopt | 2-1-2009 | 407-007-0370 | 10-1-2009 | Amend | 11-1-2009 |
| 350-040-0020 | 1-14-2009 | Amend(T) | 2-1-2009 | 407-007-0380 | 1-1-2009 | Repeal | 2-1-2009 |
| 350-040-0020 | 5-1-2009 | Amend | 5-1-2009 | 407-007-0400 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 350-040-0040 | 1-14-2009 | Amend(T) | 2-1-2009 | 407-007-0410 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 350-040-0040 | 5-1-2009 | Amend | 5-1-2009 | 407-007-0420 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 350-050-0020 | 1-14-2009 | Amend(T) | 2-1-2009 | 407-007-0430 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 350-050-0020 | 5-1-2009 | Amend | 5-1-2009 | 407-007-0440 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 350-050-0060 | 1-14-2009 | Amend(T) | 2-1-2009 | 407-007-0450 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 350-050-0060 | 5-1-2009 | Amend | 5-1-2009 | 407-007-0460 | 10-1-2009 | Adopt(T) | 11-1-2009 |
| 407-001-0000 | 12-5-2008 | Amend | 1-1-2009 | 407-043-0010 | 9-14-2009 | Adopt(T) | 10-1-2009 |
| 407-001-0005 | 12-5-2008 | Amend | 1-1-2009 | 407-045-0250 | 5-1-2009 | Amend | 6-1-2009 |
| 407-001-0010 | 12-5-2008 | Amend | 1-1-2009 | 407-045-0260 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0200 | 1-1-2009 | Amend | 2-1-2009 | 407-045-0270 | 5-1-2009 | Repeal | 6-1-2009 |
| 407-007-0200 | 4-1-2009 | Amend | 5-1-2009 | 407-045-0280 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0200 | 10-1-2009 | Amend | 11-1-2009 | 407-045-0290 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0210 | 1-1-2009 | Amend | 2-1-2009 | 407-045-0300 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0210 | 4-1-2009 | Amend | 5-1-2009 | 407-045-0310 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0210 | 10-1-2009 | Amend | 11-1-2009 | 407-045-0320 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0220 | 1-1-2009 | Amend | 2-1-2009 | 407-045-0330 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0220 | 4-1-2009 | Amend | 5-1-2009 | 407-045-0340 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0220 | 10-1-2009 | Amend | 11-1-2009 | 407-045-0350 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0230 | 1-1-2009 | Amend | 2-1-2009 | 407-045-0360 | 5-1-2009 | Amend | 6-1-2009 |
| 407-007-0230 | 4-1-2009 | Amend | 5-1-2009 | 407-120-0300 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0230 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0300(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0240 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0310 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0240 | 4-1-2009 | Amend | 5-1-2009 | 407-120-0310(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0240 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0320 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0250 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0320(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0250 | 4-1-2009 | Amend | 5-1-2009 | 407-120-0325 | 12-27-2008 | Adopt | 2-1-2009 |
| 407-007-0250 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0325(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0260 | 1-1-2009 | Repeal | 2-1-2009 | 407-120-0330 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0270 | 1-1-2009 | Repeal | 2-1-2009 | 407-120-0330(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0280 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0340 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0280 | 4-1-2009 | Amend | 5-1-2009 | 407-120-0340(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0280 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0350 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0290 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0350(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0290 | 4-1-2009 | Amend | 5-1-2009 | 407-120-0360 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0290 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0360(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0300 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0370 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0300 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0370(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0310 | 1-1-2009 | Repeal | 2-1-2009 | 407-120-0380 | 12-27-2008 | Amend | 2-1-2009 |
| 407-007-0320 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0380(T) | 12-27-2008 | Repeal | 2-1-2009 |
| 407-007-0320 | 4-1-2009 | Amend | 5-1-2009 | 407-120-0400 | 1-12-2009 | Adopt(T) | 2-1-2009 |
| 407-007-0320 | 10-1-2009 | Amend | 11-1-2009 | 407-120-0400 | 7-10-2009 | Adopt | 8-1-2009 |
| 407-007-0330 | 1-1-2009 | Amend | 2-1-2009 | 407-120-0400(T) | 7-10-2009 | Repeal | 8-1-2009 |
| 407-007-0330 | 4-1-2009 | Amend | 5-1-2009 | 409-023-0000 | 7-1-2009 | Amend | 8-1-2009 |
| 407-007-0330 | 10-1-2009 | Amend | 11-1-2009 | 409-023-0010 | 7-1-2009 | Amend | 8-1-2009 |
| 407-007-0340 | 1-1-2009 | Amend | 2-1-2009 | 409-023-0012 | 7-1-2009 | Adopt | 8-1-2009 |
| 407-007-0340 | 4-1-2009 | Amend | 5-1-2009 | 409-023-0013 | 7-1-2009 | Adopt | 8-1-2009 |
| 407-007-0340 | 10-1-2009 | Amend | 11-1-2009 | 409-023-0015 | 7-1-2009 | Amend | 8-1-2009 |
| 407-007-0350 | 1-1-2009 | Amend | 2-1-2009 | 409-030-0000 | 10-1-2009 | Amend | 11-1-2009 |
| 407-007-0350 | 4-1-2009 | Amend | 5-1-2009 | 409-030-0005 | 10-1-2009 | Amend | 11-1-2009 |
| 407-007-0350 | 10-1-2009 | Amend | 11-1-2009 | 409-030-0010 | 10-1-2009 | Amend | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|------------|-----------|-----------------|-----------|----------|----------|
| 409-030-0020 | 10-1-2009 | Amend | 11-1-2009 | 410-121-0032 | 1-1-2009 | Amend | 1-1-2009 |
| 409-030-0030 | 10-1-2009 | Amend | 11-1-2009 | 410-121-0032 | 7-1-2009 | Amend | 7-1-2009 |
| 409-030-0040 | 10-1-2009 | Repeal | 11-1-2009 | 410-121-0040 | 12-1-2008 | Amend | 1-1-2009 |
| 409-030-0050 | 10-1-2009 | Amend | 11-1-2009 | 410-121-0040 | 7-1-2009 | Amend | 7-1-2009 |
| 409-030-0065 | 10-1-2009 | Amend | 11-1-2009 | 410-121-0060 | 12-1-2008 | Amend | 1-1-2009 |
| 409-110-0000 | 10-1-2009 | Adopt | 11-1-2009 | 410-121-0060 | 1-1-2009 | Amend | 1-1-2009 |
| 409-110-0005 | 10-1-2009 | Adopt | 11-1-2009 | 410-121-0140 | 12-1-2008 | Amend | 1-1-2009 |
| 409-110-0010 | 10-1-2009 | Adopt | 11-1-2009 | 410-121-0140 | 1-1-2009 | Repeal | 1-1-2009 |
| 409-110-0015 | 10-1-2009 | Adopt | 11-1-2009 | 410-121-0150 | 12-1-2008 | Amend | 1-1-2009 |
| 409-110-0020 | 10-1-2009 | Adopt | 11-1-2009 | 410-121-0150 | 7-1-2009 | Amend | 7-1-2009 |
| 410-014-0000 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0155 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 410-014-0010 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0155 | 7-1-2009 | Amend | 7-1-2009 |
| 410-014-0020 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0157 | 12-1-2008 | Amend | 1-1-2009 |
| 410-014-0030 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0185 | 1-1-2009 | Amend | 1-1-2009 |
| 410-014-0040 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0200 | 12-1-2008 | Amend | 1-1-2009 |
| 410-014-0050 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0300 | 1-1-2009 | Amend | 1-1-2009 |
| 410-014-0060 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0320 | 12-1-2008 | Amend | 1-1-2009 |
| 410-014-0070 | 7-1-2009 | Am. & Ren. | 8-1-2009 | 410-121-0625 | 1-1-2009 | Amend | 1-1-2009 |
| 410-050-0100 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0040 | 12-1-2008 | Amend | 1-1-2009 |
| 410-050-0130 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0080 | 7-1-2009 | Amend | 7-1-2009 |
| 410-050-0180 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0180 | 7-1-2009 | Amend | 7-1-2009 |
| 410-050-0240 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0182 | 1-1-2009 | Amend | 1-1-2009 |
| 410-050-0250 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0186 | 7-1-2009 | Amend | 7-1-2009 |
| 410-050-0700 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0200 | 1-1-2009 | Amend | 1-1-2009 |
| 410-050-0800 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0202 | 1-1-2009 | Amend(T) | 2-1-2009 |
| 410-050-0861 | 7-1-2009 | Amend | 8-1-2009 | 410-122-0202 | 6-1-2009 | Amend | 7-1-2009 |
| 410-050-0861 | 7-15-2009 | Amend(T) | 8-1-2009 | 410-122-0202(T) | 6-1-2009 | Repeal | 7-1-2009 |
| 410-050-0861 | 9-1-2009 | Amend | 10-1-2009 | 410-122-0203 | 1-1-2009 | Amend | 1-1-2009 |
| 410-050-0861 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0204 | 1-1-2009 | Amend | 1-1-2009 |
| 410-050-0861(T) | 9-1-2009 | Repeal | 10-1-2009 | 410-122-0205 | 7-1-2009 | Amend | 7-1-2009 |
| 410-050-0870 | 10-1-2009 | Amend | 11-1-2009 | 410-122-0208 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-0000 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0211 | 1-1-2009 | Adopt | 1-1-2009 |
| 410-120-0000 | 7-1-2009 | Amend | 7-1-2009 | 410-122-0320 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-0027 | 1-12-2009 | Adopt(T) | 2-1-2009 | 410-122-0325 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-0027 | 1-16-2009 | Amend(T) | 3-1-2009 | 410-122-0330 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-0027 | 5-1-2009 | Amend(T) | 6-1-2009 | 410-122-0340 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-0027 | 6-12-2009 | Amend | 7-1-2009 | 410-122-0340 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-0027(T) | 1-16-2009 | Suspend | 3-1-2009 | 410-122-0365 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-0027(T) | 5-1-2009 | Suspend | 6-1-2009 | 410-122-0375 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-0027(T) | 6-12-2009 | Repeal | 7-1-2009 | 410-122-0400 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-0030 | 10-1-2009 | Amend(T) | 10-1-2009 | 410-122-0420 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1140 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0500 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1180 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0520 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1195 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0560 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-1260 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0580 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-1280 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0580 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1295 | 10-1-2009 | Amend(T) | 10-1-2009 | 410-122-0590 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1340 | 12-1-2008 | Amend | 1-1-2009 | 410-122-0600 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1340 | 1-1-2009 | Amend | 1-1-2009 | 410-122-0620 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1560 | 7-1-2009 | Amend | 7-1-2009 | 410-122-0630 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-1570 | 7-1-2009 | Amend | 7-1-2009 | 410-122-0655 | 1-1-2009 | Amend | 1-1-2009 |
| 410-120-1580 | 7-1-2009 | Amend | 7-1-2009 | 410-122-0700 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1600 | 7-1-2009 | Amend | 7-1-2009 | 410-122-0720 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1680 | 7-1-2009 | Repeal | 7-1-2009 | 410-123-1060 | 7-1-2009 | Amend | 7-1-2009 |
| 410-120-1700 | 7-1-2009 | Repeal | 7-1-2009 | 410-123-1085 | 1-1-2009 | Amend | 1-1-2009 |
| 410-121-0000 | 1-1-2009 | Amend | 1-1-2009 | 410-123-1100 | 7-1-2009 | Amend | 7-1-2009 |
| 410-121-0000 | 7-1-2009 | Amend | 7-1-2009 | 410-123-1160 | 1-1-2009 | Amend | 1-1-2009 |
| 410-121-0030 | 1-1-2009 | Amend | 1-1-2009 | 410-123-1160 | 7-1-2009 | Amend | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 410-123-1220 | 1-1-2009 | Amend | 1-1-2009 | 410-133-0140 | 12-28-2008 | Amend | 2-1-2009 |
| 410-123-1220 | 7-1-2009 | Amend | 7-1-2009 | 410-133-0140 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1230 | 1-1-2009 | Amend | 1-1-2009 | 410-133-0160 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1240 | 1-1-2009 | Amend | 1-1-2009 | 410-133-0180 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1260 | 1-1-2009 | Amend | 1-1-2009 | 410-133-0200 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1260 | 7-1-2009 | Amend | 7-1-2009 | 410-133-0220 | 12-28-2008 | Amend | 2-1-2009 |
| 410-123-1490 | 1-1-2009 | Amend | 1-1-2009 | 410-133-0220 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1490 | 7-1-2009 | Amend | 7-1-2009 | 410-133-0245 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1600 | 7-1-2009 | Amend | 7-1-2009 | 410-133-0280 | 12-28-2008 | Amend | 2-1-2009 |
| 410-123-1620 | 1-1-2009 | Amend | 1-1-2009 | 410-133-0280 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1620 | 7-1-2009 | Amend | 7-1-2009 | 410-133-0320 | 7-1-2009 | Amend | 7-1-2009 |
| 410-123-1670 | 1-1-2009 | Amend | 1-1-2009 | 410-136-0240 | 12-1-2008 | Amend | 1-1-2009 |
| 410-123-1670 | 7-1-2009 | Amend | 7-1-2009 | 410-136-0240 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 410-125-0020 | 1-1-2009 | Amend | 1-1-2009 | 410-136-0240 | 9-25-2009 | Amend | 11-1-2009 |
| 410-125-0041 | 1-1-2009 | Amend | 1-1-2009 | 410-136-0260 | 12-1-2008 | Amend | 1-1-2009 |
| 410-125-0045 | 1-1-2009 | Amend | 1-1-2009 | 410-136-0300 | 12-1-2008 | Amend | 1-1-2009 |
| 410-125-0080 | 1-1-2009 | Amend | 1-1-2009 | 410-136-0300 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 410-125-0080 | 7-1-2009 | Amend | 7-1-2009 | 410-136-0300 | 9-25-2009 | Amend | 11-1-2009 |
| 410-125-0085 | 1-1-2009 | Amend | 1-1-2009 | 410-137-0080 | 7-1-2009 | Repeal | 7-1-2009 |
| 410-125-0125 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0000 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0141 | 5-1-2009 | Amend(T) | 6-1-2009 | 410-138-0005 | 12-28-2008 | Adopt | 2-1-2009 |
| 410-125-0141 | 10-1-2009 | Amend | 11-1-2009 | 410-138-0007 | 12-28-2008 | Adopt | 2-1-2009 |
| 410-125-0155 | 1-1-2009 | Amend | 1-1-2009 | 410-138-0009 | 12-28-2008 | Adopt | 2-1-2009 |
| 410-125-0181 | 1-1-2009 | Amend | 1-1-2009 | 410-138-0020 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0195 | 1-1-2009 | Amend | 1-1-2009 | 410-138-0080 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0195 | 5-1-2009 | Amend(T) | 6-1-2009 | 410-138-0300 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0195 | 10-1-2009 | Amend | 11-1-2009 | 410-138-0320 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0210 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0380 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0220 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0500 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0360 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0520 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0400 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0560 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0600 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0600 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0640 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0620 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-0720 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0680 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-1020 | 1-1-2009 | Amend | 1-1-2009 | 410-138-0700 | 12-28-2008 | Amend | 2-1-2009 |
| 410-125-1070 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0720 | 12-28-2008 | Amend | 2-1-2009 |
| 410-127-0080 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0740 | 12-28-2008 | Amend | 2-1-2009 |
| 410-129-0080 | 12-1-2008 | Amend | 1-1-2009 | 410-138-0780 | 12-28-2008 | Amend | 2-1-2009 |
| 410-130-0163 | 7-1-2009 | Amend | 7-1-2009 | 410-140-0140 | 7-1-2009 | Amend | 7-1-2009 |
| 410-130-0180 | 12-1-2008 | Amend | 1-1-2009 | 410-140-0160 | 7-1-2009 | Amend | 7-1-2009 |
| 410-130-0180 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0000 | 12-1-2008 | Amend | 1-1-2009 |
| 410-130-0200 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0020 | 12-1-2008 | Amend | 1-1-2009 |
| 410-130-0220 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0120 | 1-1-2009 | Amend | 1-1-2009 |
| 410-130-0240 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0220 | 12-1-2008 | Amend | 1-1-2009 |
| 410-130-0255 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0266 | 1-1-2009 | Amend | 1-1-2009 |
| 410-130-0365 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0425 | 1-5-2009 | Adopt(T) | 2-1-2009 |
| 410-130-0595 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0520 | 1-1-2009 | Amend | 1-1-2009 |
| 410-132-0100 | 12-1-2008 | Amend | 1-1-2009 | 410-141-0520 | 1-30-2009 | Amend(T) | 3-1-2009 |
| 410-133-0000 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0520 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 410-133-0040 | 12-28-2008 | Amend | 2-1-2009 | 410-141-0520 | 4-17-2009 | Amend(T) | 6-1-2009 |
| 410-133-0040 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0520 | 8-5-2009 | Amend | 9-1-2009 |
| 410-133-0060 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0520 | 10-1-2009 | Amend(T) | 10-1-2009 |
| 410-133-0080 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0520(T) | 1-1-2009 | Repeal | 1-1-2009 |
| 410-133-0090 | 12-28-2008 | Amend | 2-1-2009 | 410-141-0520(T) | 4-1-2009 | Suspend | 5-1-2009 |
| 410-133-0090 | 7-1-2009 | Amend | 7-1-2009 | 410-141-0520(T) | 4-17-2009 | Suspend | 6-1-2009 |
| 410-133-0100 | 12-28-2008 | Amend | 2-1-2009 | 410-141-0520(T) | 8-5-2009 | Repeal | 9-1-2009 |
| 410-133-0100 | 7-1-2009 | Amend | 7-1-2009 | 410-146-0021 | 12-1-2008 | Amend | 1-1-2009 |
| 410-133-0120 | 7-1-2009 | Amend | 7-1-2009 | 410-146-0040 | 1-1-2009 | Amend | 1-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|--------|-----------|-----------------|-----------|------------|-----------|
| 410-146-0060 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0093 | 10-1-2009 | Amend | 11-1-2009 |
| 410-146-0080 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0105 | 1-1-2009 | Amend | 2-1-2009 |
| 410-146-0085 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0125 | 3-3-2009 | Adopt | 4-1-2009 |
| 410-146-0085 | 7-1-2009 | Amend | 7-1-2009 | 411-054-0125 | 10-1-2009 | Repeal | 11-1-2009 |
| 410-146-0086 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0125(T) | 3-3-2009 | Repeal | 4-1-2009 |
| 410-146-0100 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0130 | 10-1-2009 | Amend | 11-1-2009 |
| 410-146-0120 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0200 | 10-1-2009 | Amend | 11-1-2009 |
| 410-146-0130 | 12-1-2008 | Amend | 1-1-2009 | 411-054-0300 | 10-1-2009 | Amend | 11-1-2009 |
| 410-146-0140 | 12-1-2008 | Amend | 1-1-2009 | 411-070-0005 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 410-146-0340 | 12-1-2008 | Amend | 1-1-2009 | 411-070-0442 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 410-146-0380 | 12-1-2008 | Amend | 1-1-2009 | 411-086-0320 | 10-1-2009 | Amend | 11-1-2009 |
| 410-146-0380 | 7-1-2009 | Amend | 7-1-2009 | 411-086-0350 | 10-1-2009 | Amend | 11-1-2009 |
| 410-146-0440 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0100 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0020 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0110 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0040 | 1-1-2009 | Amend | 1-1-2009 | 411-300-0120 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0060 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0130 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0120 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0140 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0120 | 7-1-2009 | Amend | 7-1-2009 | 411-300-0150 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0125 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0155 | 8-1-2009 | Adopt | 9-1-2009 |
| 410-147-0125 | 7-1-2009 | Amend | 7-1-2009 | 411-300-0160 | 8-1-2009 | Repeal | 9-1-2009 |
| 410-147-0140 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0170 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0140 | 7-1-2009 | Amend | 7-1-2009 | 411-300-0180 | 8-1-2009 | Repeal | 9-1-2009 |
| 410-147-0160 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0190 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0180 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0200 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0200 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0205 | 8-1-2009 | Adopt | 9-1-2009 |
| 410-147-0220 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0210 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0320 | 12-1-2008 | Amend | 1-1-2009 | 411-300-0220 | 8-1-2009 | Amend | 9-1-2009 |
| 410-147-0340 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0010 | 6-1-2009 | Amend | 7-1-2009 |
| 410-147-0360 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0020 | 6-1-2009 | Amend | 7-1-2009 |
| 410-147-0460 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0030 | 6-1-2009 | Amend | 7-1-2009 |
| 410-147-0480 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0040 | 6-1-2009 | Repeal | 7-1-2009 |
| 410-147-0540 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0050 | 6-1-2009 | Amend | 7-1-2009 |
| 410-147-0560 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0060 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 410-147-0610 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0070 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 410-147-0620 | 12-1-2008 | Amend | 1-1-2009 | 411-305-0080 | 6-1-2009 | Amend | 7-1-2009 |
| 410-148-0100 | 7-1-2009 | Amend | 7-1-2009 | 411-305-0080 | 7-28-2009 | Amend(T) | 9-1-2009 |
| 410-148-0140 | 7-1-2009 | Amend | 7-1-2009 | 411-305-0080 | 10-1-2009 | Amend | 11-1-2009 |
| 410-148-0260 | 7-1-2009 | Amend | 7-1-2009 | 411-305-0080(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 411-001-0010 | 3-3-2009 | Repeal | 4-1-2009 | 411-305-0090 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0002 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0100 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 411-030-0020 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0110 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0033 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0120 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0040 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0130 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 411-030-0050 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0140 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0055 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0150 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 411-030-0070 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0160 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0080 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0170 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0090 | 1-1-2009 | Amend | 2-1-2009 | 411-305-0180 | 6-1-2009 | Amend | 7-1-2009 |
| 411-030-0100 | 1-1-2009 | Amend | 2-1-2009 | 411-308-0010 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-050-0499 | 7-1-2009 | Adopt | 8-1-2009 | 411-308-0020 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0005 | 1-1-2009 | Amend | 2-1-2009 | 411-308-0030 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0005 | 10-1-2009 | Amend | 11-1-2009 | 411-308-0040 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0008 | 1-1-2009 | Repeal | 2-1-2009 | 411-308-0050 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0010 | 10-1-2009 | Amend | 11-1-2009 | 411-308-0060 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0012 | 1-1-2009 | Amend | 2-1-2009 | 411-308-0070 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0025 | 10-1-2009 | Amend | 11-1-2009 | 411-308-0080 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0034 | 10-1-2009 | Amend | 11-1-2009 | 411-308-0090 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-054-0090 | 10-1-2009 | Amend | 11-1-2009 | 411-308-0100 | 7-1-2009 | Adopt(T) | 8-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|------------|----------|-----------------|-----------|----------|-----------|
| 411-308-0110 | 7-1-2009 | Adopt(T) | 8-1-2009 | 413-010-0500 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-308-0120 | 7-1-2009 | Adopt(T) | 8-1-2009 | 413-010-0500 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-308-0130 | 7-1-2009 | Adopt(T) | 8-1-2009 | 413-010-0500 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 411-308-0140 | 7-1-2009 | Adopt(T) | 8-1-2009 | 413-010-0500(T) | 9-1-2009 | Suspend | 10-1-2009 |
| 411-308-0150 | 7-1-2009 | Adopt(T) | 8-1-2009 | 413-010-0505 | 8-12-2009 | Adopt(T) | 9-1-2009 |
| 411-320-0010 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0505(T) | 8-12-2009 | Suspend | 9-1-2009 |
| 411-320-0020 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0510 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-320-0030 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0515 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-320-0040 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0515 | 8-12-2009 | Adopt(T) | 9-1-2009 |
| 411-320-0045 | 7-13-2009 | Adopt | 8-1-2009 | 413-010-0515(T) | 8-12-2009 | Suspend | 9-1-2009 |
| 411-320-0050 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0520 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-320-0060 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0525 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-320-0070 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0530 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-320-0080 | 7-13-2009 | Amend | 8-1-2009 | 413-010-0535 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 411-320-0090 | 7-13-2009 | Amend | 8-1-2009 | 413-015-0409 | 10-2-2009 | Amend | 11-1-2009 |
| 411-320-0100 | 7-13-2009 | Amend | 8-1-2009 | 413-015-0470 | 8-3-2009 | Amend | 9-1-2009 |
| 411-320-0110 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0200 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-320-0120 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0200 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-320-0130 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0200(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-320-0140 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0210 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-320-0150 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0210 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-320-0160 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0210(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-320-0170 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0230 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-320-0175 | 7-13-2009 | Adopt | 8-1-2009 | 413-020-0230 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-320-0180 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0230(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-320-0190 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0233 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-320-0200 | 7-13-2009 | Amend | 8-1-2009 | 413-020-0233 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-340-0010 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0233(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-340-0020 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0236 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-340-0030 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0236 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-340-0040 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0236(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-340-0050 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0240 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-340-0060 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0240 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-340-0070 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0240(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-340-0080 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0245 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-340-0090 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0245 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-340-0100 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0245(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-340-0110 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0255 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-340-0120 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0255 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 411-340-0130 | 7-1-2009 | Amend | 8-1-2009 | 413-020-0255(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 411-340-0140 | 7-1-2009 | Amend | 8-1-2009 | 413-030-0405 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 411-340-0150 | 7-1-2009 | Amend | 8-1-2009 | 413-030-0410 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 411-340-0160 | 7-1-2009 | Amend | 8-1-2009 | 413-030-0415 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 411-340-0170 | 7-1-2009 | Amend | 8-1-2009 | 413-030-0445 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 411-340-0180 | 7-1-2009 | Amend | 8-1-2009 | 413-030-0450 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 411-350-0010 | 3-1-2009 | Amend | 4-1-2009 | 413-040-0005 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0020 | 3-1-2009 | Amend | 4-1-2009 | 413-040-0006 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0030 | 3-1-2009 | Amend | 4-1-2009 | 413-040-0010 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0040 | 3-1-2009 | Amend | 4-1-2009 | 413-040-0011 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0050 | 3-1-2009 | Amend | 4-1-2009 | 413-040-0013 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0060 | 3-1-2009 | Am. & Ren. | 4-1-2009 | 413-040-0016 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0070 | 3-1-2009 | Repeal | 4-1-2009 | 413-040-0024 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 411-350-0080 | 3-1-2009 | Amend | 4-1-2009 | 413-050-0000 | 3-19-2009 | Amend | 4-1-2009 |
| 411-350-0090 | 3-1-2009 | Repeal | 4-1-2009 | 413-050-0005 | 3-19-2009 | Amend | 4-1-2009 |
| 411-350-0100 | 3-1-2009 | Amend | 4-1-2009 | 413-050-0010 | 3-19-2009 | Amend | 4-1-2009 |
| 411-350-0110 | 3-1-2009 | Amend | 4-1-2009 | 413-050-0020 | 3-19-2009 | Amend | 4-1-2009 |
| 411-350-0115 | 3-1-2009 | Adopt | 4-1-2009 | 413-050-0030 | 3-19-2009 | Amend | 4-1-2009 |
| 411-350-0120 | 3-1-2009 | Amend | 4-1-2009 | 413-050-0040 | 3-19-2009 | Amend | 4-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|-----------|-----------------|-----------|----------|-----------|
| 413-050-0050 | 3-19-2009 | Amend | 4-1-2009 | 413-070-0960 | 3-31-2009 | Amend(T) | 5-1-2009 |
| 413-070-0620 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-070-0960 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0625 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-070-0960 | 9-28-2009 | Amend | 11-1-2009 |
| 413-070-0630 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-070-0960(T) | 7-1-2009 | Suspend | 8-1-2009 |
| 413-070-0640 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-070-0965 | 3-31-2009 | Amend(T) | 5-1-2009 |
| 413-070-0900 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-070-0965 | 7-1-2009 | Suspend | 8-1-2009 |
| 413-070-0900 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-070-0965 | 9-28-2009 | Amend | 11-1-2009 |
| 413-070-0900 | 9-28-2009 | Amend | 11-1-2009 | 413-070-0970 | 3-31-2009 | Amend(T) | 5-1-2009 |
| 413-070-0900(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-070-0970 | 7-1-2009 | Suspend | 8-1-2009 |
| 413-070-0905 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-070-0970 | 9-28-2009 | Amend | 11-1-2009 |
| 413-070-0905 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-070-0980 | 3-31-2009 | Amend(T) | 5-1-2009 |
| 413-070-0905 | 9-28-2009 | Amend | 11-1-2009 | 413-070-0980 | 7-1-2009 | Suspend | 8-1-2009 |
| 413-070-0905(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-070-0980 | 9-28-2009 | Repeal | 11-1-2009 |
| 413-070-0909 | 9-28-2009 | Adopt | 11-1-2009 | 413-070-0981 | 3-31-2009 | Suspend | 5-1-2009 |
| 413-070-0910 | 3-31-2009 | Suspend | 5-1-2009 | 413-070-0981 | 9-28-2009 | Repeal | 11-1-2009 |
| 413-070-0910 | 9-28-2009 | Repeal | 11-1-2009 | 413-070-0982 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0915 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-070-0982 | 9-28-2009 | Repeal | 11-1-2009 |
| 413-070-0915 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-080-0000 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0915 | 9-28-2009 | Amend | 11-1-2009 | 413-080-0010 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0915(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-080-0020 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0917 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-080-0030 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0917 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-080-0040 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0917 | 9-28-2009 | Amend | 11-1-2009 | 413-080-0050 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0917(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-080-0055 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0920 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-080-0059 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0920 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-080-0063 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0920 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0000 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0920(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0000 | 8-12-2009 | Amend(T) | 9-1-2009 |
| 413-070-0925 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0000 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 413-070-0925 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0000 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 413-070-0925 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0000(T) | 8-12-2009 | Suspend | 9-1-2009 |
| 413-070-0925(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0000(T) | 9-1-2009 | Suspend | 10-1-2009 |
| 413-070-0930 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0000(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 413-070-0930 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0005 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0930 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0005 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 413-070-0930(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0005 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 413-070-0935 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0005(T) | 9-1-2009 | Suspend | 10-1-2009 |
| 413-070-0935 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0005(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 413-070-0935 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0010 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0935(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0010 | 8-12-2009 | Amend(T) | 9-1-2009 |
| 413-070-0937 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0010 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 413-070-0937 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0010 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 413-070-0937 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0010(T) | 8-12-2009 | Suspend | 9-1-2009 |
| 413-070-0937(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0010(T) | 9-1-2009 | Suspend | 10-1-2009 |
| 413-070-0940 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0010(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 413-070-0940 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0021 | 7-1-2009 | Adopt(T) | 8-1-2009 |
| 413-070-0940 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0021 | 9-25-2009 | Adopt(T) | 11-1-2009 |
| 413-070-0940(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0021(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 413-070-0945 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0030 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0945 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0030 | 8-12-2009 | Amend(T) | 9-1-2009 |
| 413-070-0945 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0030 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 413-070-0945(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0030(T) | 8-12-2009 | Suspend | 9-1-2009 |
| 413-070-0950 | 3-31-2009 | Suspend | 5-1-2009 | 413-090-0030(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 413-070-0950 | 9-28-2009 | Repeal | 11-1-2009 | 413-090-0040 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0955 | 3-31-2009 | Amend(T) | 5-1-2009 | 413-090-0040 | 9-25-2009 | Amend(T) | 11-1-2009 |
| 413-070-0955 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-090-0040(T) | 9-25-2009 | Suspend | 11-1-2009 |
| 413-070-0955 | 9-28-2009 | Amend | 11-1-2009 | 413-090-0050 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-070-0955(T) | 7-1-2009 | Suspend | 8-1-2009 | 413-090-0050 | 9-25-2009 | Amend(T) | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|-----------|-----------------|-----------|----------|----------|
| 413-090-0050(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-130-0075 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0100 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-130-0080 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0110 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-130-0090 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0110 | 9-25-2009 | Amend(T) | 11-1-2009 | 413-130-0100 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0110(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-130-0110 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0120 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-130-0115 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0120 | 9-25-2009 | Amend(T) | 11-1-2009 | 413-130-0120 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0120(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-130-0125 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0130 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-130-0127 | 7-1-2009 | Suspend | 8-1-2009 |
| 413-090-0130 | 8-12-2009 | Amend(T) | 9-1-2009 | 413-130-0130 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 413-090-0130 | 9-25-2009 | Amend(T) | 11-1-2009 | 413-200-0270 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0130(T) | 8-12-2009 | Suspend | 9-1-2009 | 413-200-0272 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0130(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-200-0272(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0133 | 9-25-2009 | Adopt(T) | 11-1-2009 | 413-200-0274 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0135 | 7-1-2009 | Adopt(T) | 8-1-2009 | 413-200-0274(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0135 | 8-12-2009 | Adopt(T) | 9-1-2009 | 413-200-0276 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0135 | 9-25-2009 | Adopt(T) | 11-1-2009 | 413-200-0278 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0135(T) | 8-12-2009 | Suspend | 9-1-2009 | 413-200-0278(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0135(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-200-0281 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0136 | 9-25-2009 | Adopt(T) | 11-1-2009 | 413-200-0281(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0140 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-200-0283 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0140 | 9-25-2009 | Amend(T) | 11-1-2009 | 413-200-0283(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0140(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-200-0287 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0150 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-200-0287(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0150 | 8-12-2009 | Amend(T) | 9-1-2009 | 413-200-0292 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0150 | 9-25-2009 | Amend(T) | 11-1-2009 | 413-200-0292(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0150(T) | 8-12-2009 | Suspend | 9-1-2009 | 413-200-0296 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0150(T) | 9-25-2009 | Suspend | 11-1-2009 | 413-200-0301 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0160 | 7-1-2009 | Suspend | 8-1-2009 | 413-200-0305 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0170 | 7-1-2009 | Suspend | 8-1-2009 | 413-200-0306 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0180 | 7-1-2009 | Suspend | 8-1-2009 | 413-200-0306(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-090-0190 | 7-1-2009 | Suspend | 8-1-2009 | 413-200-0308 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0200 | 7-1-2009 | Suspend | 8-1-2009 | 413-200-0314 | 2-2-2009 | Amend | 3-1-2009 |
| 413-090-0210 | 7-1-2009 | Amend(T) | 8-1-2009 | 413-200-0314(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-120-0400 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0335 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0400(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0354 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0410 | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0358 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0420 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0362 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0420(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0371 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0440 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0371(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-120-0440(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0379 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0450 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0383 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0450(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0383(T) | 2-2-2009 | Repeal | 3-1-2009 |
| 413-120-0455 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0386 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0455(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0388 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0460 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0390 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0460(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0393 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0470 | 2-2-2009 | Amend | 3-1-2009 | 413-200-0395 | 2-2-2009 | Amend | 3-1-2009 |
| 413-120-0470(T) | 2-2-2009 | Repeal | 3-1-2009 | 413-200-0396 | 2-2-2009 | Amend | 3-1-2009 |
| 413-130-0000 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-340-0010 | 4-17-2009 | Amend | 5-1-2009 |
| 413-130-0010 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-340-0020 | 4-17-2009 | Amend | 5-1-2009 |
| 413-130-0020 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-340-0030 | 4-17-2009 | Amend | 5-1-2009 |
| 413-130-0030 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-340-0040 | 4-17-2009 | Amend | 5-1-2009 |
| 413-130-0040 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-340-0060 | 4-17-2009 | Amend | 5-1-2009 |
| 413-130-0045 | 7-1-2009 | Adopt(T) | 8-1-2009 | 416-340-0070 | 4-17-2009 | Amend | 5-1-2009 |
| 413-130-0050 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-440-0015 | 7-27-2009 | Amend | 9-1-2009 |
| 413-130-0060 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-440-0020 | 7-27-2009 | Amend | 9-1-2009 |
| 413-130-0070 | 7-1-2009 | Amend(T) | 8-1-2009 | 416-440-0035 | 7-27-2009 | Amend | 9-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|----------|-----------|--------------|------------|----------|-----------|
| 416-530-0070 | 2-2-2009 | Amend | 3-1-2009 | 437-001-0055 | 10-5-2009 | Amend | 11-1-2009 |
| 423-001-0006 | 12-12-2008 | Amend(T) | 1-1-2009 | 437-001-0057 | 10-5-2009 | Amend | 11-1-2009 |
| 423-001-0006 | 6-24-2009 | Amend | 8-1-2009 | 437-001-0160 | 2-3-2009 | Amend | 3-1-2009 |
| 423-010-0023 | 12-12-2008 | Amend | 1-1-2009 | 437-001-0205 | 2-3-2009 | Amend | 3-1-2009 |
| 436-009-0004 | 7-1-2009 | Amend | 7-1-2009 | 437-001-0420 | 10-5-2009 | Amend | 11-1-2009 |
| 436-009-0005 | 1-1-2009 | Amend | 1-1-2009 | 437-001-0760 | 2-3-2009 | Amend | 3-1-2009 |
| 436-009-0008 | 1-1-2009 | Amend | 1-1-2009 | 437-001-1015 | 2-3-2009 | Amend | 3-1-2009 |
| 436-009-0010 | 7-1-2009 | Amend | 7-1-2009 | 437-001-1020 | 2-3-2009 | Amend | 3-1-2009 |
| 436-009-0015 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0005 | 5-29-2009 | Amend | 7-1-2009 |
| 436-009-0018 | 1-1-2009 | Adopt | 1-1-2009 | 437-002-0067 | 4-17-2009 | Repeal | 5-1-2009 |
| 436-009-0018 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0069 | 4-17-2009 | Repeal | 5-1-2009 |
| 436-009-0020 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0071 | 4-17-2009 | Repeal | 5-1-2009 |
| 436-009-0020 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0072 | 4-17-2009 | Adopt | 5-1-2009 |
| 436-009-0022 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0073 | 4-17-2009 | Repeal | 5-1-2009 |
| 436-009-0022 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0074 | 4-17-2009 | Adopt | 5-1-2009 |
| 436-009-0030 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0075 | 4-17-2009 | Repeal | 5-1-2009 |
| 436-009-0030 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0076 | 4-17-2009 | Adopt | 5-1-2009 |
| 436-009-0035 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0080 | 5-29-2009 | Amend | 7-1-2009 |
| 436-009-0040 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0120 | 5-29-2009 | Amend | 7-1-2009 |
| 436-009-0040 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0170 | 9-21-2009 | Adopt | 11-1-2009 |
| 436-009-0050 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0180 | 5-29-2009 | Amend | 7-1-2009 |
| 436-009-0060 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0182 | 10-1-2009 | Amend | 8-1-2009 |
| 436-009-0070 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0187 | 12-31-2008 | Amend | 2-1-2009 |
| 436-009-0080 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0256 | 7-21-2009 | Amend | 8-1-2009 |
| 436-009-0090 | 1-1-2009 | Amend | 1-1-2009 | 437-002-0320 | 4-17-2009 | Amend | 5-1-2009 |
| 436-009-0090 | 7-1-2009 | Amend | 7-1-2009 | 437-002-0360 | 5-29-2009 | Amend | 7-1-2009 |
| 436-009-0095 | 1-1-2009 | Adopt | 1-1-2009 | 437-003-0001 | 5-29-2009 | Amend | 7-1-2009 |
| 436-009-0100 | 1-1-2009 | Amend | 1-1-2009 | 437-004-1120 | 1-26-2009 | Amend | 3-1-2009 |
| 436-010-0230 | 7-1-2009 | Amend | 7-1-2009 | 437-004-6000 | 9-21-2009 | Amend | 11-1-2009 |
| 436-010-0275 | 7-1-2009 | Amend | 7-1-2009 | 437-005-0001 | 5-29-2009 | Amend | 7-1-2009 |
| 436-015-0007 | 1-1-2009 | Adopt | 1-1-2009 | 437-005-0002 | 5-29-2009 | Amend | 7-1-2009 |
| 436-015-0120 | 1-1-2009 | Amend | 1-1-2009 | 437-005-0002 | 6-5-2009 | Amend | 7-1-2009 |
| 436-060-0005 | 1-1-2009 | Amend | 1-1-2009 | 437-005-0003 | 5-29-2009 | Amend | 7-1-2009 |
| 436-060-0009 | 1-1-2009 | Amend | 1-1-2009 | 437-005-0003 | 6-5-2009 | Amend | 7-1-2009 |
| 436-060-0010 | 1-1-2009 | Amend | 1-1-2009 | 437-007-0010 | 9-21-2009 | Amend | 11-1-2009 |
| 436-060-0015 | 1-1-2009 | Amend | 1-1-2009 | 438-005-0055 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0017 | 1-1-2009 | Amend | 1-1-2009 | 438-006-0055 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0018 | 1-1-2009 | Amend | 1-1-2009 | 438-015-0038 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0020 | 1-1-2009 | Amend | 1-1-2009 | 438-015-0055 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0025 | 1-1-2009 | Amend | 1-1-2009 | 438-015-0065 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0035 | 1-1-2009 | Amend | 1-1-2009 | 438-015-0070 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0060 | 1-1-2009 | Amend | 1-1-2009 | 438-015-0110 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0105 | 1-1-2009 | Amend | 1-1-2009 | 440-045-0020 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0135 | 1-1-2009 | Amend | 1-1-2009 | 440-045-0025 | 1-1-2010 | Amend | 11-1-2009 |
| 436-060-0137 | 1-1-2009 | Amend | 1-1-2009 | 441-005-0010 | 9-25-2009 | Amend | 10-1-2009 |
| 436-060-0147 | 1-1-2009 | Amend | 1-1-2009 | 441-025-0060 | 2-3-2009 | Adopt | 3-1-2009 |
| 436-060-0150 | 1-1-2009 | Amend | 1-1-2009 | 441-500-0020 | 2-3-2009 | Amend | 3-1-2009 |
| 436-060-0153 | 1-1-2009 | Adopt | 1-1-2009 | 441-500-0020 | 9-25-2009 | Amend | 10-1-2009 |
| 436-060-0155 | 1-1-2009 | Amend | 1-1-2009 | 441-505-3046 | 8-21-2009 | Amend(T) | 10-1-2009 |
| 436-060-0500 | 1-1-2009 | Amend | 1-1-2009 | 441-505-3070 | 8-7-2009 | Adopt | 9-1-2009 |
| 436-160-0002 | 1-1-2010 | Amend | 11-1-2009 | 441-505-3075 | 8-7-2009 | Adopt | 9-1-2009 |
| 436-160-0003 | 1-1-2010 | Amend | 11-1-2009 | 441-505-3080 | 8-7-2009 | Adopt | 9-1-2009 |
| 436-160-0004 | 1-1-2010 | Amend | 11-1-2009 | 441-505-3085 | 8-7-2009 | Adopt | 9-1-2009 |
| 436-160-0080 | 1-1-2010 | Amend | 11-1-2009 | 441-505-4010 | 9-25-2009 | Amend | 10-1-2009 |
| 436-160-0410 | 1-1-2010 | Amend | 11-1-2009 | 441-710-0540 | 8-21-2009 | Amend(T) | 10-1-2009 |
| 436-160-0420 | 1-1-2010 | Amend | 11-1-2009 | 441-730-0010 | 6-2-2009 | Amend | 7-1-2009 |
| 437-001-0015 | 2-3-2009 | Amend | 3-1-2009 | 441-730-0015 | 6-2-2009 | Amend | 7-1-2009 |
| 437-001-0015 | 10-5-2009 | Amend | 11-1-2009 | 441-730-0025 | 6-2-2009 | Amend | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|----------|-----------|-----------------|------------|----------|-----------|
| 441-730-0030 | 2-3-2009 | Amend | 3-1-2009 | 441-850-0042 | 8-21-2009 | Amend(T) | 10-1-2009 |
| 441-730-0030 | 6-2-2009 | Amend | 7-1-2009 | 441-865-0025 | 12-10-2008 | Adopt | 1-1-2009 |
| 441-730-0050 | 6-2-2009 | Amend | 7-1-2009 | 441-910-0000 | 8-14-2009 | Amend(T) | 9-1-2009 |
| 441-730-0070 | 6-2-2009 | Amend | 7-1-2009 | 441-910-0092 | 8-14-2009 | Suspend | 9-1-2009 |
| 441-730-0080 | 6-2-2009 | Amend | 7-1-2009 | 441-910-0095 | 8-14-2009 | Suspend | 9-1-2009 |
| 441-730-0100 | 6-2-2009 | Amend | 7-1-2009 | 441-910-9000 | 8-14-2009 | Adopt(T) | 9-1-2009 |
| 441-730-0110 | 6-2-2009 | Amend | 7-1-2009 | 441-910-9001 | 8-14-2009 | Adopt(T) | 9-1-2009 |
| 441-730-0120 | 6-2-2009 | Amend | 7-1-2009 | 441-925-0010 | 1-1-2010 | Repeal | 10-1-2009 |
| 441-730-0150 | 6-2-2009 | Amend | 7-1-2009 | 441-925-0020 | 1-1-2010 | Repeal | 10-1-2009 |
| 441-730-0165 | 6-2-2009 | Adopt | 7-1-2009 | 441-925-0030 | 1-1-2010 | Repeal | 10-1-2009 |
| 441-730-0170 | 6-2-2009 | Amend | 7-1-2009 | 441-925-0040 | 1-1-2010 | Repeal | 10-1-2009 |
| 441-730-0180 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0000 | 1-1-2009 | Amend | 2-1-2009 |
| 441-730-0200 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0005 | 1-1-2009 | Amend | 2-1-2009 |
| 441-730-0205 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0010 | 1-1-2009 | Repeal | 2-1-2009 |
| 441-730-0210 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0015 | 1-1-2009 | Repeal | 2-1-2009 |
| 441-730-0246 | 8-21-2009 | Amend(T) | 10-1-2009 | 442-001-0050 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0250 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0060 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0255 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0070 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0270 | 6-2-2009 | Repeal | 7-1-2009 | 442-001-0080 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0271 | 6-2-2009 | Adopt | 7-1-2009 | 442-001-0090 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0272 | 6-2-2009 | Adopt | 7-1-2009 | 442-001-0100 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0275 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0110 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0280 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0120 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0310 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0130 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-730-0320 | 6-2-2009 | Amend | 7-1-2009 | 442-001-0140 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-755-0300 | 9-9-2009 | Amend | 10-1-2009 | 442-001-0150 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-755-0310 | 9-9-2009 | Amend | 10-1-2009 | 442-001-0160 | 1-1-2009 | Adopt | 2-1-2009 |
| 441-760-0020 | 9-25-2009 | Repeal | 10-1-2009 | 443-002-0070 | 2-12-2009 | Amend(T) | 3-1-2009 |
| 441-760-0030 | 9-25-2009 | Repeal | 10-1-2009 | 443-002-0070 | 4-15-2009 | Amend | 5-1-2009 |
| 441-760-0040 | 9-25-2009 | Repeal | 10-1-2009 | 443-002-0070(T) | 4-15-2009 | Repeal | 5-1-2009 |
| 441-760-0050 | 9-25-2009 | Repeal | 10-1-2009 | 443-002-0110 | 10-5-2009 | Amend | 11-1-2009 |
| 441-760-0060 | 9-25-2009 | Repeal | 10-1-2009 | 443-002-0180 | 4-15-2009 | Amend | 5-1-2009 |
| 441-760-0070 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0001 | 2-12-2009 | Amend | 3-1-2009 |
| 441-760-0080 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0055 | 7-21-2009 | Amend | 9-1-2009 |
| 441-760-0090 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0058 | 7-21-2009 | Repeal | 9-1-2009 |
| 441-760-0100 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0060 | 7-21-2009 | Amend | 9-1-2009 |
| 441-760-0110 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0250 | 7-21-2009 | Amend | 9-1-2009 |
| 441-760-0120 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0525 | 11-26-2008 | Amend | 1-1-2009 |
| 441-760-0130 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0535 | 11-26-2008 | Amend | 1-1-2009 |
| 441-760-0140 | 9-25-2009 | Repeal | 10-1-2009 | 459-005-0545 | 11-26-2008 | Amend | 1-1-2009 |
| 441-760-0150 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0001 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0160 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0005 | 4-6-2009 | Amend | 6-1-2009 |
| 441-760-0170 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0015 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0180 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0020 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0190 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0025 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0200 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0050 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0210 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0060 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0220 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0080 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0230 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0110 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0240 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0230 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0250 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0240 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0260 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0250 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0265 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0300 | 4-6-2009 | Amend | 5-1-2009 |
| 441-760-0270 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0320 | 4-6-2009 | Adopt | 6-1-2009 |
| 441-760-0280 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0330 | 4-6-2009 | Adopt | 6-1-2009 |
| 441-760-0290 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0340 | 4-6-2009 | Adopt | 6-1-2009 |
| 441-760-0300 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0400 | 4-6-2009 | Adopt | 6-1-2009 |
| 441-760-0310 | 9-25-2009 | Repeal | 10-1-2009 | 459-007-0410 | 4-6-2009 | Adopt | 6-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|-----------|----------|-----------|
| 459-007-0420 | 4-6-2009 | Adopt | 6-1-2009 | 461-115-0705 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-007-0900 | 4-6-2009 | Amend | 5-1-2009 | 461-120-0110 | 4-1-2009 | Amend(T) | 4-1-2009 |
| 459-010-0010 | 11-26-2008 | Amend | 1-1-2009 | 461-120-0110 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 459-010-0300 | 6-3-2009 | Adopt | 7-1-2009 | 461-120-0110(T) | 4-1-2009 | Suspend | 5-1-2009 |
| 459-011-0100 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0125 | 1-1-2009 | Amend(T) | 2-1-2009 |
| 459-011-0110 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0125 | 4-1-2009 | Amend | 5-1-2009 |
| 459-013-0260 | 11-26-2008 | Amend | 1-1-2009 | 461-120-0125 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 459-015-0001 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0125 | 10-1-2009 | Amend | 11-1-2009 |
| 459-017-0060 | 4-6-2009 | Amend | 5-1-2009 | 461-120-0125 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-030-0011 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0125(T) | 4-1-2009 | Repeal | 5-1-2009 |
| 459-030-0025 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0125(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 459-030-0030 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0210 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-050-0037 | 11-26-2008 | Amend | 1-1-2009 | 461-120-0310 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 459-050-0075 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0310 | 10-1-2009 | Amend | 11-1-2009 |
| 459-070-0001 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0310 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-075-0060 | 7-21-2009 | Adopt | 9-1-2009 | 461-120-0310(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 459-075-0175 | 11-26-2008 | Adopt | 1-1-2009 | 461-120-0315 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-075-0300 | 7-21-2009 | Adopt | 9-1-2009 | 461-120-0340 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 459-076-0001 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0340 | 10-1-2009 | Amend | 11-1-2009 |
| 459-080-0060 | 7-21-2009 | Adopt | 9-1-2009 | 461-120-0340(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 459-080-0100 | 2-12-2009 | Amend | 3-1-2009 | 461-120-0345 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-080-0200 | 4-6-2009 | Amend | 6-1-2009 | 461-120-0510 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 459-080-0250 | 4-6-2009 | Amend | 6-1-2009 | 461-125-0170 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 459-080-0300 | 7-21-2009 | Adopt | 9-1-2009 | 461-130-0310 | 10-1-2009 | Amend | 11-1-2009 |
| 461-001-0000 | 1-1-2009 | Amend | 2-1-2009 | 461-130-0335 | 1-1-2009 | Amend | 2-1-2009 |
| 461-001-0000 | 4-1-2009 | Amend | 5-1-2009 | 461-135-0010 | 1-1-2009 | Amend | 2-1-2009 |
| 461-001-0000 | 7-1-2009 | Amend | 8-1-2009 | 461-135-0010 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-001-0000 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-135-0010 | 5-6-2009 | Amend(T) | 6-1-2009 |
| 461-001-0025 | 1-1-2009 | Amend | 2-1-2009 | 461-135-0010 | 9-29-2009 | Amend | 11-1-2009 |
| 461-001-0030 | 7-1-2009 | Amend | 8-1-2009 | 461-135-0010(T) | 5-6-2009 | Suspend | 6-1-2009 |
| 461-101-0010 | 1-1-2009 | Amend | 2-1-2009 | 461-135-0070 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 461-101-0010 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-135-0070 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 461-105-0006 | 10-1-2009 | Adopt(T) | 11-1-2009 | 461-135-0070(T) | 8-1-2009 | Suspend | 9-1-2009 |
| 461-110-0210 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-135-0075 | 1-1-2009 | Amend | 2-1-2009 |
| 461-110-0330 | 1-1-2009 | Amend | 2-1-2009 | 461-135-0075 | 7-1-2009 | Amend | 8-1-2009 |
| 461-110-0330 | 5-1-2009 | Amend(T) | 6-1-2009 | 461-135-0075 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 461-110-0330 | 10-1-2009 | Amend | 11-1-2009 | 461-135-0075 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 461-110-0330(T) | 10-1-2009 | Repeal | 11-1-2009 | 461-135-0075 | 10-1-2009 | Amend | 11-1-2009 |
| 461-110-0350 | 1-1-2009 | Amend | 2-1-2009 | 461-135-0075(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-110-0350 | 4-1-2009 | Amend | 5-1-2009 | 461-135-0075(T) | 7-1-2009 | Repeal | 8-1-2009 |
| 461-110-0370 | 4-1-2009 | Amend | 5-1-2009 | 461-135-0075(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 461-110-0370 | 10-1-2009 | Amend | 11-1-2009 | 461-135-0082 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 461-110-0530 | 5-1-2009 | Amend(T) | 6-1-2009 | 461-135-0082 | 10-1-2009 | Amend | 11-1-2009 |
| 461-110-0530 | 7-1-2009 | Amend | 8-1-2009 | 461-135-0082(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 461-110-0530 | 7-1-2009 | Amend(T) | 8-1-2009 | 461-135-0085 | 1-1-2009 | Amend | 2-1-2009 |
| 461-110-0530 | 10-1-2009 | Amend | 11-1-2009 | 461-135-0089 | 1-1-2009 | Amend | 2-1-2009 |
| 461-110-0530(T) | 7-1-2009 | Repeal | 8-1-2009 | 461-135-0095 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-110-0530(T) | 10-1-2009 | Repeal | 11-1-2009 | 461-135-0096 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-110-0630 | 7-1-2009 | Amend | 8-1-2009 | 461-135-0400 | 4-1-2009 | Amend(T) | 4-1-2009 |
| 461-115-0030 | 8-28-2009 | Amend(T) | 10-1-2009 | 461-135-0400 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-115-0050 | 1-1-2009 | Amend | 2-1-2009 | 461-135-0400 | 9-29-2009 | Amend | 11-1-2009 |
| 461-115-0050 | 7-1-2009 | Amend | 8-1-2009 | 461-135-0400(T) | 4-1-2009 | Suspend | 5-1-2009 |
| 461-115-0050 | 8-1-2009 | Amend(T) | 9-1-2009 | 461-135-0405 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 461-115-0050 | 8-28-2009 | Amend(T) | 10-1-2009 | 461-135-0405 | 10-1-2009 | Amend | 11-1-2009 |
| 461-115-0050(T) | 8-28-2009 | Suspend | 10-1-2009 | 461-135-0405(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 461-115-0530 | 1-1-2009 | Amend | 2-1-2009 | 461-135-0415 | 7-1-2009 | Amend | 8-1-2009 |
| 461-115-0705 | 5-6-2009 | Amend(T) | 6-1-2009 | 461-135-0475 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-115-0705 | 9-29-2009 | Amend | 11-1-2009 | 461-135-0475 | 7-1-2009 | Amend(T) | 8-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|-----------|-----------------|-----------|----------|-----------|
| 461-135-0475(T) | 7-1-2009 | Suspend | 8-1-2009 | 461-150-0055 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-0730 | 1-1-2009 | Amend | 2-1-2009 | 461-150-0055 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-135-0745 | 1-1-2009 | Amend | 2-1-2009 | 461-150-0060 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-0780 | 1-1-2009 | Amend | 2-1-2009 | 461-150-0070 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-0832 | 1-1-2009 | Amend | 2-1-2009 | 461-150-0080 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-0900 | 5-1-2009 | Amend(T) | 6-1-2009 | 461-150-0090 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-0900 | 10-1-2009 | Amend | 11-1-2009 | 461-150-0100 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-0900(T) | 10-1-2009 | Repeal | 11-1-2009 | 461-155-0030 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 461-135-0990 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-155-0030 | 10-1-2009 | Amend | 11-1-2009 |
| 461-135-1100 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-155-0030(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 461-135-1102 | 1-1-2009 | Amend | 2-1-2009 | 461-155-0150 | 4-1-2009 | Amend(T) | 4-1-2009 |
| 461-135-1110 | 7-1-2009 | Amend | 8-1-2009 | 461-155-0150 | 9-29-2009 | Amend | 11-1-2009 |
| 461-135-1125 | 8-28-2009 | Amend(T) | 10-1-2009 | 461-155-0175 | 10-1-2009 | Suspend | 11-1-2009 |
| 461-135-1149 | 10-1-2009 | Adopt(T) | 11-1-2009 | 461-155-0180 | 1-27-2009 | Amend | 3-1-2009 |
| 461-135-1175 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0180 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-135-1175 | 6-1-2009 | Amend(T) | 7-1-2009 | 461-155-0190 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-135-1175 | 10-1-2009 | Amend | 11-1-2009 | 461-155-0190 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-1175(T) | 10-1-2009 | Repeal | 11-1-2009 | 461-155-0190 | 10-1-2009 | Amend | 11-1-2009 |
| 461-135-1195 | 1-1-2009 | Amend | 2-1-2009 | 461-155-0190(T) | 7-1-2009 | Repeal | 8-1-2009 |
| 461-135-1195 | 7-1-2009 | Amend(T) | 8-1-2009 | 461-155-0225 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-135-1195 | 10-1-2009 | Amend | 11-1-2009 | 461-155-0235 | 1-27-2009 | Amend | 3-1-2009 |
| 461-135-1195(T) | 10-1-2009 | Repeal | 11-1-2009 | 461-155-0250 | 1-1-2009 | Amend | 2-1-2009 |
| 461-135-1230 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0250 | 3-1-2009 | Amend(T) | 4-1-2009 |
| 461-135-1250 | 1-1-2009 | Amend(T) | 2-1-2009 | 461-155-0250 | 7-1-2009 | Amend | 8-1-2009 |
| 461-135-1250 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0250(T) | 7-1-2009 | Repeal | 8-1-2009 |
| 461-135-1250(T) | 4-1-2009 | Repeal | 5-1-2009 | 461-155-0270 | 1-1-2009 | Amend | 2-1-2009 |
| 461-140-0040 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0290 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-145-0080 | 7-1-2009 | Amend(T) | 8-1-2009 | 461-155-0290 | 7-1-2009 | Amend | 8-1-2009 |
| 461-145-0080 | 10-1-2009 | Amend | 11-1-2009 | 461-155-0290(T) | 7-1-2009 | Repeal | 8-1-2009 |
| 461-145-0080(T) | 10-1-2009 | Repeal | 11-1-2009 | 461-155-0291 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-145-0130 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-155-0291 | 7-1-2009 | Amend | 8-1-2009 |
| 461-145-0143 | 3-3-2009 | Adopt(T) | 4-1-2009 | 461-155-0291(T) | 7-1-2009 | Repeal | 8-1-2009 |
| 461-145-0143 | 8-31-2009 | Adopt | 10-1-2009 | 461-155-0295 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0143 | 9-1-2009 | Amend(T) | 10-1-2009 | 461-155-0295 | 4-1-2009 | Amend(T) | 5-1-2009 |
| 461-145-0330 | 7-29-2009 | Amend(T) | 9-1-2009 | 461-155-0295 | 7-1-2009 | Amend | 8-1-2009 |
| 461-145-0330(T) | 9-1-2009 | Suspend | 10-1-2009 | 461-155-0295(T) | 7-1-2009 | Repeal | 8-1-2009 |
| 461-145-0380 | 1-1-2009 | Amend | 2-1-2009 | 461-155-0300 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0380 | 7-1-2009 | Amend | 8-1-2009 | 461-155-0320 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0380 | 7-29-2009 | Amend(T) | 9-1-2009 | 461-155-0360 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-145-0380(T) | 9-1-2009 | Suspend | 10-1-2009 | 461-155-0500 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0455 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0500(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-145-0460 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0526 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0540 | 1-1-2009 | Amend | 2-1-2009 | 461-155-0526(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-145-0550 | 3-3-2009 | Amend(T) | 4-1-2009 | 461-155-0600 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0550 | 8-31-2009 | Amend | 10-1-2009 | 461-155-0600(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-145-0580 | 4-1-2009 | Amend | 5-1-2009 | 461-155-0610 | 1-1-2009 | Amend | 2-1-2009 |
| 461-145-0820 | 1-1-2009 | Amend | 2-1-2009 | 461-155-0610(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-145-0830 | 1-1-2009 | Amend | 2-1-2009 | 461-155-0660 | 7-1-2009 | Amend | 8-1-2009 |
| 461-145-0840 | 1-1-2009 | Repeal | 2-1-2009 | 461-155-0700 | 1-1-2009 | Adopt | 2-1-2009 |
| 461-150-0020 | 7-1-2009 | Amend | 8-1-2009 | 461-155-0700 | 10-1-2009 | Amend | 11-1-2009 |
| 461-150-0030 | 7-1-2009 | Amend | 8-1-2009 | 461-155-0700(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-150-0042 | 7-1-2009 | Amend | 8-1-2009 | 461-155-0710 | 1-1-2009 | Adopt | 2-1-2009 |
| 461-150-0047 | 7-1-2009 | Repeal | 8-1-2009 | 461-155-0710(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 461-150-0048 | 1-1-2009 | Repeal | 2-1-2009 | 461-160-0015 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-150-0049 | 1-1-2009 | Amend | 2-1-2009 | 461-160-0040 | 4-1-2009 | Amend(T) | 4-1-2009 |
| 461-150-0049 | 7-1-2009 | Repeal | 8-1-2009 | 461-160-0040 | 9-29-2009 | Amend | 11-1-2009 |
| 461-150-0050 | 1-1-2009 | Amend | 2-1-2009 | 461-160-0060 | 4-1-2009 | Amend | 5-1-2009 |
| 461-150-0050 | 7-1-2009 | Amend | 8-1-2009 | 461-160-0100 | 1-1-2009 | Amend | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|------------|-----------|-----------------|-----------|----------|-----------|
| 461-160-0300 | 7-1-2009 | Amend | 8-1-2009 | 461-175-0270 | 1-1-2009 | Amend | 2-1-2009 |
| 461-160-0410 | 1-1-2009 | Amend | 2-1-2009 | 461-175-0270 | 10-1-2009 | Amend | 11-1-2009 |
| 461-160-0410 | 4-1-2009 | Amend | 5-1-2009 | 461-175-0280 | 1-1-2009 | Amend | 2-1-2009 |
| 461-160-0420 | 10-1-2009 | Amend | 11-1-2009 | 461-175-0280 | 4-1-2009 | Amend | 5-1-2009 |
| 461-160-0430 | 10-1-2009 | Amend | 11-1-2009 | 461-175-0280 | 10-1-2009 | Amend | 11-1-2009 |
| 461-160-0550 | 1-1-2009 | Amend(T) | 2-1-2009 | 461-175-0305 | 1-1-2009 | Amend | 2-1-2009 |
| 461-160-0550 | 4-1-2009 | Amend | 5-1-2009 | 461-180-0005 | 1-1-2009 | Amend | 2-1-2009 |
| 461-160-0550 | 7-1-2009 | Amend | 8-1-2009 | 461-180-0005 | 10-1-2009 | Amend | 11-1-2009 |
| 461-160-0550(T) | 4-1-2009 | Repeal | 5-1-2009 | 461-180-0006 | 4-1-2009 | Amend | 5-1-2009 |
| 461-160-0551 | 1-1-2009 | Amend(T) | 2-1-2009 | 461-180-0020 | 10-1-2009 | Amend | 11-1-2009 |
| 461-160-0551 | 4-1-2009 | Amend | 5-1-2009 | 461-180-0030 | 10-1-2009 | Amend | 11-1-2009 |
| 461-160-0551 | 7-1-2009 | Amend | 8-1-2009 | 461-180-0070 | 4-1-2009 | Amend | 5-1-2009 |
| 461-160-0551(T) | 4-1-2009 | Repeal | 5-1-2009 | 461-180-0085 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-160-0580 | 1-1-2009 | Amend | 2-1-2009 | 461-180-0090 | 1-1-2009 | Amend | 2-1-2009 |
| 461-160-0620 | 1-1-2009 | Amend | 2-1-2009 | 461-180-0090 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 461-160-0620 | 7-1-2009 | Amend | 8-1-2009 | 461-180-0120 | 10-1-2009 | Amend | 11-1-2009 |
| 461-160-0700 | 10-1-2009 | Amend(T) | 11-1-2009 | 461-180-0125 | 1-1-2009 | Amend | 2-1-2009 |
| 461-165-0010 | 7-1-2009 | Amend | 8-1-2009 | 461-190-0199 | 10-1-2009 | Amend | 11-1-2009 |
| 461-165-0030 | 1-1-2009 | Amend | 2-1-2009 | 461-190-0360 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 461-165-0060 | 4-1-2009 | Amend | 5-1-2009 | 461-190-0360 | 10-1-2009 | Amend | 11-1-2009 |
| 461-165-0060 | 4-1-2009 | Amend(T) | 5-1-2009 | 461-190-0360(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 461-165-0060 | 7-1-2009 | Amend | 8-1-2009 | 461-193-0000 | 4-1-2009 | Amend | 5-1-2009 |
| 461-165-0060(T) | 4-1-2009 | Repeal | 5-1-2009 | 461-193-0001 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-165-0060(T) | 7-1-2009 | Repeal | 8-1-2009 | 461-193-0005 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-165-0130 | 7-1-2009 | Amend | 8-1-2009 | 461-193-0007 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-165-0140 | 7-1-2009 | Amend | 8-1-2009 | 461-193-0010 | 4-1-2009 | Amend | 5-1-2009 |
| 461-165-0180 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0016 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-165-0410 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0026 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-165-0420 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0031 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0010 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0031 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 461-170-0010 | 10-1-2009 | Amend | 11-1-2009 | 461-193-0031 | 10-1-2009 | Amend | 11-1-2009 |
| 461-170-0011 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0031(T) | 10-1-2009 | Repeal | 11-1-2009 |
| 461-170-0015 | 1-1-2009 | Am. & Ren. | 2-1-2009 | 461-193-0040 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-170-0020 | 1-1-2009 | Am. & Ren. | 2-1-2009 | 461-193-0042 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0025 | 1-1-2009 | Am. & Ren. | 2-1-2009 | 461-193-0046 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-170-0030 | 1-1-2009 | Am. & Ren. | 2-1-2009 | 461-193-0130 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0035 | 1-1-2009 | Am. & Ren. | 2-1-2009 | 461-193-0185 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0100 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0190 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0101 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0221 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0101 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0240 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0102 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0246 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0102 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0470 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0103 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0560 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0104 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0610 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-170-0120 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0640 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-170-0150 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0650 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0150 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0650 | 7-1-2009 | Repeal | 8-1-2009 |
| 461-170-0150 | 7-1-2009 | Amend | 8-1-2009 | 461-193-0660 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-170-0150 | 10-1-2009 | Amend | 11-1-2009 | 461-193-0670 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0160 | 1-1-2009 | Amend | 2-1-2009 | 461-193-0690 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0160 | 4-1-2009 | Amend | 5-1-2009 | 461-193-0890 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0160 | 10-1-2009 | Amend | 11-1-2009 | 461-193-0940 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0170 | 1-1-2009 | Repeal | 2-1-2009 | 461-193-0960 | 4-1-2009 | Amend | 5-1-2009 |
| 461-170-0200 | 1-1-2009 | Amend | 2-1-2009 | 461-193-1200 | 4-1-2009 | Amend | 5-1-2009 |
| 461-175-0010 | 10-1-2009 | Amend | 11-1-2009 | 461-193-1230 | 4-1-2009 | Amend | 5-1-2009 |
| 461-175-0200 | 10-1-2009 | Amend | 11-1-2009 | 461-193-1310 | 4-1-2009 | Repeal | 5-1-2009 |
| 461-175-0220 | 1-1-2009 | Amend | 2-1-2009 | 461-195-0501 | 7-1-2009 | Amend | 8-1-2009 |
| 461-175-0240 | 1-1-2009 | Amend | 2-1-2009 | 461-195-0521 | 4-1-2009 | Amend(T) | 5-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|-----------|--------------|-----------|------------|-----------|
| 461-195-0521 | 7-1-2009 | Amend | 8-1-2009 | 471-031-0190 | 12-1-2008 | Adopt | 1-1-2009 |
| 461-195-0521 | 10-1-2009 | Amend | 11-1-2009 | 471-031-0195 | 12-1-2008 | Adopt | 1-1-2009 |
| 461-195-0521(T) | 7-1-2009 | Repeal | 8-1-2009 | 471-031-0200 | 12-1-2008 | Adopt | 1-1-2009 |
| 461-195-0621 | 7-1-2009 | Amend | 8-1-2009 | 471-031-0205 | 12-1-2008 | Adopt | 1-1-2009 |
| 462-110-0010 | 10-1-2009 | Amend | 10-1-2009 | 471-031-0210 | 12-1-2008 | Adopt | 1-1-2009 |
| 462-120-0030 | 10-1-2009 | Amend | 10-1-2009 | 471-031-0215 | 12-1-2008 | Adopt | 1-1-2009 |
| 462-120-0040 | 10-1-2009 | Amend | 10-1-2009 | 471-031-0220 | 12-1-2008 | Adopt | 1-1-2009 |
| 462-120-0050 | 10-1-2009 | Amend | 10-1-2009 | 471-031-0225 | 12-1-2008 | Adopt | 1-1-2009 |
| 462-120-0100 | 10-1-2009 | Amend | 10-1-2009 | 471-031-0230 | 12-1-2008 | Adopt | 1-1-2009 |
| 462-120-0110 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0000 | 3-2-2009 | Amend | 4-1-2009 |
| 462-130-0010 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0010 | 3-2-2009 | Amend | 4-1-2009 |
| 462-130-0040 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0020 | 3-2-2009 | Amend | 4-1-2009 |
| 462-130-0070 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0030 | 3-2-2009 | Amend | 4-1-2009 |
| 462-140-0040 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0040 | 3-2-2009 | Amend | 4-1-2009 |
| 462-140-0060 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0060 | 3-2-2009 | Amend | 4-1-2009 |
| 462-140-0070 | 10-1-2009 | Amend | 10-1-2009 | 543-060-0070 | 3-2-2009 | Adopt | 4-1-2009 |
| 462-140-0130 | 10-1-2009 | Amend | 10-1-2009 | 548-048-0030 | 10-5-2009 | Am. & Ren. | 11-1-2009 |
| 462-140-0150 | 10-1-2009 | Amend | 10-1-2009 | 548-048-0035 | 10-5-2009 | Am. & Ren. | 11-1-2009 |
| 462-140-0250 | 10-1-2009 | Amend | 10-1-2009 | 571-060-0005 | 7-1-2009 | Amend | 6-1-2009 |
| 462-140-0340 | 10-1-2009 | Amend | 10-1-2009 | 571-060-0005 | 7-1-2009 | Amend | 8-1-2009 |
| 462-140-0350 | 10-1-2009 | Amend | 10-1-2009 | 573-040-0005 | 6-15-2009 | Amend | 7-1-2009 |
| 462-150-0010 | 10-1-2009 | Amend | 10-1-2009 | 573-050-0025 | 10-4-2009 | Amend | 11-1-2009 |
| 462-150-0020 | 10-1-2009 | Amend | 10-1-2009 | 573-050-0040 | 10-4-2009 | Amend | 11-1-2009 |
| 462-150-0030 | 10-1-2009 | Amend | 10-1-2009 | 573-050-0045 | 10-4-2009 | Amend | 11-1-2009 |
| 462-150-0040 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0000 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-150-0060 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0010 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-150-0070 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0020 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-150-0080 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0030 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-160-0110 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0040 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-160-0120 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0050 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-160-0130 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0060 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-160-0140 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0070 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-200-0340 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0080 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-200-0370 | 10-1-2009 | Amend | 10-1-2009 | 573-075-0090 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-200-0380 | 10-1-2009 | Repeal | 10-1-2009 | 573-075-0100 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-210-0030 | 7-1-2009 | Amend | 6-1-2009 | 573-075-0110 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-220-0030 | 7-1-2009 | Amend | 6-1-2009 | 573-075-0130 | 8-14-2009 | Repeal | 9-1-2009 |
| 462-220-0070 | 7-1-2009 | Amend | 6-1-2009 | 573-075-0140 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0200 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0150 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0210 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0160 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0220 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0170 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0230 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0180 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0240 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0190 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0250 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0200 | 8-14-2009 | Amend | 9-1-2009 |
| 471-007-0260 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0210 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0270 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-075-0220 | 8-14-2009 | Repeal | 9-1-2009 |
| 471-007-0280 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-076-0000 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-007-0285 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-076-0010 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-007-0290 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-076-0020 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-007-0300 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-076-0030 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-007-0310 | 8-5-2009 | Adopt(T) | 9-1-2009 | 573-076-0040 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-010-0025 | 12-1-2008 | Adopt | 1-1-2009 | 573-076-0050 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-010-0045 | 12-1-2008 | Adopt | 1-1-2009 | 573-076-0060 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-030-0012 | 7-1-2009 | Adopt(T) | 8-1-2009 | 573-076-0070 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-030-0038 | 6-29-2009 | Amend(T) | 8-1-2009 | 573-076-0080 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-030-0150 | 6-29-2009 | Amend(T) | 8-1-2009 | 573-076-0090 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-031-0072 | 12-1-2008 | Amend | 1-1-2009 | 573-076-0100 | 8-14-2009 | Adopt | 9-1-2009 |
| 471-031-0151 | 12-1-2008 | Amend | 1-1-2009 | 573-076-0110 | 8-14-2009 | Adopt | 9-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|----------|----------|--------------|------------|----------|-----------|
| 573-076-0120 | 8-14-2009 | Adopt | 9-1-2009 | 576-030-0045 | 7-1-2009 | Amend | 8-1-2009 |
| 573-076-0130 | 8-14-2009 | Adopt | 9-1-2009 | 576-030-0050 | 7-1-2009 | Amend | 8-1-2009 |
| 574-031-0000 | 7-29-2009 | Amend | 9-1-2009 | 576-030-0050 | 10-15-2009 | Amend | 11-1-2009 |
| 574-031-0030 | 7-29-2009 | Amend | 9-1-2009 | 576-030-0055 | 7-1-2009 | Amend | 8-1-2009 |
| 574-031-0040 | 7-29-2009 | Amend | 9-1-2009 | 576-030-0060 | 7-1-2009 | Amend | 8-1-2009 |
| 574-032-0020 | 7-29-2009 | Amend | 9-1-2009 | 576-030-0070 | 7-1-2009 | Amend | 8-1-2009 |
| 574-032-0030 | 7-29-2009 | Amend | 9-1-2009 | 576-030-0090 | 7-1-2009 | Amend | 8-1-2009 |
| 574-032-0040 | 7-29-2009 | Amend | 9-1-2009 | 576-060-0031 | 7-1-2009 | Amend | 8-1-2009 |
| 574-032-0120 | 7-29-2009 | Amend | 9-1-2009 | 577-031-0125 | 9-28-2009 | Amend | 9-1-2009 |
| 574-032-0150 | 7-29-2009 | Amend | 9-1-2009 | 577-031-0130 | 9-28-2009 | Amend | 9-1-2009 |
| 574-050-0005 | 2-13-2009 | Amend | 3-1-2009 | 577-031-0131 | 9-28-2009 | Amend | 9-1-2009 |
| 574-050-0005 | 7-29-2009 | Amend | 9-1-2009 | 577-031-0132 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0000 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-031-0133 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0000 | 8-26-2009 | Adopt | 9-1-2009 | 577-031-0135 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0000(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-031-0136 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0005 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-031-0137 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0005 | 8-26-2009 | Adopt | 9-1-2009 | 577-031-0138 | 9-28-2009 | Adopt | 9-1-2009 |
| 576-003-0005(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-031-0139 | 9-28-2009 | Adopt | 9-1-2009 |
| 576-003-0010 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-031-0140 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0010 | 8-26-2009 | Adopt | 9-1-2009 | 577-031-0141 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0010(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-031-0142 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0020 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-031-0143 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0020 | 8-26-2009 | Adopt | 9-1-2009 | 577-031-0144 | 9-28-2009 | Adopt | 9-1-2009 |
| 576-003-0020(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-031-0145 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0040 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-031-0146 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0040 | 8-26-2009 | Adopt | 9-1-2009 | 577-031-0147 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0040(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-031-0148 | 9-28-2009 | Amend | 9-1-2009 |
| 576-003-0050 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-060-0020 | 5-14-2009 | Amend(T) | 6-1-2009 |
| 576-003-0050 | 8-26-2009 | Adopt | 9-1-2009 | 577-060-0020 | 8-1-2009 | Amend | 8-1-2009 |
| 576-003-0050(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-060-0020 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 576-003-0060 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-070-0005 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0060 | 8-26-2009 | Adopt | 9-1-2009 | 577-070-0010 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0060(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-070-0015 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0070 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-070-0020 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0070 | 8-26-2009 | Adopt | 9-1-2009 | 577-070-0025 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0070(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-070-0030 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0080 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-070-0035 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0080 | 8-26-2009 | Adopt | 9-1-2009 | 577-070-0040 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0080(T) | 8-26-2009 | Repeal | 9-1-2009 | 577-070-0045 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0090 | 6-9-2009 | Adopt(T) | 7-1-2009 | 577-070-0050 | 9-15-2009 | Amend | 9-1-2009 |
| 576-003-0090 | 8-26-2009 | Adopt | 9-1-2009 | 577-072-0030 | 1-1-2010 | Adopt | 9-1-2009 |
| 576-003-0090(T) | 8-26-2009 | Repeal | 9-1-2009 | 578-041-0030 | 9-2-2009 | Amend | 10-1-2009 |
| 576-003-0100 | 6-9-2009 | Adopt(T) | 7-1-2009 | 579-020-0006 | 3-12-2009 | Amend | 4-1-2009 |
| 576-003-0100 | 8-26-2009 | Adopt | 9-1-2009 | 579-020-0006 | 8-14-2009 | Amend | 9-1-2009 |
| 576-003-0100(T) | 8-26-2009 | Repeal | 9-1-2009 | 580-021-0026 | 10-12-2009 | Adopt | 11-1-2009 |
| 576-003-0110 | 6-9-2009 | Adopt(T) | 7-1-2009 | 580-021-0027 | 3-13-2009 | Adopt(T) | 4-1-2009 |
| 576-003-0110 | 8-26-2009 | Adopt | 9-1-2009 | 580-023-0005 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-003-0110(T) | 8-26-2009 | Repeal | 9-1-2009 | 580-023-0010 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-003-0120 | 6-9-2009 | Adopt(T) | 7-1-2009 | 580-023-0015 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-003-0120 | 8-26-2009 | Adopt | 9-1-2009 | 580-023-0020 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-003-0120(T) | 8-26-2009 | Repeal | 9-1-2009 | 580-023-0025 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-010-0000 | 7-1-2009 | Amend | 8-1-2009 | 580-023-0030 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-030-0015 | 7-1-2009 | Amend | 8-1-2009 | 580-023-0035 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-030-0020 | 7-1-2009 | Amend | 8-1-2009 | 580-023-0040 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-030-0025 | 7-1-2009 | Amend | 8-1-2009 | 580-023-0045 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-030-0030 | 7-1-2009 | Repeal | 8-1-2009 | 580-023-0050 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-030-0035 | 7-1-2009 | Amend | 8-1-2009 | 580-023-0055 | 10-12-2009 | Repeal | 11-1-2009 |
| 576-030-0040 | 7-1-2009 | Amend | 8-1-2009 | 580-023-0060 | 10-12-2009 | Repeal | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 580-023-0065 | 10-12-2009 | Repeal | 11-1-2009 | 581-022-1060 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0106 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1130 | 6-30-2009 | Amend(T) | 8-1-2009 |
| 580-023-0111 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1131 | 4-23-2009 | Amend | 6-1-2009 |
| 580-023-0116 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1310 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0121 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1330 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0126 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1622 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0131 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1640 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0136 | 10-12-2009 | Adopt | 11-1-2009 | 581-022-1650 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0141 | 10-12-2009 | Adopt | 11-1-2009 | 581-045-0190 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0146 | 10-12-2009 | Adopt | 11-1-2009 | 581-045-0500 | 6-29-2009 | Amend | 8-1-2009 |
| 580-023-0151 | 10-12-2009 | Adopt | 11-1-2009 | 581-045-0505 | 6-29-2009 | Amend | 8-1-2009 |
| 580-040-0035 | 1-22-2009 | Amend | 3-1-2009 | 581-045-0515 | 6-29-2009 | Amend | 8-1-2009 |
| 580-040-0040 | 2-20-2009 | Amend(T) | 4-1-2009 | 581-045-0522 | 6-29-2009 | Adopt | 8-1-2009 |
| 580-040-0040 | 3-13-2009 | Amend(T) | 4-1-2009 | 581-045-0525 | 6-29-2009 | Amend | 8-1-2009 |
| 580-040-0040 | 7-20-2009 | Amend(T) | 9-1-2009 | 581-045-0530 | 6-29-2009 | Amend | 8-1-2009 |
| 580-040-0040 | 10-1-2009 | Amend(T) | 11-1-2009 | 581-045-0535 | 6-29-2009 | Amend | 8-1-2009 |
| 580-040-0040(T) | 3-13-2009 | Suspend | 4-1-2009 | 581-045-0538 | 6-29-2009 | Adopt | 8-1-2009 |
| 580-040-0040(T) | 10-1-2009 | Suspend | 11-1-2009 | 581-045-0545 | 6-29-2009 | Amend | 8-1-2009 |
| 581-001-0100 | 12-19-2008 | Amend | 2-1-2009 | 581-045-0550 | 6-29-2009 | Amend | 8-1-2009 |
| 581-011-0050 | 6-29-2009 | Amend | 8-1-2009 | 581-045-0555 | 6-29-2009 | Amend | 8-1-2009 |
| 581-011-0052 | 6-29-2009 | Amend | 8-1-2009 | 581-045-0565 | 6-29-2009 | Amend | 8-1-2009 |
| 581-011-0055 | 6-29-2009 | Amend | 8-1-2009 | 581-045-0570 | 6-29-2009 | Amend | 8-1-2009 |
| 581-011-0060 | 6-29-2009 | Amend | 8-1-2009 | 581-045-0575 | 6-29-2009 | Repeal | 8-1-2009 |
| 581-011-0065 | 6-29-2009 | Amend | 8-1-2009 | 581-053-0517 | 6-29-2009 | Amend | 8-1-2009 |
| 581-011-0066 | 6-29-2009 | Amend | 8-1-2009 | 582-001-0003 | 12-19-2008 | Amend(T) | 2-1-2009 |
| 581-011-0067 | 6-29-2009 | Amend | 8-1-2009 | 582-001-0003 | 3-27-2009 | Amend | 5-1-2009 |
| 581-011-0070 | 6-29-2009 | Amend | 8-1-2009 | 582-001-0003(T) | 3-27-2009 | Repeal | 5-1-2009 |
| 581-011-0071 | 6-29-2009 | Amend | 8-1-2009 | 582-001-0005 | 12-19-2008 | Amend(T) | 2-1-2009 |
| 581-011-0072 | 6-29-2009 | Repeal | 8-1-2009 | 582-001-0005 | 3-27-2009 | Amend | 5-1-2009 |
| 581-011-0073 | 6-29-2009 | Repeal | 8-1-2009 | 582-001-0005(T) | 3-27-2009 | Repeal | 5-1-2009 |
| 581-011-0074 | 6-29-2009 | Repeal | 8-1-2009 | 582-001-0010 | 12-19-2008 | Amend(T) | 2-1-2009 |
| 581-011-0075 | 6-29-2009 | Amend | 8-1-2009 | 582-001-0010 | 3-27-2009 | Amend | 5-1-2009 |
| 581-011-0076 | 6-29-2009 | Repeal | 8-1-2009 | 582-001-0010(T) | 3-27-2009 | Repeal | 5-1-2009 |
| 581-011-0077 | 6-29-2009 | Repeal | 8-1-2009 | 582-010-0005 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0078 | 6-29-2009 | Repeal | 8-1-2009 | 582-010-0010 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0079 | 6-29-2009 | Repeal | 8-1-2009 | 582-010-0015 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0080 | 6-29-2009 | Amend | 8-1-2009 | 582-010-0020 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0086 | 6-29-2009 | Amend | 8-1-2009 | 582-010-0021 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0087 | 6-29-2009 | Adopt | 8-1-2009 | 582-010-0022 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0090 | 6-29-2009 | Amend | 8-1-2009 | 582-010-0025 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0095 | 6-29-2009 | Amend | 8-1-2009 | 582-010-0030 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0114 | 6-29-2009 | Adopt | 8-1-2009 | 582-050-0000 | 3-27-2009 | Amend | 5-1-2009 |
| 581-011-0117 | 6-29-2009 | Amend | 8-1-2009 | 582-070-0010 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0118 | 6-29-2009 | Repeal | 8-1-2009 | 582-070-0020 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0119 | 6-29-2009 | Repeal | 8-1-2009 | 582-080-0010 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0120 | 6-29-2009 | Repeal | 8-1-2009 | 582-080-0020 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0125 | 6-29-2009 | Repeal | 8-1-2009 | 582-080-0030 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0130 | 6-29-2009 | Repeal | 8-1-2009 | 582-080-0040 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0131 | 6-29-2009 | Repeal | 8-1-2009 | 582-080-0050 | 2-11-2009 | Amend(T) | 3-1-2009 |
| 581-011-0135 | 6-29-2009 | Repeal | 8-1-2009 | 582-085-0004 | 2-11-2009 | Suspend | 3-1-2009 |
| 581-011-0136 | 2-24-2009 | Adopt(T) | 4-1-2009 | 582-100-0040 | 12-19-2008 | Amend(T) | 2-1-2009 |
| 581-011-0140 | 6-29-2009 | Repeal | 8-1-2009 | 582-100-0040 | 3-27-2009 | Amend | 5-1-2009 |
| 581-011-0142 | 2-24-2009 | Adopt(T) | 4-1-2009 | 582-100-0040(T) | 3-27-2009 | Repeal | 5-1-2009 |
| 581-011-0145 | 6-29-2009 | Repeal | 8-1-2009 | 584-005-0005 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 581-011-0210 | 6-29-2009 | Repeal | 8-1-2009 | 584-005-0005 | 10-5-2009 | Amend | 11-1-2009 |
| 581-022-0610 | 12-19-2008 | Amend | 2-1-2009 | 584-005-0005(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 581-022-0615 | 9-1-2009 | Amend(T) | 10-1-2009 | 584-017-0042 | 9-22-2009 | Amend | 11-1-2009 |
| 581-022-0711 | 12-19-2008 | Adopt | 2-1-2009 | 584-019-0003 | 10-5-2009 | Amend | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|-----------|------------|-----------|-----------------|-----------|------------|-----------|
| 584-021-0105 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-048-0095(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-021-0105 | 10-5-2009 | Amend | 11-1-2009 | 584-048-0105 | 5-15-2009 | Suspend | 6-1-2009 |
| 584-021-0105(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-048-0105 | 10-5-2009 | Repeal | 11-1-2009 |
| 584-021-0140 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-048-0110 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-021-0140 | 10-5-2009 | Amend | 11-1-2009 | 584-048-0110 | 10-5-2009 | Am. & Ren. | 11-1-2009 |
| 584-021-0140(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-048-0110(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-021-0150 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-048-0115 | 5-15-2009 | Suspend | 6-1-2009 |
| 584-021-0150 | 10-5-2009 | Amend | 11-1-2009 | 584-048-0115 | 10-5-2009 | Repeal | 11-1-2009 |
| 584-021-0150(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-048-0120 | 10-5-2009 | Renumber | 11-1-2009 |
| 584-021-0210 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-050-0004 | 3-12-2009 | Am. & Ren. | 4-1-2009 |
| 584-021-0210 | 10-5-2009 | Amend | 11-1-2009 | 584-050-0040 | 3-12-2009 | Amend | 4-1-2009 |
| 584-021-0210(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-050-0042 | 3-12-2009 | Am. & Ren. | 4-1-2009 |
| 584-023-0005 | 9-22-2009 | Amend | 11-1-2009 | 584-050-0043 | 3-12-2009 | Am. & Ren. | 4-1-2009 |
| 584-023-0015 | 9-22-2009 | Amend | 11-1-2009 | 584-050-0100 | 3-12-2009 | Adopt | 4-1-2009 |
| 584-023-0025 | 9-22-2009 | Repeal | 11-1-2009 | 584-052-0027 | 3-12-2009 | Amend | 4-1-2009 |
| 584-036-0010 | 3-12-2009 | Amend | 4-1-2009 | 584-052-0030 | 3-12-2009 | Amend | 4-1-2009 |
| 584-036-0015 | 3-12-2009 | Amend | 4-1-2009 | 584-052-0031 | 3-12-2009 | Amend | 4-1-2009 |
| 584-036-0025 | 10-5-2009 | Amend | 11-1-2009 | 584-052-0032 | 3-12-2009 | Amend | 4-1-2009 |
| 584-036-0055 | 2-27-2009 | Amend(T) | 4-1-2009 | 584-052-0033 | 3-12-2009 | Amend | 4-1-2009 |
| 584-036-0055 | 9-22-2009 | Amend | 11-1-2009 | 584-060-0002 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-036-0067 | 10-5-2009 | Amend | 11-1-2009 | 584-060-0002 | 10-5-2009 | Amend | 11-1-2009 |
| 584-036-0080 | 3-12-2009 | Amend | 4-1-2009 | 584-060-0002(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-036-0082 | 9-22-2009 | Amend | 11-1-2009 | 584-060-0012 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-036-0083 | 3-12-2009 | Adopt | 4-1-2009 | 584-060-0013 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-040-0005 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-060-0013 | 10-5-2009 | Amend | 11-1-2009 |
| 584-040-0005 | 10-5-2009 | Amend | 11-1-2009 | 584-060-0013(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-040-0005(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0014 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0006 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-060-0014 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0006 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-060-0014(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-048-0006(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0022 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0010 | 5-15-2009 | Suspend | 6-1-2009 | 584-060-0022 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0010 | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0022(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-048-0015 | 5-15-2009 | Suspend | 6-1-2009 | 584-060-0040 | 3-12-2009 | Repeal | 4-1-2009 |
| 584-048-0015 | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0062 | 9-22-2009 | Amend | 11-1-2009 |
| 584-048-0020 | 5-15-2009 | Suspend | 6-1-2009 | 584-060-0071 | 9-22-2009 | Amend | 11-1-2009 |
| 584-048-0020 | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0091 | 3-12-2009 | Repeal | 4-1-2009 |
| 584-048-0025 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-060-0171 | 3-12-2009 | Amend | 4-1-2009 |
| 584-048-0025 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-060-0171 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0025(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0181 | 3-12-2009 | Amend | 4-1-2009 |
| 584-048-0030 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-060-0182 | 3-12-2009 | Adopt | 4-1-2009 |
| 584-048-0030(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-060-0190 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0032 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-060-0200 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0035 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-060-0210 | 3-12-2009 | Amend | 4-1-2009 |
| 584-048-0035(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-065-0060 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0040 | 10-5-2009 | Renumber | 11-1-2009 | 584-070-0012 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0067 | 5-15-2009 | Suspend | 6-1-2009 | 584-070-0014 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0067 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-070-0014 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0067(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-070-0014(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-048-0070 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-070-0022 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0070 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-070-0022 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0070(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-070-0022(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-048-0085 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-070-0211 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0085 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-070-0211 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0085(T) | 10-5-2009 | Repeal | 11-1-2009 | 584-070-0211(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-048-0090 | 5-15-2009 | Suspend | 6-1-2009 | 584-070-0221 | 5-15-2009 | Amend(T) | 6-1-2009 |
| 584-048-0090 | 10-5-2009 | Repeal | 11-1-2009 | 584-070-0221 | 10-5-2009 | Amend | 11-1-2009 |
| 584-048-0095 | 5-15-2009 | Amend(T) | 6-1-2009 | 584-070-0221(T) | 10-5-2009 | Repeal | 11-1-2009 |
| 584-048-0095 | 10-5-2009 | Am. & Ren. | 11-1-2009 | 584-070-0310 | 5-15-2009 | Amend(T) | 6-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 584-080-0002 | 5-15-2009 | Amend(T) | 6-1-2009 | 603-027-0440 | 7-24-2009 | Amend(T) | 9-1-2009 |
| 584-080-0002 | 10-5-2009 | Amend | 11-1-2009 | 603-027-0490 | 7-24-2009 | Amend(T) | 9-1-2009 |
| 584-080-0002(T) | 10-5-2009 | Repeal | 11-1-2009 | 603-052-0129 | 2-13-2009 | Amend | 3-1-2009 |
| 584-080-0012 | 5-15-2009 | Amend(T) | 6-1-2009 | 603-052-0153 | 2-13-2009 | Amend | 3-1-2009 |
| 584-080-0012 | 10-5-2009 | Amend | 11-1-2009 | 603-052-0160 | 2-13-2009 | Amend | 3-1-2009 |
| 584-080-0012(T) | 10-5-2009 | Repeal | 11-1-2009 | 603-052-0201 | 2-13-2009 | Amend | 3-1-2009 |
| 584-080-0022 | 5-15-2009 | Amend(T) | 6-1-2009 | 603-052-0265 | 2-13-2009 | Amend | 3-1-2009 |
| 584-080-0022 | 10-5-2009 | Amend | 11-1-2009 | 603-052-0347 | 8-21-2009 | Amend | 10-1-2009 |
| 584-080-0022(T) | 10-5-2009 | Repeal | 11-1-2009 | 603-052-0360 | 2-13-2009 | Amend | 3-1-2009 |
| 584-080-0031 | 5-15-2009 | Amend(T) | 6-1-2009 | 603-052-0850 | 9-16-2009 | Amend | 11-1-2009 |
| 584-080-0031 | 10-5-2009 | Amend | 11-1-2009 | 603-052-0860 | 9-16-2009 | Amend | 11-1-2009 |
| 584-080-0031(T) | 10-5-2009 | Repeal | 11-1-2009 | 603-052-0870 | 9-16-2009 | Amend | 11-1-2009 |
| 584-080-0161 | 5-15-2009 | Amend(T) | 6-1-2009 | 603-052-0880 | 9-16-2009 | Amend | 11-1-2009 |
| 584-090-0001 | 10-5-2009 | Amend | 11-1-2009 | 603-052-1020 | 4-9-2009 | Amend | 5-1-2009 |
| 584-090-0005 | 10-5-2009 | Amend | 11-1-2009 | 603-052-1230 | 4-9-2009 | Amend | 5-1-2009 |
| 584-100-0006 | 3-12-2009 | Amend | 4-1-2009 | 603-052-1250 | 4-9-2009 | Amend | 5-1-2009 |
| 585-005-0015 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0110 | 7-15-2009 | Amend | 8-1-2009 |
| 585-005-0020 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0145 | 7-15-2009 | Amend | 8-1-2009 |
| 585-005-0025 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0160 | 7-15-2009 | Adopt | 8-1-2009 |
| 585-005-0030 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0180 | 7-15-2009 | Adopt | 8-1-2009 |
| 585-005-0035 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0500 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 585-005-0040 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0500 | 5-7-2009 | Amend | 6-1-2009 |
| 585-005-0045 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0500(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-005-0050 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0502 | 1-23-2009 | Adopt(T) | 3-1-2009 |
| 585-005-0055 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0502 | 5-7-2009 | Adopt | 6-1-2009 |
| 585-005-0060 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0502(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-005-0065 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0510 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 585-005-0070 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0510 | 5-7-2009 | Amend | 6-1-2009 |
| 585-005-0075 | 6-11-2009 | Adopt | 7-1-2009 | 603-057-0510(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-010-0310 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0515 | 1-23-2009 | Suspend | 3-1-2009 |
| 585-020-0005 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0515 | 5-7-2009 | Repeal | 6-1-2009 |
| 585-020-0010 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0520 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 585-020-0015 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0520 | 5-7-2009 | Amend | 6-1-2009 |
| 585-020-0020 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0520(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-020-0020 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0525 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 585-020-0025 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0525 | 5-7-2009 | Amend | 6-1-2009 |
| 585-020-0025 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0525(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-020-0030 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0530 | 1-23-2009 | Amend(T) | 3-1-2009 |
| 585-020-0030 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0530 | 5-7-2009 | Amend | 6-1-2009 |
| 585-020-0040 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0530(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-020-0040 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0532 | 1-23-2009 | Adopt(T) | 3-1-2009 |
| 585-020-0045 | 4-13-2009 | Amend | 5-1-2009 | 603-057-0532 | 5-7-2009 | Adopt | 6-1-2009 |
| 585-020-0045 | 8-7-2009 | Amend | 9-1-2009 | 603-057-0532(T) | 5-7-2009 | Repeal | 6-1-2009 |
| 585-020-0050 | 8-7-2009 | Amend | 9-1-2009 | 603-074-0080 | 1-30-2009 | Amend | 3-1-2009 |
| 585-020-0055 | 4-13-2009 | Repeal | 5-1-2009 | 603-076-0100 | 6-30-2009 | Adopt(T) | 8-1-2009 |
| 585-020-0055 | 8-7-2009 | Repeal | 9-1-2009 | 603-076-0105 | 6-30-2009 | Adopt(T) | 8-1-2009 |
| 585-020-0060 | 4-13-2009 | Amend | 5-1-2009 | 603-077-0101 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 585-020-0060 | 8-7-2009 | Amend | 9-1-2009 | 603-077-0105 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 589-002-0100 | 8-5-2009 | Amend(T) | 9-1-2009 | 603-077-0110 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 589-007-0500 | 7-6-2009 | Amend | 8-1-2009 | 603-077-0112 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 589-007-0700 | 7-15-2009 | Adopt(T) | 8-1-2009 | 603-077-0113 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 589-020-0225 | 12-29-2008 | Amend | 2-1-2009 | 603-077-0115 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 603-011-0610 | 9-1-2009 | Amend(T) | 10-1-2009 | 603-077-0137 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 603-011-0615 | 9-1-2009 | Amend(T) | 10-1-2009 | 603-077-0140 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 603-011-0620 | 9-1-2009 | Amend(T) | 10-1-2009 | 619-005-0010 | 12-17-2008 | Adopt | 2-1-2009 |
| 603-027-0410 | 7-24-2009 | Amend(T) | 9-1-2009 | 619-005-0020 | 12-17-2008 | Adopt | 2-1-2009 |
| 603-027-0420 | 7-24-2009 | Amend(T) | 9-1-2009 | 619-005-0030 | 12-17-2008 | Adopt | 2-1-2009 |
| 603-027-0430 | 7-24-2009 | Amend(T) | 9-1-2009 | 619-005-0040 | 12-17-2008 | Adopt | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 619-005-0050 | 12-17-2008 | Adopt | 2-1-2009 | 632-030-0040 | 5-15-2009 | Amend | 6-1-2009 |
| 619-005-0060 | 12-17-2008 | Adopt | 2-1-2009 | 632-030-0041 | 5-15-2009 | Adopt | 6-1-2009 |
| 620-010-0020 | 3-1-2009 | Amend | 2-1-2009 | 632-030-0042 | 5-15-2009 | Amend | 6-1-2009 |
| 620-010-0020(T) | 3-1-2009 | Repeal | 2-1-2009 | 632-030-0045 | 5-15-2009 | Amend | 6-1-2009 |
| 629-021-0700 | 5-11-2009 | Amend | 6-1-2009 | 632-030-0049 | 5-15-2009 | Adopt | 6-1-2009 |
| 629-022-0030 | 2-1-2009 | Amend | 2-1-2009 | 632-030-0052 | 5-15-2009 | Adopt | 6-1-2009 |
| 629-022-0035 | 2-1-2009 | Adopt | 2-1-2009 | 632-030-0056 | 5-15-2009 | Amend | 6-1-2009 |
| 629-022-0040 | 2-1-2009 | Amend | 2-1-2009 | 632-030-0061 | 8-10-2009 | Adopt(T) | 9-1-2009 |
| 629-022-0050 | 2-1-2009 | Adopt | 2-1-2009 | 632-030-0070 | 5-15-2009 | Amend | 6-1-2009 |
| 629-022-0060 | 2-1-2009 | Adopt | 2-1-2009 | 635-001-0050 | 1-14-2009 | Amend(T) | 2-1-2009 |
| 629-022-0070 | 2-1-2009 | Adopt | 2-1-2009 | 635-003-0003 | 5-18-2009 | Amend | 7-1-2009 |
| 629-022-0080 | 2-1-2009 | Adopt | 2-1-2009 | 635-003-0004 | 3-15-2009 | Amend(T) | 4-1-2009 |
| 629-022-0100 | 2-1-2009 | Repeal | 2-1-2009 | 635-003-0004 | 5-18-2009 | Amend | 7-1-2009 |
| 629-022-0110 | 2-1-2009 | Amend | 2-1-2009 | 635-003-0004(T) | 5-18-2009 | Repeal | 7-1-2009 |
| 629-022-0120 | 2-1-2009 | Amend | 2-1-2009 | 635-003-0074 | 5-18-2009 | Amend | 7-1-2009 |
| 629-022-0130 | 2-1-2009 | Amend | 2-1-2009 | 635-003-0077 | 5-18-2009 | Amend | 7-1-2009 |
| 629-022-0140 | 2-1-2009 | Amend | 2-1-2009 | 635-003-0085 | 5-18-2009 | Amend | 7-1-2009 |
| 629-022-0150 | 2-1-2009 | Amend | 2-1-2009 | 635-003-0085 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 629-022-0160 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0005 | 4-27-2009 | Amend | 6-1-2009 |
| 629-022-0200 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0009 | 4-27-2009 | Amend | 6-1-2009 |
| 629-022-0210 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0012 | 4-22-2009 | Adopt | 6-1-2009 |
| 629-022-0220 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0014 | 11-21-2008 | Amend | 1-1-2009 |
| 629-022-0230 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0016 | 1-1-2009 | Amend(T) | 2-1-2009 |
| 629-022-0250 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0016 | 2-23-2009 | Amend(T) | 4-1-2009 |
| 629-022-0300 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0016 | 4-22-2009 | Amend | 6-1-2009 |
| 629-022-0320 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0016(T) | 2-23-2009 | Suspend | 4-1-2009 |
| 629-022-0380 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0016(T) | 4-22-2009 | Repeal | 6-1-2009 |
| 629-022-0390 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0017 | 4-22-2009 | Adopt | 6-1-2009 |
| 629-022-0400 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0017 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 629-022-0410 | 2-1-2009 | Amend | 2-1-2009 | 635-004-0017 | 7-18-2009 | Amend(T) | 9-1-2009 |
| 629-022-0500 | 2-1-2009 | Repeal | 2-1-2009 | 635-004-0017 | 9-23-2009 | Amend(T) | 11-1-2009 |
| 629-022-0600 | 2-1-2009 | Repeal | 2-1-2009 | 635-004-0017(T) | 7-18-2009 | Suspend | 9-1-2009 |
| 629-022-0700 | 2-1-2009 | Repeal | 2-1-2009 | 635-004-0017(T) | 9-23-2009 | Suspend | 11-1-2009 |
| 629-022-0800 | 2-1-2009 | Adopt | 2-1-2009 | 635-004-0018 | 4-27-2009 | Amend | 6-1-2009 |
| 629-022-0810 | 2-1-2009 | Adopt | 2-1-2009 | 635-004-0019 | 12-4-2008 | Amend(T) | 1-1-2009 |
| 629-022-0820 | 2-1-2009 | Adopt | 2-1-2009 | 635-004-0019 | 1-5-2009 | Amend(T) | 2-1-2009 |
| 629-022-0830 | 2-1-2009 | Adopt | 2-1-2009 | 635-004-0019 | 3-18-2009 | Amend(T) | 5-1-2009 |
| 629-022-0840 | 2-1-2009 | Adopt | 2-1-2009 | 635-004-0019 | 4-27-2009 | Amend | 6-1-2009 |
| 629-022-0850 | 2-1-2009 | Adopt | 2-1-2009 | 635-004-0019 | 5-1-2009 | Amend(T) | 6-1-2009 |
| 629-041-0100 | 3-25-2009 | Amend(T) | 5-1-2009 | 635-004-0019 | 7-2-2009 | Amend(T) | 8-1-2009 |
| 629-041-0100 | 9-21-2009 | Amend | 10-1-2009 | 635-004-0019(T) | 12-4-2008 | Suspend | 1-1-2009 |
| 632-030-0005 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0019(T) | 3-18-2009 | Suspend | 5-1-2009 |
| 632-030-0010 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0019(T) | 4-27-2009 | Repeal | 6-1-2009 |
| 632-030-0015 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0019(T) | 7-2-2009 | Suspend | 8-1-2009 |
| 632-030-0016 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0020 | 11-21-2008 | Amend | 1-1-2009 |
| 632-030-0017 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0025 | 8-10-2009 | Amend | 9-1-2009 |
| 632-030-0018 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0027 | 1-1-2009 | Amend(T) | 2-1-2009 |
| 632-030-0019 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033 | 1-1-2009 | Amend(T) | 2-1-2009 |
| 632-030-0020 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033 | 3-1-2009 | Amend(T) | 4-1-2009 |
| 632-030-0021 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033 | 4-27-2009 | Amend | 6-1-2009 |
| 632-030-0022 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 632-030-0024 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033 | 10-10-2009 | Amend(T) | 11-1-2009 |
| 632-030-0025 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033(T) | 3-1-2009 | Suspend | 4-1-2009 |
| 632-030-0026 | 5-15-2009 | Adopt | 6-1-2009 | 635-004-0033(T) | 4-27-2009 | Repeal | 6-1-2009 |
| 632-030-0027 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0033(T) | 10-10-2009 | Suspend | 11-1-2009 |
| 632-030-0030 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0035 | 11-21-2008 | Amend | 1-1-2009 |
| 632-030-0033 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0042 | 6-1-2009 | Adopt(T) | 6-1-2009 |
| 632-030-0035 | 5-15-2009 | Amend | 6-1-2009 | 635-004-0042 | 8-10-2009 | Adopt | 9-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 635-004-0042(T) | 8-10-2009 | Repeal | 9-1-2009 | 635-006-0225 | 11-21-2008 | Amend | 1-1-2009 |
| 635-004-0048 | 11-21-2008 | Amend | 1-1-2009 | 635-006-0225 | 6-16-2009 | Amend(T) | 7-1-2009 |
| 635-004-0050 | 11-21-2008 | Amend | 1-1-2009 | 635-006-0230 | 11-21-2008 | Amend | 1-1-2009 |
| 635-004-0060 | 11-21-2008 | Amend | 1-1-2009 | 635-006-0232 | 1-13-2009 | Amend | 2-1-2009 |
| 635-004-0090 | 1-1-2009 | Amend(T) | 2-1-2009 | 635-006-0235 | 11-21-2008 | Amend | 1-1-2009 |
| 635-004-0090 | 4-27-2009 | Amend | 6-1-2009 | 635-006-0412 | 11-21-2008 | Amend | 1-1-2009 |
| 635-004-0090(T) | 4-27-2009 | Repeal | 6-1-2009 | 635-006-0425 | 11-21-2008 | Amend | 1-1-2009 |
| 635-004-0135 | 11-21-2008 | Amend | 1-1-2009 | 635-006-0810 | 11-21-2008 | Amend | 1-1-2009 |
| 635-004-0170 | 11-21-2008 | Amend | 1-1-2009 | 635-006-0850 | 12-17-2008 | Amend | 2-1-2009 |
| 635-005-0001 | 11-21-2008 | Amend | 1-1-2009 | 635-006-0910 | 12-17-2008 | Amend | 2-1-2009 |
| 635-005-0005 | 11-21-2008 | Amend | 1-1-2009 | 635-006-1015 | 4-22-2009 | Amend | 6-1-2009 |
| 635-005-0005 | 12-17-2008 | Amend | 2-1-2009 | 635-006-1035 | 11-21-2008 | Amend | 1-1-2009 |
| 635-005-0016 | 11-21-2008 | Amend | 1-1-2009 | 635-006-1035 | 12-17-2008 | Amend | 2-1-2009 |
| 635-005-0045 | 11-21-2008 | Amend | 1-1-2009 | 635-006-1035 | 4-22-2009 | Amend | 6-1-2009 |
| 635-005-0047 | 11-21-2008 | Amend | 1-1-2009 | 635-006-1065 | 10-7-2009 | Amend | 11-1-2009 |
| 635-005-0048 | 11-21-2008 | Amend | 1-1-2009 | 635-006-1075 | 11-21-2008 | Amend | 1-1-2009 |
| 635-005-0055 | 11-21-2008 | Amend | 1-1-2009 | 635-006-1075 | 4-22-2009 | Amend | 6-1-2009 |
| 635-005-0055 | 12-1-2008 | Amend(T) | 1-1-2009 | 635-006-1085 | 12-17-2008 | Amend | 2-1-2009 |
| 635-005-0055 | 5-29-2009 | Amend(T) | 7-1-2009 | 635-006-1085 | 2-26-2009 | Amend(T) | 4-1-2009 |
| 635-005-0055 | 8-29-2009 | Amend(T) | 10-1-2009 | 635-006-1085 | 4-22-2009 | Amend | 6-1-2009 |
| 635-005-0055 | 10-7-2009 | Amend | 11-1-2009 | 635-006-1085(T) | 4-22-2009 | Repeal | 6-1-2009 |
| 635-005-0055(T) | 5-29-2009 | Suspend | 7-1-2009 | 635-008-0050 | 8-12-2009 | Amend | 9-1-2009 |
| 635-005-0055(T) | 10-7-2009 | Repeal | 11-1-2009 | 635-008-0050 | 10-7-2009 | Amend | 11-1-2009 |
| 635-005-0064 | 12-17-2008 | Amend | 2-1-2009 | 635-008-0055 | 4-27-2009 | Amend | 6-1-2009 |
| 635-005-0065 | 11-21-2008 | Amend | 1-1-2009 | 635-008-0095 | 6-10-2009 | Amend | 7-1-2009 |
| 635-005-0065 | 12-17-2008 | Amend | 2-1-2009 | 635-008-0123 | 4-27-2009 | Amend | 6-1-2009 |
| 635-005-0067 | 12-17-2008 | Amend | 2-1-2009 | 635-008-0140 | 4-27-2009 | Amend | 6-1-2009 |
| 635-005-0068 | 12-17-2008 | Adopt | 2-1-2009 | 635-008-0145 | 1-15-2009 | Amend | 2-1-2009 |
| 635-005-0069 | 12-17-2008 | Adopt | 2-1-2009 | 635-008-0147 | 3-11-2009 | Amend(T) | 4-1-2009 |
| 635-005-0084 | 11-21-2008 | Amend | 1-1-2009 | 635-008-0147 | 3-30-2009 | Amend(T) | 5-1-2009 |
| 635-005-0090 | 11-21-2008 | Amend | 1-1-2009 | 635-008-0147 | 8-12-2009 | Amend | 9-1-2009 |
| 635-005-0095 | 11-21-2008 | Amend | 1-1-2009 | 635-008-0155 | 8-12-2009 | Amend | 9-1-2009 |
| 635-005-0100 | 11-21-2008 | Amend | 1-1-2009 | 635-008-0210 | 8-26-2009 | Adopt(T) | 10-1-2009 |
| 635-005-0135 | 11-21-2008 | Amend | 1-1-2009 | 635-010-0170 | 12-9-2008 | Amend(T) | 1-1-2009 |
| 635-005-0140 | 11-21-2008 | Amend | 1-1-2009 | 635-010-0170 | 5-14-2009 | Amend(T) | 6-1-2009 |
| 635-005-0145 | 11-21-2008 | Amend | 1-1-2009 | 635-010-0170(T) | 5-14-2009 | Suspend | 6-1-2009 |
| 635-005-0180 | 11-21-2008 | Amend | 1-1-2009 | 635-011-0100 | 1-1-2009 | Amend | 2-1-2009 |
| 635-006-0001 | 11-21-2008 | Amend | 1-1-2009 | 635-013-0003 | 1-1-2009 | Amend | 2-1-2009 |
| 635-006-0001 | 8-10-2009 | Amend | 9-1-2009 | 635-013-0003 | 5-18-2009 | Amend | 7-1-2009 |
| 635-006-0132 | 11-21-2008 | Amend | 1-1-2009 | 635-013-0004 | 1-1-2009 | Amend | 2-1-2009 |
| 635-006-0133 | 11-21-2008 | Amend | 1-1-2009 | 635-013-0007 | 5-18-2009 | Amend | 7-1-2009 |
| 635-006-0145 | 11-21-2008 | Amend | 1-1-2009 | 635-013-0007 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 635-006-0145 | 10-7-2009 | Amend | 11-1-2009 | 635-013-0009 | 3-15-2009 | Amend(T) | 4-1-2009 |
| 635-006-0150 | 11-21-2008 | Amend | 1-1-2009 | 635-013-0009 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 635-006-0160 | 8-10-2009 | Amend | 9-1-2009 | 635-013-0009(T) | 8-1-2009 | Suspend | 9-1-2009 |
| 635-006-0165 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0080 | 1-1-2009 | Amend | 2-1-2009 |
| 635-006-0200 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090 | 1-1-2009 | Amend | 2-1-2009 |
| 635-006-0205 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090 | 5-22-2009 | Amend(T) | 6-1-2009 |
| 635-006-0205 | 8-10-2009 | Amend | 9-1-2009 | 635-014-0090 | 6-15-2009 | Amend(T) | 7-1-2009 |
| 635-006-0207 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 635-006-0210 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090 | 9-1-2009 | Amend(T) | 10-1-2009 |
| 635-006-0211 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090 | 9-22-2009 | Amend(T) | 11-1-2009 |
| 635-006-0212 | 6-16-2009 | Amend(T) | 7-1-2009 | 635-014-0090(T) | 6-15-2009 | Suspend | 7-1-2009 |
| 635-006-0213 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090(T) | 8-1-2009 | Suspend | 9-1-2009 |
| 635-006-0215 | 11-21-2008 | Amend | 1-1-2009 | 635-014-0090(T) | 9-1-2009 | Suspend | 10-1-2009 |
| 635-006-0215 | 6-16-2009 | Amend(T) | 7-1-2009 | 635-014-0090(T) | 9-22-2009 | Suspend | 11-1-2009 |
| 635-006-0215 | 6-25-2009 | Amend(T) | 8-1-2009 | 635-016-0080 | 1-1-2009 | Amend | 2-1-2009 |
| 635-006-0215(T) | 6-25-2009 | Suspend | 8-1-2009 | 635-016-0090 | 1-1-2009 | Amend | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 635-016-0090 | 6-1-2009 | Amend(T) | 7-1-2009 | 635-023-0128 | 1-1-2009 | Amend | 2-1-2009 |
| 635-016-0090 | 7-1-2009 | Amend(T) | 8-1-2009 | 635-023-0128 | 5-18-2009 | Amend | 7-1-2009 |
| 635-016-0090 | 8-1-2009 | Amend(T) | 9-1-2009 | 635-023-0128 | 6-16-2009 | Amend(T) | 7-1-2009 |
| 635-016-0090 | 9-18-2009 | Amend(T) | 11-1-2009 | 635-023-0130 | 1-1-2009 | Amend | 2-1-2009 |
| 635-016-0090(T) | 7-1-2009 | Suspend | 8-1-2009 | 635-023-0130 | 5-18-2009 | Amend | 7-1-2009 |
| 635-016-0090(T) | 9-18-2009 | Suspend | 11-1-2009 | 635-023-0134 | 1-1-2009 | Amend | 2-1-2009 |
| 635-017-0080 | 1-1-2009 | Amend | 2-1-2009 | 635-023-0134 | 5-30-2009 | Amend(T) | 7-1-2009 |
| 635-017-0090 | 1-1-2009 | Amend | 2-1-2009 | 635-023-0134 | 7-1-2009 | Amend(T) | 8-1-2009 |
| 635-017-0090 | 2-25-2009 | Amend | 4-1-2009 | 635-023-0134 | 10-18-2009 | Amend(T) | 11-1-2009 |
| 635-017-0090 | 3-1-2009 | Amend(T) | 3-1-2009 | 635-023-0134(T) | 7-1-2009 | Suspend | 8-1-2009 |
| 635-017-0090 | 6-30-2009 | Amend(T) | 8-1-2009 | 635-039-0080 | 1-1-2009 | Amend | 2-1-2009 |
| 635-017-0090 | 9-1-2009 | Amend(T) | 10-1-2009 | 635-039-0080 | 4-27-2009 | Amend | 6-1-2009 |
| 635-017-0090 | 9-28-2009 | Amend(T) | 11-1-2009 | 635-039-0085 | 1-1-2009 | Amend | 2-1-2009 |
| 635-017-0090 | 10-5-2009 | Amend(T) | 11-1-2009 | 635-039-0085 | 4-27-2009 | Amend | 6-1-2009 |
| 635-017-0090(T) | 2-25-2009 | Repeal | 4-1-2009 | 635-039-0085 | 5-22-2009 | Amend(T) | 7-1-2009 |
| 635-017-0090(T) | 9-28-2009 | Suspend | 11-1-2009 | 635-039-0085 | 8-16-2009 | Amend(T) | 9-1-2009 |
| 635-017-0090(T) | 10-5-2009 | Suspend | 11-1-2009 | 635-039-0090 | 1-1-2009 | Amend | 2-1-2009 |
| 635-017-0095 | 1-1-2009 | Amend | 2-1-2009 | 635-039-0090 | 2-2-2009 | Amend(T) | 3-1-2009 |
| 635-017-0095 | 1-1-2009 | Amend(T) | 2-1-2009 | 635-039-0090 | 4-27-2009 | Amend | 6-1-2009 |
| 635-017-0095 | 2-25-2009 | Amend | 4-1-2009 | 635-039-0090 | 9-13-2009 | Amend(T) | 10-1-2009 |
| 635-017-0095(T) | 2-25-2009 | Repeal | 4-1-2009 | 635-039-0090(T) | 4-27-2009 | Repeal | 6-1-2009 |
| 635-018-0080 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0005 | 11-21-2008 | Amend | 1-1-2009 |
| 635-018-0090 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0010 | 11-21-2008 | Amend | 1-1-2009 |
| 635-018-0090 | 4-15-2009 | Amend(T) | 4-1-2009 | 635-041-0030 | 11-21-2008 | Amend | 1-1-2009 |
| 635-018-0090 | 8-1-2009 | Amend(T) | 7-1-2009 | 635-041-0030 | 2-26-2009 | Amend | 4-1-2009 |
| 635-018-0090 | 9-1-2009 | Amend(T) | 10-1-2009 | 635-041-0040 | 11-21-2008 | Amend | 1-1-2009 |
| 635-019-0080 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0045 | 11-21-2008 | Amend | 1-1-2009 |
| 635-019-0090 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0060 | 11-21-2008 | Amend | 1-1-2009 |
| 635-019-0090 | 10-18-2009 | Amend(T) | 11-1-2009 | 635-041-0061 | 11-21-2008 | Amend | 1-1-2009 |
| 635-019-0090 | 10-18-2009 | Amend(T) | 11-1-2009 | 635-041-0061 | 2-26-2009 | Amend | 4-1-2009 |
| 635-019-0090(T) | 10-18-2009 | Suspend | 11-1-2009 | 635-041-0063 | 11-21-2008 | Amend | 1-1-2009 |
| 635-021-0080 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0063 | 2-26-2009 | Amend | 4-1-2009 |
| 635-021-0090 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0063 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 635-021-0090 | 5-30-2009 | Amend(T) | 7-1-2009 | 635-041-0065 | 11-21-2008 | Amend | 1-1-2009 |
| 635-021-0090 | 6-13-2009 | Amend(T) | 7-1-2009 | 635-041-0065 | 2-2-2009 | Amend(T) | 3-1-2009 |
| 635-021-0090 | 7-5-2009 | Amend(T) | 8-1-2009 | 635-041-0065 | 2-16-2009 | Amend(T) | 3-1-2009 |
| 635-021-0090(T) | 6-13-2009 | Suspend | 7-1-2009 | 635-041-0065 | 3-6-2009 | Amend(T) | 4-1-2009 |
| 635-021-0090(T) | 7-5-2009 | Suspend | 8-1-2009 | 635-041-0065(T) | 2-16-2009 | Suspend | 3-1-2009 |
| 635-023-0080 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0065(T) | 3-6-2009 | Suspend | 4-1-2009 |
| 635-023-0090 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0075 | 8-1-2009 | Amend(T) | 9-1-2009 |
| 635-023-0095 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0075 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 635-023-0095 | 1-1-2009 | Amend(T) | 2-1-2009 | 635-041-0075 | 9-13-2009 | Amend(T) | 10-1-2009 |
| 635-023-0095 | 2-26-2009 | Amend | 4-1-2009 | 635-041-0075 | 9-21-2009 | Amend(T) | 11-1-2009 |
| 635-023-0095 | 4-13-2009 | Amend(T) | 5-1-2009 | 635-041-0075 | 9-29-2009 | Amend(T) | 11-1-2009 |
| 635-023-0095 | 6-6-2009 | Amend(T) | 7-1-2009 | 635-041-0075 | 10-14-2009 | Amend(T) | 11-1-2009 |
| 635-023-0095 | 7-9-2009 | Amend(T) | 8-1-2009 | 635-041-0075(T) | 8-24-2009 | Suspend | 10-1-2009 |
| 635-023-0095 | 7-24-2009 | Amend(T) | 9-1-2009 | 635-041-0075(T) | 9-13-2009 | Suspend | 10-1-2009 |
| 635-023-0095(T) | 2-26-2009 | Repeal | 4-1-2009 | 635-041-0075(T) | 9-21-2009 | Suspend | 11-1-2009 |
| 635-023-0095(T) | 6-6-2009 | Suspend | 7-1-2009 | 635-041-0075(T) | 9-29-2009 | Suspend | 11-1-2009 |
| 635-023-0095(T) | 7-9-2009 | Suspend | 8-1-2009 | 635-041-0075(T) | 10-14-2009 | Suspend | 11-1-2009 |
| 635-023-0095(T) | 7-24-2009 | Suspend | 9-1-2009 | 635-041-0076 | 5-16-2009 | Amend(T) | 6-1-2009 |
| 635-023-0125 | 1-1-2009 | Amend | 2-1-2009 | 635-041-0076 | 5-27-2009 | Amend(T) | 7-1-2009 |
| 635-023-0125 | 2-26-2009 | Amend | 4-1-2009 | 635-041-0076 | 6-16-2009 | Amend(T) | 7-1-2009 |
| 635-023-0125 | 3-1-2009 | Amend(T) | 3-1-2009 | 635-041-0076 | 6-30-2009 | Amend(T) | 8-1-2009 |
| 635-023-0125 | 5-15-2009 | Amend(T) | 6-1-2009 | 635-041-0076 | 7-8-2009 | Amend(T) | 8-1-2009 |
| 635-023-0125 | 6-12-2009 | Amend(T) | 7-1-2009 | 635-041-0076 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 635-023-0125(T) | 2-26-2009 | Repeal | 4-1-2009 | 635-041-0076(T) | 5-27-2009 | Suspend | 7-1-2009 |
| 635-023-0125(T) | 6-12-2009 | Suspend | 7-1-2009 | 635-041-0076(T) | 6-16-2009 | Suspend | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 635-041-0076(T) | 6-30-2009 | Suspend | 8-1-2009 | 635-042-0170 | 9-5-2009 | Amend(T) | 10-1-2009 |
| 635-041-0076(T) | 7-8-2009 | Suspend | 8-1-2009 | 635-042-0170(T) | 9-5-2009 | Suspend | 10-1-2009 |
| 635-041-0076(T) | 7-15-2009 | Suspend | 8-1-2009 | 635-042-0180 | 2-15-2009 | Amend(T) | 3-1-2009 |
| 635-041-0510 | 11-21-2008 | Amend | 1-1-2009 | 635-042-0180 | 3-6-2009 | Amend(T) | 4-1-2009 |
| 635-041-0520 | 11-21-2008 | Amend | 1-1-2009 | 635-042-0180 | 4-7-2009 | Amend(T) | 5-1-2009 |
| 635-041-0600 | 11-21-2008 | Amend | 1-1-2009 | 635-042-0180 | 5-17-2009 | Amend(T) | 6-1-2009 |
| 635-042-0001 | 11-21-2008 | Amend | 1-1-2009 | 635-042-0180 | 8-4-2009 | Amend(T) | 9-1-2009 |
| 635-042-0007 | 11-21-2008 | Amend | 1-1-2009 | 635-042-0180 | 9-5-2009 | Amend(T) | 10-1-2009 |
| 635-042-0022 | 11-21-2008 | Amend | 1-1-2009 | 635-042-0180 | 9-13-2009 | Amend(T) | 10-1-2009 |
| 635-042-0022 | 3-27-2009 | Amend(T) | 5-1-2009 | 635-042-0180 | 9-30-2009 | Amend(T) | 11-1-2009 |
| 635-042-0022 | 4-7-2009 | Amend(T) | 5-1-2009 | 635-042-0180(T) | 3-6-2009 | Suspend | 4-1-2009 |
| 635-042-0022 | 4-14-2009 | Amend(T) | 5-1-2009 | 635-042-0180(T) | 4-7-2009 | Suspend | 5-1-2009 |
| 635-042-0022(T) | 4-7-2009 | Suspend | 5-1-2009 | 635-042-0180(T) | 5-17-2009 | Suspend | 6-1-2009 |
| 635-042-0022(T) | 4-14-2009 | Suspend | 5-1-2009 | 635-042-0180(T) | 9-5-2009 | Suspend | 10-1-2009 |
| 635-042-0027 | 6-18-2009 | Amend(T) | 7-1-2009 | 635-042-0180(T) | 9-13-2009 | Suspend | 10-1-2009 |
| 635-042-0031 | 8-4-2009 | Amend(T) | 9-1-2009 | 635-042-0180(T) | 9-30-2009 | Suspend | 11-1-2009 |
| 635-042-0031 | 8-8-2009 | Amend(T) | 9-1-2009 | 635-043-0105 | 4-13-2009 | Amend(T) | 5-1-2009 |
| 635-042-0031 | 8-21-2009 | Amend(T) | 10-1-2009 | 635-043-0105 | 8-11-2009 | Amend(T) | 9-1-2009 |
| 635-042-0031 | 8-25-2009 | Amend(T) | 10-1-2009 | 635-043-0105(T) | 8-11-2009 | Suspend | 9-1-2009 |
| 635-042-0031 | 8-27-2009 | Amend(T) | 10-1-2009 | 635-044-0002 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0031(T) | 8-8-2009 | Suspend | 9-1-2009 | 635-044-0005 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0031(T) | 8-21-2009 | Suspend | 10-1-2009 | 635-044-0015 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0031(T) | 8-25-2009 | Suspend | 10-1-2009 | 635-044-0035 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0031(T) | 8-27-2009 | Suspend | 10-1-2009 | 635-044-0060 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0060 | 9-24-2009 | Amend(T) | 11-1-2009 | 635-044-0130 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0060 | 9-30-2009 | Amend(T) | 11-1-2009 | 635-045-0000 | 1-1-2009 | Amend | 2-1-2009 |
| 635-042-0060 | 10-5-2009 | Amend(T) | 11-1-2009 | 635-045-0000 | 8-12-2009 | Amend | 9-1-2009 |
| 635-042-0060 | 10-7-2009 | Amend(T) | 11-1-2009 | 635-045-0002 | 1-1-2009 | Amend | 2-1-2009 |
| 635-042-0060 | 10-13-2009 | Amend(T) | 11-1-2009 | 635-045-0002 | 9-8-2009 | Amend | 10-1-2009 |
| 635-042-0060(T) | 9-30-2009 | Suspend | 11-1-2009 | 635-048-0080 | 5-7-2009 | Amend(T) | 6-1-2009 |
| 635-042-0060(T) | 10-5-2009 | Suspend | 11-1-2009 | 635-049-0025 | 6-10-2009 | Amend | 7-1-2009 |
| 635-042-0060(T) | 10-7-2009 | Suspend | 11-1-2009 | 635-049-0055 | 6-10-2009 | Repeal | 7-1-2009 |
| 635-042-0060(T) | 10-13-2009 | Suspend | 11-1-2009 | 635-049-0065 | 6-10-2009 | Adopt | 7-1-2009 |
| 635-042-0110 | 11-21-2008 | Amend | 1-1-2009 | 635-049-0067 | 6-10-2009 | Adopt | 7-1-2009 |
| 635-042-0110 | 6-1-2009 | Amend(T) | 7-1-2009 | 635-049-0069 | 6-10-2009 | Adopt | 7-1-2009 |
| 635-042-0130 | 1-1-2009 | Amend(T) | 2-1-2009 | 635-049-0071 | 6-10-2009 | Adopt | 7-1-2009 |
| 635-042-0130 | 2-26-2009 | Amend | 4-1-2009 | 635-049-0073 | 6-10-2009 | Adopt | 7-1-2009 |
| 635-042-0130(T) | 2-26-2009 | Repeal | 4-1-2009 | 635-049-0090 | 6-10-2009 | Repeal | 7-1-2009 |
| 635-042-0133 | 2-26-2009 | Amend | 4-1-2009 | 635-049-0200 | 5-6-2009 | Repeal | 6-1-2009 |
| 635-042-0135 | 1-1-2009 | Amend(T) | 2-1-2009 | 635-049-0205 | 11-24-2008 | Amend | 1-1-2009 |
| 635-042-0135 | 2-2-2009 | Amend(T) | 3-1-2009 | 635-049-0210 | 1-1-2009 | Repeal | 2-1-2009 |
| 635-042-0135(T) | 2-2-2009 | Suspend | 3-1-2009 | 635-049-0235 | 1-1-2009 | Adopt | 2-1-2009 |
| 635-042-0145 | 2-15-2009 | Amend(T) | 3-1-2009 | 635-049-0255 | 5-6-2009 | Adopt | 6-1-2009 |
| 635-042-0145 | 3-11-2009 | Amend(T) | 4-1-2009 | 635-051-0000 | 8-12-2009 | Amend | 9-1-2009 |
| 635-042-0145 | 5-17-2009 | Amend(T) | 6-1-2009 | 635-051-0075 | 8-28-2009 | Amend(T) | 10-1-2009 |
| 635-042-0145 | 8-4-2009 | Amend(T) | 9-1-2009 | 635-052-0000 | 8-12-2009 | Amend | 9-1-2009 |
| 635-042-0145 | 9-5-2009 | Amend(T) | 10-1-2009 | 635-053-0000 | 8-12-2009 | Amend | 9-1-2009 |
| 635-042-0145(T) | 3-11-2009 | Suspend | 4-1-2009 | 635-054-0000 | 8-12-2009 | Amend | 9-1-2009 |
| 635-042-0145(T) | 5-17-2009 | Suspend | 6-1-2009 | 635-055-0035 | 1-1-2009 | Amend | 2-1-2009 |
| 635-042-0145(T) | 9-5-2009 | Suspend | 10-1-2009 | 635-055-0035 | 5-15-2009 | Amend(T) | 4-1-2009 |
| 635-042-0160 | 2-15-2009 | Amend(T) | 3-1-2009 | 635-055-0037 | 1-1-2009 | Adopt | 2-1-2009 |
| 635-042-0160 | 5-17-2009 | Amend(T) | 6-1-2009 | 635-060-0000 | 1-1-2009 | Amend | 2-1-2009 |
| 635-042-0160 | 8-4-2009 | Amend(T) | 9-1-2009 | 635-060-0000 | 8-12-2009 | Amend | 9-1-2009 |
| 635-042-0160 | 9-5-2009 | Amend(T) | 10-1-2009 | 635-060-0008 | 5-12-2009 | Amend(T) | 6-1-2009 |
| 635-042-0160(T) | 5-17-2009 | Suspend | 6-1-2009 | 635-060-0008 | 5-14-2009 | Amend(T) | 6-1-2009 |
| 635-042-0160(T) | 9-5-2009 | Suspend | 10-1-2009 | 635-060-0009 | 1-1-2009 | Amend | 2-1-2009 |
| 635-042-0170 | 2-15-2009 | Amend(T) | 3-1-2009 | 635-060-0009 | 5-28-2009 | Amend(T) | 7-1-2009 |
| 635-042-0170 | 8-4-2009 | Amend(T) | 9-1-2009 | 635-060-0046 | 6-10-2009 | Amend | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|-----------|----------|-----------|
| 635-060-0055 | 1-1-2009 | Amend | 2-1-2009 | 660-041-0080 | 8-18-2009 | Amend(T) | 10-1-2009 |
| 635-065-0001 | 1-1-2009 | Amend | 2-1-2009 | 660-041-0095 | 8-18-2009 | Adopt(T) | 10-1-2009 |
| 635-065-0015 | 6-10-2009 | Amend | 7-1-2009 | 660-041-0110 | 4-2-2009 | Amend | 5-1-2009 |
| 635-065-0015 | 9-2-2009 | Amend(T) | 10-1-2009 | 660-041-0170 | 4-2-2009 | Adopt | 5-1-2009 |
| 635-065-0401 | 1-1-2009 | Amend | 2-1-2009 | 661-010-0015 | 8-5-2009 | Amend(T) | 9-1-2009 |
| 635-065-0625 | 1-1-2009 | Amend | 2-1-2009 | 661-010-0038 | 8-5-2009 | Amend(T) | 9-1-2009 |
| 635-065-0720 | 10-7-2009 | Amend | 11-1-2009 | 661-010-0050 | 8-5-2009 | Amend(T) | 9-1-2009 |
| 635-065-0740 | 1-1-2009 | Amend | 2-1-2009 | 670-010-0005 | 7-1-2009 | Amend | 7-1-2009 |
| 635-065-0760 | 1-1-2009 | Amend | 2-1-2009 | 670-010-0006 | 7-1-2009 | Repeal | 7-1-2009 |
| 635-065-0765 | 1-9-2009 | Amend | 2-1-2009 | 670-010-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 635-066-0000 | 1-1-2009 | Amend | 2-1-2009 | 670-010-0011 | 7-1-2009 | Amend | 7-1-2009 |
| 635-066-0010 | 1-1-2009 | Amend | 2-1-2009 | 690-180-0005 | 7-30-2009 | Adopt(T) | 9-1-2009 |
| 635-066-0020 | 1-1-2009 | Amend | 2-1-2009 | 690-180-0005 | 9-2-2009 | Amend(T) | 10-1-2009 |
| 635-067-0000 | 1-1-2009 | Amend | 2-1-2009 | 690-180-0005(T) | 9-2-2009 | Suspend | 10-1-2009 |
| 635-067-0000 | 6-10-2009 | Amend | 7-1-2009 | 690-180-0010 | 7-30-2009 | Adopt(T) | 9-1-2009 |
| 635-067-0004 | 1-1-2009 | Amend | 2-1-2009 | 690-180-0100 | 7-30-2009 | Adopt(T) | 9-1-2009 |
| 635-067-0030 | 9-9-2009 | Amend(T) | 10-1-2009 | 690-180-0200 | 7-30-2009 | Adopt(T) | 9-1-2009 |
| 635-068-0000 | 3-1-2009 | Amend | 4-1-2009 | 690-180-0300 | 7-30-2009 | Adopt(T) | 9-1-2009 |
| 635-068-0000 | 6-10-2009 | Amend | 7-1-2009 | 690-180-0300(T) | 9-2-2009 | Suspend | 10-1-2009 |
| 635-069-0000 | 2-3-2009 | Amend | 3-1-2009 | 690-200-0050 | 1-2-2009 | Amend | 2-1-2009 |
| 635-069-0000 | 6-10-2009 | Amend | 7-1-2009 | 690-205-0200 | 1-2-2009 | Amend | 2-1-2009 |
| 635-070-0000 | 4-1-2009 | Amend | 5-1-2009 | 690-205-0205 | 1-2-2009 | Adopt | 2-1-2009 |
| 635-070-0000 | 6-10-2009 | Amend | 7-1-2009 | 690-215-0005 | 1-2-2009 | Amend | 2-1-2009 |
| 635-071-0000 | 4-1-2009 | Amend | 5-1-2009 | 690-215-0006 | 1-2-2009 | Adopt | 2-1-2009 |
| 635-071-0000 | 6-10-2009 | Amend | 7-1-2009 | 690-215-0025 | 1-2-2009 | Adopt | 2-1-2009 |
| 635-072-0000 | 1-1-2009 | Amend | 2-1-2009 | 690-215-0030 | 1-2-2009 | Amend | 2-1-2009 |
| 635-073-0000 | 2-3-2009 | Amend | 3-1-2009 | 690-215-0035 | 1-2-2009 | Adopt | 2-1-2009 |
| 635-073-0000 | 6-10-2009 | Amend | 7-1-2009 | 690-215-0040 | 1-2-2009 | Amend | 2-1-2009 |
| 635-073-0065 | 2-3-2009 | Amend | 3-1-2009 | 690-220-0030 | 1-2-2009 | Amend | 2-1-2009 |
| 635-073-0070 | 2-3-2009 | Amend | 3-1-2009 | 690-220-0040 | 1-2-2009 | Amend | 2-1-2009 |
| 635-075-0005 | 5-5-2009 | Amend(T) | 6-1-2009 | 690-220-0050 | 1-2-2009 | Amend | 2-1-2009 |
| 635-075-0005 | 6-10-2009 | Amend | 7-1-2009 | 690-220-0060 | 1-2-2009 | Repeal | 2-1-2009 |
| 635-075-0005(T) | 6-10-2009 | Repeal | 7-1-2009 | 690-220-0070 | 1-2-2009 | Amend | 2-1-2009 |
| 635-080-0050 | 1-1-2009 | Amend | 2-1-2009 | 690-220-0080 | 1-2-2009 | Amend | 2-1-2009 |
| 635-080-0051 | 1-1-2009 | Amend | 2-1-2009 | 690-220-0115 | 1-2-2009 | Adopt | 2-1-2009 |
| 635-080-0062 | 1-1-2009 | Amend | 2-1-2009 | 690-240-0010 | 1-2-2009 | Amend | 2-1-2009 |
| 635-080-0063 | 1-1-2009 | Amend | 2-1-2009 | 690-240-0035 | 1-2-2009 | Amend | 2-1-2009 |
| 635-100-0001 | 9-8-2009 | Amend | 10-1-2009 | 690-240-0375 | 1-2-2009 | Amend | 2-1-2009 |
| 635-100-0040 | 9-8-2009 | Amend | 10-1-2009 | 690-240-0385 | 1-2-2009 | Adopt | 2-1-2009 |
| 635-195-0000 | 11-24-2008 | Adopt | 1-1-2009 | 690-380-0090 | 6-18-2009 | Amend | 8-1-2009 |
| 635-195-0010 | 11-24-2008 | Adopt | 1-1-2009 | 690-380-0100 | 6-18-2009 | Amend | 8-1-2009 |
| 643-010-0010 | 9-1-2009 | Amend | 10-1-2009 | 690-380-4010 | 6-18-2009 | Amend | 8-1-2009 |
| 647-010-0010 | 7-1-2009 | Amend | 6-1-2009 | 690-382-0100 | 6-18-2009 | Amend | 8-1-2009 |
| 660-024-0000 | 4-16-2009 | Amend | 5-1-2009 | 690-382-0300 | 6-18-2009 | Amend | 8-1-2009 |
| 660-024-0010 | 4-16-2009 | Amend | 5-1-2009 | 690-382-0500 | 6-18-2009 | Amend | 8-1-2009 |
| 660-024-0020 | 4-16-2009 | Amend | 5-1-2009 | 690-382-0700 | 6-18-2009 | Amend | 8-1-2009 |
| 660-024-0030 | 4-16-2009 | Amend | 5-1-2009 | 690-512-0040 | 7-1-2009 | Amend | 8-1-2009 |
| 660-024-0040 | 4-16-2009 | Amend | 5-1-2009 | 690-512-0100 | 7-1-2009 | Adopt | 8-1-2009 |
| 660-024-0050 | 4-16-2009 | Amend | 5-1-2009 | 731-050-0030 | 5-20-2009 | Adopt(T) | 7-1-2009 |
| 660-024-0060 | 4-16-2009 | Amend | 5-1-2009 | 731-070-0240 | 7-29-2009 | Amend(T) | 9-1-2009 |
| 660-024-0070 | 4-16-2009 | Amend | 5-1-2009 | 731-070-0245 | 7-29-2009 | Adopt(T) | 9-1-2009 |
| 660-024-0080 | 4-16-2009 | Adopt | 5-1-2009 | 732-005-0000 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 660-033-0120 | 1-2-2009 | Amend | 2-1-2009 | 732-005-0010 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 660-033-0130 | 1-2-2009 | Amend | 2-1-2009 | 732-005-0016 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 660-041-0000 | 8-18-2009 | Amend(T) | 10-1-2009 | 732-005-0021 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 660-041-0010 | 4-2-2009 | Amend | 5-1-2009 | 732-005-0027 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 660-041-0010 | 8-18-2009 | Amend(T) | 10-1-2009 | 732-005-0031 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 660-041-0020 | 8-18-2009 | Amend(T) | 10-1-2009 | 732-005-0036 | 8-24-2009 | Amend(T) | 10-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|----------|-----------|-----------------|------------|----------|-----------|
| 732-005-0046 | 8-24-2009 | Amend(T) | 10-1-2009 | 733-030-0440 | 6-1-2009 | Adopt | 7-1-2009 |
| 732-005-0051 | 8-24-2009 | Amend(T) | 10-1-2009 | 733-030-0450 | 6-1-2009 | Adopt | 7-1-2009 |
| 732-005-0056 | 8-24-2009 | Amend(T) | 10-1-2009 | 733-030-0460 | 6-1-2009 | Adopt | 7-1-2009 |
| 732-005-0061 | 8-24-2009 | Amend(T) | 10-1-2009 | 733-030-0470 | 6-1-2009 | Adopt | 7-1-2009 |
| 732-005-0066 | 8-24-2009 | Amend(T) | 10-1-2009 | 733-030-0480 | 6-1-2009 | Adopt | 7-1-2009 |
| 732-005-0076 | 8-24-2009 | Amend(T) | 10-1-2009 | 734-017-0015 | 9-29-2009 | Amend | 11-1-2009 |
| 732-005-0081 | 8-24-2009 | Amend(T) | 10-1-2009 | 734-017-0025 | 9-29-2009 | Amend | 11-1-2009 |
| 732-030-0005 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-059-0015 | 2-20-2009 | Amend | 4-1-2009 |
| 732-030-0010 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-060-0000 | 3-23-2009 | Adopt | 5-1-2009 |
| 732-030-0015 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-060-0010 | 2-20-2009 | Amend | 4-1-2009 |
| 732-030-0020 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-060-0105 | 2-20-2009 | Amend | 4-1-2009 |
| 732-030-0025 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-060-0175 | 2-20-2009 | Amend | 4-1-2009 |
| 732-030-0030 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-060-0185 | 2-20-2009 | Amend | 4-1-2009 |
| 732-030-0035 | 8-24-2009 | Adopt(T) | 10-1-2009 | 734-062-0005 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0006 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0010 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0011 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0015 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0016 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0020 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0021 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0025 | 7-20-2009 | Repeal | 9-1-2009 |
| 733-030-0021 | 9-29-2009 | Amend | 11-1-2009 | 734-062-0030 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0026 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0035 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0036 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0040 | 7-20-2009 | Amend | 9-1-2009 |
| 733-030-0045 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0045 | 7-20-2009 | Repeal | 9-1-2009 |
| 733-030-0050 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0100 | 3-23-2009 | Adopt | 5-1-2009 |
| 733-030-0055 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0105 | 3-23-2009 | Adopt | 5-1-2009 |
| 733-030-0060 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0110 | 3-23-2009 | Adopt | 5-1-2009 |
| 733-030-0065 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0115 | 3-23-2009 | Adopt | 5-1-2009 |
| 733-030-0080 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0120 | 3-23-2009 | Adopt | 5-1-2009 |
| 733-030-0085 | 4-3-2009 | Amend | 5-1-2009 | 734-062-0125 | 3-23-2009 | Adopt | 5-1-2009 |
| 733-030-0090 | 4-3-2009 | Amend | 5-1-2009 | 734-071-0010 | 12-15-2008 | Amend | 1-1-2009 |
| 733-030-0095 | 4-3-2009 | Amend | 5-1-2009 | 734-072-0010 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0100 | 4-3-2009 | Amend | 5-1-2009 | 734-072-0020 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0105 | 4-3-2009 | Amend | 5-1-2009 | 734-072-0022 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0110 | 4-3-2009 | Amend | 5-1-2009 | 734-072-0030 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0115 | 4-3-2009 | Amend | 5-1-2009 | 734-073-0110 | 12-15-2008 | Amend | 1-1-2009 |
| 733-030-0120 | 4-3-2009 | Amend | 5-1-2009 | 734-073-0120 | 12-15-2008 | Repeal | 1-1-2009 |
| 733-030-0125 | 4-3-2009 | Amend | 5-1-2009 | 734-075-0010 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0130 | 4-3-2009 | Amend | 5-1-2009 | 734-078-0015 | 4-17-2009 | Amend | 6-1-2009 |
| 733-030-0135 | 4-3-2009 | Amend | 5-1-2009 | 734-078-0017 | 4-17-2009 | Adopt | 6-1-2009 |
| 733-030-0140 | 4-3-2009 | Repeal | 5-1-2009 | 734-082-0015 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0150 | 4-3-2009 | Amend | 5-1-2009 | 734-082-0025 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0155 | 4-3-2009 | Amend | 5-1-2009 | 734-082-0040 | 3-20-2009 | Amend | 5-1-2009 |
| 733-030-0160 | 4-3-2009 | Amend | 5-1-2009 | 735-010-0030 | 10-1-2009 | Amend | 11-1-2009 |
| 733-030-0180 | 4-3-2009 | Amend | 5-1-2009 | 735-010-0130 | 1-1-2009 | Amend | 1-1-2009 |
| 733-030-0190 | 4-3-2009 | Amend | 5-1-2009 | 735-010-0130(T) | 1-1-2009 | Repeal | 1-1-2009 |
| 733-030-0250 | 4-3-2009 | Amend | 5-1-2009 | 735-016-0030 | 6-1-2009 | Amend | 7-1-2009 |
| 733-030-0260 | 4-3-2009 | Amend | 5-1-2009 | 735-016-0070 | 6-1-2009 | Amend | 7-1-2009 |
| 733-030-0270 | 4-3-2009 | Amend | 5-1-2009 | 735-022-0090 | 8-24-2009 | Amend | 10-1-2009 |
| 733-030-0280 | 4-3-2009 | Amend | 5-1-2009 | 735-024-0015 | 9-29-2009 | Amend(T) | 11-1-2009 |
| 733-030-0290 | 4-3-2009 | Amend | 5-1-2009 | 735-024-0025 | 9-29-2009 | Amend(T) | 11-1-2009 |
| 733-030-0300 | 4-3-2009 | Amend | 5-1-2009 | 735-032-0010 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 733-030-0320 | 4-3-2009 | Amend | 5-1-2009 | 735-032-0036 | 2-20-2009 | Adopt | 4-1-2009 |
| 733-030-0330 | 4-3-2009 | Amend | 5-1-2009 | 735-040-0097 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 733-030-0340 | 4-3-2009 | Amend | 5-1-2009 | 735-040-0098 | 8-24-2009 | Adopt(T) | 10-1-2009 |
| 733-030-0350 | 4-3-2009 | Amend | 5-1-2009 | 735-046-0010 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 733-030-0400 | 6-1-2009 | Adopt | 7-1-2009 | 735-046-0050 | 8-24-2009 | Amend(T) | 10-1-2009 |
| 733-030-0410 | 6-1-2009 | Adopt | 7-1-2009 | 735-050-0000 | 8-24-2009 | Amend | 10-1-2009 |
| 733-030-0420 | 6-1-2009 | Adopt | 7-1-2009 | 735-060-0040 | 7-1-2009 | Amend | 8-1-2009 |
| 733-030-0430 | 6-1-2009 | Adopt | 7-1-2009 | 735-060-0055 | 7-1-2009 | Amend | 8-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|--------------|------------|----------|-----------|
| 735-060-0057 | 7-1-2009 | Amend | 8-1-2009 | 735-170-0110 | 7-1-2009 | Amend | 7-1-2009 |
| 735-060-0065 | 7-1-2009 | Amend | 8-1-2009 | 735-170-0115 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-060-0105 | 7-1-2009 | Amend | 8-1-2009 | 735-170-0120 | 7-1-2009 | Amend | 7-1-2009 |
| 735-060-0110 | 7-1-2009 | Amend | 8-1-2009 | 735-170-0130 | 7-1-2009 | Amend | 7-1-2009 |
| 735-060-0120 | 7-1-2009 | Amend | 8-1-2009 | 735-170-0140 | 7-1-2009 | Amend | 7-1-2009 |
| 735-060-0130 | 7-1-2009 | Amend | 8-1-2009 | 735-174-0000 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0005 | 1-1-2009 | Amend | 1-1-2009 | 735-174-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0014 | 1-1-2009 | Adopt | 1-1-2009 | 735-174-0020 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0014(T) | 1-1-2009 | Repeal | 1-1-2009 | 735-174-0030 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0015 | 1-1-2009 | Amend | 1-1-2009 | 735-174-0035 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-062-0015(T) | 1-1-2009 | Repeal | 1-1-2009 | 735-174-0040 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0020 | 1-1-2009 | Amend | 1-1-2009 | 735-174-0045 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-062-0020(T) | 1-1-2009 | Repeal | 1-1-2009 | 735-176-0000 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0040 | 2-20-2009 | Amend | 4-1-2009 | 735-176-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 735-062-0078 | 2-20-2009 | Adopt | 4-1-2009 | 735-176-0015 | 7-1-2009 | Repeal | 7-1-2009 |
| 735-062-0080 | 2-20-2009 | Amend | 4-1-2009 | 735-176-0017 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-062-0080 | 7-1-2009 | Amend | 8-1-2009 | 735-176-0018 | 7-1-2009 | Repeal | 7-1-2009 |
| 735-062-0096 | 3-20-2009 | Adopt | 5-1-2009 | 735-176-0019 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-062-0140 | 2-20-2009 | Amend | 4-1-2009 | 735-176-0020 | 7-1-2009 | Amend | 7-1-2009 |
| 735-063-0000 | 2-20-2009 | Adopt | 4-1-2009 | 735-176-0021 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-063-0050 | 2-20-2009 | Amend | 4-1-2009 | 735-176-0022 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-063-0055 | 2-20-2009 | Repeal | 4-1-2009 | 735-176-0030 | 7-1-2009 | Amend | 7-1-2009 |
| 735-063-0060 | 2-20-2009 | Amend | 4-1-2009 | 735-176-0040 | 7-1-2009 | Amend | 7-1-2009 |
| 735-063-0065 | 2-20-2009 | Amend | 4-1-2009 | 735-176-0045 | 7-1-2009 | Adopt | 7-1-2009 |
| 735-063-0070 | 2-20-2009 | Amend | 4-1-2009 | 736-004-0062 | 12-15-2008 | Amend | 1-1-2009 |
| 735-063-0075 | 2-20-2009 | Amend | 4-1-2009 | 736-004-0062 | 6-18-2009 | Amend | 8-1-2009 |
| 735-064-0020 | 6-25-2009 | Amend | 8-1-2009 | 736-010-0040 | 12-15-2008 | Amend | 1-1-2009 |
| 735-064-0040 | 6-25-2009 | Amend | 8-1-2009 | 736-010-0040 | 6-18-2009 | Amend | 8-1-2009 |
| 735-064-0110 | 12-15-2008 | Amend | 1-1-2009 | 736-010-0055 | 12-15-2008 | Amend | 1-1-2009 |
| 735-070-0043 | 1-26-2009 | Adopt | 3-1-2009 | 736-010-0055 | 6-18-2009 | Amend | 8-1-2009 |
| 735-070-0043(T) | 1-26-2009 | Repeal | 3-1-2009 | 736-015-0006 | 9-29-2009 | Amend | 11-1-2009 |
| 735-150-0005 | 3-20-2009 | Amend | 5-1-2009 | 736-015-0015 | 8-1-2009 | Amend | 7-1-2009 |
| 735-150-0005 | 9-29-2009 | Amend(T) | 11-1-2009 | 736-015-0015 | 9-29-2009 | Amend | 11-1-2009 |
| 735-158-0000 | 3-20-2009 | Amend | 5-1-2009 | 736-015-0020 | 2-10-2009 | Amend | 3-1-2009 |
| 735-158-0005 | 3-20-2009 | Adopt | 5-1-2009 | 736-015-0020 | 9-29-2009 | Amend | 11-1-2009 |
| 735-158-0010 | 3-20-2009 | Adopt | 5-1-2009 | 736-015-0026 | 9-29-2009 | Amend | 11-1-2009 |
| 735-160-0010 | 2-20-2009 | Amend | 4-1-2009 | 736-015-0030 | 9-29-2009 | Amend | 11-1-2009 |
| 735-160-0011 | 2-20-2009 | Amend | 4-1-2009 | 736-015-0035 | 6-2-2009 | Amend | 7-1-2009 |
| 735-160-0012 | 2-20-2009 | Repeal | 4-1-2009 | 736-015-0035 | 9-29-2009 | Amend | 11-1-2009 |
| 735-160-0013 | 2-20-2009 | Repeal | 4-1-2009 | 736-015-0040 | 2-10-2009 | Amend | 3-1-2009 |
| 735-160-0075 | 2-20-2009 | Amend | 4-1-2009 | 736-015-0040 | 9-29-2009 | Amend | 11-1-2009 |
| 735-160-0080 | 2-20-2009 | Amend | 4-1-2009 | 736-015-0043 | 9-29-2009 | Adopt | 11-1-2009 |
| 735-160-0085 | 2-20-2009 | Repeal | 4-1-2009 | 736-018-0045 | 2-1-2009 | Amend | 2-1-2009 |
| 735-160-0093 | 2-20-2009 | Repeal | 4-1-2009 | 736-018-0045 | 4-1-2009 | Amend | 4-1-2009 |
| 735-160-0125 | 2-20-2009 | Amend | 4-1-2009 | 736-018-0045 | 5-1-2009 | Amend | 5-1-2009 |
| 735-170-0000 | 7-1-2009 | Amend | 7-1-2009 | 736-018-0045 | 5-1-2009 | Amend | 5-1-2009 |
| 735-170-0010 | 7-1-2009 | Amend | 7-1-2009 | 736-018-0045 | 6-1-2009 | Amend | 6-1-2009 |
| 735-170-0020 | 7-1-2009 | Amend | 7-1-2009 | 736-018-0045 | 9-3-2009 | Amend | 10-1-2009 |
| 735-170-0030 | 7-1-2009 | Repeal | 7-1-2009 | 736-018-0045 | 10-1-2009 | Amend | 10-1-2009 |
| 735-170-0040 | 7-1-2009 | Amend | 7-1-2009 | 736-050-0001 | 9-28-2009 | Amend(T) | 11-1-2009 |
| 735-170-0045 | 7-1-2009 | Amend | 7-1-2009 | 736-050-0002 | 9-28-2009 | Suspend | 11-1-2009 |
| 735-170-0050 | 7-1-2009 | Amend | 7-1-2009 | 736-050-0005 | 9-28-2009 | Suspend | 11-1-2009 |
| 735-170-0060 | 7-1-2009 | Repeal | 7-1-2009 | 736-050-0100 | 9-28-2009 | Amend(T) | 11-1-2009 |
| 735-170-0070 | 7-1-2009 | Repeal | 7-1-2009 | 736-050-0105 | 9-28-2009 | Amend(T) | 11-1-2009 |
| 735-170-0080 | 7-1-2009 | Repeal | 7-1-2009 | 736-050-0110 | 9-28-2009 | Suspend | 11-1-2009 |
| 735-170-0090 | 7-1-2009 | Amend | 7-1-2009 | 736-050-0112 | 9-28-2009 | Adopt(T) | 11-1-2009 |
| 735-170-0100 | 7-1-2009 | Amend | 7-1-2009 | 736-050-0115 | 9-28-2009 | Suspend | 11-1-2009 |
| 735-170-0105 | 7-1-2009 | Adopt | 7-1-2009 | 736-050-0120 | 9-28-2009 | Amend(T) | 11-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|----------|-----------|--------------|-----------|--------|-----------|
| 736-050-0125 | 9-28-2009 | Amend(T) | 11-1-2009 | 740-300-0035 | 9-29-2009 | Amend | 11-1-2009 |
| 736-050-0130 | 9-28-2009 | Suspend | 11-1-2009 | 741-100-0005 | 2-20-2009 | Adopt | 4-1-2009 |
| 736-050-0135 | 9-28-2009 | Amend(T) | 11-1-2009 | 741-100-0020 | 2-20-2009 | Amend | 4-1-2009 |
| 736-050-0140 | 9-28-2009 | Amend(T) | 11-1-2009 | 741-100-0030 | 2-20-2009 | Amend | 4-1-2009 |
| 736-050-0150 | 9-28-2009 | Suspend | 11-1-2009 | 741-100-0040 | 2-20-2009 | Adopt | 4-1-2009 |
| 736-140-0010 | 6-2-2009 | Adopt(T) | 7-1-2009 | 741-105-0010 | 2-20-2009 | Repeal | 4-1-2009 |
| 736-140-0020 | 6-2-2009 | Adopt(T) | 7-1-2009 | 741-105-0020 | 2-20-2009 | Repeal | 4-1-2009 |
| 736-146-0010 | 12-15-2008 | Amend | 1-1-2009 | 741-105-0030 | 2-20-2009 | Repeal | 4-1-2009 |
| 736-146-0012 | 12-15-2008 | Amend | 1-1-2009 | 741-110-0020 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0015 | 12-15-2008 | Amend | 1-1-2009 | 741-110-0030 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0020 | 12-15-2008 | Amend | 1-1-2009 | 741-110-0040 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0025 | 12-15-2008 | Repeal | 1-1-2009 | 741-110-0050 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0030 | 12-15-2008 | Repeal | 1-1-2009 | 741-110-0060 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0040 | 12-15-2008 | Repeal | 1-1-2009 | 741-110-0070 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0050 | 12-15-2008 | Amend | 1-1-2009 | 741-110-0080 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0060 | 12-15-2008 | Amend | 1-1-2009 | 741-110-0090 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0070 | 12-15-2008 | Amend | 1-1-2009 | 741-115-0030 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0080 | 12-15-2008 | Amend | 1-1-2009 | 741-115-0040 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0090 | 12-15-2008 | Amend | 1-1-2009 | 741-115-0060 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0100 | 12-15-2008 | Amend | 1-1-2009 | 741-115-0070 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0110 | 12-15-2008 | Amend | 1-1-2009 | 741-120-0020 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0120 | 12-15-2008 | Amend | 1-1-2009 | 741-120-0040 | 2-20-2009 | Amend | 4-1-2009 |
| 736-146-0130 | 12-15-2008 | Amend | 1-1-2009 | 741-125-0020 | 2-20-2009 | Repeal | 4-1-2009 |
| 736-146-0140 | 12-15-2008 | Amend | 1-1-2009 | 741-200-0010 | 2-20-2009 | Amend | 4-1-2009 |
| 736-147-0010 | 12-15-2008 | Amend | 1-1-2009 | 741-200-0040 | 2-20-2009 | Amend | 4-1-2009 |
| 736-147-0020 | 12-15-2008 | Repeal | 1-1-2009 | 741-200-0065 | 2-20-2009 | Adopt | 4-1-2009 |
| 736-147-0030 | 12-15-2008 | Amend | 1-1-2009 | 800-010-0020 | 2-5-2009 | Amend | 3-1-2009 |
| 736-147-0040 | 12-15-2008 | Adopt | 1-1-2009 | 800-010-0025 | 2-5-2009 | Amend | 3-1-2009 |
| 736-147-0050 | 12-15-2008 | Amend | 1-1-2009 | 800-010-0030 | 2-5-2009 | Amend | 3-1-2009 |
| 736-147-0060 | 12-15-2008 | Amend | 1-1-2009 | 800-010-0040 | 2-5-2009 | Amend | 3-1-2009 |
| 736-147-0070 | 12-15-2008 | Adopt | 1-1-2009 | 800-010-0041 | 2-5-2009 | Amend | 3-1-2009 |
| 736-148-0010 | 12-15-2008 | Amend | 1-1-2009 | 800-010-0042 | 2-5-2009 | Amend | 3-1-2009 |
| 736-148-0020 | 12-15-2008 | Amend | 1-1-2009 | 800-015-0005 | 2-5-2009 | Amend | 3-1-2009 |
| 736-149-0010 | 12-15-2008 | Amend | 1-1-2009 | 800-015-0010 | 2-5-2009 | Amend | 3-1-2009 |
| 737-010-0000 | 9-29-2009 | Adopt(T) | 11-1-2009 | 800-015-0015 | 2-5-2009 | Amend | 3-1-2009 |
| 737-010-0010 | 9-29-2009 | Adopt(T) | 11-1-2009 | 800-015-0020 | 2-5-2009 | Amend | 3-1-2009 |
| 737-010-0020 | 9-29-2009 | Adopt(T) | 11-1-2009 | 800-015-0030 | 2-5-2009 | Amend | 3-1-2009 |
| 740-015-0020 | 12-15-2008 | Amend | 1-1-2009 | 800-020-0015 | 2-5-2009 | Amend | 3-1-2009 |
| 740-015-0040 | 12-15-2008 | Amend | 1-1-2009 | 800-020-0020 | 2-5-2009 | Amend | 3-1-2009 |
| 740-035-0020 | 9-29-2009 | Amend | 11-1-2009 | 800-020-0025 | 2-5-2009 | Amend | 3-1-2009 |
| 740-035-0110 | 9-29-2009 | Amend | 11-1-2009 | 800-020-0030 | 2-5-2009 | Amend | 3-1-2009 |
| 740-035-0145 | 9-29-2009 | Adopt | 11-1-2009 | 800-020-0035 | 2-5-2009 | Amend | 3-1-2009 |
| 740-035-0150 | 9-29-2009 | Amend | 11-1-2009 | 800-025-0020 | 2-5-2009 | Amend | 3-1-2009 |
| 740-035-0160 | 9-29-2009 | Amend | 11-1-2009 | 800-025-0023 | 2-5-2009 | Amend | 3-1-2009 |
| 740-035-0165 | 9-29-2009 | Adopt | 11-1-2009 | 800-025-0025 | 2-5-2009 | Amend | 3-1-2009 |
| 740-060-0045 | 9-29-2009 | Adopt | 11-1-2009 | 800-025-0027 | 2-5-2009 | Amend | 3-1-2009 |
| 740-060-0050 | 9-29-2009 | Repeal | 11-1-2009 | 800-025-0030 | 2-5-2009 | Amend | 3-1-2009 |
| 740-060-0100 | 9-29-2009 | Amend | 11-1-2009 | 800-025-0040 | 2-5-2009 | Amend | 3-1-2009 |
| 740-100-0010 | 4-1-2009 | Amend | 5-1-2009 | 800-025-0050 | 2-5-2009 | Amend | 3-1-2009 |
| 740-100-0060 | 4-1-2009 | Amend | 5-1-2009 | 800-025-0060 | 2-5-2009 | Amend | 3-1-2009 |
| 740-100-0065 | 4-1-2009 | Adopt | 5-1-2009 | 800-025-0070 | 2-5-2009 | Amend | 3-1-2009 |
| 740-100-0070 | 4-1-2009 | Amend | 5-1-2009 | 800-030-0025 | 2-5-2009 | Amend | 3-1-2009 |
| 740-100-0080 | 4-1-2009 | Amend | 5-1-2009 | 800-030-0050 | 2-5-2009 | Amend | 3-1-2009 |
| 740-100-0085 | 4-1-2009 | Adopt | 5-1-2009 | 801-001-0035 | 1-1-2009 | Amend | 2-1-2009 |
| 740-100-0090 | 4-1-2009 | Amend | 5-1-2009 | 801-010-0010 | 1-1-2009 | Amend | 2-1-2009 |
| 740-100-0100 | 4-1-2009 | Amend | 5-1-2009 | 801-010-0050 | 1-1-2009 | Amend | 2-1-2009 |
| 740-110-0010 | 4-1-2009 | Amend | 5-1-2009 | 801-010-0115 | 1-1-2009 | Amend | 2-1-2009 |
| 740-110-0080 | 4-1-2009 | Amend | 5-1-2009 | 801-010-0345 | 1-1-2009 | Amend | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|------------|----------|
| 801-030-0020 | 1-1-2009 | Amend | 2-1-2009 | 812-020-0065 | 11-20-2008 | Adopt | 1-1-2009 |
| 801-040-0010 | 1-1-2009 | Amend | 2-1-2009 | 812-020-0070 | 11-20-2008 | Adopt | 1-1-2009 |
| 801-040-0090 | 1-1-2009 | Amend | 2-1-2009 | 812-020-0070 | 2-1-2009 | Amend | 3-1-2009 |
| 804-001-0002 | 7-1-2009 | Amend | 7-1-2009 | 812-020-0071 | 7-1-2009 | Adopt | 8-1-2009 |
| 806-001-0003 | 5-14-2009 | Amend | 6-1-2009 | 812-020-0072 | 11-20-2008 | Adopt | 1-1-2009 |
| 806-001-0003 | 7-1-2009 | Amend | 7-1-2009 | 812-020-0080 | 11-20-2008 | Adopt | 1-1-2009 |
| 806-010-0020 | 7-10-2009 | Amend | 8-1-2009 | 812-020-0082 | 11-20-2008 | Adopt | 1-1-2009 |
| 806-010-0037 | 7-10-2009 | Amend | 8-1-2009 | 812-020-0085 | 11-20-2008 | Adopt | 1-1-2009 |
| 806-010-0095 | 2-5-2009 | Amend | 3-1-2009 | 812-020-0087 | 11-20-2008 | Adopt | 1-1-2009 |
| 808-001-0008 | 7-1-2009 | Amend | 7-1-2009 | 812-020-0090 | 11-20-2008 | Adopt | 1-1-2009 |
| 808-002-0480 | 6-1-2009 | Amend | 7-1-2009 | 812-021-0000 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-002-0780 | 2-1-2009 | Amend | 3-1-2009 | 812-021-0005 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-003-0010 | 10-14-2009 | Amend(T) | 11-1-2009 | 812-021-0010 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-003-0045 | 7-1-2009 | Amend | 7-1-2009 | 812-021-0011 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-003-0095 | 6-3-2009 | Amend(T) | 7-1-2009 | 812-021-0015 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-003-0100 | 7-1-2009 | Amend | 7-1-2009 | 812-021-0019 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-003-0105 | 7-1-2009 | Amend | 7-1-2009 | 812-021-0023 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-003-0130 | 7-1-2009 | Amend | 7-1-2009 | 812-021-0025 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-040-0020 | 5-13-2009 | Amend(T) | 6-1-2009 | 812-021-0028 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-040-0050 | 5-13-2009 | Amend(T) | 6-1-2009 | 812-021-0030 | 7-1-2009 | Adopt | 8-1-2009 |
| 808-040-0080 | 5-13-2009 | Amend(T) | 6-1-2009 | 812-021-0031 | 7-1-2009 | Adopt | 8-1-2009 |
| 809-010-0025 | 7-1-2009 | Amend | 7-1-2009 | 812-021-0032 | 7-1-2009 | Adopt | 8-1-2009 |
| 811-015-0025 | 12-23-2008 | Amend | 2-1-2009 | 812-021-0033 | 7-1-2009 | Adopt | 8-1-2009 |
| 811-015-0030 | 1-29-2009 | Amend | 3-1-2009 | 812-021-0034 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-001-0200 | 2-23-2009 | Amend(T) | 4-1-2009 | 812-021-0035 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-001-0200 | 6-1-2009 | Amend | 6-1-2009 | 812-021-0037 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-001-0200(T) | 6-1-2009 | Repeal | 6-1-2009 | 812-021-0040 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-001-0220 | 6-1-2009 | Adopt | 6-1-2009 | 812-021-0042 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-002-0060 | 11-20-2008 | Amend | 1-1-2009 | 812-021-0045 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-002-0262 | 2-1-2009 | Adopt | 3-1-2009 | 812-021-0047 | 7-1-2009 | Adopt | 8-1-2009 |
| 812-002-0420 | 11-20-2008 | Amend | 1-1-2009 | 813-110-0010 | 2-9-2009 | Amend(T) | 3-1-2009 |
| 812-002-0420 | 6-1-2009 | Amend | 6-1-2009 | 813-110-0010 | 8-5-2009 | Amend | 9-1-2009 |
| 812-003-0120 | 6-1-2009 | Amend | 6-1-2009 | 813-110-0010(T) | 8-5-2009 | Repeal | 9-1-2009 |
| 812-003-0140 | 2-1-2009 | Amend | 3-1-2009 | 817-005-0005 | 6-1-2009 | Amend | 7-1-2009 |
| 812-003-0140 | 9-1-2009 | Amend | 10-1-2009 | 817-010-0101 | 6-1-2009 | Amend | 7-1-2009 |
| 812-003-0141 | 2-1-2009 | Adopt | 3-1-2009 | 817-020-0005 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 812-003-0200 | 6-1-2009 | Amend | 6-1-2009 | 817-020-0011 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 812-003-0320 | 6-1-2009 | Amend | 6-1-2009 | 817-020-0012 | 6-1-2009 | Am. & Ren. | 7-1-2009 |
| 812-003-0325 | 9-1-2009 | Adopt | 10-1-2009 | 817-020-0015 | 6-1-2009 | Amend | 7-1-2009 |
| 812-003-0330 | 6-1-2009 | Amend | 6-1-2009 | 817-030-0005 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-003-0330 | 9-1-2009 | Amend | 10-1-2009 | 817-030-0005 | 6-1-2009 | Amend | 7-1-2009 |
| 812-003-0450 | 11-20-2008 | Repeal | 1-1-2009 | 817-030-0015 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-005-0280 | 11-20-2008 | Amend | 1-1-2009 | 817-030-0015 | 6-1-2009 | Amend | 7-1-2009 |
| 812-005-0280 | 6-1-2009 | Amend | 6-1-2009 | 817-030-0020 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-005-0280 | 9-1-2009 | Amend | 10-1-2009 | 817-030-0020 | 6-1-2009 | Amend | 7-1-2009 |
| 812-005-0800 | 11-20-2008 | Amend | 1-1-2009 | 817-030-0040 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-005-0800 | 2-1-2009 | Amend | 3-1-2009 | 817-030-0040 | 6-1-2009 | Amend | 7-1-2009 |
| 812-005-0800 | 6-1-2009 | Amend | 6-1-2009 | 817-030-0045 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-005-0800 | 9-1-2009 | Amend | 10-1-2009 | 817-030-0045 | 6-1-2009 | Amend | 7-1-2009 |
| 812-006-0100 | 11-20-2008 | Amend | 1-1-2009 | 817-030-0065 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-006-0200 | 11-20-2008 | Amend | 1-1-2009 | 817-030-0065 | 6-1-2009 | Amend | 7-1-2009 |
| 812-006-0300 | 6-1-2009 | Amend | 6-1-2009 | 817-030-0100 | 12-1-2008 | Suspend | 1-1-2009 |
| 812-006-0400 | 6-1-2009 | Amend | 6-1-2009 | 817-030-0100 | 6-1-2009 | Repeal | 7-1-2009 |
| 812-012-0170 | 6-1-2009 | Adopt | 6-1-2009 | 817-035-0010 | 6-1-2009 | Amend | 7-1-2009 |
| 812-020-0050 | 11-20-2008 | Adopt | 1-1-2009 | 817-035-0030 | 12-1-2008 | Amend(T) | 1-1-2009 |
| 812-020-0055 | 11-20-2008 | Adopt | 1-1-2009 | 817-035-0030 | 6-1-2009 | Amend | 7-1-2009 |
| 812-020-0060 | 11-20-2008 | Adopt | 1-1-2009 | 817-035-0050 | 6-1-2009 | Amend | 7-1-2009 |
| 812-020-0062 | 11-20-2008 | Adopt | 1-1-2009 | 817-035-0070 | 6-1-2009 | Amend | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|------------|-----------|--------------|------------|----------|----------|
| 817-035-0090 | 6-1-2009 | Amend | 7-1-2009 | 836-043-0062 | 1-1-2009 | Amend | 1-1-2009 |
| 817-035-0110 | 6-1-2009 | Amend | 7-1-2009 | 836-043-0064 | 1-1-2009 | Amend | 1-1-2009 |
| 817-040-0003 | 7-1-2009 | Amend(T) | 8-1-2009 | 836-043-0066 | 1-1-2009 | Amend | 1-1-2009 |
| 818-001-0087 | 7-1-2009 | Amend(T) | 7-1-2009 | 836-043-0068 | 1-1-2009 | Amend | 1-1-2009 |
| 820-010-0215 | 12-12-2008 | Amend | 1-1-2009 | 836-043-0070 | 1-1-2009 | Repeal | 1-1-2009 |
| 820-010-0325 | 5-15-2009 | Amend | 6-1-2009 | 836-043-0071 | 1-1-2009 | Adopt | 1-1-2009 |
| 820-010-0635 | 5-15-2009 | Amend | 6-1-2009 | 836-043-0076 | 1-1-2009 | Amend | 1-1-2009 |
| 820-030-0060 | 5-15-2009 | Amend | 6-1-2009 | 836-043-0079 | 1-1-2009 | Amend | 1-1-2009 |
| 820-040-0005 | 5-15-2009 | Amend | 6-1-2009 | 836-043-0082 | 1-1-2009 | Amend | 1-1-2009 |
| 830-001-0000 | 7-1-2009 | Amend | 8-1-2009 | 836-043-0086 | 1-1-2009 | Repeal | 1-1-2009 |
| 830-011-0000 | 7-1-2009 | Amend | 8-1-2009 | 836-043-0087 | 1-1-2009 | Adopt | 1-1-2009 |
| 830-011-0020 | 7-1-2009 | Amend | 8-1-2009 | 836-043-0089 | 1-1-2009 | Amend | 1-1-2009 |
| 830-011-0040 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0106 | 12-9-2008 | Amend | 1-1-2009 |
| 830-020-0030 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0750 | 12-9-2008 | Adopt | 1-1-2009 |
| 830-030-0000 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0755 | 12-9-2008 | Adopt | 1-1-2009 |
| 830-030-0050 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0760 | 12-9-2008 | Adopt | 1-1-2009 |
| 830-030-0060 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0765 | 12-9-2008 | Adopt | 1-1-2009 |
| 830-040-0000 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0770 | 12-9-2008 | Adopt | 1-1-2009 |
| 830-040-0040 | 7-1-2009 | Amend | 8-1-2009 | 836-051-0775 | 12-9-2008 | Adopt | 1-1-2009 |
| 833-020-0050 | 12-26-2008 | Amend | 2-1-2009 | 836-052-0119 | 7-1-2009 | Amend | 8-1-2009 |
| 833-020-0164 | 12-26-2008 | Amend | 2-1-2009 | 836-052-0129 | 7-1-2009 | Amend | 8-1-2009 |
| 833-025-0050 | 12-26-2008 | Amend | 2-1-2009 | 836-052-0132 | 7-1-2009 | Adopt | 8-1-2009 |
| 833-030-0001 | 12-26-2008 | Amend | 2-1-2009 | 836-052-0133 | 7-1-2009 | Amend | 8-1-2009 |
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| 833-060-0001 | 12-26-2008 | Am. & Ren. | 2-1-2009 | 836-052-0141 | 7-1-2009 | Adopt | 8-1-2009 |
| 833-060-0001 | 12-26-2008 | Am. & Ren. | 2-1-2009 | 836-052-0142 | 7-1-2009 | Amend | 8-1-2009 |
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| 833-060-0001 | 12-26-2008 | Am. & Ren. | 2-1-2009 | 836-053-0850 | 4-28-2009 | Adopt(T) | 6-1-2009 |
| 833-060-0001 | 12-26-2008 | Am. & Ren. | 2-1-2009 | 836-053-0855 | 4-28-2009 | Adopt(T) | 6-1-2009 |
| 833-060-0001 | 12-26-2008 | Am. & Ren. | 2-1-2009 | 836-053-0860 | 4-28-2009 | Adopt(T) | 6-1-2009 |
| 836-009-0020 | 10-1-2009 | Adopt(T) | 11-1-2009 | 836-053-0865 | 4-28-2009 | Adopt(T) | 6-1-2009 |
| 836-009-0025 | 10-1-2009 | Adopt(T) | 11-1-2009 | 836-072-0001 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-009-0030 | 10-1-2009 | Adopt(T) | 11-1-2009 | 836-072-0005 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-009-0035 | 10-1-2009 | Adopt(T) | 11-1-2009 | 836-072-0010 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-009-0040 | 10-1-2009 | Adopt(T) | 11-1-2009 | 836-072-0015 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-011-0000 | 1-29-2009 | Amend | 3-1-2009 | 836-072-0020 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-012-0331 | 7-9-2009 | Adopt(T) | 8-1-2009 | 836-072-0025 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-042-0045 | 1-1-2009 | Amend | 2-1-2009 | 836-072-0030 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-043-0005 | 1-1-2009 | Amend | 1-1-2009 | 836-072-0035 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-043-0009 | 1-1-2009 | Amend | 1-1-2009 | 836-072-0040 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-043-0017 | 1-1-2009 | Amend | 1-1-2009 | 836-072-0045 | 12-10-2008 | Adopt | 1-1-2009 |
| 836-043-0021 | 1-1-2009 | Amend | 1-1-2009 | 837-012-0530 | 4-10-2009 | Amend | 5-1-2009 |
| 836-043-0024 | 1-1-2009 | Amend | 1-1-2009 | 837-012-0625 | 4-10-2009 | Amend | 5-1-2009 |
| 836-043-0028 | 1-1-2009 | Amend | 1-1-2009 | 837-012-0750 | 4-10-2009 | Amend | 5-1-2009 |
| 836-043-0032 | 1-1-2009 | Amend | 1-1-2009 | 837-040-0001 | 12-31-2008 | Amend | 2-1-2009 |
| 836-043-0034 | 1-1-2009 | Adopt | 1-1-2009 | 837-040-0015 | 12-31-2008 | Adopt | 2-1-2009 |
| 836-043-0036 | 1-1-2009 | Repeal | 1-1-2009 | 837-040-0020 | 12-31-2008 | Amend | 2-1-2009 |
| 836-043-0037 | 1-1-2009 | Repeal | 1-1-2009 | 837-046-0000 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0041 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0020 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0044 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0040 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0046 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0060 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0046 | 8-14-2009 | Amend | 9-1-2009 | 837-046-0080 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0048 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0100 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0050 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0120 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0053 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0140 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0056 | 8-14-2009 | Amend | 9-1-2009 | 837-046-0160 | 6-2-2009 | Adopt(T) | 7-1-2009 |
| 836-043-0060 | 1-1-2009 | Amend | 1-1-2009 | 837-046-0180 | 6-2-2009 | Adopt(T) | 7-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|----------|----------|--------------|------------|------------|-----------|
| 839-003-0005 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 7-16-2009 | Amend | 9-1-2009 |
| 839-003-0010 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 7-22-2009 | Amend | 9-1-2009 |
| 839-003-0020 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 7-29-2009 | Amend | 9-1-2009 |
| 839-003-0025 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 8-18-2009 | Amend | 10-1-2009 |
| 839-003-0040 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 9-14-2009 | Amend | 10-1-2009 |
| 839-003-0045 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 9-21-2009 | Amend | 11-1-2009 |
| 839-003-0050 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 10-1-2009 | Amend | 11-1-2009 |
| 839-003-0055 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0700 | 10-8-2009 | Amend | 11-1-2009 |
| 839-003-0060 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0750 | 3-1-2009 | Amend | 4-1-2009 |
| 839-003-0065 | 12-5-2008 | Amend | 1-1-2009 | 839-025-0750 | 4-16-2009 | Amend | 5-1-2009 |
| 839-003-0070 | 12-5-2008 | Amend | 1-1-2009 | 845-001-0005 | 8-1-2009 | Amend | 8-1-2009 |
| 839-003-0080 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0320 | 7-1-2009 | Amend | 8-1-2009 |
| 839-003-0085 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0321 | 7-1-2009 | Adopt | 8-1-2009 |
| 839-003-0090 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0405 | 4-1-2009 | Amend | 5-1-2009 |
| 839-003-0095 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0410 | 4-1-2009 | Amend | 5-1-2009 |
| 839-003-0100 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0415 | 4-1-2009 | Amend | 5-1-2009 |
| 839-003-0200 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0415 | 7-15-2009 | Amend(T) | 8-1-2009 |
| 839-003-0205 | 12-5-2008 | Amend | 1-1-2009 | 845-005-0431 | 11-1-2009 | Adopt | 10-1-2009 |
| 839-003-0210 | 12-5-2008 | Amend | 1-1-2009 | 845-006-0335 | 4-1-2009 | Amend | 5-1-2009 |
| 839-003-0215 | 12-5-2008 | Amend | 1-1-2009 | 845-006-0345 | 5-1-2009 | Amend | 6-1-2009 |
| 839-003-0220 | 12-5-2008 | Amend | 1-1-2009 | 845-006-0425 | 7-1-2009 | Amend | 8-1-2009 |
| 839-003-0225 | 12-5-2008 | Amend | 1-1-2009 | 845-006-0452 | 11-1-2009 | Adopt | 10-1-2009 |
| 839-003-0230 | 12-5-2008 | Amend | 1-1-2009 | 845-006-0500 | 5-1-2009 | Amend | 6-1-2009 |
| 839-003-0235 | 12-5-2008 | Amend | 1-1-2009 | 845-007-0025 | 9-1-2009 | Repeal | 10-1-2009 |
| 839-003-0240 | 12-5-2008 | Amend | 1-1-2009 | 845-008-0045 | 7-1-2009 | Am. & Ren. | 8-1-2009 |
| 839-003-0245 | 12-5-2008 | Amend | 1-1-2009 | 845-010-0154 | 12-20-2008 | Adopt | 2-1-2009 |
| 839-005-0000 | 12-5-2008 | Amend | 1-1-2009 | 845-013-0050 | 5-1-2009 | Amend | 6-1-2009 |
| 839-005-0003 | 12-5-2008 | Amend | 1-1-2009 | 845-013-0060 | 5-1-2009 | Amend | 6-1-2009 |
| 839-005-0010 | 12-5-2008 | Amend | 1-1-2009 | 845-020-0025 | 1-1-2009 | Amend | 2-1-2009 |
| 839-005-0016 | 12-5-2008 | Amend | 1-1-2009 | 845-020-0035 | 1-1-2009 | Amend | 2-1-2009 |
| 839-005-0026 | 12-5-2008 | Amend | 1-1-2009 | 847-001-0030 | 5-1-2009 | Amend | 6-1-2009 |
| 839-005-0195 | 12-5-2008 | Amend | 1-1-2009 | 847-005-0005 | 1-22-2009 | Amend | 3-1-2009 |
| 839-005-0200 | 12-5-2008 | Amend | 1-1-2009 | 847-005-0005 | 9-11-2009 | Amend(T) | 10-1-2009 |
| 839-005-0205 | 12-5-2008 | Amend | 1-1-2009 | 847-008-0020 | 1-22-2009 | Amend | 3-1-2009 |
| 839-005-0220 | 12-5-2008 | Amend | 1-1-2009 | 847-008-0040 | 1-22-2009 | Amend | 3-1-2009 |
| 839-020-0050 | 1-12-2009 | Amend | 2-1-2009 | 847-008-0060 | 5-1-2009 | Amend | 6-1-2009 |
| 839-025-0013 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-008-0070 | 1-22-2009 | Adopt | 3-1-2009 |
| 839-025-0020 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-010-0054 | 1-22-2009 | Repeal | 3-1-2009 |
| 839-025-0030 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-010-0055 | 1-22-2009 | Repeal | 3-1-2009 |
| 839-025-0035 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-010-0073 | 5-1-2009 | Amend | 6-1-2009 |
| 839-025-0085 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-010-0100 | 1-22-2009 | Amend | 3-1-2009 |
| 839-025-0200 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-020-0130 | 1-22-2009 | Amend | 3-1-2009 |
| 839-025-0210 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-020-0170 | 4-9-2009 | Amend(T) | 5-1-2009 |
| 839-025-0530 | 8-5-2009 | Amend(T) | 9-1-2009 | 847-035-0030 | 5-1-2009 | Amend | 6-1-2009 |
| 839-025-0700 | 12-1-2008 | Amend | 1-1-2009 | 847-035-0030 | 7-20-2009 | Amend | 9-1-2009 |
| 839-025-0700 | 12-29-2008 | Amend | 2-1-2009 | 847-050-0037 | 7-14-2009 | Amend(T) | 8-1-2009 |
| 839-025-0700 | 1-1-2009 | Amend | 2-1-2009 | 847-065-0000 | 5-1-2009 | Amend | 6-1-2009 |
| 839-025-0700 | 1-6-2009 | Amend | 2-1-2009 | 847-070-0016 | 7-20-2009 | Amend | 9-1-2009 |
| 839-025-0700 | 1-12-2009 | Amend | 2-1-2009 | 847-070-0019 | 1-22-2009 | Amend | 3-1-2009 |
| 839-025-0700 | 2-11-2009 | Amend | 3-1-2009 | 847-070-0020 | 1-22-2009 | Amend | 3-1-2009 |
| 839-025-0700 | 3-17-2009 | Amend | 5-1-2009 | 847-070-0045 | 1-22-2009 | Amend | 3-1-2009 |
| 839-025-0700 | 3-24-2009 | Amend | 5-1-2009 | 848-005-0010 | 5-14-2009 | Amend | 6-1-2009 |
| 839-025-0700 | 4-1-2009 | Amend | 5-1-2009 | 848-005-0010 | 7-1-2009 | Amend | 6-1-2009 |
| 839-025-0700 | 6-10-2009 | Amend | 7-1-2009 | 848-010-0015 | 1-2-2009 | Amend | 2-1-2009 |
| 839-025-0700 | 6-30-2009 | Amend | 8-1-2009 | 848-010-0020 | 1-2-2009 | Amend | 2-1-2009 |
| 839-025-0700 | 7-1-2009 | Amend | 8-1-2009 | 848-010-0022 | 1-2-2009 | Adopt | 2-1-2009 |
| 839-025-0700 | 7-1-2009 | Amend | 8-1-2009 | 848-010-0026 | 1-2-2009 | Amend | 2-1-2009 |
| 839-025-0700 | 7-10-2009 | Amend | 8-1-2009 | 848-010-0044 | 1-2-2009 | Amend | 2-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|-----------------|------------|----------|-----------|-----------------|------------|----------|-----------|
| 848-015-0030 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0080 | 1-5-2009 | Adopt(T) | 2-1-2009 |
| 848-020-0030 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0080 | 6-22-2009 | Adopt | 8-1-2009 |
| 848-020-0060 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0080(T) | 6-22-2009 | Repeal | 8-1-2009 |
| 848-035-0020 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0090 | 1-5-2009 | Adopt(T) | 2-1-2009 |
| 848-035-0030 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0090 | 6-22-2009 | Adopt | 8-1-2009 |
| 848-035-0035 | 1-2-2009 | Adopt | 2-1-2009 | 855-007-0090(T) | 6-22-2009 | Repeal | 8-1-2009 |
| 848-035-0040 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0100 | 1-5-2009 | Adopt(T) | 2-1-2009 |
| 848-040-0100 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0100 | 6-22-2009 | Adopt | 8-1-2009 |
| 848-040-0117 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0100(T) | 6-22-2009 | Repeal | 8-1-2009 |
| 848-040-0145 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0110 | 1-5-2009 | Adopt(T) | 2-1-2009 |
| 848-040-0160 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0110 | 6-22-2009 | Adopt | 8-1-2009 |
| 848-040-0175 | 1-2-2009 | Adopt | 2-1-2009 | 855-007-0110(T) | 6-22-2009 | Repeal | 8-1-2009 |
| 848-045-0020 | 1-2-2009 | Amend | 2-1-2009 | 855-007-0120 | 1-5-2009 | Adopt(T) | 2-1-2009 |
| 850-030-0035 | 10-6-2009 | Amend | 11-1-2009 | 855-007-0120 | 6-22-2009 | Adopt | 8-1-2009 |
| 850-030-0195 | 10-6-2009 | Amend | 11-1-2009 | 855-007-0120(T) | 6-22-2009 | Repeal | 8-1-2009 |
| 850-030-0195 | 10-13-2009 | Amend(T) | 11-1-2009 | 855-060-0003 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-035-0230 | 4-30-2009 | Amend | 6-1-2009 | 855-062-0003 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-035-0230 | 10-6-2009 | Amend | 11-1-2009 | 855-062-0005 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-035-0230 | 10-13-2009 | Amend(T) | 11-1-2009 | 855-062-0020 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-040-0210 | 10-6-2009 | Amend | 11-1-2009 | 855-062-0030 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-040-0210 | 10-13-2009 | Amend(T) | 11-1-2009 | 855-062-0040 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-060-0225 | 12-8-2008 | Amend | 1-1-2009 | 855-062-0050 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 850-060-0225 | 6-17-2009 | Amend | 8-1-2009 | 855-065-0001 | 6-26-2009 | Amend(T) | 8-1-2009 |
| 850-060-0226 | 12-8-2008 | Amend | 1-1-2009 | 855-065-0005 | 6-26-2009 | Amend(T) | 8-1-2009 |
| 850-060-0226 | 6-17-2009 | Amend | 8-1-2009 | 855-065-0006 | 6-26-2009 | Amend(T) | 8-1-2009 |
| 851-002-0010 | 10-7-2009 | Amend | 11-1-2009 | 855-110-0003 | 6-26-2009 | Adopt(T) | 8-1-2009 |
| 851-002-0040 | 10-7-2009 | Amend | 11-1-2009 | 855-110-0007 | 6-26-2009 | Amend(T) | 8-1-2009 |
| 851-031-0090 | 6-26-2009 | Amend | 8-1-2009 | 855-110-0010 | 6-26-2009 | Amend(T) | 8-1-2009 |
| 851-050-0138 | 11-26-2008 | Amend | 1-1-2009 | 856-010-0008 | 6-23-2009 | Adopt | 8-1-2009 |
| 851-056-0006 | 11-26-2008 | Amend | 1-1-2009 | 856-010-0010 | 6-23-2009 | Amend | 8-1-2009 |
| 851-056-0022 | 11-26-2008 | Amend | 1-1-2009 | 856-010-0010 | 8-5-2009 | Amend | 9-1-2009 |
| 851-061-0090 | 5-15-2009 | Amend | 6-1-2009 | 856-010-0015 | 2-10-2009 | Amend(T) | 3-1-2009 |
| 851-062-0020 | 11-26-2008 | Amend | 1-1-2009 | 856-010-0015 | 8-24-2009 | Amend | 10-1-2009 |
| 851-062-0120 | 6-26-2009 | Amend | 8-1-2009 | 856-010-0016 | 8-24-2009 | Amend | 10-1-2009 |
| 851-063-0035 | 5-15-2009 | Amend | 6-1-2009 | 856-010-0022 | 6-19-2009 | Adopt | 8-1-2009 |
| 852-005-0005 | 7-1-2009 | Amend | 7-1-2009 | 858-030-0005 | 10-1-2009 | Amend(T) | 11-1-2009 |
| 852-070-0005 | 7-1-2009 | Amend | 7-1-2009 | 859-040-0010 | 12-17-2008 | Amend(T) | 2-1-2009 |
| 852-070-0055 | 7-1-2009 | Amend | 7-1-2009 | 859-040-0010 | 5-5-2009 | Amend | 6-1-2009 |
| 852-070-0060 | 7-1-2009 | Amend | 7-1-2009 | 859-040-0010(T) | 5-5-2009 | Repeal | 6-1-2009 |
| 855-007-0010 | 1-5-2009 | Adopt(T) | 2-1-2009 | 859-040-0015 | 12-17-2008 | Amend(T) | 2-1-2009 |
| 855-007-0010 | 6-22-2009 | Adopt | 8-1-2009 | 859-040-0015 | 5-5-2009 | Amend | 6-1-2009 |
| 855-007-0010 | 8-19-2009 | Amend(T) | 10-1-2009 | 859-040-0015(T) | 5-5-2009 | Repeal | 6-1-2009 |
| 855-007-0010(T) | 6-22-2009 | Repeal | 8-1-2009 | 860-021-0305 | 8-25-2009 | Amend | 10-1-2009 |
| 855-007-0020 | 1-5-2009 | Adopt(T) | 2-1-2009 | 860-021-0405 | 8-25-2009 | Amend | 10-1-2009 |
| 855-007-0020 | 6-22-2009 | Adopt | 8-1-2009 | 860-021-0505 | 8-25-2009 | Amend | 10-1-2009 |
| 855-007-0020(T) | 6-22-2009 | Repeal | 8-1-2009 | 860-022-0041 | 4-15-2009 | Amend(T) | 5-1-2009 |
| 855-007-0030 | 1-5-2009 | Adopt(T) | 2-1-2009 | 860-022-0041 | 10-2-2009 | Amend | 11-1-2009 |
| 855-007-0030 | 6-22-2009 | Adopt | 8-1-2009 | 860-022-0041(T) | 10-2-2009 | Repeal | 11-1-2009 |
| 855-007-0030(T) | 6-22-2009 | Repeal | 8-1-2009 | 860-022-0070 | 3-25-2009 | Amend | 5-1-2009 |
| 855-007-0040 | 1-5-2009 | Adopt(T) | 2-1-2009 | 860-024-0010 | 12-29-2008 | Amend | 2-1-2009 |
| 855-007-0040 | 6-22-2009 | Adopt | 8-1-2009 | 860-024-0020 | 5-5-2009 | Amend | 6-1-2009 |
| 855-007-0040(T) | 6-22-2009 | Repeal | 8-1-2009 | 860-024-0021 | 5-5-2009 | Amend | 6-1-2009 |
| 855-007-0050 | 1-5-2009 | Adopt(T) | 2-1-2009 | 860-027-0400 | 2-5-2009 | Adopt | 3-1-2009 |
| 855-007-0050 | 6-22-2009 | Adopt | 8-1-2009 | 860-032-0620 | 4-14-2009 | Amend | 5-1-2009 |
| 855-007-0050(T) | 6-22-2009 | Repeal | 8-1-2009 | 860-034-0010 | 5-5-2009 | Amend | 6-1-2009 |
| 855-007-0060 | 1-5-2009 | Adopt(T) | 2-1-2009 | 860-034-0120 | 5-5-2009 | Amend | 6-1-2009 |
| 855-007-0060 | 6-22-2009 | Adopt | 8-1-2009 | 860-034-0180 | 8-25-2009 | Amend | 10-1-2009 |
| 855-007-0060(T) | 6-22-2009 | Repeal | 8-1-2009 | 860-034-0260 | 8-25-2009 | Amend | 10-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|-----------|------------|-----------|--------------|-----------|------------|----------|
| 860-034-0310 | 5-5-2009 | Amend | 6-1-2009 | 863-015-0120 | 1-1-2009 | Am. & Ren. | 1-1-2009 |
| 860-038-0220 | 6-25-2009 | Amend | 8-1-2009 | 863-015-0130 | 1-1-2009 | Amend | 1-1-2009 |
| 860-038-0300 | 6-25-2009 | Amend | 8-1-2009 | 863-015-0135 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0005 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0140 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0010 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0145 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0015 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0150 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0020 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0155 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0025 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0160 | 1-1-2009 | Am. & Ren. | 1-1-2009 |
| 860-082-0030 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0165 | 1-1-2009 | Repeal | 1-1-2009 |
| 860-082-0035 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0175 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0040 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0180 | 1-1-2009 | Repeal | 1-1-2009 |
| 860-082-0045 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0185 | 1-1-2009 | Repeal | 1-1-2009 |
| 860-082-0050 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0186 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0055 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0188 | 1-1-2009 | Adopt | 1-1-2009 |
| 860-082-0060 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0190 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0065 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0195 | 1-1-2009 | Repeal | 1-1-2009 |
| 860-082-0070 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0200 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0075 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0205 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0080 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0210 | 1-1-2009 | Amend | 1-1-2009 |
| 860-082-0085 | 8-26-2009 | Adopt | 10-1-2009 | 863-015-0215 | 1-1-2009 | Amend | 1-1-2009 |
| 860-083-0005 | 6-25-2009 | Adopt | 8-1-2009 | 863-015-0220 | 1-1-2009 | Repeal | 1-1-2009 |
| 860-083-0005 | 8-5-2009 | Amend | 9-1-2009 | 863-015-0225 | 1-1-2009 | Am. & Ren. | 1-1-2009 |
| 860-083-0010 | 8-5-2009 | Adopt | 9-1-2009 | 863-015-0230 | 1-1-2009 | Am. & Ren. | 1-1-2009 |
| 860-083-0050 | 6-25-2009 | Adopt | 8-1-2009 | 863-015-0250 | 1-1-2009 | Amend | 1-1-2009 |
| 860-083-0100 | 8-5-2009 | Adopt | 9-1-2009 | 863-015-0255 | 1-1-2009 | Amend | 1-1-2009 |
| 860-083-0200 | 8-5-2009 | Adopt | 9-1-2009 | 863-015-0260 | 1-1-2009 | Amend | 1-1-2009 |
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| 860-083-0400 | 8-5-2009 | Adopt | 9-1-2009 | 863-024-0000 | 1-1-2009 | Adopt | 1-1-2009 |
| 860-083-0500 | 8-5-2009 | Adopt | 9-1-2009 | 863-024-0003 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-014-0000 | 1-1-2009 | Adopt | 1-1-2009 | 863-024-0005 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-014-0003 | 1-1-2009 | Adopt | 1-1-2009 | 863-024-0010 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-014-0038 | 1-1-2009 | Adopt | 1-1-2009 | 863-024-0015 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-014-0042 | 1-1-2009 | Adopt | 1-1-2009 | 863-024-0020 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0000 | 1-1-2009 | Adopt | 1-1-2009 | 863-024-0030 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0005 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0050 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0010 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0055 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0015 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0060 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0020 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0061 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0025 | 1-1-2009 | Repeal | 1-1-2009 | 863-024-0062 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0030 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0063 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0035 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0065 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0040 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0070 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0045 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0075 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0050 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0076 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0055 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0085 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0060 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0095 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0061 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-024-0100 | 1-1-2009 | Adopt | 1-1-2009 |
| 863-015-0062 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0005 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0063 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0010 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0065 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0015 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0070 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0020 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0075 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0025 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0076 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0030 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0080 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0035 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0085 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0040 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0095 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0045 | 1-1-2009 | Amend | 1-1-2009 |
| 863-015-0100 | 1-1-2009 | Am. & Ren. | 1-1-2009 | 863-025-0050 | 1-1-2009 | Amend | 1-1-2009 |

OAR REVISION CUMULATIVE INDEX

| OAR Number | Effective | Action | Bulletin | OAR Number | Effective | Action | Bulletin |
|--------------|------------|--------|-----------|-----------------|-----------|----------|-----------|
| 863-025-0055 | 1-1-2009 | Amend | 1-1-2009 | 877-040-0010 | 7-1-2009 | Amend | 7-1-2009 |
| 863-025-0060 | 1-1-2009 | Amend | 1-1-2009 | 877-040-0015 | 7-1-2009 | Amend | 7-1-2009 |
| 863-025-0065 | 1-1-2009 | Amend | 1-1-2009 | 877-040-0020 | 7-1-2009 | Repeal | 7-1-2009 |
| 863-025-0070 | 1-1-2009 | Amend | 1-1-2009 | 877-040-0045 | 7-1-2009 | Amend | 7-1-2009 |
| 863-025-0080 | 1-1-2009 | Amend | 1-1-2009 | 877-040-0050 | 7-1-2009 | Amend | 7-1-2009 |
| 863-027-0000 | 1-1-2009 | Adopt | 1-1-2009 | 877-040-0055 | 7-1-2009 | Amend | 7-1-2009 |
| 863-027-0005 | 1-1-2009 | Adopt | 1-1-2009 | 918-008-0075 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0000 | 1-1-2009 | Amend | 1-1-2009 | 918-008-0080 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0015 | 1-1-2009 | Amend | 1-1-2009 | 918-008-0085 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0020 | 1-1-2009 | Amend | 1-1-2009 | 918-008-0090 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0025 | 1-1-2009 | Amend | 1-1-2009 | 918-008-0095 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0030 | 1-1-2009 | Amend | 1-1-2009 | 918-008-0110 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0033 | 1-1-2009 | Amend | 1-1-2009 | 918-008-0115 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0035 | 1-1-2009 | Amend | 1-1-2009 | 918-020-0370 | 1-1-2009 | Adopt | 2-1-2009 |
| 863-050-0040 | 1-1-2009 | Repeal | 1-1-2009 | 918-050-0000 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0050 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0010 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0052 | 1-1-2009 | Adopt | 1-1-2009 | 918-050-0020 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0055 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0030 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0060 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0100 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0065 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0100 | 10-1-2009 | Amend | 11-1-2009 |
| 863-050-0066 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0110 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0100 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0120 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0105 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0130 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0115 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0140 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0150 | 1-1-2009 | Amend | 1-1-2009 | 918-050-0150 | 1-1-2009 | Amend | 1-1-2009 |
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| 863-050-0205 | 1-1-2009 | Repeal | 1-1-2009 | 918-050-0170 | 1-1-2009 | Amend | 1-1-2009 |
| 863-050-0210 | 1-1-2009 | Repeal | 1-1-2009 | 918-225-0430 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0215 | 1-1-2009 | Repeal | 1-1-2009 | 918-225-0435 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0220 | 1-1-2009 | Repeal | 1-1-2009 | 918-225-0445 | 1-1-2009 | Adopt | 2-1-2009 |
| 863-050-0225 | 1-1-2009 | Repeal | 1-1-2009 | 918-225-0450 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0230 | 1-1-2009 | Repeal | 1-1-2009 | 918-225-0570 | 1-1-2009 | Amend | 2-1-2009 |
| 863-050-0235 | 1-1-2009 | Repeal | 1-1-2009 | 918-225-0600 | 7-16-2009 | Amend(T) | 9-1-2009 |
| 863-050-0240 | 1-1-2009 | Amend | 1-1-2009 | 918-225-0605 | 7-16-2009 | Suspend | 9-1-2009 |
| 875-010-0090 | 12-15-2008 | Amend | 1-1-2009 | 918-225-0610 | 7-16-2009 | Suspend | 9-1-2009 |
| 875-010-0090 | 4-20-2009 | Amend | 6-1-2009 | 918-225-0630 | 7-16-2009 | Amend(T) | 9-1-2009 |
| 875-011-0010 | 10-15-2009 | Amend | 11-1-2009 | 918-261-0015 | 1-1-2009 | Adopt | 2-1-2009 |
| 875-020-0005 | 12-15-2008 | Amend | 1-1-2009 | 918-261-0015(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 875-030-0010 | 12-15-2008 | Amend | 1-1-2009 | 918-282-0140 | 7-1-2009 | Amend | 8-1-2009 |
| 875-030-0010 | 10-15-2009 | Amend | 11-1-2009 | 918-305-0280 | 4-1-2009 | Amend | 5-1-2009 |
| 875-030-0020 | 10-15-2009 | Amend | 11-1-2009 | 918-311-0065 | 1-1-2009 | Adopt | 2-1-2009 |
| 875-030-0025 | 10-15-2009 | Amend | 11-1-2009 | 918-311-0065(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 875-030-0050 | 12-15-2008 | Amend | 1-1-2009 | 918-311-0080 | 7-27-2009 | Adopt(T) | 9-1-2009 |
| 877-001-0000 | 7-1-2009 | Repeal | 7-1-2009 | 918-311-0080 | 10-1-2009 | Adopt | 11-1-2009 |
| 877-001-0005 | 7-1-2009 | Amend | 7-1-2009 | 918-400-0455 | 1-1-2009 | Amend | 2-1-2009 |
| 877-001-0010 | 7-1-2009 | Repeal | 7-1-2009 | 918-400-0458 | 1-1-2009 | Amend | 2-1-2009 |
| 877-020-0060 | 7-1-2009 | Adopt | 7-1-2009 | 918-400-0800 | 7-16-2009 | Amend(T) | 9-1-2009 |
| 877-030-0100 | 7-1-2009 | Amend | 7-1-2009 | 918-480-0010 | 2-1-2009 | Amend | 3-1-2009 |
| 877-035-0000 | 7-1-2009 | Amend | 7-1-2009 | 918-480-0010 | 10-1-2009 | Amend | 11-1-2009 |
| 877-035-0005 | 7-1-2009 | Repeal | 7-1-2009 | 918-480-0010(T) | 2-1-2009 | Repeal | 3-1-2009 |
| 877-035-0010 | 7-1-2009 | Amend | 7-1-2009 | 918-480-0150 | 1-1-2009 | Adopt | 2-1-2009 |
| 877-035-0012 | 7-1-2009 | Amend | 7-1-2009 | 918-480-0150(T) | 1-1-2009 | Repeal | 2-1-2009 |
| 877-035-0013 | 7-1-2009 | Amend | 7-1-2009 | 943-001-0000 | 9-14-2009 | Adopt(T) | 10-1-2009 |
| 877-035-0015 | 7-1-2009 | Amend | 7-1-2009 | 943-001-0010 | 9-14-2009 | Adopt(T) | 10-1-2009 |
| 877-040-0000 | 7-1-2009 | Amend | 7-1-2009 | 943-001-0015 | 9-14-2009 | Adopt(T) | 10-1-2009 |
| 877-040-0003 | 7-1-2009 | Amend | 7-1-2009 | 951-003-0005 | 7-20-2009 | Amend(T) | 9-1-2009 |

